CITY OF IRVINE

GREAT PARK AUDIT

REPORT OF SPECIAL COUNSEL

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I.

EXECUTIVE SUMMARY

A. INTRODUCTION AND OVERVIEW.

The Orange County Great Park project (the “Great Park” or “GPC”) in the City of Irvine (“City”) has been the subject of concern and criticism over the years on several levels. The ambitious scope of the project and its ultimate feasibility in light of actual financial resources available to plan, construct and operate the facility has long been questioned. The unusual corporate and governance structure that was created to implement the Great Park concept has raised questions at a variety of levels and prompted two Grand Jury inquiries.

The City initially set up the Orange County Great Park Corporation (the “GPC”) as a non-profit corporation supporting the City’s efforts to develop the Great Park. The initial distinction between the authority of the GPC and the City Council of Irvine with regard to awarding of contracts to various consultants generated concerns about whether proper City regulations affecting bidding, award and administration of contracts were being followed and whether the necessary technical expertise in construction, as opposed to planning, of the Great Park was obtained. Ultimately, the GPC was subsumed by the City and became an advisory body rather than a free standing entity.

Throughout the history of the Great Park project, the nature of the personal and business relationships of the major contractors and some elected officials, actions taken to extend or close out contracts and other actions of the parties have caused controversy and concern resulting in negative press coverage and questions about the standards that were followed. Operative contract provisions for the Great Park required an audit and performance review. As a result, a performance review of the various contracts, which has more commonly been referred to as the Great Park Audit (the “Audit”) was commenced in June of 2013 and has involved the taking of depositions of numerous individuals with the resulting deposition transcripts placed on the City’s website. With the transparency and online access to the transcripts, there has been no end of public comment and controversy.

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1 The term “Audit” as used herein refers to how the audit is described in various city contracts herein, rather than the technical definition of an audit from an accounting standpoint.
2 The California State Legislature enacted many changes in the law after the City of Bell scandal in an effort to prevent future corruption scandals. For example, Assembly Bill 1344, approved by the Governor of California on October 9, 2011, enacted several reforms, including among other reforms, requiring that cities provide notice of each council meeting and post agenda packages on the city’s Internet website, which was not previously required. Consistent with these legal reforms, deposition transcripts and other documents for the Audit were posted on the City’s website to ensure full transparency consistent with Assembly Bill 1344.
A few salient points should be set forth at the beginning of this report:

1. The Great Park project involves the expenditure of over $350 million\(^3\) of public monies. The City of Irvine was given approximately 1350 acres from the former El Toro Marine Corps Air Station (“MCAS” or “ETMCAS”) to create a great iconic park to become the heart of Orange County and be completed in 6-7 years. Seven years later, only 88 acres are developed for recreational purposes.

2. The performance review covers seven years of work on the Great Park (2005-2012). Tens of thousands of pages have been reviewed for the Audit. City contracts with firms working on the Great Park provided for performance reviews and contract compliance audits. Violations of material contract terms have been found and potential conflicts of interest raising the appearance of impropriety.

3. The Orange County District Attorney, Grand Jury, the former presiding judge of the Orange County Superior Court and other public officials are all reviewing the information generated by the Audit. There are thus multiple layers of oversight and review and the Audit itself has heightened the public awareness of the issues surrounding the Great Park.

4. The Audit has involved a Council Subcommittee. The Subcommittee was created by the City Council on January 8, 2013. The Audit has compelled participation by parties through subpoenas. The use of subpoenas was approved by the City Council after a public meeting on January 28, 2014. The Mayor and City Clerk issued all deposition subpoenas, not the Subcommittee. In fact, twice special counsel had to seek Council approval to seek judicial enforcement of subpoenas.

5. The audit firm of HSNO was selected after a competitive bidding process in 2013. Two different special counsel firms have been used for the Audit. Both law firms had represented the City on other matters before the Audit.

6. The Audit fully complied with the Brown Act and Public Records Act. Audit matters were approved by the City Council at properly noticed public meetings. Records concerning the Audit are posted on the City’s website including all final deposition transcripts, contracts and staff reports. The media has closely followed the testimony through the posted depositions.

7. The Audit has already helped produce reforms approved by the voters. On November 4, 2014, the voters of Irvine by 88.7% of the vote approved a Charter Amendment requiring an annual audit of Great Park funds, prohibiting Great Park expenditures or contracts until recommended by

\(^3\) As of June 2014, Great Park raised $520M including $200M Lennar contribution, $88M from fees and other sources, $134M from City loan, $96M from redevelopment; and had expenses of $359M with a fund balance of $161M. Source: City Finance.
the Great Park Board of Directors and approved by the City Council, and establishing whistleblower protections for those who report waste, fraud or abuse of Great Park funds.

B. NARRATIVE SUMMARY OF REPORT.

At the Great Park Board meeting of January 23, 2006, following a trip to New York to meet with the Design Studio, who would soon be selected to design the Great Park, Chairman Larry Agran, sought to reassure the residents of Irvine, and indeed the larger regional community of Orange County itself, that the Great Park was affordable and buildable. He stated:

“What I also learned on the visit to New York is that within the $401 million available to us, $201 million buried for the most part in the ground in backbone infrastructure and $200 million above ground, we can expect to see a master design that comfortably fits within the $200 million above ground and includes, yes the Great Canyon that has been proposed and has been such a signature piece which has its own microclimates and many, many elements within it, including the likely embedding of earthworks structures as the canyon moves along toward the lake, toward the amphitheater which will be included as well. All of these are affordable.” – Larry Agran

This proved a fictitious statement. Of course, with the advantage of hindsight it is clear that the statement turned out to be wildly inaccurate. Ten years later Great Park expenditures are $359 million, and thus approaching the $401 million Chairman Agran projected, but only 6.5% of the park, 88 acres, is developed for park purposes. Yet, in 2004 it all seemed real enough. The $401 million budget was based on an agreement with Lennar who a year earlier had bought the 4700-acre El Toro Marine Corps Air Station for $649.5 million, and had given 1347 acres to the City for the Great Park. Lennar had agreed to prepay $200 million in developer fees to the Great Park to carry out the Project. Furthermore, Lennar had agreed to construct $201 million worth of infrastructure which would serve the Great Park, through the creation of community facilities district assessment financing so that future property owners would pay off the bonds. Additionally, the financing plan also projected that within five years the Park could pay operating expenses by generating $15 million per year in annual revenue from parking and user fees, RV storage fees, fees for the use of agricultural land, and other sources. This was the 2004 Business Plan. The ambitious plan projected build out of the park in 6-7 years, though great urban parks of similar size had taken 50 years or more. It was an express selling point of the Project that phasing and long development horizons were not needed.

And yet, it was a fiction at the time. The fiction was not that the Chairman and City representatives had been to New York, or that they had met with architect Ken Smith and others who would become Design Studio, or even that they had seen an

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4 See Chairman Agran’s remarks on recorded video of January 23, 2006 meeting, at 3 hour 4 minute mark.
innovative landscape design with a canyon and other manmade elements. The fiction was that it could be built for $401 million. That was always a fiction about the Design Studio’s plans. Chairman Agran, it turned out, had heard on the New York trip that the price tag for the creative design with the canyon was $1 billion. He stated in his deposition as follows:

“…it was Ken Smith, in his presentation, who…produced not only a master design, but a projection of what it would cost to build that design. And that figure, I remember it because I heard first in New York, as part of the competition. He said: ‘We’re presenting this to you assuming we’re selected. And if we were selected, we believe all of this can be built for $998 million.’ A billion dollars.”

Over the course of two years, the projected Great Park cost of $401 million, supported by the financing plan described above, rose to the billion dollars that Design Studio had privately projected, then to $1.24 billion and finally $1.6 billion. The question is asked why the City’s leadership at that time did not balk at the tripling of the cost to over a billion dollars. The escalating cost was not a surprise. The Chairman was told what to expect in New York – a billion dollars. Accordingly, his statement on January 23, 2006 was inaccurate. The $401 million park was never going to be great enough for the Chairman. In his deposition he stated that for $350 million there would only be a normal park, flat with greenery and without the “compelling features” like a canyon, “so our vision grew at the same time the park was growing. And we had the benefit of the master design. And yes the billion dollar vision of what this could be.”

Possibly there would be those who would defend the Chairman for his billion dollar vision, and perhaps even the choice to describe the $401 million as the cost, and letting the public awareness of the $1 billion cost arise organically over time. However, ironically, Great Park costs have now crossed the $350 million threshold Chairman Agran named for the lesser park. For this $350 million, we can see the results, 6.5% of the Great Park is developed, 88 acres. Have the political leaders and managers delivered a sufficient product for the expenditures of these monies, and what should be the lessons learned? These are the questions we seek to explore in this Audit.

On March 9, 2006, three months after Chairman Agran’s pronouncement, the City entered into an initial design contract with the Design Studio for $372,000 to develop the planning process for a master plan. Significantly, despite the Chairman’s representation to the public of a $410 million cost, Design Studio was not given this limitation. In something over a year, the Design Studio produced a master plan (the “Master Plan”) at a cost of almost $10 million. On July 28, 2007, the Board approved a Schematic Design Contract with Design Studio for $27.3 million to design the Park, one of the purposes of which was to produce a new budget based on the Master Plan. In another precedent, the City commenced design without completion of the Master

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5 Agran depo pg. 42.
6 Agran, pgs. 115-116.
7 This contract cost also escalated to $42.7M.
Plan and without a budget because without more funding the Design Studio was going to cut back staff. On September 27, 2007, the Master Plan was finally approved, but now the budget estimate for the project was $979.8 million, back to Design Studio’s estimate in New York, 20 months previously. Three months later the Design Studio provided a new cost estimate of $1.24 billion.

September 27, 2007 or more generally, the last quarter of 2007, is perhaps the point where the Great Park Project went critically off track. The one billion dollar estimate was now in the open, in fact the cost had gone considerably higher. There was no acknowledgement that the cost had doubled and tripled from the early projection, that the original financing plan, which was affordable and a part of the negotiations with Lennar, a major development entity, was now void, or that the Design Studio was not designing the Project to stay within a budget which had been set based on realistic revenue projections. Instead of a Project controlled by a budget and contract constraints, three elements of what can at best be called naiveté or worst studied indifference, had entered the picture. The lack of construction budget controls would dominate management of the Project until Mr. Mike Ellzey was hired as Chief Executive Officer and reassessed project direction in 2009. These three elements were: (1) a dream-like desire that the “Great” Park needed to be world class and not constrained by a budget; (2) a belief that there would be an abundant amount of redevelopment money to pay for it, although the estimates of redevelopment funding could be shown to be insufficient; and (3) management of the Project had been put in the hands of consultants who had a financial stake in the expanding cost of the Project.

There are many important statements made by witnesses in these depositions which support the above statements. Perhaps one of the clearest is that of Mr. Richard Sim, a long-time executive at The Irvine Company who during his 43 years in development, participated in most of the important development decisions in Irvine. Mr. Sim had been placed on the Great Park Board due to his development experience, yet found himself in complete disagreement with the management of the Project, which was directed largely by Chairman Agran through his supporters on the City Council and the Board, and by the team of consultants he had helped assemble. Mr. Sim explained his resignation as follows:

“No bidding, giving contracts to favored people that were referred to “FOL” that the city staff referred to privately as “Friends of Larry.” When that happened, also I think I mentioned to some of the councilmembers, particularly Chairman Agran that you know this was an unethical way to do business and a bad business practice and I think his comment was ‘but it was not illegal.’ Once I realized this was the way the Board was going to do business, I decided it was time for me to resign because in my 43 years of being in the development business and my last 20 years with the Irvine Company, ethics, good business practices were a way of life for us because that is the only way we as private developers stayed in business over the long-term. To hear that we were going to operate this business in a slip shod manner and having no-bid contracts and ethics were not
important, it was just something I could not tolerate and I had to resign and I did.\textsuperscript{8}

Yehudi Gaffen of Gafcon, part of Design Studio, a man very sympathetic to Chairman Agran, and gave the following perspective in his deposition:

“So the Great Park, to me, kind of epitomizes that subset of design management where it’s the result of a public competition that has no budget. It was a project that was innovative. The brief was an encouragement to dream big and to invent what the next generation of public metropolitan park would be…(Gaffen depo, pg. 31) [Chairman Agran] wasn’t as concerned about [budget]. He had the attitude that, ‘We’ll figure it out.’ Let’s design something great, and then let’s figure out how to make it happen.” [Gaffen depo pg. 193]

Plenty of signs of trouble followed. The Design Studio estimate of Park costs of $979.8 million rose in only three more months by another $250 million to $1.24 billion and six months later, on July 11, 2008, the independent estimator that the Great Park had hired, Bovis Lend Lease (“Bovis”), gave an estimate of an astonishing $1.6 billion, or $360 million more than the Design Studio’s January 2008 estimate and now 60 percent higher than the billion dollar New York budget discussed with Mr. Agran two years earlier. Moreover, this estimate did not include vertical construction.\textsuperscript{9} Clearly, as Mr. Gaffen stated, neither the construction budget nor what the Great Park could afford were taken into sufficient consideration.

The Great Recession was just starting, but $1.6 billion was far more than the Redevelopment Project ever could have paid for.\textsuperscript{10} It has been said many times in defense of the decisions made from 2006 to 2009, that it was the recession or the state’s dissolving redevelopment that killed the Great Park. This is false. The Project as contemplated by the Master Plan was well beyond the GPC’s financial capacity \textit{two years before the dissolution of redevelopment}.

The Master Plan was killed not by the recession or the loss of the redevelopment funding, it was killed by its own hubris, the failure to engage in a honest dialogue about how it could be funded, and failure to keep the consultants operating within any sort of affordable budget.

The GPC took steps to try to manage the Project but all proved ineffective. The July 2007 Schematic Design Contract required the Design Studio to develop a Management Plan with budgets and timelines to manage the Project, but after submitting a plan to the City’s Program Manager, Bovis, in September 2007, which

\textsuperscript{8} Sim sworn statement pg. 4.
\textsuperscript{9} In fact, internal estimates put the real cost at $3-4 billion.
\textsuperscript{10} When the redevelopment plan was adopted there was an estimate of total revenue over 40 years of almost $1 billion. However, this assumed build-out of the improvements in less than 10 years, which did not occur. In addition, the bonding capacity on a 40-year stream of revenue was much less. See footnote 22 on present value calculations.
Bovis critiqued substantially, no final plan was ever adopted and in response to a later audit request as to why the plan was never finalized, it was claimed it was unnecessary [Onisko Scholz Audit, June 21, 2012]. Besides the Bovis program management contract, other independent consultants were used such as Brandon McDevitt (McDevitt Construction Partners) to try and analyze control and project costs. Also, after the Bovis $1.6 billion estimate, the Great Park entered into audit contracts with Diehl Evans, LLP in August of 2008 and Onisko Scholz, LLP in November 2011. These audits raised issues but were late in the process and took a considerable time to complete (the Diehl Evans audit took over a year), so they had no impact on preventing the excessive expenditures or causing a reappraisal of project revenues.

Reviewing the whole train of events, what ultimately led to the City’s facing financial reality, was the hiring of Michael Ellzey as the CEO in August 2008, soon after the Bovis estimate of $1.6 billion. Mr. Ellzey coming in with fresh eyes was willing to look realistically at what was feasible. He brought in another reviewer, Mr. Brandon McDevitt, who quickly recognized problems. Governor Jerry Brown was still two years away from proclaiming that redevelopment agencies should be dissolved (January 2011), but it was clear to Mr. McDevitt and Mr. Ellzey that radical changes were needed. This was not easy given the political environment Mr. Ellzey described in his deposition. It appears that Mr. Ellzey ultimately acted with some courage given the threats which were made against him.

In February 2009, Mr. Ellzey recommended discontinuance of the Schematic Design process with the Design Studio, pursuant to which the City would spend $36 million, $9 million above the original $27.3 million contract. Mr. Ellzey decided to approach things from the measure of what the Great Park’s resources were and what development could be supported from anticipated revenue. The goal was to determine “fiscal sustainability.” The projections, including projected redevelopment tax increment (since redevelopment was still available), showed that the Great Park could afford to build and maintain about $61.2 million of facilities. Concurrently with this staff review, the Board had directed Design Studio to undertake a 36-month study to develop 500 acres. Some $3.5 million was allocated to this study but ultimately Mr. Ellzey concluded it was an idea without a supporting financial analysis and there was not a feasible way to build the 500-acre plan. Staff’s further analysis became the 2009 Business Plan, replacing the 2004, $401 million, Business Plan. On October 22, 2009, the 500-acre concept was dropped and staff proposed an approximate 220-acre plan costing $65.5 million. But of the approximately 115 acres developed, excluding agricultural lands, only about 88 acres was for public recreational uses.

This new plan was called the Western Sector Park Development Plan. The CEO was authorized to negotiate sole source contracts to proceed expeditiously. Even at this late stage of the Great Park, and with this much more limited project, many of the prior practices were continued with sole source contracts, developing elements of the project after the fact, consultants with fixed fee contracts without clear scopes, and so forth. A contract was let to WRSN Studios for $10.2 million and planning started on November 1, 2009. On June 7, 2012, a contract was let to USS Cal Builders for the remaining 30 acres at a cost of $22.8 million. On September 2013 the Western Sector was opened.
Other components of the Western Sector were developed until the total cost was $70 million, not too much greater than the $65.5 million in the original budget.

This is a simplified telling of the Great Park story, from roughly January 2003 until the opening of the Western Sector in September 2013—over 10 years later. The basic question is how did a Project, with a $401 million projected cost, balloon with the hiring of the Design Studio on March 9, 2006 to a Project with a $1.24 billion estimate less than two years later? The Great Park’s independent estimator projected the cost as $1.6 billion and yet the Great Park Board continued with Schematic Design. Why did it take the hiring of Mike Ellzey as CEO and the 2009 Business Plan for the political push behind the Project to falter and for the expenditure of millions of dollars to come up against a financial reality it could not push through?

There are many details left out of this telling of the story, and hopefully in the many pages that follow, the reader will find that these details reinforce the simplified account above, or may find that they add conflict, or even that there are questions which are not answered. In fact, the Audit itself has been attacked for the length of time it has taken and the expense. The first phase of the audit was undertaken by Hagen, Streiff, Newton & Oshiro Accountants (“HSNO”) and was a preliminary review. However, several key witnesses failed to cooperate with HSNO and that resistance increased the cost of the Audit. In January 2014 the second phase of the Audit began with the goal of exploring additional issues and ensuring that all witnesses cooperate fully. The City Council authorized the use of subpoenas. Aleshire & Wynder joined the Audit in June 2014. Depositions of the key participants were taken. These have added a much fuller understanding of events. The last deposition was only completed on March 16, 2015. All of this material has been posted on the City’s website in response to demands from the public to ensure transparency and people have been free to read the transcripts and draw their own conclusions, which many have done over the last eight months. While we have deposed over 20 witnesses, in reality a full perspective could involve deposing perhaps an equal number of additional witnesses. And yet, while this would add further detail, at some point this process must draw to a close, and the Irvine community must move on.

It is our hope that the public will find the Audit to have value in showing accountability for expenditures of approximately $350 million. We see a number of ways that this report will prove worth the investment. Most importantly, from a transparency standpoint, the public should know how $350 million could get spent towards a project supposed to cost $200 million to develop a 1347-acre park and end up with only 88 acres (6.5%) developed for recreational purposes.

There are also questions to answer such as:

1. Do the City and Great Park Corporation have sufficient rules and procedures in place for bidding and awarding of contracts or are changes in law necessary?

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11 Although the 2004 Business Plan was for $401M, only $200M was to be paid by the GPC.
2. In the future must contracts have budgets and timelines to assure performance?

3. Was the problem the inability of management to perform its function, and if so, what was the cause?

4. Is it proper to put consultants in a position where they are managing themselves and was this situation caused by elected officials interfering with the administrative function?

5. Was there any criminal conduct which should be referred to the DA?

6. Are there contract violations or improper billings which would be a basis of civil liability that would allow the City to recover some of the lost monies?

These are all important questions. We have spent extensive time consulting with the District Attorney’s office and providing them with information they have requested, and, as this office has no prosecutorial function, this is as much as we can do in this regard. With regards to potential sources of recovery, this is a subject of a separate analysis and for attorney-client discussions with the Council rather than a public report. So not all of the above questions are fully addressed here.

But as a final comment on the importance of the Audit, part of the way that public service advances, and is improved, is by the method of “case studies.” No public agency appreciates being a case study for others, though as long as human beings are the ones to administer our government, there will be waste and abuse. Our Founding Fathers believed in limited government power and the process of checks and balances. The press and media play an important role in this, but equally important is the role of government itself to engage in self-examination, to try to use knowledgeable and impartial examiners, and to prepare and issue to the public reports on what is found. Anticipating this, the Great Park contracts provide full audit rights to permit evaluation of the services by the City. For a report to be useful to others as a case study, it must be searching, unbiased, and understandable. These are the criteria by which this report should be judged.

We recently spent three years trying to unravel the complexity of the corruption which occurred in the City of Bell and we were fortunate enough to be selected this year as the Attorneys of the Year in Municipal Law by California Lawyer Magazine. We feel a responsibility to the citizens of Irvine and to the larger universe of public agencies and public officials who could benefit from learning how a great City such as Irvine could go so astray with this project, as almost any reasonably minded person would recognize it has. While in our eight months of involvement with this Audit we have been under continuous attack, it is our hope that this report will be perceived as finally providing a complete explanation which is both reasonable and fair. The question we seek to answer is how the project to develop a 1347-acre iconic Great Park for Orange County in 6-7 years could spend over $300 million to, 10 years later, only develop 6.5% of the
park. If the report achieves that, and teaches other public officials to ask for budgets and timelines and enforceable agreements in management of their projects, even when dreaming big, then this report will have served a purpose worthy of the effort.

C. FINANCIAL TIMELINE.

The above narrative is based on this simplified financial timeline:

<table>
<thead>
<tr>
<th>DATE</th>
<th>COST ESTIMATE</th>
<th>REASON INCREASE</th>
<th>AUDIT</th>
<th>FINANCIAL PLAN</th>
</tr>
</thead>
<tbody>
<tr>
<td>01/28/03</td>
<td>City projects cost of $353M</td>
<td></td>
<td></td>
<td>$353M: Development fees $200M—Development fees $153M—Bond assessments on property owners</td>
</tr>
<tr>
<td>12/16/04</td>
<td>City projects cost of $401M</td>
<td>After a year cost increases $50M</td>
<td>2004 Business Plan $200M from Lennar $201M CFD revenue. Assume $15M annual revenue from parking, user fees, RV storage, agricultural leases.</td>
<td></td>
</tr>
<tr>
<td>02/16/05</td>
<td></td>
<td></td>
<td>Sale 4700 ac to Lennar for $649.5M. 1347 ac given to City.</td>
<td></td>
</tr>
<tr>
<td>03/08/05</td>
<td><em>Redevelopment Project Area Adopted</em></td>
<td></td>
<td>At adoption of redevelopment plan RSG projections assumed major development begin 2006-7 completed 2015-16; projected over 40 years: projected revenue $978.6M with present value $218.5M.</td>
<td></td>
</tr>
<tr>
<td>01/23/06</td>
<td>Chairman Agran makes statements following NY trip that cost will be $401M with all elements including canyon</td>
<td></td>
<td>Same as 2004 Business Plan</td>
<td></td>
</tr>
<tr>
<td>03/09/06</td>
<td>Master Designer Contract: Smith/Gafcon. Contract was for $372,000 for preliminary planning, and later increased to $10M</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>07/24/07</td>
<td>Board approves Schematic Design. Contract was for $27.3M to include completion of Master Plan. Contract ballooned to $42.7M</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>09/27/07</td>
<td>Board Approves Master Plan Design Studio estimates cost $979.8M</td>
<td>Cost more than doubles from $401M 2.5 yrs earlier</td>
<td>No new financing plan even though costs exceed RSG projections and development had not commenced.</td>
<td></td>
</tr>
<tr>
<td>01/08/08</td>
<td>Continue w/Schematic Design Design Studio Estimate now $1.24B</td>
<td>Cost increases $250M since Sept. estimate</td>
<td>No new financing plan even though costs exceed RSG projections and development had not commenced.</td>
<td></td>
</tr>
<tr>
<td>07/11/08</td>
<td>Bovis estimate is $1.6B for horizontal construction not including buildings. [Internal estimates are $3-4B]</td>
<td>Price increase $360M but doesn’t include vertical.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>08/07/08</td>
<td>Ellzey hired as new CEO for Great Park Corp.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>Event</td>
<td>Notes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>------------</td>
<td>----------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>02/19/2009</td>
<td>Ellzey recommends discontinue Schematic Design. City estimates $1.4B cost to build Great Park.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>04/23/2009</td>
<td>Board recommends to City $61.2M to develop 500 ac based on max expenditure which can be supported for fiscal sustainability.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10/22/2009</td>
<td>Ellzey concludes 500 acre project unaffordable. Board approves 200 ac Western Sector, but only 88 ac is for park purposes. Budget is $65.5M and expenditures are $70M.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>08/13/2010</td>
<td>Close out agreement with Design Studio. Paid $1.39M with releases and waivers. Total paid to Design Studio $46M.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>06/17/2013</td>
<td>Hagen Streiff (HSNO) is retained to perform audit of Great Park.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2009 Business Plan incorporated $200M from Lennar, $35M from leases and other revenue. Assumed $134M loan from City repaid from Redevelopment. RSG revised estimate based on commencing construction 2011-12 build out 2023-24. Net increment 2050-51 $1.28B with present value $267.9. Due to need to repay City loan, only permitted construction of $60-$64M in improvements.
D. THE AUDIT PROCESS.

All parties under direct or indirect contract to either the City, GPC or Design Studio are subject to the contractual obligation to cooperate fully in the Audit. In accord with these mandates set forth in various contracts with consultants retained to design and construct the Great Park, after a competitive bidding process, the City Council in June of 2013 retained HSNO to perform a performance review of the awarding, administration and settlement of various contracts entered into by the GPC or the City of Irvine related to planning, developing and constructing the Great Park (the “Project”). The review was limited to the time period between July 1, 2005 through December 31, 2012.

The specific tasks that were assigned to HSNO included the following:

1. Prepare various schedules detailing revenues, expenses, assets, liabilities and fund balances for the review period.

2. Determine whether the City and/or GPC complied with City policies in awarding the contracts.

3. Determine whether the City and/or GPC complied with City policies in approving changes, amendments or extensions of contracts.

4. Determine whether the work performed by contractors and subcontractors were consistent with the scope of work in their respective contracts.

5. Determine whether the services contracted for were received as anticipated.

HSNO issued a Preliminary Performance Review Report on January 9, 2014 that raised many issues and concerns including a lack of cooperation by various parties. In response to that preliminary report, the City Council directed its Great Park Performance Review Subcommittee, which had been appointed in January of 2013 (the “Subcommittee”) to bring forward a new scope of work and budget to complete the investigation. The intent was to focus more specifically on aspects which had not been clarified. Moreover, because of the failure of cooperation during the initial review by several contractors, a formal legislative investigation process was initiated including legislative subpoena procedures to continue the investigation. The lack of cooperation by these individuals and entities is the primary factor that increased the audit costs. The authorization by the City Council on January 28, 2014 included the power to

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12 The Schematic Design Agreement provides that: “Owner shall conduct a performance and financial audit of this Agreement upon completion of the Services and at such other times as determined advisable by Owner, the scope and procedures of which shall be determined by Owner at its discretion…. The Architect [Design Studio] also agrees to include these requirements in each Subcontract, modified only if necessary to identify the affected parties.” (Id. at p. 28) This Audit is both authorized by this contract provision and the Audit is an official proceeding under Civil Code Section 47. This report therefore comes under Civil Code Section 47(a)(b).
contract with experts, including special legal counsel to work with and assist in the investigation.

Specifically, the expanded investigation, called “Phase 2,” was to include the following:


2. Review of the Contract Award Process, including formal bidding process, sole source contracts and review and vetting of contractors selected.

3. Review of all changes, amendments and extensions of contracts including the following specific contracts:
   a. Master Plan (Phase I) Contract
   b. Schematic Design (Phase 2) Contract

4. Review of work performed to determine consistency with contracts awarded including the following specific contracts:
   a. Contract with Forde & Mollrich
   b. Contract with George Urch

5. Review of specific performance problem areas including:
   a. Feasibility Studies performed after completion of Master Plan
   b. Replacement of Gafcon, Inc. as program manager with WRNS

6. Other issues and concerns relating to costs and contracts specifically related to services performed by the Orange County Great Park Design Studio (“Design Studio”).

Judge Nancy Wieben Stock (Ret.) is the former Presiding Judge of the Orange County Superior Court. Judge Stock has served as Special Master to the Audit from February 12, 2014 to the present time. The first two depositions of the current phase of the Audit of former Great Park Corporate executives Colleen Clark and Walter Kreutzen were taken by Judge Stock in April 2014. Since that time, Judge Stock has provided advice to Special Counsel on procedures used in the Audit and has reviewed and commented on various status reports prepared to the City Council during the Audit by Special Counsel. Judge Stock also reviewed preliminary drafts of and commented on this Special Counsel Report. Special Counsel has greatly appreciated Judge Stock’s time and guidance throughout the Audit.

Concurrent with issuance of this report, HSNO has issued its final report which supersedes their preliminary report. We do not summarize its findings here, but HSNO’s report provides detailed information on the additional areas of inquiry, and this information is vital to the conclusions reached herein. At the same time, the HSNO
report is primarily a financial analysis, and our report has attempted to examine organizational, process, legal and policy issues not addressed in the HSNO report.

E. METHODOLOGY.

In June of 2014, the law firm of Aleshire & Wynder, LLP, was retained to assist in Phase 2 of the Audit and to provide legal review of the various issue areas identified during Phase 1 of the Audit. In accordance with Government Code § 37104 et seq. legislative subpoenas were issued and depositions were scheduled. A total of 23 depositions and 1 sworn statement were taken and the testimony of public officials, private consultants, vendors and others involved in the planning and administration of the Project was compiled. In the course of this review, all contract documents provided by the City and various consultants and vendors related to the Great Park project, public agency minutes, ordinances, ballot issues and other documents deemed relevant to the tasks to be performed as well as reports generated by the Orange County Grand Jury and various documents and correspondence by and among the City, GPC, employees, agents and other public and private entities involved in the project were reviewed and analyzed. Finally, general legal research was conducted to determine the legality and appropriateness of various actions that have been taken.

Multiple written status reports were presented by special counsel for the Audit to the full City Council (including on July 18, 2014; August 20, 2014; October 14, 2014; December 16, 2014 and March 2, 2015). This report is intended to supersede each of the interim reports.

In compliance with the Brown Act, preliminary findings and areas of inquiry were discussed with the Council at public meetings. The audit investigation into some of the preliminary findings from the preliminary audit report as well as areas of inquiry in some instances, as discussed herein, did not result in clear enough information being obtained during the Audit for the analysis needed to reach a conclusion in the final report. There were tens of thousands of pages of information reviewed during the Audit. Some of those records appeared to warrant further investigation and inquiry. Where the audit investigation has ultimately led to an inconclusive determination, the preliminary findings and areas of inquiry are hereby withdrawn from the Audit.

We have undertaken substantial effort to verify all information from all available sources. We reserve the right to correct any aspect of this report based on new information brought to our attention.

Throughout the course of the Audit process, correspondence was received from various attorneys, parties and party representatives. There was extensive correspondence, for example, with attorneys for Gafcon and Forde & Molrich (“F&M”). All of that correspondence has been carefully reviewed and considered in this report. Some of that correspondence is also cited in this report.

Certainly the Audit was prolonged and the Audit was made more expensive by parties who through their legal counsel resisted the Audit. Twice we sought Council action, as required by law, to authorize seeking compliance through judicial order. While
of course these parties will argue that they were defending their rights, we merely make the point that this was not fully anticipated in the original timeline or budget of the Audit.

F. ORGANIZATION OF REPORT.

Based on our investigation, this Audit Report is organized in the following manner.

I. Executive Summary – including a narrative summary of the key events, the audit history and methodology, and a summary of findings.

II. Participants and Chronology of Events.

III. Finance Issues and Feasibility of Project as Designed.

IV. Effectiveness of the governance structure.

V. Awarding, Administering and Termination of Contracts.

VI. Relationships and Personal Ties – the Appearance of Impropriety.

In addition, this report includes the following Exhibits:

Exhibit A: Map of Great Park Master Plan
Exhibit B: General Map of Western Sector
Exhibit C: Detailed Map of Western Sector
Exhibit D: Acreage of Western Sector

G. FINDINGS.

a. Financial Feasibility Of Project.

1) The original financing plan came together in 2004 (2004 Business Plan) and was for $401 million. The Great Park was to be developed in 6-7 years. The Plan updated earlier City projections ($353 million) but considered negotiations with the new owner, Lennar. It did not rely on redevelopment but on developer fees and land-based assessment financing. The Plan included finance policies requiring quarterly adjustments to factor in operation and capital improvement budgets and schedules.

2) The Design Studio was hired in 2006. After a visit to their New York office, Chairman Agran represented publicly that the $401 million was reasonable. This was not made a condition of Design Studio’s contract. In fact, Mr. Smith had told Chairman Agran that a billion dollar budget would be necessary for the project envisioned, and Chairman Agran knew this when he reported on the trip to the public. Design Studio developed a Master Plan for a cost of almost $10 million and on July 24, 2007 a Schematic Design Contract was approved for $27.3 million which included developing the budget for the Master Plan. Two months later (September 27, 2007) the Master Plan was formally approved with a budget estimate prepared by Design Studio of $979.8 million.
3) On January 8, 2008, in an updated estimate, the Master Plan was projected by Design Studio to have a cost of $1.24 billion, and six months later was estimated by Bovis to cost $1.6 billion, not including vertical construction. Internal estimates by Gafcon with vertical construction were even higher - $3-4 billion, but this was not publicly disclosed. Based on these estimates, the Master Plan was never buildable, even with Redevelopment funding. The Redevelopment funding was eliminated with the dissolution of redevelopment, but this occurred two years later.

4) When the Redevelopment Plan was adopted in 2005, the City’s redevelopment consultant, RSG made initial estimates of redevelopment funding based on various contingencies, including development commencing in 2006-7 and being complete in 2015-16. These assumptions did not occur. Additionally, by law 20% was set aside for housing rather than park development and other pass-throughs were necessary to taxing agencies. The estimated revenue over a 40-year horizon was $978.6 million and the present value was only about $220 million. At several points RSG updated these estimates but not in connection with the Great Park budget but in connection with various development proposals (Heritage Fields). In connection with the 2009 Business Plan which scaled Great Park development back to $60-64 million, RSG’s projection of $1.278 billion through 2050 only had a present value of $267.9 million and, with the need to set aside money to repay the $134 million loan from the City, could not have supported a $1.6 billion dollar budget.

5) Before the dissolution of redevelopment, the new Great Park Chief Executive Officer, Mr. Michael Ellzey commenced a financial review and recommended halting the Schematic Plan which ultimately cost $36 million. Downsizing the plan for fiscal sustainability, he recommended a budget of $60-64 million. Though Design Studio had been working on a 500 acre reduced plan, Mr. Ellzey determined this was beyond the GPC’s resources. Accordingly, the Western Sector plan was developed for 88 acres, 6.5% of the Great Park area.

6) The Western Sector was built with sole source contracts. It includes the balloon, site preparation, demolition and grading, balloon enhancement, and various capital improvement projects totaling $25 million. The rest of the Western Sector included the “Western Sector,” WSPDP Hanger 244, WSPDP North Lawn, and WSPDP Palm Court, with total cost of $69.9 million. Ultimately this project was within 10% of the original $65.5 million budget, a better track records than any other part of the Great Park. Project began with design in January 2009 and was completed in 44 months when opened in September 2013.
b. **Corporate Structure And Governance.**

1) While the GPC was originally intended to have broad based County representation, after annexation of the 4700 acres into the City of Irvine, the City ultimately assumed control, and on April 25, 2006 by Resolution 06-42 made the GPC an advisory entity, and this change was ratified by Irvine voters by Measure R approved November 4, 2008.

2) For local government entities, good public administration practice has come to entail separating the policy-making function of the elected legislative body from the administrative function of the appointed managers. The Council-Manager form of government, the most popular form of local municipal governmental in the United States, has this premise, and the City of Irvine structure embodies these concepts.

3) In the case of the Great Park, there was overwhelming testimony that the policy-making/administrative dichotomy broke down and that the Chairman directly interjected himself in the administrative operations of the Great Park and was the most active board member, and this ultimately affected how the managers performed their function.

4) Besides interference from some elected officials, management was not able to perform its function as provided by City ordinance due to the fact that some consultants had strong connections to Chairman Agran and took on management functions themselves, according to deposition testimony.

5) There is testimony that the Chairman exercised influence through and was influenced principally by Arnold Forde (Forde & Mollrich) and Yehudi Gaffen (Gafcon), and this appeared to staff to be the group in principal control of the Project.

6) It has been suggested that a strong committee system would have served to better inform the public and Board members and broaden decision making responsibility, and thus been a platform for better decision-making.

c. **Contract Formation And Administration.**

1) Despite one of the most extensive design competitions ever undertaken in Orange County, which communicated the desire to build a world-class, iconic Great Park, ultimately the process resulted in melding together a small New York architectural firm, various consultants, and a San Diego construction design and management firm, where the assembled team had never collaborated before on a major public project.

2) The 2004 Business Plan established fiscally prudent policies for management of project expense, requiring monitoring of expenses and adequate funding for all operations, through requiring development of a Project Management Plan and retaining an independent experienced Program Manager.
3) The City has extensive requirements concerning bidding of contracts and limiting sole source contracts. City contracting requirements were not followed consistently, as one-third of 83 contracts over $100,000 were not bid competitively or subject to “open competition,” nor was a record consistently made justifying sole source awards. The City was not involved in the awarding of Design Studio subcontractors, although there is a list of subcontractors including Gafcon and Forde & Mollrich which could not be terminated without City approval.

4) A Project Management Plan including goals and cash flow projections was contractually required of Design Studio but a final plan was never produced or approved, depriving the Project of what could have been a valuable management tool.

5) The lack of control over contracts was illustrated in the construction of the Preview Park which was initially based around the balloon ride resulting from a donation from Lennar. This led to a $4.1 million contract to construct the area. A contract with Belaire-West for $1.75 million had $7.7 million in change orders. In total the Preview Park went through three phases with a total cost for the facilities ultimately totaling $25.4 million.

6) There is testimony that there were frequent disputes with Design Studio as to its invoices as to whether services were within scope or outside of scope, and that Design Studio was operating beyond the scope of what they were authorized to do. There was testimony of work being begun before the scope of work was fully defined or there not being clear budgets for the work, making monitoring of compliance difficult.

7) Significant program change orders are generally a sign of lack of definition of project scope at the beginning of the project, or poor project management, and with the Great Park there are numerous examples of change orders of more than 25%, amounting to millions of dollars.

8) As a primary management strategy, as contemplated by the 2004 Business Plan, the Great Park Board awarded a contract to Bovis Lend Lease for “Program Management,” to include “over the shoulder review” and monthly reports. But Bovis contents these services only needed to be performed at specific milestones.

9) Forde & Mollrich had the distinction of both being a subcontractor under Design Studio and then a subcontractor in the Western Sector Contract. Total payments were $7,108,271.84 ($3,908,271.84 + $3,200,000.00). Accordingly, the public relations firm was paid nearly as much as the architect, Ken Smith. Their contract relations went through four phases from a fixed fee of $50,000 per month, to time and materials (from $20,000 to $100,000 per month), back to a fixed fee of $100,000 per month, and finally back to $50,000 per month). There was no clear evidence justifying a doubling of cost in one period and halving it in another.
10) Contracts contained explicit provisions giving access to books and records and permitting audits of contract performance and certain contractors have resisted compliance with these requirements.

11) According to HSNO, Design Studio was paid $46,871,867.70. Some 60% of the payments went to three entities: Gafcon ($13,457,433.93); Fuscoe Engineering ($8,934,360.53); and Ken Smith Architect ($7,871,707.31). Other major contractors (above $5 million) include the following:

<table>
<thead>
<tr>
<th>Contractor</th>
<th>Services</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>LA Engineering</td>
<td>Engineering</td>
<td>$14,184,530.88</td>
</tr>
<tr>
<td>Belaire-West Landscape</td>
<td>Landscaping</td>
<td>$ 9,421,990.35</td>
</tr>
<tr>
<td>Bovis Lend Lease</td>
<td>Program Manager</td>
<td>$ 9,331,498.95</td>
</tr>
<tr>
<td>DMC Engineers</td>
<td>Engineering</td>
<td>$ 6,411,299.11</td>
</tr>
<tr>
<td>Atkins North (PBS&amp;J)</td>
<td>Engineering Oversight</td>
<td>$ 5,548,025.75</td>
</tr>
<tr>
<td>AMCI</td>
<td>Staffing/Equipment Rental</td>
<td>$ 4,912,156.25</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td><strong>$86,462,540.29</strong></td>
</tr>
</tbody>
</table>

d. **Relationships And Personal Ties & The Appearance Of Impropriety.**

1) The City’s contracts with Design Studio all required avoidance of situations that could create the appearance of impropriety.

2) An instance that illustrates personal relationships creating the appearance of impropriety was when Chairman Agran recruited George Urch, Chairman Agran’s friend and political ally, to work at the Great Park and Chairman Agran recommended design studio hire George Urch.

3) The Audit has revealed that Gafcon had an agreement to remodel Stu Mollrich’s Laguna Beach house, which created a potential conflict of interest and the appearance of impropriety based on undisclosed financial terms.

4) There was a failure within the Design Studio and Forde & Mollrich to fully disclose all potential conflicts of interest as required by the Schematic Design Agreement. Over $4 million in City funds was paid that would have been held pending an investigation had these conflicts been fully disclosed.

5) Failure to secure Council approval of the final Design Studio close out Agreement created the appearance of impropriety.

6) We believe there are grounds for legal recovery including contract claims, claims under the False Claims Act, and professional negligence should the Council wish to explore them.
PREPARED BY:

ALESHIRE & WYNDER, LLP

[Signatures]
David J. Aleshire, Managing Partner
Anthony R. Taylor, Partner

Drawing on my experience as a former judge, I have discussed the audit process with Special Counsel and have provided substantive comments in the drafting of this Report. This has not included an independent verification of all of the information contained within the Report.

[Signature]
Judge Nancy Wieben Stock (Ret.)

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14 David J. Aleshire graduated from UCLA with a J.D. in 1975 and M.A. in Urban Planning in 1976. Prior to that, Mr. Aleshire graduated with a B.A., Phi Beta Kappa, from Stanford University in 1972. Mr. Aleshire has served as city attorney for nine different cities since 1978 and served as special counsel to others. Mr. Aleshire has won numerous awards including the 2015 California Attorney of the Year Award by California Lawyer Magazine in the municipal law category.

Anthony R. Taylor graduated with a Bachelor of Science Degree from the University of Southern California, summa cum laude and class valedictorian of the School of Public Administration in 1997. Continuing at USC, he received his J.D. from USC Law School in 2000 with an emphasis in municipal law coursework and including graduate level coursework in public administration. Mr. Taylor has represented numerous cities for approximately 15 years, including two cities as city attorney. Mr. Taylor has won numerous awards including the 2015 California Attorney of the Year Award by California Lawyer Magazine in the municipal law category.

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II. PARTICIPANTS AND CHRONOLOGY OF EVENTS

The following is a list of the major contractors, elected officials and deponents who are involved in this Audit followed by a chronology of events relevant to the Audit.

A. ELECTED OFFICIALS, MAJOR CONTRACTORS AND DEPONENTS.

During the Audit Period, the following entities and individuals were active on the Great Park Project:

<table>
<thead>
<tr>
<th>Irvine City Councilmembers</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Larry Agran</td>
<td>Councilmember until Nov. 2014 GPC Chair 2004 – 2011</td>
</tr>
<tr>
<td>Beth Krom</td>
<td>Current councilmember; Mayor 2004-2008 GPC Chair 2011 – 2013</td>
</tr>
<tr>
<td>Steven Choi</td>
<td>Mayor 2012 – present; Councilmember 2004 – 2008</td>
</tr>
<tr>
<td>Jeff Lalloway</td>
<td>Councilmember 2010 – present GPC Chair 2013 – 2014</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>City Staff</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Sean Joyce</td>
<td>City Manager 2004 – present</td>
</tr>
<tr>
<td>Sharon Landers</td>
<td>Assistant City Manager 2006 – present Interim GPC CEO 2007 – 2008</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>City Attorney</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Philip Kohn</td>
<td>City Attorney 2006 – 2013 GPC General Counsel 2010 – 2013</td>
</tr>
</tbody>
</table>

| Orange County Great Park Corporation Board Members            |                                                                 |
| (In addition to members of the City Council)                  |                                                                 |
| William Kogerman                                              | Lieutenant Colonel U.S.M.C. (retired) Former board member 2006 – 2013 |
| Miguel Pulido                                                  | Mayor of Santa Ana 1994 - present Former board member           |
| Walkie Ray                                                    | Board Member, 2005 – 2012 Former Vice Chair                     |
| Michael Pinto                                                 | Chair of Great Park Design Committee 2005 Former board member    |
### Section II
Participants and Chronology of Events

<table>
<thead>
<tr>
<th>Chief Executive Officers and Public Information Officer</th>
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</thead>
<tbody>
<tr>
<td><strong>Michael Ellzey</strong></td>
</tr>
<tr>
<td><strong>Wally Kreutzen</strong></td>
</tr>
<tr>
<td><strong>Colleen Clark</strong></td>
</tr>
<tr>
<td><strong>Jennifer Starnes</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Design Consultants and Contractors</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Ken Smith</strong></td>
</tr>
<tr>
<td><strong>Gafcon, Inc.</strong></td>
</tr>
<tr>
<td><strong>Great Park Design Studio</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Design Studio Subcontractors and Subconsultants</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Forde &amp; Mollrich</strong></td>
</tr>
<tr>
<td><strong>BuroHappold Engineering</strong></td>
</tr>
<tr>
<td><strong>TEN Arquitectos</strong></td>
</tr>
<tr>
<td><strong>Mia Lehrer + Associates – Mia Lehrer</strong></td>
</tr>
<tr>
<td><strong>Fuscoe Engineering – Pat Fuscoe</strong></td>
</tr>
<tr>
<td><strong>Wallace Laboratories</strong></td>
</tr>
<tr>
<td><strong>George Urch</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Program Manager</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Keith McDonnell</strong></td>
</tr>
<tr>
<td><strong>Brendan McDevitt</strong></td>
</tr>
</tbody>
</table>
### B. DEPOSITIONS AND INTERVIEWS.

<table>
<thead>
<tr>
<th>NAME</th>
<th>TITLE</th>
<th>ORGANIZATION</th>
<th>DATE DEPOSED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colleen Clark</td>
<td>Deputy CEO and CFO</td>
<td>GPC</td>
<td>April 23, 2014</td>
</tr>
<tr>
<td>Walter Kreutzen</td>
<td>CEO / Assistant City Manager</td>
<td>GPC / City of Irvine</td>
<td>April 29, 2014</td>
</tr>
<tr>
<td>Michael Elizay</td>
<td>CEO; Assistant City Manager</td>
<td>GPC; City of Irvine</td>
<td>June 18, 2014</td>
</tr>
<tr>
<td>Marsha Burgess</td>
<td>Employee</td>
<td>GPC</td>
<td>June 24, 2014</td>
</tr>
<tr>
<td>William Kogerman</td>
<td>Board member</td>
<td>GPC</td>
<td>June 26, 2014</td>
</tr>
<tr>
<td>Jennifer Starnes</td>
<td>Public Information Officer</td>
<td>GPC</td>
<td>June 30, 2014</td>
</tr>
<tr>
<td>Brendan McDevitt</td>
<td>Engineering Construction Consultant to GPC CEO</td>
<td>GPC</td>
<td>July 8, 2014</td>
</tr>
<tr>
<td>Sharon Landers</td>
<td>Ass. City Manager; Interim CEO</td>
<td>City of Irvine; GPC</td>
<td>July 9, 2014</td>
</tr>
<tr>
<td>Pat Fuscoe</td>
<td>CEO</td>
<td>Fuscoe Engineering</td>
<td>July 14, 2014</td>
</tr>
<tr>
<td>Sean Joyce</td>
<td>City Manager</td>
<td>City of Irvine</td>
<td>July 18, 2014</td>
</tr>
<tr>
<td>Richard Sim (sworn statement)</td>
<td>Board member</td>
<td>GPC</td>
<td>July 24, 2014</td>
</tr>
<tr>
<td>Stu Mollrich</td>
<td>Great Park Public Relations</td>
<td>Forde &amp; Mollrich</td>
<td>July 30, 2014; December 2, 2014</td>
</tr>
<tr>
<td>Arnold Forde</td>
<td>Great Park Public Relations</td>
<td>Forde &amp; Mollrich</td>
<td>August 5, 2014</td>
</tr>
<tr>
<td>Yehudi Gaffen</td>
<td>Great Park Design Manager</td>
<td>Gafcon Inc. (Design Studio*)</td>
<td>August 8, 2014</td>
</tr>
<tr>
<td>Philip D. Kohn</td>
<td>City Attorney</td>
<td>City of Irvine</td>
<td>August 11, 2014</td>
</tr>
<tr>
<td>Thomas Maxwell-Miller</td>
<td>Great Park Senior Program Manager</td>
<td>Gafcon Inc.</td>
<td>August 19, 2014</td>
</tr>
<tr>
<td>George Urch</td>
<td>Public Affairs</td>
<td>Gafcon, Inc.</td>
<td>August 26, 2014</td>
</tr>
<tr>
<td>Ken Smith</td>
<td>Great Park Master Architect</td>
<td>Ken Smith Landscape Architects (Design Studio*)</td>
<td>September 5, 2014</td>
</tr>
<tr>
<td>Sam Allevato</td>
<td>Employee; Mayor</td>
<td>Forde &amp; Mollrich; San Juan Capistrano</td>
<td>October 10, 2014</td>
</tr>
<tr>
<td>Keith McDonnell</td>
<td>Great Park Program Manager</td>
<td>Bovis Lend Lease, Inc.</td>
<td>October 22, 2014</td>
</tr>
<tr>
<td>Sukhee Kang</td>
<td>Board member; Councilmember</td>
<td>GPC; City of Irvine</td>
<td>February 18, 2015</td>
</tr>
<tr>
<td>Larry Agran</td>
<td>Chair; Councilmember</td>
<td>GPC; City of Irvine</td>
<td>March 13, 2015</td>
</tr>
<tr>
<td>Dianna Anast</td>
<td>Production Manager</td>
<td>Kenny the Printer</td>
<td>March 16, 2015</td>
</tr>
<tr>
<td>NAME</td>
<td>TITLE</td>
<td>ORGANIZATION</td>
<td>INTERVIEWED</td>
</tr>
<tr>
<td>-----------------</td>
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<td>---------------------------------------------------</td>
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</tr>
<tr>
<td>Walter Kreutzen</td>
<td>CEO; Ass. City Manager</td>
<td>GPC; City of Irvine</td>
<td>October 17, 2013</td>
</tr>
<tr>
<td>Glen Worthington</td>
<td>Manager of Planning</td>
<td>GPC</td>
<td>October 17, 2013 and November 21, 2013</td>
</tr>
<tr>
<td>Colleen Clark</td>
<td>Deputy CEO and CFO</td>
<td>GPC</td>
<td>November 17, 2013</td>
</tr>
<tr>
<td>Pat Fuscoe</td>
<td>CEO</td>
<td>Fuscoe Engineering</td>
<td>November 21, 2013</td>
</tr>
<tr>
<td>Sharon Landers</td>
<td>Ass. City Manager; Interim CEO</td>
<td>City of Irvine; GPC</td>
<td>December 18, 2013</td>
</tr>
<tr>
<td>Jeff Warner</td>
<td>Partner/Architect</td>
<td>WRNS Studio</td>
<td>March 11, 2014</td>
</tr>
<tr>
<td>Kurt Mowery</td>
<td>Manager of Finance</td>
<td>GPC</td>
<td>March 12, 2014</td>
</tr>
<tr>
<td>Bill Vardoulis</td>
<td>Former Mayor and member of the planning authority</td>
<td>City of Irvine</td>
<td>March 13, 2014</td>
</tr>
<tr>
<td>Christina Templeton</td>
<td>Manager of Engineering</td>
<td>GPC</td>
<td>March 19, 2014 and November 4, 2014</td>
</tr>
<tr>
<td>William Kogerman</td>
<td>Board member</td>
<td>GPC</td>
<td>March 26, 2014</td>
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### C. CHRONOLOGY OF EVENTS.

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
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</thead>
<tbody>
<tr>
<td>July 1993</td>
<td>Department of Defense places El Toro Marine Corps Air Station (&quot;MCAS&quot;) on the closure list.</td>
</tr>
<tr>
<td>March 5, 2002</td>
<td>Orange County voters approve an initiative, Measure W, that would create the Orange County Central Park and Nature Preserve in place of the closed MCAS.</td>
</tr>
<tr>
<td>March 6, 2002</td>
<td>The U.S. Navy announces its intention to sell MCAS land.</td>
</tr>
<tr>
<td>January 28, 2003</td>
<td>Irvine City Council announces in a press release that the Great Park would cost a projected $353 million to build.</td>
</tr>
<tr>
<td>July 7, 2003</td>
<td>The Orange County Great Park is incorporated. The Board of Directors is Irvine City Council members Beth Krom, Chris Mears, and Christina Shea, Mayor Pro Tem Mike Ward, and Mayor Larry Agran.</td>
</tr>
<tr>
<td>November 12, 2003</td>
<td>The Local Agency Formation Commission (&quot;LAFCO&quot;) approves the City of Irvine’s annexation of MCAS land, putting the City of Irvine in control of land use decisions for the entire property.</td>
</tr>
<tr>
<td>December 5, 2003</td>
<td>The Orange County Great Park Corporation holds its first public meeting. The Great Park Board adopts a resolution that expands the Board to nine (9) Directors, adding Richard Sim, Michael Pinto, Miguel Pulido, and Walkie Ray to the Board.</td>
</tr>
<tr>
<td>Winter 2003</td>
<td>Irvine City Manager Allison Hart announces to local residents in a City newsletter that the Great Park would cost a projected $353 million to build.</td>
</tr>
<tr>
<td>February 26, 2004</td>
<td>The Great Park Board selects Director Mears to be Chair and Director Pinto to be Vice Chair.</td>
</tr>
<tr>
<td>September 2004</td>
<td>The U.S. Navy issues an Invitation for Bids for MCAS.</td>
</tr>
<tr>
<td>December 16, 2004</td>
<td>The Great Park Board elects Director Agran as Chair. The Board also approves the 2004/2005 Orange County Great Park Corporation Business Plan presented by Director Sim. The anticipated budget to build the park is $401 million.</td>
</tr>
<tr>
<td>March 8, 2005</td>
<td>Redevelopment Project approved and funding for the Great Park is authorized by ordinance.</td>
</tr>
<tr>
<td>April 2005</td>
<td>Request for Qualification applications to select the “Master Designer” of the Great Park Conceptual Plan are sent out.</td>
</tr>
<tr>
<td>June 1, 2005</td>
<td>Applications for “Master Designer” are due/submitted.</td>
</tr>
<tr>
<td>June 10, 2005</td>
<td>A “Design Jury” composed of a panel of six (6) academics, architects, and professionals, review and rank the submittals and recommend seven firms to advance in the competition.</td>
</tr>
<tr>
<td>June 23, 2005</td>
<td>Based on the “Design Jury” evaluations, the Great Park Board approves the selection of Ken Smith and six other finalists in the design competition and each finalist is given $50,000 to develop a Conceptual Master Designer Plan.</td>
</tr>
<tr>
<td>July 12, 2005</td>
<td>Lennar Corporation purchases MCAS for $649.5 million, contributes 1,347 acres to the City, pays $200 million in development fees and pledges an additional $201 million for joint infrastructure and facilities intended to be funded by a Community Facilities District (&quot;CFD&quot;) bond sale.</td>
</tr>
<tr>
<td>September 2005</td>
<td>Competition design plans by Ken Smith and the other finalists are...</td>
</tr>
<tr>
<td>Date</td>
<td>Event Description</td>
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<td>------------------</td>
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</tr>
<tr>
<td>September 22-23, 2005</td>
<td>Finalists present their design plans during Great Park Board public meetings.</td>
</tr>
<tr>
<td>October 27, 2005</td>
<td>Great Park Board authorizes staff to procure a professional program management firm through a Request for Proposal process. (Bovis later selected)</td>
</tr>
<tr>
<td>November 7-10, 2005</td>
<td>Members of the Great Park Corporation Board and City Council meet Ken Smith at his home and place of business in New York City. Attendees of the Great Park Board and City Council include Chair/Council member Agran, Directors/Council members Choi, Shea, and Kang, Mayor/Director Krom, Directors Pulido and Ray, Vice Chair Pinto and CEO Kreutzen. Yehudi Gaffen of Gafcon and Arnold Forde of Forde &amp; Mollrich also attend.</td>
</tr>
<tr>
<td>January 23, 2006</td>
<td>Chairman Agran announces $401 million budget confirmed. Great Park Board selects Ken Smith to be project architect of the Great Park.</td>
</tr>
<tr>
<td>March 9, 2006</td>
<td>Great Park Corporation enters into Agreement for Master Designer Services (GPOG-1019) with the Design Studio, a joint venture between Ken Smith and Gafcon Inc., a construction management firm, to develop the Great Park Master Plan for $372,000. The initial contract is basically for scoping to develop a conceptual design of the Great Park that would be approved by Great Park Board and City. Contract increased by $9,575,000 on May 23, 2006 to actually produce Master Plan which is completed and approved September 27, 2007.</td>
</tr>
<tr>
<td>March 23, 2006</td>
<td>Bovis Lend Lease is selected from five bidding firms and approved by Great Park Board to be the program manager for the Great Park. The Great Park Board enters into a contract with Bovis Lend Lease to be the program manager for the Great Park with a budget not to exceed $3.5 million and for an initial term of 18 months ending August 31, 2007. Program management services include management, oversight, and coordination of all design and specialty consultants, contractors, vendors, and suppliers in connection with and in the performance of, the delivery of the projects. This includes monthly progress reports and coordination of the planning and execution of each component of the project with the client’s personnel and governing public agencies. Services also include cost control, cash flow projections, project schedules, constructability and technical reviews, among other services.</td>
</tr>
<tr>
<td>April 25, 2006</td>
<td>City Council adopts Resolution 06-42 limiting the authority of the Orange County Great Park Corporation to act autonomously to award contracts and make other decisions without presentation to the Irvine City Council. Becomes advisory to City Council.</td>
</tr>
<tr>
<td>May 15, 2006</td>
<td>Novation of Master Designer contract entered into transferring contract from the Orange County Great Park to the City of Irvine; Novation of Bovis Contract transferring contract from Orange County Great Park to the City of Irvine.</td>
</tr>
<tr>
<td>Date</td>
<td>Event</td>
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<td>-------------------</td>
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</tr>
<tr>
<td>May 23, 2006</td>
<td>Master Designer Agreement amended to add elements of schematic design, design development and planning, at additional cost of $9,575,000.</td>
</tr>
<tr>
<td>October 26, 2006</td>
<td>Great Park Board approves Design Studio’s Preliminary Master Plan in concept.</td>
</tr>
<tr>
<td>January 9, 2007</td>
<td>City Council authorizes approximately $4.1 million in expenditures for design, construction, operation, and insurance for the Great Park balloon, which includes a $905,000 gift from Lennar towards construction. Preview park would ultimately go through 3 phases of construction and cost $25.4 million.</td>
</tr>
<tr>
<td>January 25, 2007</td>
<td>Design Studio makes proposal to Great Park Board to continue services for the design development of the entire park, including park schematics, mass grading, and construction documents for the initial park construction to be completed within a 24 month (2 year) period. According to the proposal, the budget is assumed to be approximately $400 million, including hard, design, and engineering costs.</td>
</tr>
<tr>
<td>July 14, 2007</td>
<td>The Great Park balloon opens to the public. Features include parking, lighting, a temporary visitor center, construction of the observation balloon, and associated infrastructure and utilities.</td>
</tr>
<tr>
<td>July 24, 2007</td>
<td>Great Park Board and City Council approve Schematic Design Contract 5759 with Design Studio for $27.3 million. The purpose of the contract is to develop construction documents in accordance with the Master Designer Plan and to establish reasonable cost estimates for the Great Park features included in the Schematic Design. The Schematic Design is to be completed within a 12 month (1 year) period. This contract also requires a Project Management Plan. A draft of this plan was submitted in 2007 to Bovis. Bovis made 171 comments on the draft, but the comments were not addressed and the plan was never finalized.</td>
</tr>
<tr>
<td>September 27, 2007</td>
<td>The Great Park Board adopts the Comprehensive Master Plan. Design Studio estimates total cost to build park at $979.8 million.</td>
</tr>
<tr>
<td>December 11, 2007</td>
<td>City Council authorizes $11.4 million for design and construction of the Balloon Enhancement Project and $2.5 million for first year operation costs, totaling $13.9 million. Features will include new signage, lighting, parking and site access, night flights, a revise multipurpose 5-acre landscape, and cleaning and painting an existing hangar that will be used for future events. Total construction cost amounted to $8.3 million, which is ultimately included in the Preview Park.</td>
</tr>
<tr>
<td>January 8, 2008</td>
<td>City Council decides to proceed with the Schematic Design to ultimately develop construction documents for the improvements. Design Studio Chief Estimator estimates cost to build park at $1.24 billion.</td>
</tr>
<tr>
<td>March 25, 2008</td>
<td>City Council directs staff to negotiate change order with Design Studio to provide design development and construction documents within the existing $13.9 million budget for the Balloon Enhancement Project. The Balloon Enhancement Project is expanded and becomes the 27.5-acre “Preview Park.” At this point, the features that opened in July 2007 become known as Phase 1 of the Preview Park. Designs for...</td>
</tr>
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</table>
## CHRONOLOGY OF THE ORANGE COUNTY GREAT PARK

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 23, 2008</td>
<td>City enters into contract 5880 with Belaire-West Landscape, Inc. for $1.75 million to construct a portion of the Preview Park, which will include night flights, a multipurpose lawn area, a bioswale demonstration, tree and ground cover planting, portable restrooms, fencing, and furniture. A total of approximately $7.7 million in change orders will be authorized for this contract to construct the Preview Park.</td>
</tr>
<tr>
<td>July 2008</td>
<td>Second phase of the Preview Park is completed. The second phase includes a lawn, trees, park furnishings, additional lighting, a timeline prototype, shade structures, and a relocated and upgraded visitor center.</td>
</tr>
<tr>
<td>July 11, 2008</td>
<td>Bovis Lend Lease estimates cost of construction alone for Great Park per Master Designer Plan to be over $1.6 billion, not including vertical construction such as buildings and associated costs.</td>
</tr>
<tr>
<td>August 2008</td>
<td>Diehl, Evans, &amp; Company, LLP, an independent public accounting firm, with a 3 year contract with the City from 2006 to 2009, is engaged by the City and Board to perform an audit of contract compliance of Design Studio’s Agreement for Master Designer Services (Contract 1). This audit takes over a year to complete.</td>
</tr>
<tr>
<td>August 7, 2008</td>
<td>The Great Park Board appoints Mike Ellzey as CEO.</td>
</tr>
<tr>
<td>November 4, 2008</td>
<td>Irvine voters approve Measure R, known as the Orange County Great Park Ratification and Implementation Act. The purpose of this measure was to clarify the roles and responsibilities of the City of Irvine and the Great Park Corporation as well as clarify the manner in which funding for, construction, and ongoing maintenance of the park is to be managed.</td>
</tr>
<tr>
<td>January 2009</td>
<td>Great Park Board commissions consulting firm Chora to evaluate the merits and feasibility of a major fundraising effort to generate private funds for selected facilities and programs within the Great Park Master Plan. Chora will take almost a year to conclude private funding infeasible.</td>
</tr>
<tr>
<td>February 19, 2009</td>
<td>Great Park Board approves Design Studio’s partial Park Design submittal, which includes schematic designs. Staff recommends that no further schematic design work is necessary at this time, because although it’s not complete, the submittal is sufficient to provide a basis for future design of the Great Park. Staff concludes that the project budget is estimated to be approximately $1.4 billion, not factoring in price escalation.</td>
</tr>
<tr>
<td>March 19, 2009</td>
<td>Pat Fuscoe, civil engineer and subconsultant under Design Studio, and Ken Smith, present a 36-month design/construction plan to the Great Park Board to develop 500 acres for $61 million. Prior, Great Park finance staff conduct a cash flow analysis at the direction of CEO Mike Ellzey and determine $61.2 million is the maximum amount of money that can be spent on development and still maintain fiscal sustainability. Redevelopment funding sources are considered.</td>
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<tr>
<th>Date</th>
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<tbody>
<tr>
<td>April 23, 2009</td>
<td>Great Park Board votes to recommend that Irvine City Council appropriate $61.2 million for the 500-Acre Park Development Plan. The plan includes 7.3 miles of trails, a sports park district which includes eight (8) soccer fields, a 125-acre agricultural district, and a lake district, which includes a 20-acre lake, a 37.5-acre botanical garden, an amphitheater and cultural terrace sites.</td>
</tr>
<tr>
<td>May 21, 2009</td>
<td>Pat Fuscoe and Ken Smith present Phase 1 of the 500-Acre Plan at Great Park Board meeting; first recommended action is to provide an additional $4,750,000 to implement Phase 1. Phase 1 includes preparation of site plans, infrastructure, demolition plans, agricultural district design plans, sports district design plans, and lake district design plans as well as a preliminary cost estimate and schedule using information from the engineering and design teams.</td>
</tr>
<tr>
<td>June 9, 2009</td>
<td>Third phase of the Preview Park is completed. Third phase includes transplanting mature trees into the lawn area and the Farm and Food Lab.</td>
</tr>
<tr>
<td>June 25, 2009</td>
<td>City executes change order #35 to Design Studio’s Schematic Design Contract 5759 for $3.5 million. Payment included work started in May.</td>
</tr>
<tr>
<td>July 2009</td>
<td>The Preview Park includes the balloon, site prep, demo and grading, balloon enhancement, and 2009 Capital Improvement Projects, totaling $25,416,711.</td>
</tr>
<tr>
<td>October 1, 2009</td>
<td>Diehl, Evans &amp; Company, LLP delivers Contract Compliance Review of Agreement For Master Designer Services. They find invoices submitted by Ken Smith, Gafcon, and other contractors often contained vague and brief descriptions of work performed and these descriptions could not be tied to the deliverables required in the contract. There was also a lack of discernible evidence that time cards submitted had been reviewed and approved by supervisors and evidence of possible double billing in some cases.</td>
</tr>
<tr>
<td>October 22, 2009</td>
<td>Great Park Board approves Ellzey’s proposal to develop 115-some acres, called the Western Sector, for approximately $65.5 million, replacing the 500-Acre Plan. However, only 88 acres are actually developed by the Great Park Corporation. The new plan includes agricultural fields, citrus trees, gardens, a multipurpose pavilion, a smaller sports district, an art and culture exhibition space, and various enhancements to infrastructure and existing facilities. The new plan does not include the previously proposed lake district from April 23, agricultural district or the 7.3 miles of trails, and reduces the size of the sports park district by nearly half.</td>
</tr>
<tr>
<td>November 10, 2009</td>
<td>City approves a sole sourced contract with WRNS Studio, an architectural firm, for $10,150,000 for design and pre-construction services for the Western Sector to be completed by September 2012. Construction completed in September 2013 at a cost of $69.8 million.</td>
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### CHRONOLOGY OF THE ORANGE COUNTY GREAT PARK

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
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<tbody>
<tr>
<td>November 12, 2009</td>
<td>Chora delivers its report to the Great Park Board, concluding it is infeasible to raise enough private funds to construct facilities for the Great Park, unless certain obstacles are overcome. Chora’s findings show there is potential for private donations, but there is a lack of trust in the project because 1) there is no sufficient independent and transparent organization to donate to, 2) a lack of broad support in the community, and 3) a lack of a clear purpose and notable accomplishments on the Great Park plan, which all create doubt that the end result would be a worthy investment.</td>
</tr>
<tr>
<td>June 17, 2010</td>
<td>A Close Out Agreement between Design Studio and the City is discussed at a public joint meeting between the Board and City Council, but no draft agreement is presented.</td>
</tr>
<tr>
<td>August 13, 2010</td>
<td>Final Close Out Agreement is executed by Design Studio and the City for a total of $1.4 million, which included payment of an additional amount of $833,000 that had received administrative approval. Additionally, recitals in the agreement describe that the City was fully satisfied with Design Studio’s work.</td>
</tr>
<tr>
<td>January 2011</td>
<td>Governor Brown proposes statewide elimination of Redevelopment Agencies (“RDA’s”) beginning with the fiscal year 2011-2012 State budget.</td>
</tr>
<tr>
<td>May 19, 2011</td>
<td>Assembly member Blumenfield introduces legislation ABX1 26, which would impose an immediate freeze on RDAs authority to engage in most of their previous functions, dissolve RDAs, and set up Successor Agencies and Oversight Boards to wind down the affairs of a dissolved RDA.</td>
</tr>
<tr>
<td>November 30, 2011</td>
<td>Onisko &amp; Scholz, LLP, an independent public accounting firm, is engaged by the City and Board to perform a review of contract compliance of Design Studio’s Schematic Design contract (Contract 2) for $30,000 to be completed by June 30, 2012.</td>
</tr>
<tr>
<td>December 28, 2011</td>
<td>California Supreme Court decision in California Redevelopment Association et al. v. Matasontos upholds ABX1 26 and the Legislature’s constitutional authority to dissolve the RDAs.</td>
</tr>
<tr>
<td>February 1, 2012</td>
<td>All California RDAs are officially dissolved. Assets and liabilities of dissolved agencies are transferred to successor agencies.</td>
</tr>
<tr>
<td>June 7, 2012</td>
<td>City enters into a contract with USS Cal Builders, Inc. for $22,840,574 to complete construction of 30 acres of the Western Sector by June 2013 including the south lawn, walkable historical timeline and visitor center pavilion, farm and food lab enhancements, promenade improvements, parking lot extension, and timeline central pavement repair.</td>
</tr>
<tr>
<td>June 21, 2012</td>
<td>Onisko &amp; Scholz LLP delivers Schematic Design Contract Compliance Review to Board and City. Onisko asked for the Project Management Plan from Design Studio but never received it. The Great Park Corporation admitted there was no final plan, but argued the lack of a plan did not hinder progress. Notwithstanding, the report did not reveal any significant or material findings. The findings included</td>
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### CHRONOLOGY OF THE ORANGE COUNTY GREAT PARK

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<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 17, 2013</td>
<td>After a competitive bidding process, Hagen, Streiff, Newton, &amp; Oshiro Accountants, PC (“HSNO”) is retained to perform a performance review of the planning, development, and construction of the Great Park at a budget of $240,000.</td>
</tr>
<tr>
<td>September 2013</td>
<td>Western Sector opens. Total cost $69.8 million.</td>
</tr>
<tr>
<td>January 9, 2014</td>
<td>HSNO’s initial report is delivered.</td>
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<tr>
<td>January 28, 2014</td>
<td>Irvine City Council authorizes a second phase of the audit at a cost of $400,000.</td>
</tr>
<tr>
<td>February 12, 2014</td>
<td>Judge Nancy Wieben Stock (Ret.) of JAMS was retained to serve in the role of Special Master to assist in the collection of evidence, including the use of deposition subpoenas for document collection and sworn testimony and to assist and advise special counsel to the City Council, in such efforts.</td>
</tr>
<tr>
<td>June 2014</td>
<td>Aleshire &amp; Wynder is added to the audit team.</td>
</tr>
<tr>
<td>July 2014</td>
<td>City Council approves an additional $330,000 for the audit.</td>
</tr>
<tr>
<td>April 23, 2014</td>
<td>First deposition is conducted by Judge Stock and the transcript subsequently placed online. Ultimately, a total of 23 depositions and 1 sworn statement are taken and on the City’s website to ensure transparency.</td>
</tr>
<tr>
<td>August 20, 2014</td>
<td>Aleshire &amp; Wynder goes to the City Council to compel Forde &amp; Mollrich to produce documents and answer questions. After which, Forde &amp; Mollrich produces 30 boxes of documents, including documents not previously disclosed.</td>
</tr>
<tr>
<td>December 16, 2014</td>
<td>Aleshire &amp; Wynder presents a status update on the audit to the City Council.</td>
</tr>
<tr>
<td>March 2, 2015</td>
<td>Aleshire &amp; Wynder goes to City Council to compel former Great Park Chair Larry Agran to appear at a deposition.</td>
</tr>
<tr>
<td>March 13, 16, 2015</td>
<td>Last depositions conducted. Larry Agran, 3/13/15; Dianna Anast of Kenny the Printer 3/16/15.</td>
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III.  
FINANCIAL FEASIBILITY OF PROJECT

“What I thought was missing, and this was just from my prior experience in doing big projects, is that you don’t budget -- you don’t budget to spend more than you have. You look at what is available, and you budget within your means. And then you can always have a plan to spend money later, if there is more money. I think what was lacking was big picture, what do I do, how do I best spend the money that I have today, that I know I have, and not hoping for future monies to come in…. There was always this future money that was potentially available to come in, but that hadn’t been nailed down yet….I believe it caused the -- the Board and the Council allowed money to be spent, not necessarily with a specific goal in mind to get a completed project done, but to further the vision of the future project that we didn’t currently have the money to build.” – Colleen Clark

A. SUMMARY.

From an early stage, the Great Park was seen to be a flagship project for the City of Irvine and the greater Orange County area, rivaling great parks across the Country and globe. Initially, the City developed a funding plan of $353 million which grew to $401 million by the end of 2004. These budgets were supported not with projected redevelopment funds (the Project Area was not approved until 2005), but by developer financing, negotiated with a major developer. However, thereafter, as the projected costs grew to $1.6 billion (projected by Bovis, the Great Park’s independent program manager), GPC did not develop a new financial plan. Instead it appears that a strategic decision was made during the design competition in 2006 to move forward with development of the Park without the strictures of a comprehensive construction budget. As noted by Yehudi Gaffen, President of Gafcon, Inc., “[Chairman Agran] wasn’t as concerned about [budget]. He had the attitude that, “We’ll figure it out. Let’s design something great, and then let’s figure out how to make it happen.”

In fact, Mr. Gaffen justified the process as follows:

“So, the Great Park to me, kind of epitomizes the subset of design management, where it’s the result of a public competition that has no budget. It was a project that was innovative. The brief was an encouragement to dream big and to invent what the next generation of public metropolitan park would be.”

While, as intended, this allowed for great creativity and emphasis on a unique “great” park, it also laid the basis of the fatal flaw in project development – a Great Park

14 Clark depo pgs. 37-38.  
15 Gaffen depo pg. 193.  
16 Gaffen depo pg. 31.
that was unaffordable. The history of the Great Park is therefore riddled with magnificent, yet financially infeasible ideas. Plans were developed and significant funds expended, which plans proved largely unusable because the funding did not exist to build them. The goal had been to build the whole project in 5-7 years. As Lieutenant Colonel William Kogerman testified, “We were not in the business of building a park. We were in the business of producing plans. And in many cases, those plans will never see the light of day.”  

As a result, much of the money spent on the Great Park has been spent on planning and design of the Great Park itself. Other significant cost categories are City and Great Park operations. Of $251 million spent as of the end of 2013, only $62 million was spent on actual construction. In terms of development, as of October of 2014, approximately 115 acres are developed: 26.6 acres in an interim capacity being held for development and 88 acres are developed for park use. So of the 1347 acres originally planned to comprise the Great Park, only approximately 6.5% of the total area has been developed.

The Master Plan was approved for the Great Park in September of 2007. The rule of thumb according to testimony presented in the Audit in estimating the cost of construction for public parks after design is complete is somewhere between $500,000 and $1,000,000 per acre. At the Great Park, for example, the 30 acre South Lawn park was constructed for approximately $22 million or roughly $730,000 per acre. Using that measure, cost overruns on design and engineering costs reduce the area that can be developed by the extent of that overrun. So for every $500,000 on design, there were two less acres that could be developed. But the math of finite budgets was not a part of the calculus of the Great Park budgets.

Richard Sim, former CEO for the Irvine Company and one of the original members of the GPC Board, observed as follows:

“I think the total amount of money spent on engineering plans to do the entire 1,200 acres was $95 million. I believe now in recent testimony they are saying none of this design that this guy from New York [Ken Smith] did will ever be implemented which means $95 million worth of plans are thrown in the toilet. . . . If that is not waste, I don’t know what is.”

Throughout the life of the Great Park, plans for development changed dramatically, creating budgetary expansions from an early estimate of $353 million to

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18 A breakdown of Great Park costs as of December 31, 2013, showed $251M spent in the following categories: Hard construction ($61.8M); soft construction outside vendors ($62M); soft construction GPC ($311.8K); for a total construction cost of $124M. Non-construction totaled $127M broken down as Outside vendors ($32.2M); City Administration ($54.6M) and GPC Admin/Non-vendor ($40.4M). Source: Great Park General Ledger.
19 Additionally, the “western sector” includes 157 acres of agricultural land and is operated as a farm by OC Produce outside of the Great Park Budget. In the remainder of this report we will not count this acreage in the developed Great Park area.
20 Sim sworn statement, pg. 6.
upwards of $1.63 billion. However, these budget expansions and anticipated costs of development were not supported by sufficient revenue during the relevant time periods. It has often been stated that such upward-spiraling costs would be fully funded through tax increment provided through the Redevelopment Project Area. However, these early projections were based on the assumption that development would commence in 2006 - 7 and be completed within 10 years, and when it did not, there was no revisiting the original assumptions until 2009. Additionally, the projections at max could not have supported development of over a billion dollars. By July 2008, cost projections were $1.6 billion, not including vertical construction. With vertical construction, evidently the estimates were much higher, as much as $3-4 billion.

So while the dissolution of Redevelopment in California certainly deprived the Great Park of revenues, in actuality projected tax increment could not generate enough revenue to secure sufficient bonding even in 2008, well before the dissolution of Redevelopment in 2011. This is explained more fully below.

In sum, this analysis demonstrates that revenue projections and expected costs of the Great Park were not adequately matched, and resulted in significant waste in creating plans and expensive designs that were economically infeasible. The Great Park therefore serves as a lesson in the importance of integrating, from a foundational planning stage, realistic revenue projections in the phasing and development of a capital works project. The grand vision of the City’s political leaders soared on unexamined illusions and led to an outcome which experienced developers could readily foresee. As noted by former director Richard Sim,

"Once Larry Agran and his group took control of this thing, there were no budgets. It was like the sky was the limit and the $200 million that I got the impression that nobody cared about that because all they were focusing on was that there was a redevelopment authority that they [were] going to put in place that would throw off another $800 million to $1.2 billion."

B. FINDINGS.

1. The original financing plan came together in 2004 (2004 Business Plan) and was for $401 million. The Great Park was to be developed in 6-7 years. The Plan updated earlier City projections ($353 million) but considered negotiations with the new owner, Lennar. It did not rely on redevelopment but on developer fees and land-based assessment financing. The Plan included finance policies requiring quarterly adjustments to factor in operation and capital improvement budgets and schedules.

21 Gaffen depo pg. 141; Maxwell-Miller depo pg. 30.
22 Mr. Gaffen testified at his deposition that a $3 to $4 billion internal estimate by Gafcon in 2007 to construct all features of the Great Park was generated; however, that "was never a publicly discussed number". (Id. pg. 142.) There are serious concerns raised by this testimony that the public was never fully informed about the total cost to construct all features of the Great Park in 2007.
23 Sim sworn statement, pg. 5
2. The Design Studio was hired in 2006. After a visit to their New York office, Chairman Agran represented publicly that the $401 million was reasonable. This was not made a condition of Design Studio’s contract. In fact, Mr. Smith had told Chairman Agran that a billion dollar budget would be necessary for the project envisioned, and Chairman Agran knew this when he reported on the trip to the public. Design Studio developed a Master Plan for a cost of almost $10 million and on July 24, 2007 a Schematic Design Contract was approved for $27.3 million which included developing the budget for the Master Plan. Two months later (September 27, 2007) the Master Plan was formally approved with a budget estimate prepared by Design Studio of $979.8 million.

3. On January 8, 2008, in an updated estimate, the Master Plan was projected by Design Studio to have a cost of $1.24 billion, and six months later was estimated by Bovis to cost $1.6 billion, not including vertical construction. Internal estimates by Gafcon with vertical construction were even higher - $3-4 billion but this was not publicly disclosed. Based on these estimates, the Master Plan was never buildable, even with Redevelopment funding. The Redevelopment funding was eliminated with the dissolution of redevelopment, but this occurred two years later.

4. When the Redevelopment Plan was adopted in 2005, the City’s redevelopment consultant, RSG made initial estimates of redevelopment funding based on various contingencies, including development commencing in 2006-7 and being complete in 2015-16. These assumptions did not occur. Additionally, by law 20% was set aside for housing rather than park development and other pass-throughs were necessary to taxing agencies. The estimated revenue over a 40-year horizon was $978.6 million and the present value was only about $220 million. At several points RSG updated these estimates but not in connection with the Great Park budget but in connection with various development proposals (Heritage Fields). In connection with the 2009 Business Plan which scaled Great Park development back to $60-64 million, RSG’s projection of $1.278 billion through 2050 only had a present value of $267.9 million and, with the need to set aside money to repay the $134 million loan from the City, could not have supported a $1.6 billion dollar budget.24

5. Before the dissolution of redevelopment, the new Great Park Chief Executive Officer, Mr. Michael Ellzey commenced a financial review and recommended halting the Schematic Plan which ultimately cost $36 million. Downsizing the plan for fiscal sustainability, he recommended a

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24 Present value is the value of an expected income stream determined as of the date of valuation. The present value of an expected income stream could similarly be used as a marker to determine the size of a loan or bonds to finance improvements. Other factors, including but not limited to, expected interest rates, tax-exemption availability, quality of revenue source, expected collections and appeals could also affect the size of a bond issue. For purposes of this report, the more generalize estimates are sufficient.
budget of $60-64 million. Though Design Studio had been working on a 500 acre reduced plan, Mr. Ellzey determined this was beyond the GPC’s resources. Accordingly, the Western Sector plan was developed for 88 acres, 6.5% of the Great Park area.

6. The Western Sector was built with sole source contracts. It includes the balloon, site preparation, demolition and grading, balloon enhancement, and various capital improvement projects totaling $25 million. The rest of the Western Sector included the “Western Sector,” WSPDP Hanger 244, WSPDP North Lawn, and WSPDP Palm Court, with total cost of $69.9 million. Ultimately this project was within 10% of the original $65.5 million budget, a better track record than any other part of the Great Park. Project began with design in January 2009 and was completed in 44 months when opened in September 2013.

C. DISCUSSION.

1. The City’s Initial Projections For Revenue For Park Development Were For $353 Million And Presumed The Land Would Be Donated, And This Was Reported To The Community In 2003.

“You want to be able to project – it becomes a combination of, you know, engineering and economics matched together. You project over a certain schedule. You develop a master schedule and you cost-load that schedule and you match that to your revenue income – your revenue – your revenue streams. And you can kind of see gaps. You could see where the curves don’t align. And then you have to adjust. . . and you look at it from a constructability standpoint, as well.” – Brendan McDevitt

In the Winter 2003 edition of the Orange County Great Park Planning Report, the Orange County Great Park provided a foundational budget, set of revenue sources, and projects. Pursuant to this report, approximately $353 million of the cost would be paid for by developers and landowners to develop and maintain the park. Federal, state, county, and city tax revenues would not be required as part of this “self-supporting park development strategy.”

According to this report, the City “determined through a comprehensive study that the cost of the park improvements, roads, and other public infrastructure for the Orange County Great Park will be $353 million.” It was foreseen that $200 million would come from development fees, and the remaining $153 million would come from bond assessments on property owners. This report promised that, while other metropolitan parks required 50+ years for development, the Great Park would be built within 5 to 7 years of sale of the property.

25 McDevitt depo pg. 38.
26 GPC Planning Report at pg. 1.
27 GPC Planning Report at pg. 1.
On January 14, 2004 the City completed annexation of 4,700 acres from the El Toro Marine Corps Air Station, and the United States Navy Department completed a successful auction of the property to the Lennar Corporation on February 16, 2005. This sale was for $649.5 million, and resulted in a dedication of 1,347 acres of property to the City for public ownership. This land is ultimately what formed the foundation for the Great Park.

Plans for development of the full 4,700 acres were as follows: a 1049 acre parcel to be dedicated to agriculture, senior citizens' housing, a 275-acre university campus, and 33 acres of retail; a 1,678 acre parcel to be used for 1,100 units of residential housing, 250 units of housing adjacent to 45 holes of golf, an elementary school, and commercial recreation; a 610 acre parcel dedicated to a public transportation center, a 1,500 unit residential “transit village” with mixed-use adjacent property; and, a 204 acre parcel to include a research and development business park, an expansion of the Irvine Auto Center, and a wildlife corridor.

The remainder of land, constituting 1,347 acres, was dedicated for public ownership, and was to form the property upon which the Great Park would be built. $200 million of the $353 million required for completion of these plans was to be derived from prepayment of development agreement fees. The remaining $153 million was to come from landscape and lighting districts, maintenance levies (likely through a community facilities district), bond assessments, and basic tax levies.

The $353 million was to be used as follows: $30 million for off-property improvements, including roadways, access, domestic water, reclaimed water, and dry utilities; $89 million for on-property improvements, including roads, sewers, water, drainage, and dry utilities; $226 million for park improvements, including the Meadows Park, the Sports Park, and the Wildlife Corridor; and $8 million for permit fees and planning costs.

2. The Revised 2004 Business Plan For $401 Million Was Based On Revenue Assumptions Developed With The Sale Of The Property To Lennar, And Projected A 5-7 Year Development Program.

“What I also learned on the visit to New York is that within the $401 million available to us, $201 million buried for the most in the ground in backbone infrastructure and $200 million above ground, we can expect to see a master design that comfortably fits within the $200 million above ground and includes, yes the Great Canyon that has been proposed and has been such a signature piece which has its own microclimates and many, many other elements within it, including the likely embedding of earthworks structures as the canyon moves along toward the lake, toward the amphitheater which will be included as well. All of these are affordable.” – Larry Agran28

28 See Chairman Agran's remarks on recorded video of January 23, 2006 meeting, at 3 hour 4 minute mark.
In February of 2004, the Great Park Corporation formed the Finance Committee to create a financial plan for the decisions affecting the expenditure of funds for the Great Park. On December 16, 2004, the Great Park Corporation considered a revised business plan (the “2004 Business Plan”) for development of the Great Park. The 2004 Business Plan included a section dedicated to financing the Great Park, with specific discussion of sources and uses, including costs and revenue. This plan approved specific finance policies, including a requirement to “employ revenue policies that prevent undue or unbalanced reliance on certain revenues, and which provide adequate funds to operate desired programs.”

The plan also rested on the principle of sound financial policies to “assure budget and financial policies and practices remain sound throughout the years by providing independent, outside oversight.” The 2004 Business Plan explicitly called for quarterly adjustments to factor in “operation and capital improvement budgets and schedule.” This did not occur. This plan provided a detailed analysis of the proposed construction of capital improvements, including passive parks, the sports park, the wildlife corridors, trails, public infrastructure, as well as budgeting for a master planner, landscape architect, and design team.

This plan relied on a total sum of $200 million to be paid over the course of two years in line with acquisition of each of the four parcels of the property, through the development agreement with the purchaser of the property (Lennar). An additional $201 million, as described by Chairman Agran, would be raised through several series of CFD bonds, assessed against private sector development proposed for the project. It further relied on building a stabilized revenue stream of $15 million by the fifth year of development of the Great Park, resting on potential revenue streams from parking, user fees, RV storage, the Orange County Sanitation District, and various agricultural leases.

Although not integrated into the overall budget for the planned development of the Great Park, the plan alludes to the potential of generating significant revenue through redevelopment. The plan specifically articulates that such funding could only be used for “identified obligations (debt) for RDA approved projects.” Other revenues included investment revenue (estimated at 3% of outstanding balances), and administrative revenues through CFD bond issues. While the 2004 Business Plan was not based on redevelopment funding, the availability of such funding apparently created a false comfort that there was room for the budget to grow.

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29 Staff Report, 12/16/2004.
32 2004 Revised Business Plan – Section 5 - Financial Plan at pg. 10.
33 2004 Revised Business Plan – Section 5 - Financial Plan.
34 A plan for redevelopment financing would not emerge until the redevelopment plan was adopted in March 2005. The estimates were prepared by RSG and are discussed in subsection six of this section.
35 When the City’s redevelopment consultant prepared the estimates in connection with the adoption of the redevelopment plan, they projected almost $1B of revenue, but collected over 40 years.
The plan anticipated several future modifications to the budget at the completion of preliminary engineering for infrastructure and schematic design for the public facilities, at the completion of final engineering, and at the completion of bid engineering and construction documents. In addition, the plan incorporated a 15% contingency, plus certain cost-escalators, in order to protect against budget overruns. With respect to budget engineering, the plan specifically incorporated program management – in other words, infrastructure and programming to ensure oversight of budget and cost estimates. This plan foresaw a program manager with primary responsibility over the design/engineering team, with the full resources available to conduct value engineering. Such program manager would be required to provide a financial guarantee to protect against cost overruns.

3. No Cost Limitations Were Included In The Competitive Selection Process For Design, Planning And Constructing The Park Although Chairman Agran Had Proclaimed $401 Million Cost Only A Few Months Previously. In Fact, Chairman Agran Knew That The Design Studio’s Internal Cost Projection Was $1 Billion.

“... when you start considering all the buildings on the cultural terrace, when you consider the botanical garden in its full development, you know, when you consider all the sustainability features, you know, creating a zero-net-energy park, the solar the wind aspects. Everything in the Great Park fully developed, I would suggest is – I think we ran some numbers on that and it was 3 to 4 billion.” - Yehudi Gaffen

Between March and April of 2005, the Great Park Corporation issued a Request for Qualifications ("RFQ") to a select number of nationally/internationally renowned architecture and landscape architecture firms. This Request specifically called for a Master Design covering approximately 1,200 acres of public park and all the streetscape development, edge treatment, entryways, icons, landmarks, and greenbelts. The selection process was guided by a panel of internationally renowned designers and planners. Selection criteria focused specifically on qualifications, references, recognition, and methodology or approach to design. The Request identified $200 million from the Development Agreement with Lennar as the primary source of funding. As noted by Mr. Sean Joyce, the current Irvine City Manager, “The design competition occurred without reference to a design or project construction budget.”

Out of 40 requests, 24 firms responded, and a design jury created for the purpose of selecting the master designer selected seven for further consideration. On September 28, 2005, the Corporation narrowed this group down to three firms,
including Ken Smith Landscape Architect. After submitting additional criteria, and throughout the next several months, the Corporation solicited further information from the finalists, and on January 23, 2006, analyzed the final structure under which the Master Designer should operate. Finally, on March 9, 2006, the Master Designer contract was awarded to the Design Studio, comprising Ken Smith Landscape Architect and numerous other consultants. The spending budget or cap identified on January 23, 2005 of $401 million was not, however, incorporated into this agreement or any other.

In fact, in Chairman Agran’s deposition on March 13, 2015, he disclosed that he had been told by Mr. Smith that realistically the plan they were pursuing would cost nearly $1 billion. This explains why the $401 million was not a contract condition. Mr. Agran testified:

“…it was Ken Smith, in his presentation, who…produced not only a master design, but a projection of what it would cost to build that design. And that figure, I remember it because I heard first in New York, as part of the competition. He said: ‘We’re presenting this to you assuming we’re selected. And if we were selected, we believe all of this can be built for $998 million.’ A billion dollars.”

“Could we for $350 million have built a park? Yes. But…It would have been flat. It would have involved a lot of greenery in the form of baseball diamonds, soccer fields. It would not have included the exciting, compelling features, for example, of a canyon. The kinds of things that came forward. The lake, as a part of the master design. So our vision grew at the same time the park was growing. And we had the benefit of the master design. And, yes, the billion dollar vision of what this could be.”

The original Contract GP06-1019, dated March 9, 2006, budgeted $372,000 for the Design Studio to prepare a Critical Issues Assessment. The scope of this work was limited to preliminary planning. On May 23, 2006 the Scope of Work was subsequently amended to include additional tasks including elements of schematic design, design development, and planning. The budget was also increased to $9,575,000 for this additional work.

While budgetary considerations were a part of the Design Studio contracts, no budgetary caps or thresholds were otherwise incorporated into the design process, in order to ensure that the design could be completed with available funds. Nonetheless, these two contracts were entered into only a few months after former Councilman Agran represented in a public meeting that the Great Park as planned, including all public improvements incorporated into the Master Plan, could be completed within a
$401 million budget of funds provided by Lennar either through the Development Agreement or through joint-infrastructure financing.

Pursuant to the Staff Report, the total amount of $9,575,000 for Design Studio was derived from industry standards and metrics that estimate total design costs to range between 7 to 15% of the total construction value. As such, the Design Studio estimated a total construction cost for Phase 1 of the Great Park at $150 million, and therefore represented that the $9,575,000 provided good value to the City. Based on these estimates, combined with all official information provided since 2003 regarding the total cost of the Great Park, approximately $251 million would remain for plans to be constructed and paid for in the next phase of development.

4. **Design Costs Were Exponentially Higher Than Anticipated With The Operative $401 Million Estimate When Design Studio Was Retained Tripling To $1.24 Billion Two Years Later, And Increasing To $1.6 Billion Later In The Year, But Internal Estimates By Gafcon Were Actually $3-4 Billion.**

“Some money was spent on its design, as though it was a blank piece of paper and without regard to the physical conditions on the ground… The lake was designed on such- in such a way where it did not properly respect the Navy’s system for remediation of groundwater, and so the lake was not going to get built as it was designed. . . . It was more of a master plan design that was magnificent as opposed to a relationship to what was constructible. . . . But when it came to projects that, in my view, were created out of this process where there was little or no staff input that ended up being a discernible waste of resources, would be the priority program feasibility studies. . . . And all those early studies did was churn fee. They did not know what they were doing, and it was – it was a terrible product and we literally had to stop them from doing it.”- Mike Ellzey

On March 1, 2007, the Design Studio made a finance presentation to the City in which it revealed that the new budget for the Great Park, which would not include vertical construction, was $1.1 billion. The first $71.5 million would be spent on a Phase 1(a), which would include site prep and demolition, construction of the Visitor Center which would include the balloon, rough grading of the entire Great Park, and park utilities, to be completed in a two year period.

On July 24, 2007, the City and the Design Studio entered into Contract 5759 for the next phase of work in the amount of $27,300,000, consisting of $25,900,000 for the performance of the Scope of Service as revised to reflect the new phase of work, and $1,400,000 for reimbursable expenses. A further increase of $369,872 to the FY 2007-2008 budget was requested to provide funding for the Great Park Balloon Project.

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44 Ellzey depo pg. 75-76.
By November of 2007, the budget was projected to be well over $1.2 billion, pursuant to the 30% Milestone Review.\textsuperscript{46} On January 8, 2008, the budget was once again increased to approximately $1.24 billion, after completion of the 30% Milestone Review. It was specifically noted that, while the City Council had not adopted a maximum budget for the Great Park construction, the anticipated cost based on 30% of the Schematic Design would be in the range of $1.2 to $1.4 billion, between $800 million to $1 billion over preliminary budgets from 2006.\textsuperscript{47}

During this two-year period where the cost of the Project was tripled from the $401 million proclaimed by Chairman Agran that was operative when Design Studio was hired, there was not a sufficient effort undertaken to reexamine where the funding would be derived for this much more expensive project.

The City did seek an independent review of the cost estimate using its program manager Bovis Lend Lease ("Bovis"). In August 2008, Bovis subsequently increased this estimate to $1.6 billion for horizontal construction alone, not including vertical construction of buildings and associated costs.\textsuperscript{48} This represented a $1.2 billion increase from the original estimate of under $400 million, and still did not account for the full costs of vertical construction, or operation and maintenance. Moreover, deposition testimony has revealed that internal estimates and calculations put the total cost to build all park features at a range of anywhere from $3 billion to $4 billion (which as previously stated, was also a number cited by Yehudi Gaffen).\textsuperscript{49}

5. A New 2009 Business Plan Was Developed After Appointment Of A New CEO, And This Plan Was Premised On Redevelopment Financing, But Projected Bonding Capacity of Only $60-64 Million, As It Included Repaying A $134 Million Loan From The City's General Fund.

“My recollection as to the general theme at that time was that increased property valuation would have an impact, a positive impact, the tax increment that would be derived from that increased valuation – increased residential developments and more contemporary home prices all had on the anticipated cash flow. Additionally, I think there were conversations about public private partnerships that would benefit the park. And yet there was, as I recall, a concern among staff that the new park construction estimates were very high.” – Sean Joyce\textsuperscript{50}

On August 7, 2008, the GPC appointed Mr. Mike Ellzey as CEO. Mr. Ellzey’s deposition points out the dysfunctional management structure he found which is discussed elsewhere in this report. In terms of the GPC’s financial condition, however,

\textsuperscript{46} See Table, Exhibit 6 to Keith McDonnell depo.
\textsuperscript{47} See recorded video of January 23, 2006 meeting, at 3 hour 4 minute mark.
\textsuperscript{48} 70% Schematic Milestone Review, pg. 11. This amount was later revised to $1.4 million by City Staff on February 19, 2009.
\textsuperscript{49} See, e.g., Maxwell-Miller depo, pg. 30, Lines 2-8; Gaffen Deposition, pg. 141, Lines 4-12.
\textsuperscript{50} Joyce depo pg. 40-41.
he came to realize the problem posed by the escalating costs and limits on the GPC’s resources. Note that this was two years before the dissolution of redevelopment was raised by the Governor. He therefore undertook a “reverse review” by looking at the costs of constructing and maintenance of various improvements, and the GPC’s remaining capital reserves and future existing revenues. Based on this review, eventually the 2009 Business Plan was developed, which suggested a financial capacity for “fiscal sustainability” of $60-$64 million, far short of the $1.6 billion required for the Design Studio’s plan.

In late 2009, the Great Park Corporation adopted the 2009 Business Plan providing for strategic development of the Great Park over the subsequent 10 years. According to the 2009 Business Plan, from inception to June 30, 2009, $369,657,941 had been raised: $200 million had come from Lennar pursuant to the Development Agreement, and $35.6 million from leases, interest, and other revenues. In addition, $134 million was included in this figure, representing a synthetic loan from the Redevelopment Agency to the City.

The 2009 Business Plan further forecasted future revenue from interest, leases, and loan repayment of the $134 million general fund loan, ranging from $6 million in 2010-2011 to $23 million in 2019-20. The range was due primarily to increased payments of tax increment for the RDA loan in later years.\(^{51}\)

This 2009 Business Plan also provided a discussion of tax increment bonding capacity and validated the RSG analysis performed for the adoption of the Plan in 2005. This analysis looked specifically at expected tax increment to be generated within the Redevelopment Project Area based on projections and analyses, and considered other costs and expenditures of the Redevelopment Project Area. Based on these considerations, the 2009 Business Plan projected total bonding capacity to be somewhere between $60 million and $64 million. These considerations were based on the following assumptions: 40% of tax increment generated would be diverted to repay the Redevelopment Agency’s $134 million loan, which would be used for maintenance and operations for constructed projects. Approximately 67% of bond proceeds would be used for construction costs, while the remainder would represent soft costs, including design and construction administration.\(^{52}\)

Concern was expressed by some members of the GPC Board as to the sufficiency of the projected funding. As stated by William Kogerman when asked if the proposed RDA funding was insufficient to complete the project,

“*That is my conclusion, absolutely. So long as we focus on the $1.2 to $1.3 billion, that’s not a big problem. We might be able to get there. But quite frankly, that doesn’t cut it. That is not going to pay for this enormous municipal project.*”\(^{53}\)

\(^{51}\) FY 2009-2020 Strategic Business Plan, Pg. 23-25.
\(^{52}\) FY 2009-2020 Strategic Business Plan, Pg. 36-37.
\(^{53}\) Kogerman depo pg. 129.
Brendan McDevitt, the consultant brought in by the CEO Mike Ellzey to evaluate various aspects of the project in order to develop the 2009 Business Plan, made a similar assessment:

“[Design Studio] had a lot of problems reconciling their estimates and coming into agreement. They were – the number out there was always $1.2 billion, and there was a – I think a disagreement. Bovis’ number was, you know, above that by quite a bit.”

Finally, William Kogerman’s overview assessment is also telling:

“Nobody ever stood up and said ‘wait a second, we’re lying. We’re telling the people we can do this for $1.2 to $1.3 billion when everybody here knows it’s going to be multi-billions of dollars. Why are we doing that?’

6. Neither The Recession Nor The Loss Of Redevelopment Tax Increment Was The Reason The Great Park Project Was Scaled Back, As This Funding Was Never Sufficient For The Design Studio Plan.

“There’s a gross assumption that the money’s going to roll in at the right time and you’re going to be able to build that thing out. And on a 20 year project, that’s a big assumption. . . And I wasn’t too privy to the rate at which redevelopment money was to come in, but it also struck me that it probably wasn’t going to be at the rate to build out a 1200-acre park in significant pieces and chunks.” – Brendan McDevitt

On July 8, 2003 the Redevelopment Agency entered into an Agreement for contract services with Rosenow Spevacek Group (“RSG”) for redevelopment consulting services in conjunction with formation of a new project area under the provisions of Health and Safety Code Section 33492 to aid in the redevelopment of the closed MCAS. Included in the required RSG services was the preparation of a Financial Analysis/Cash Flow Analysis. Specifically,

“RSG will prepare tax increment projections necessary to determine the financial viability of the Project Area and redevelopment plan. These projections will incorporate future development opportunities as presented in the financial analysis for the Great Park Plan for El Toro. RSG will also develop a cash flow analysis of the Agency’s potential revenues and expenditures for the next five years. The projected tax increment revenue will be analyzed to identify the funds remaining for Agency redevelopment projects/programs under the revenue sharing requirement prescribed by Assembly Bill 1290. A bond financing capacity analysis will also be

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54 McDevitt depo pg. 46.
55 Kogerman depo pg. 123.
56 McDevitt depo pg. 37.
prepared to justify the bonded indebtedness limit required by Redevelopment Law.”

When the redevelopment plan was approved by the Irvine City Council on March 8, 2005, the report prepared in accordance with the requirements of H&S 33352 included the attached Table D-2, Great Park Redevelopment Project Tax Increment Projections dated December 2004 showing the anticipated tax increment projections through 2043-44. These projections, as with others prepared by RSG, were based on assumptions provided by the City, its consultants and the developers. Those assumptions dealt with the scope and timing of the residential and commercial/industrial development that would occur over the foreseeable future and its assessed valuation. The original assumptions anticipated that substantial development would begin in 2006-07 and be completed by 2015-16. The anticipated tax increment from that development, net of pass-through, and the housing set-aside, would total $978,616,810 (over 40 years) with a present value of $218,520,285.

As noted by Wally Kreutzen who was the first CEO for the GPC:

“At some point in time in the future, it was projected that funds would come in from the Redevelopment Agency, but the way redevelopment funds work, it is contingent upon development occurring. So you needed to have development in the surrounding private lands owned by Lennar well on its way before any revenue was going to come in from the Redevelopment Agency. So we were looking at, if you will, two revenue streams, what I would refer to as a short-term revenue stream from the development agreement, and a longer term revenue stream from the Redevelopment Agency.”

On July 12, 2005, the City of Irvine and Heritage Fields (“Heritage”) signed a Development Agreement based on the overlay zoning plan approved for El Toro. Under its terms, Heritage agreed to pay developer fees in the amount of $200 million and create $201 million in Community Facilities District Bond revenues to be invested in the development of the OCGP. In 2006 it was proposed to amend the Development Agreement to increase the permitted number of residential units and reduce the commercial/industrial space. In a September 12, 2006 report to the Irvine City Council regarding this proposed amendment there is the following comparison of the funding under the original Development Agreement and the proposed amended Development Agreement:

<table>
<thead>
<tr>
<th>Revenue Source</th>
<th>Original Plan</th>
<th>Amended Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Development Fees</td>
<td>$200 million</td>
<td>$200 million</td>
</tr>
<tr>
<td>Community Facilities District (CFD) Funds</td>
<td>$201 million</td>
<td>$201 million</td>
</tr>
<tr>
<td>RDA Tax Increment Non-Housing Funds</td>
<td>$191 million</td>
<td>$750 million*</td>
</tr>
<tr>
<td>RDA Housing Set Aside Funds</td>
<td>$.80 million</td>
<td>$300 million*</td>
</tr>
<tr>
<td><strong>TOTAL:</strong></td>
<td><strong>$672 million</strong></td>
<td><strong>$1.451 billion</strong></td>
</tr>
</tbody>
</table>

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57 Kreutzen depo pg. 25-26.
While these numbers might have appeared to provide a comfortable cushion to the 2004 Business Plan which was developer-funded for $401 million, in fact the caveats to the RSG estimates were substantial and overlooked. As Mr. Kreutzen noted above, all these numbers assumed an aggressive development cycle, commencing 2006-7 and continuing through 2015-16. The development cycle was substantially delayed, and not taken into account in revised Great Park budget estimates until 2009. Moreover, the $200 million in development fees were being expended and the $201 million was being spent on infrastructure. Additionally, the redevelopment law required pass-throughs to taxing agencies and a 20% housing set-aside (the $300 million), for affordable housing purposes, not park development. So, for the impressive $1.4 billion estimate, only half of that was available.

It may be that the 2006 RSG estimates produced an illusion that the $1.2 billion development program was possible. But this misunderstanding could only persist if not subject to critical examination. The City should have applied its original policies in its 2004 Business Plan to perform quarterly adjustments of the estimates, but did not. The funding program was fatally flawed in that contrary to the 2004 policies, there was no attempt to monitor and align potential revenue with the Master Plan budget, which was now estimated at $1.4 billion. This was illustrated when the 2009 Business Plan was developed.\(^{58}\)

On September 4, 2009, after the sale of the property to Heritage Fields for $598 million, RSG prepared an updated report on the anticipated tax increment that reflected the reduced value of the land because of the recession. This report anticipated significant building beginning in 2011-12, with completion in 2023-24. After pass-throughs the net tax increment available through 2050-51 was projected to be $1,278,300,409, but with a present net value of only $267,915,665.

After factoring in repayment of the Redevelopment Agency loan of $134 million, which represents 40% of each $1 million in tax increment revenue generated, the 2009 Business Plan estimated that only up to $63 million in tax increment bonds could be supported by revenue in the following 10 years. This assumed that:

(i) the economy continues to improve;

\(^{58}\) We do not argue that the recession had no impact. The recession of 2008-09, did have an impact not only significantly reducing the value of undeveloped land, which was reflected in successful property tax assessment appeals, but also the amount of development that was projected to occur and when. Due to this, RSG did adjust its estimates in the future, reducing estimates and providing longer development time frames. But Great Park budget estimates escalated at rates which were orders of magnitude above redevelopment bonding capacity as demonstrated in development of the 2009 Business Plan.

\(^{59}\) Expenditures at the Great Park were requiring a “bridge loan” to help fund activities until the supposed influx of redevelopment monies. Pursuant to the terms of this agreement, the City “loaned” $134 million to the Redevelopment Agency, which was to be repaid to the City at 9% interest, compounded annually, over the 45-year life of the Redevelopment Agency.
(ii) the absorption studies, as well as the other assumptions built into the
developed/consultant projections all prove accurate;
(iii) property value continues to increase; and
(iv) all tax increment generated from development, after statutory pass-
through, is used to pay Tax Increment Bond debt service.

These amounts contemplated a first bond issue in either September 2015 or
2016, and a second series in September 2021 or 2022. The 2009 Business Plan
acknowledges that these are lower than expected, citing to loan repayment obligations,
maintenance and operational costs, and soft costs associated with design and
construction of the Great Park. Such strictures would significantly limit future bonding
capacity as well. As a result of this analysis, the projected redevelopment funding was
only sufficient for $60-64 million.

The most recent property tax increment projections prepared by RSG are shown
on the November 5, 2013 report. These were based on price point and market
absorption study updates provided by the developer and City/Agency consultants and
show development beginning in the current fiscal year and extending through 2026-27.
Tax increment projections show the maximum net tax increment revenues available
through 2051-52 to be $1,836,414,995. However, since it will take 40 years to produce
that revenue, it would not support $1.8 billion in improvements over a 10-year build out.

In conclusion, the Design Studio Great Park Master Plan ignored and outgrew
the original $401 million developer-financed improvement program. Although the
developer would install the $201 million in infrastructure required by the development
agreement, the $200 million advance in development fees had gone to design,
planning and other expenses. Some $359 million has been spent, and what the City
has to show for this is the 88-acre Western Section which cost $70 million. But the
creation of a redevelopment project area was never projected to be able to support a
$1.2 billion bond issue to build a Great Park, much less a $1.6 billion or $3 billion Great
Park. In fact, in the 2009 Business Plan with redevelopment still viable, the funding was
deemed only sufficient for between $60-$64 million in park improvements.

According to Brendan McDevitt, these numbers demonstrate that RDA funding
would never have been sufficient or timely enough to meet the needs of the project. In
addition, the recession that began in 2008 appears to have been unrelated to the lack
of sufficient funding for the project. As McDevitt notes:

“There had been some indications in the economy [by 2008] that the
recession or the housing bubble was becoming an issue, but it hadn’t
impacted this project yet, I don’t believe, directly. . . . But for the purposes
of my evaluation, I believe it was irrelevant at that point. Because within
two weeks [of being hired in October of 2008], I’d made the

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60 Historically, Gafcon’s attorneys, Stradling Yocca, were one of the law firms that acted as bond counsel
for the City of Irvine. We are currently reviewing that further.
61 2009 Business Plan, pg. 35-37.
62 It was approved at a cost of $65.5M but actual cost was $70M.
recommendation to Mike [Ellzey] to stop the design...And I don’t think that was related to the recession.\textsuperscript{63}

D. CONCLUSION.

On the subject of why the financing plan failed, the words of Yehudi Gaffen, one of the de facto managers of the project under Chairman Agran, are prophetic.

“So I would say to you that on these large, iconic projects that I’ve worked on budgets came second. Once the concept had been developed, obviously people want to know, well, what’s that going to cost? And you then get into the discussion of how are we going to pay for it, and can it be phased or can we do a certain amount of it to create the canvas for the future, or can there be some increments of it built over time? That’s been my experience on these projects that I’ve been involved with.” – Yehudi Gaffen\textsuperscript{64}

Mr. Gaffen’s quote epitomizes much of the problem with the financial planning for the Great Park. Budget was not a fundamental consideration in the planning of the Great Park, demonstrated by the expanding costs as the project developed, from under $400 million to $1.6 billion for horizontal construction exclusively and in actuality, probably double that. The Budget was not a measure of control of project expense, not because it could not be, but because it was not intended to operate in such fashion, despite the City’s adopted policies. Redevelopment funding was not a part of the original budget, which was developer funded, and when it became a part of the 2009 Business Plan, it led to scaling back the budget to $60-$64 million. While dissolution of Redevelopment is an often cited cause of the failure to construct the Great Park, it is apparent that a failure to integrate a solid budget and revenue projection into planning is what led to spending millions of dollars planning and designing improvements that the GPC could never afford to build.\textsuperscript{65}

\textsuperscript{63} McDevitt depo pg. 32-33.
\textsuperscript{64} Gaffen depo pg. 35, lines 7-16.
\textsuperscript{65} Mr. Agran, in his deposition only a week ago, now, for the first time we are aware, makes the argument that the Master Plan was fine and buildable, as long as a sufficient time horizon was provided. “It might take 20, 30, 40, 50, 100 years”, he states. The goal and original financing plan was to build it all at once over 6-7 years. It is hard to know how to treat such a fundamental change in argument. Certainly a major public facility such as a 1300-acre park could be gradually built over decades. But then the financing plan would be geared to that. How would the elements be prioritized and coordinated? Does the canyon go first and what necessary elements would be related to that, and what would they cost? Or should the emphasis be on the elements of the park which would be most useable by the public? If in fact the Great Park, as planned, was not affordable, then it would be incumbent on the leaders to come up with a plan buildable over whatever time horizon they proposed. What they ended up with was the $65 million Western Sector. Trying to analyze a 100 year development program as suggested by Mr. Agran seems to be speculative at this point. We have focused our analysis on the financial plan presented to the public and how that went astray. We do not here attempt to assess whether a 50 or 100 year development program might have been carried out, as none was ever proposed.
E. REPRESENTATIVE STATEMENTS.

- Kreutzen depo pg. 25-26: “At some point in time in the future, it was projected that funds would come in from the Redevelopment Agency, but the way redevelopment funds work, it is contingent upon development occurring. So you needed to have development in the surrounding private lands owned by Lennar well on its way before any revenue was going could come in from the Redevelopment Agency. So we were looking at, if you will, two revenue streams, what I would refer to as a short-term revenue stream from the development agreement, and a longer term revenue stream from the Redevelopment Agency.

- Kogerman depo pg. 99-100: “Walkie was constantly talking about what’s that going to cost us? I praised Director Ray for -- for his efforts there. I met -- when we were having twice-a-month meetings, and then one, I met with our finance people. I complained about the kinds of financial analysis we were doing, which were impacted by change orders, amongst other things. But it was also impacted by G&A. How can you continue, I would ask, having G&A’s of $18 million and revenues of 10-? How can you continue to do that? Well, you can’t. I mean, you go bankrupt. And so I was given, in some cases, a curved line chart that shows that this will happen up until a certain point, but then at this point, certain things kick in, and -- and we’re home free. I mean, that was either the biggest bunch of hooey, or bad predictions, or whatever. I mean, what's going to kick in? And then, of course, losing the redevelopment moneys, it got -- it was exacerbated. So I think that it was a number of things that -- that did wrong. The programs we ran at millions of dollars a year that were all free, the concerts, all the -- all the things that we did to get people to come to the park brought people to the park, but it took money out of the account. And as long as there was money in the account, we continued to do that, much to the chagrin of those of us who were raising those issues. Christina Shea raised the issues. Walkie Ray was -- he raised them all the time. And so did I.”

- Landers depo pg. 61: “But, essentially, if housing is not being built in the redevelopment area, then any assumptions that might have been made for those early years would then be changed to reflect the fact that no tax increment would be coming in during those years.”

- McDevitt depo pg. 38: there was no analysis of constructability issues. “You want to be able to project – it becomes a combination of, you know, engineering and economics matched together. You project over a certain schedule. You develop a master schedule and you cost-load that schedule and you match that to your revenue income – your revenue – your revenue streams. And you can kind of see gaps. You could see where the curves don’t align.
And then you have to adjust.... And you look at it from a constructability standpoint, as well.”

- Joyce depo pg. 57: “Wally was negotiating in a very assertive fashion, focusing on narrow, well-defined scopes of service and trying to get the best value and cost. [Chairman Agran] believed Wally was playing hardball and not giving proper attention to the creative nature of the Design Studio’s work.”

- Sim Sworn Statement pg. 7: design competition was premature because there was not enough knowledge as to the direction of the park and what was necessary prior to bringing on design components; no due diligence done.

- McDevitt depo pg. 95: “So if you start with a number, the Design Studio was asked to prepare a package for what they recommended the park develop with those funds. And there was a disagreement not only on the scope of work, but also on how much should be allocated for soft costs.” These items should have been incorporated in a preliminary phase-by-phase budget to match against available funds and revenue.

- Sim Sworn Statement, pg. 5-6: After Larry Agran came into control, no more budgets. Focus was exclusively on the RDA that would generate an additional $800 million to $1.2 billion (but on what basis?). However, no plan to spend that money, still no real budget or plan of spending.

- Joyce depo pg. 118: “The design competition occurred without reference to a design or project construction budget.”

- Gaffen, pg. 31, “So the Great Park, to me, kind of epitomizes that subset of design management, where it’s the result of a public competition that has no budget. It was a project that was innovative. The brief was an encouragement to dream big and to invent what the next generation of public metropolitan park would be.”

- Stu Mollrich depo pg. 88-89: there was no real budget as part of the design competition; “I do not recall the designers being handed a budget and saying ‘Design a park that costs X.’”
IV. CORPORATE STRUCTURE AND GOVERNANCE

A. SUMMARY STATEMENT.

The corporate structure and governance of the Great Park was complex from its inception. Originally, the structure relied on a strict division between the City of Irvine as a policy maker and the Orange County Great Park Corporation as a land developer. Over time the City became dissatisfied with the structure and the City assumed full responsibility for the project.

The GPC as a corporate entity initially operated independently and directly entered into contracts with consultants for the design and construction of the Great Park. It was initially suggested that the GPC should establish a committee-based governance structure with the Board, as the executive body, and several committees that would have task-specific analyses to provide to the executive committee for implementation. That structure did not, however, come into being. Rather, members of the City Council sitting as members of the Board of Directors assumed varying degrees of involvement in the project.

Neither the Governing Board of the City nor of the GPC were experienced professionals in park development and construction. The professionals selected to design the park had limited experience in developing projects of the magnitude of the Great Park. While City staff and management were aware of City standards and procedures for moving forward with a major City project, Board members and consultants often were not. As a result irregularities occurred in the award of various contracts, many of which were awarded on a sole source basis. Within the combined organization of the City and the GPC there was confusion in the roles of City staff and GPC staff.

The City Charter outlines the appropriate roles and relationship of the City Manager and members of the City Council. The GPC, however, created a corporate structure that allowed some councilmembers who also served as members of the GPC Board to become heavily involved in day to day administrative direction and activities of the Great Park. This led to a situation where consultants worked directly with policy makers in the development of designs and plans for the Great Park, often without a concept of cost limitations. As cost escalated, so too did their contracts. City staff and management felt constrained from attempting to influence or re-direct Great Park decisions and procedures. At times certain consultants were seen to be politically connected and surrogates for the policy makers. Thus, the consultants themselves who were supposed to be working under the CEO and staff actually acted in a directory role. Under these circumstances, some in City management reported that they were afraid they would lose their jobs if they opposed decisions that were made.
B. FINDINGS.

1. While the GPC was originally intended to have broad based County representation, after annexation of the 4700 acres into the City of Irvine, the City ultimately assumed control, and on April 25, 2006 by Resolution 06-42 made the GPC an advisory entity, and this change was ratified by Irvine voters by Measure R approved November 4, 2008.

2. For local government entities, good public administration practice has come to entail separating the policy-making function of the elected legislative body from the administrative function of the appointed managers. The Council-Manager form of government, the most popular form of local municipal governmental in the United States, has this premise, and the City of Irvine structure embodies these concepts.

3. In the case of the Great Park, there was overwhelming testimony that the policy-making/administrative dichotomy broke down and that the Chairman Agran directly interjected himself in the administrative operations of the Great Park and was the most active board member, and this ultimately affected how the managers performed their function.

4. Besides interference from some elected officials, management was not able to perform its function as provided by City ordinance due to the fact that some consultants had strong connections to Chairman Agran and took on management functions themselves, according to deposition testimony.

5. There is testimony that the Chairman exercised influence through and was influenced principally by Arnold Forde (Forde & Mollrich) and Yehudi Gaffen (Gafcon), and this appeared to staff to be the group in principal control of the Project.

6. It has been suggested that a strong committee system would have served to better inform the public and Board members and broaden decision making responsibility, and thus been a platform for better decision-making.
C. DISCUSSION.

1. While The GPC Was Originally Intended To Have Broad Based County Representation After Annexation Of The 4700 Acres Into The City Of Irvine, The City Ultimately Assumed Control, And On April 25, 2006 By Resolution 06-42 Made The GPC An Advisory Entity And This Change Was Ratified By Irvine Voters By Measure R, Approved November 4, 2008.

“As one who has worked in government for over 40 years, I have never witnessed a more complicated governance and management environment than the Great Park.”

After closure of the El Toro Marine Corps Air Station (ETMCAS) in 1993, a variety of Countywide initiative measures attempted to address the reuse issue for nearly a decade. Ranging from measures approving commercial air use to measures mandating open space and park uses, various initiative measures were enacted, repealed, contradicted and challenged in court.

In May of 2001, the City of Irvine proposed another Countywide initiative measure that would create the “Orange County Central Park and Nature Preserve” on the land. The proposal revised the County’s General Plan to require development of a park within the ETMCAS property as part of the opening of the land to residential and commercial development. The total size of the site was approximately 4700 acres of which a portion was to be dedicated for the Orange County Great Park. The Irvine sponsored initiative appeared on the Countywide ballot on March 5, 2002 as Measure W. Its purpose as stated in the measure was to “unify our communities and improve the quality of life for every County resident...” It was approved by a vote of 297,735 to 216,026 (58% yes; 42% no).

(a) Original Role of the City of Irvine.

The day after Measure W was approved, the United States Navy announced its intention to sell the property at auction to a land use developer rather than to just transfer it at no cost to Orange County. This opened the door for the City of Irvine and the Navy to jointly create a reuse plan that was announced in May of 2002. Based on that plan, the City of Irvine processed an annexation proposal and entered into a property tax agreement with Orange County through the Local Agency Formation Commission. The entire ETMCAS property was then annexed by the City of Irvine in November of 2003. This put the City of Irvine in control of land use decisions for the entire site.

The commitment of Irvine to honor the purpose of Measure W and create a park facility for all of Orange County was reflected in the reuse proposal for annexation submitted to and relied upon by LAFCO in its decision approving annexation of the property to the City of Irvine.

The reuse plan included the Navy selling the entire property to a private developer who would then commit to transfer approximately 1350 acres of land to the City of Irvine for development as the Orange County Great Park as a condition of development of the remaining property for residential and commercial purposes. In addition to dedication of the land, the developer would pay approximately $200 million in development impact fees. A Community Financing District was then to be formed by the City that would also contribute $200 million to the Orange County Great Park Project as the residential and commercial properties sold out. This was supposed to allow full development of the Orange County Great Park without a cost to the taxpayers.  

It was planned that the City of Irvine would retain land use planning and financing control over the park and would in fact own the Orange County Great Park as a City asset. Maintenance obligations were left somewhat unresolved initially.

(b) Original Role of the Orange County Great Park Corporation.

The reuse plan set up a means of implementing Measure W by calling for the creation of GPC as an independent non-profit organization. Articles of Incorporation for the GPC were filed by the City of Irvine on July 7, 2003 with its primary purpose being “... to receive, develop, and operate property and improvements. . . for the benefit of the residents of the City of Irvine, and others.” (Article II(B)). The GPC was organized under California law as a non-profit 509(1)(3) corporation and its Governing Board was to be comprised of

“... no less than seven (7) or more than thirty (30) directors, two (2) of whom shall be officers or employees of the City of Irvine designated by the City Council of the City. . . . (hereinafter referred to as the ‘City-Directors’).” (Article IV)

Article VIII of the Articles of Incorporation provided that the Articles of Incorporation could only be amended with the prior written consent of the two Irvine City-Directors. No provision appears in the original Articles of Incorporation regarding the method of electing or appointing the remaining directors. The initial concept was that a Countywide corporation would develop and operate the Orange County Great Park subject to land use controls established by the City of Irvine.

The original bylaws of GPC as approved by the Irvine City Council and adopted by GPC on December 5, 2003 provided as follows in Article III, section 2 with regard to the purpose of GPC:

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67 January 28, 2003 Irvine Press Release stated the cost to design and build the Orange County Great Park would cost a projected $353 million to be covered by the development fees and the proceeds from the proposed Community Facilities District to be formed by the developer.

68 The limitation on the number of directors from the City of Irvine and the large number of potential Board members appears to have been intended to assure that there would be broad participation among nearby communities. That was the message that accompanied the promotion of Measure W, although Measure W did not address how its goals would be achieved. Rather Measure W was enacted with the understanding that Orange County itself would direct and control the development of the Orange County Great Park.
“2. General Purposes. The general purposes of this corporation are the following:

(a) to receive, hold and disburse gifts, bequests, devises, and other funds to advance the specific and primary purpose of this corporation;

(b) to own, lease, and maintain suitable real and personal property which is deemed necessary to accomplish the specific and primary purpose of this corporation; and

(c) to enter into, make, and perform, and carry out contracts which are deemed necessary to accomplish the specific and primary purpose of this corporation.”

In addition, the GPC original business plan stated:

“The purpose of the Orange County Great Park Corporation is to develop and operate, preserve and protect the Orange County Great Park for the benefit and enjoyment of all its visitors, those of today and those in the future.”

Following incorporation of GPC, the Irvine City Council took steps to create bylaws for the organization. From June until September of 2003, the Council wrestled with how GPC should be governed and what the composition of the Board of Directors should be. A total of 27 local residents submitted applications to be appointed to the Board of Directors. After review of those applications and discussion of various options for governance, the City Council determined that the bylaws would provide that the Board of Directors would be comprised of a total of nine members. Of the nine members, five would be the elected members of the Irvine City Council instead of the two authorized in the Articles of Incorporation then in effect. The remaining four members were to be appointed by the five City-Directors. The City Council would thereby be in a position to control all decisions made by the GPC.69

The City Council then voted to appoint four of the applicants from the public to fill the remaining seats on the Board of Directors. While this was not an actual vote of GPC, it was an indication of the action the first Board would take once it was seated. The City Council further approved bylaws reflecting this change on September 23, 2003. When the first meeting of the GPC was held on December 5, 2003, these actions were validated by the GPC Board. The Articles of Incorporation were amended on January 29, 2004 (the “Amendment”) to conform to these actions.

69 The Grand Jury reviewed various aspects of the Orange County Great Park situation in 2005-2006 and again in 2009-2010. Both reports note that the effect of the action taken by the Irvine City Council on April 25, 2006 was to relegate GPC to an advisory role and imbue the City of Irvine with full control and governance of the Orange County Great Park.
The 2004 Amendment provided that no further amendments to the Articles of Incorporation could be made without the “... prior written consent of a majority of the City-Directors then in office,” thereby effectively assuring permanent control by a minimum of three members of the City Council of the City of Irvine (Amendment, section 3).

(c) Committee Structure.

In order to implement the project and organize the GPC, City Manager Allison Hart proposed a committee system in 2003 that would have evaluated the various proposals that would come before it and make recommendations to the GPC Executive Committee. The committees were intended to be subject to the Brown Act with meetings held in public. This structure was originally proposed in a business plan submitted and approved in late 2003. In November of 2004, however, the same plan was rejected. At that meeting, the decision was made by the Council majority and two others on the Board to shift the structure so that GPC and its CEO as well as the City Manager would report to the City Council. After Councilman Agran was voted in as Chairman of the Board in December of 2004, various meetings were held to discuss the governance structure and the committee system was rejected.

In addition to the general powers to enter into contracts that were used by GPC to begin work on the Orange County Great Park, additional facts support the understanding that GPC, not the City of Irvine, was originally intended to be the entity actually developing the Orange County Great Park. At a GPC Board meeting held on June 23, 2005, for example, the Board was scheduled to consider approving a Lease and Operating Agreement that would have leased the Orange County Great Park property to GPC and granted GPC full power and authority to develop the Orange County Great Park. The issue was not addressed at that meeting, however, and even though it was to be rescheduled for September of 2005, in fact the agreement that had been prepared at considerable City expense was never brought forward for consideration by the entire City Council or the GPC Board of Directors.

(d) GPC as Advisory Body.

After selection of the Orange County Great Park master designer Ken Smith, in 2006 the role of GPC was “clarified” by the Board. On April 25, 2006, the Irvine City Council adopted Resolution 06-42 which outlined its interpretation of the governance structure that was in place. Essentially, the Irvine Council determined that some of the powers that had originally been intended to be granted to GPC and that had already been employed with regard to awarding of contracts and making policy decisions should be retained by the City. The GPC essentially was relegated to an advisory role. The Irvine City Council vote was split on that decision 3-2 with Mayor Agran and two others leading the vote. The GPC did not vote on this matter, but because of its leadership structure, did not object to the determinations made by the Irvine City Council on its behalf. It became clear at this point that GPC was going to be used simply as a branch of the City government of Irvine rather than as an independent entity.
Councilmember Christina Shea objected extensively to the change in direction for GPC, citing the Lease and Operating Agreement that had received support by the City Council in 2005 and that had been prepared at substantial expense. At that meeting concerns were raised by Ms. Shea and others that the inclusive intent of Measure W was being “hijacked” by the Irvine City Council majority contrary to the will of the people. Specific comments were made concerning the lack of participation by residents of all of Orange County in the decision-making process as it was affecting policy and design decisions at the Orange County Great Park as well.\(^{70}\)

Resolution 06-42 specifically provided that employees of GPC would be employees of the City and would work within the City’s organizational structure as a distinct operating department of the City under the general direction and supervision of the City Manager as the Chief Executive Officer of GPC. This ratified City involvement in and support of the internal operations of GPC. In addition, all funds generated for use by GPC were to be managed by the City of Irvine as a separate fund and operations and maintenance of the Orange County Great Park were to be conducted on a self-sustaining basis.

The role of the GPC Board of Directors under Resolution 06-42 was intended to “. . . ensure inclusion of independent participation recommending essential policy adoption concerning planning, designing, constructing, operating and maintaining the public portions of the Orange County Great Park.”

In addition, the nature of GPC was now determined to be a “recommending” role rather than a decision-making role as originally set forth in the reuse proposal that had been the basis for the annexation of the land to Irvine.

The language of Resolution 06-42 repeatedly states that the GPC Board is responsible for “providing direction,” or “assuring” implementation of policies and guidelines. While the Board is empowered to “oversee construction” of the Orange County Great Park, GPC was deemed to have authority only to “recommend” change orders, resolution to contract disputes and final acceptance of construction to the City Council for approval. The GPC Board also was granted authority to “recommend contracts” for City Council approval.

Finally, GPC and its staff were to implement contracts and serve as “direct interface” with the design team and construction general contractors, utilities and regulatory agencies as well as with public and private funding sources with all decisions referred to the City Council for ultimate action.

All of these provisions served to change the role of GPC from developer and operator of the Orange County Great Park to an advisory committee to the City Council.

\(^{70}\) Irvine City Council Meeting, April 25, 2006.
staffed by City employees. What had begun as an independent entity representing the entire County was changed into a separate department within the City of Irvine.\footnote{The Grand Jury reviewed various aspects of the Orange County Great Park situation in 2005-2006 and again in 2009-2010. Both reports note that the effect of the action taken by the Irvine City Council on April 25, 2006 was to put GPC into an advisory role and transfer full control and governance of the Orange County Great Park to the City of Irvine.}

\(\text{e) 2006 Grand Jury Investigation.}\)

\(\text{(1) Grand Jury Findings.}\)

The change effected in April 2006 by the City of Irvine in the governance structure for the Orange County Great Park prompted a Grand Jury investigation and report released in June of 2006 that concluded that the City of Irvine had created a structure of governance different from that contemplated and approved in Measure W and the reuse plan. The Grand Jury also concluded that the action taken by a “three member bloc” on the City Council changed GPC from an independent entity in charge of actual development of the Orange County Great Park to advisory status. It also concluded that the failure of the Orange County Board of Supervisors to object to this action helped contribute to the loss of county wide participation.\footnote{Grand Jury Report, Sections 1.1, 1.2 and 1.3, pgs. 1-2.}

The Grand Jury found that the new structure created a potential conflict of interest involving the Board of Directors and the City Council because Irvine officials were also officials of GPC and therefore would be conflicted should an issue arise that affected the City of Irvine differently from the GPC. The Grand Jury found that this same problem affected the roles of the City Manager and the Chief Executive Officer of GPC.

The Grand Jury also determined that GPC was organized to manage the affairs of the project in part to assure that GPC funds would be accounted for entirely separate from City of Irvine revenues. Change in the organization that rendered GPC an advisory body rather than an independent entity negatively affected that goal in the Grand Jury’s view. In fact, the Grand Jury found that it is “practically impossible to ascertain where the City of Irvine stops and the GPC begins. . .”

The Grand Jury also noted that no-bid contracts had been approved for the Orange County Great Park project by the City of Irvine. Finally, the Grand Jury concluded that the Irvine City Council had created a structure of governance incompatible with the intent of Measure W. To address this issue, the Grand Jury recommended that the Irvine City Council consider amending the bylaws to change the composition of the Board of Directors so that it included two Orange County supervisors, two members of the Irvine City Council and three members elected at-large from other cities in Orange County.

\(\text{(2) Response of City of Irvine to 2006 Grand Jury Report.}\)

In response to the Grand Jury report, the City of Irvine strongly disagreed with all of the findings. The City contended that Measure W was only effective so long as the
Orange County Great Park property was within the control of the County. Annexation according to the City of Irvine eliminated any limitation imposed by Measure W. This argument turns on the action of LAFCO in permitting the annexation of the property to Irvine. The LAFCO action taken on November 12, 2003, specifically notes that the project would be built under the governance of the GPC.

The financing plan presented by the City of Irvine was considered by LAFCO in making its determination that sufficient financial resources were available to enable appropriate community services to be provided to the area. LAFCO staff specifically noted that the passage of Measure W, the cooperation of the United States Navy, the adoption by the City of Irvine of the Orange County Great Park Land Use Plan which was consistent with Measure W were all necessary and a part of the annexation decision. Irvine’s City Manager specifically represented to the Commission that the Orange County Great Park Land Use Plan adopted by the City of Irvine was consistent with the intent of Measure W. 

The City Council contended that the role announced and depicted in Resolution 06-42 did not alter GPC; it just interpreted and clarified the role that GPC had always been intended to play in the development of the Orange County Great Park. The City of Irvine however, on May 15, 2006 after adoption of Resolution 06-42 in April 25, 2006 and before the release of the Grand Jury Report, felt it necessary to have the GPC (“Transferor”) agree to transfer its interest in its March 23, 2006 contract with the Design Studio to the City Council (“Transferee”) by way of a Novation Agreement. The Novation Agreement states its purpose unequivocally as follows:

“A. Transferor [GPC] was formed by Transferee [City of Irvine] for the purpose of managing and effecting the design, development, operation and maintenance of certain portions of the former United States Marine Corps Air Station El Toro as the Orange County Great Park.

B. Transferor [GPC] and Master Designer [Design Studio] have entered into that certain Agreement for Master Design Services for the Orange County Great Park dated as of March 23, 2006 (the “Contract”). Transferee is a third party beneficiary of the Contract pursuant to its terms.

C. On April 25, 2006, Transferee approved “A Resolution of the City Council of the City of Irvine Restating and Clarifying the Governing Structures and Responsibilities Relating to the Orange County Great Park (the “Resolution”). The Resolution clarified the organizational structure that exists for development of the Orange County Great Park.

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73 LAFCO minutes, November 12, 2003, Comments of Irvine City Manager Allison Hart, pg. 5.

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D. The Resolution provides in pertinent part, that Transferor [GPC] has responsibility for implementation of contracts, and that Transferee [City of Irvine] will consider all contacts and appropriate the allocation of funds in a manner consistent with existing City policies, and shall have final authority over all financial matters, including contracts for professional services, design, construction, operation and maintenance of the Orange County Great Park.

E. The parties desire to assign all rights and delegate all duties under the Contract to Transferee [GPC] so that Transferee shall be the express party to the contract and Transferor shall be a third party beneficiary and continue to manage the Contract consistent with the Resolution.”

If the organizational structure of GPC had not been altered, no Novation Agreement would have been required. The parties clearly intended to change the role of GPC to make it solely an advisory body. The effect of this change in role, however, is not entirely clear. Despite the limitations imposed on GPC, some significant decisions were still made by the GPC without presentation to the Irvine City Council or the GPC Board. As the Grand Jury has pointed out, it can be confusing to know where the City of Irvine starts and the GPC begins. This confusion may have contributed to some degree to lack of clarity in management of the affairs of the Great Park and its many vendors.

(f) City of Irvine Voters Act.

(1) 2008 City of Irvine Voter Ratification of Changes.

As tensions and criticisms grew, the Council majority decided to place a measure on the November 4, 2008 ballot to ratify their actions. The “Ratification of Measure W Implementation Plan” (“Measure R”) went to the voters in the City of Irvine only, in November of 2008. Measure R ratified actions taken in 2003 and later relating to the GPC including adoption of Resolution 06-42. Unlike Measure W which was voted on by voters in the County at-large, only residents in the City of Irvine voted on the ratification measure. Measure R passed with a vote of 39,056 to 30,828 (55.9% to 44.1%). Measure R, however, contained a clause that stated that the measure would expire four years after its adoption unless it was extended. The City Council did not extend the measure after its expiration in November of 2012 so it appears that it is no longer in effect.

For purposes of the audit, however, Measure R remains relevant because it outlines the roles of the City, GPC, and staff that have been in effect since 2008 and

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75 The settlement of Closeout of the Schematic Design Contract approved on August 13, 2010, for example was only presented and approved “in concept” by the Irvine City Council, but never went back to the Council for final approval after an additional $800,000 was included in the settlement amount by the City Manager and Mayor.
that are generally still followed. Measure R was codified as Division 11 of Title 1 of the Irvine Municipal Code. The purpose of the initiative measure states that it intends to “... ratify and implement certain policies relating to the Orange County Great Park project with regard to the governing structures and responsibilities of the City of Irvine and the Orange County Great Park Corporation, funding and construction, operation and maintenance considerations and major policies and programs.” Measure R seemingly also tried to clarify the roles of various parties. Under section 1-11-104(A), the GPC Board of Directors is intended to ... assure inclusion of independent participation in recommending policies regarding planning, designing, construction, operating and maintaining the public portions of the Orange County Great Park. In addition, the GPC Board is to be held responsible for ensuring that City approved policy guidelines and design principles are implemented. GPC is also responsible under the ordinance for providing direction and oversight with respect to planning, designing and constructing the Orange County Great Park. Finally, the GPC Board is charged with overseeing construction of the Orange County Great Park and recommending any necessary change orders, other than those authorized by the GPC Chief Executive Officer, as well as recommending contract dispute resolutions, and final acceptance of construction for approval by the City Council.

Under Section 1-11-104(B), GPC staff is charged with initiating fund development and fostering relationships with public and private partners to construct and operate the Orange County Great Park. Staff is also responsible for presenting fees, concessions, revenue-generating facilities, programming, services and other similar matters to the GPC Board for subsequent approval by the City Council. In addition, GPC staff is to serve as direct interface with the design team, program manager and construction general contractor(s) as well as with utilities and regulatory agencies. Staff is responsible for making recommendation to the GPC Board regarding utility agreements and instruments and regulatory permit applications and conditions for approval by the City Council.

Under the provisions of Section 1-11-104(C) the City of Irvine retains its land use authority including zoning, issuance of finance district bonds and expenditure of bond proceeds and disposition of funds. The City must also approve all contracts and property instruments relating to the Orange County Great Park and allocate funds. The City has final authority over all financial matters including contracts for professional services, design, construction, operation and maintenance of the Orange County Great Park. Finally, all policy decisions and disposition of land matters are the responsibility of the City of Irvine as are accounting functions and investment policies.

Under the provisions of Section 1-11-105, various generalized governance policies are set forth as follows:

1. The City has the obligation prior to completion of construction to determine whether the City, GPC or a combination will operate, program and maintain the Orange County Great Park.
2. All Orange County Great Park funds are to be managed by the City in a separate account.
3. Operation and maintenance of the Orange County Great Park is to be on a self-sustaining basis and taxpayers must be protected against paying for operations and maintenance.
4. General Funds of the City shall not be used for the planning, construction, operation or maintenance of the Orange County Great Park although normal public safety, excluding public events, and maintenance of publicly accepted roads and rights of way in and through the Orange County Great Park may be provided with General Funds.
5. New sources of revenue that are generated as a result of the Orange County Great Park may be used for operation and maintenance of the Orange County Great Park.
the Board and City Council. The City Council had authority over approving contracts, but not management of the consultants.

(2) Great Park Fiscal Transparency and Reform Act.

Even as this Audit progressed, the City Council took steps to place another measure pertaining to the Great Park on the ballot in November of 2014. This Measure attempted to correct a number of issues which arose during the Park Audit process. The Measure sought to assure an annual audit of the Great Park funds. Also in light of the contract issues, it required a recommendation from the Great Park Board and approval by the Irvine City Council for the expenditure of funds or awarding of contracts for the Great Park.

The Measure also included whistleblower protections, protections for reporting of waste, fraud and abuse of Great Park funds and a requirement that all members of the Irvine City Council be members of the Great Park Board of Directors. If the Great Park Corporation ceases to exist as a separate legal entity, the recommendation and involvement of the GPC Board will no longer be required.

The Measure was endorsed by the entire City Council. It received overwhelming support from the electorate with passage by a margin of 88.7% to 11.3%, undoubtedly showing strong public support for reform.


(a) The Existence Of The Great Park Corporation Separate From The City With Separate Governing Entities And Separate Executive Officers Created Confusion In Terms Of Management Responsibilities.

“There were these multiple city agencies or city people that were involved. And we never quite got any formal notification of exactly what each person or entity’s role was going to be in the project. It was kind of a moving target.” -Yehudi Gaffen 77

By establishing a structure that divided responsibility between the Irvine City Council and the GPC Board, separate management teams were created for the Great Park and the City that eroded the effectiveness of management on both sides. While City staff reported to the City Manager with regard to City issues and concerns, that same staff reported to what was initially a broader GPC Board with regard to matters relating to the Great Park. This created some confusion and uncertainty as to which interests were paramount.

77 Gaffen depo pg. 65-66.
The initial administrative corporate structure for the Orange County Great Park project included the City Manager, Allison Hart, serving simultaneously as the Chief Executive Officer of GPC (“CEO”). Ordinarily each of these offices would be held separately with the administrative head of each entity reporting to the City Council and the Board of Directors, respectively. Decisions affecting either entity would be made by the legislative boards and implemented administratively by each officer. At times during the audit period, however, both positions were held by the Assistant City Manager.

As noted by Sean Joyce, when Mike Ellzey was hired, the CEO no longer reported to the City Manager but rather directly to the Board, specifically through the Chairperson. According to Mr. Joyce, this was due to a sense of frustration with people working through the City Manager, because he “regularly applied existing city standards and protocols that [he] believed applied to circumstances at the Great Park.”

As a result, there was confusion between City standards and standards and procedures followed by the GPC.

The adoption of Resolution 06-42 had the potential to clarify this situation by making the Great Park Board advisory to the City Council. Measure R adopted by the voters in 2008 contained language intended to make the advisory role of the Board clear, and to reaffirm the separation of the policy-making and administrative roles. In practice, however, there has continued potential for confusion.

(b) At One Time There Was Consideration Of Trying An Alternative “Committee” Structure To Clarify Roles, To Disperse Responsibilities More Broadly, And Bring More Transparency To Great Park Activities, But This Concept Was Rejected.

Until the composition of the Irvine City Council changed in 2012, those members of the Irvine City Council who exercised power through GPC essentially controlled and were responsible for the actions that occurred. As has been documented throughout this Audit report, the Chair of GPC, Larry Agran, was a constant presence on the Great Park and his views and directives frequently controlled activities of staff and management. One way of avoiding that situation might have been to implement a committee structure as had been originally proposed.

One of the first members of the GPC Board, Richard Sim, a retired Irvine Company executive, discussed the proposed committee system that was ultimately rejected by the GPC Board as follows:

“Yes, basically, I think the committee structure was proposed by Allison Hart who was the City Manager of the City of Irvine at that time and she had proposed that we have basically an executive committee which would be the Chairman, Vice Chairman and the Finance Committee Chair that would act on most things. Also that there be a committee structure set up

78 Joyce depo pg. 43
of communications which would be chaired by Beth Krom, design and infrastructure which was probably chaired by Michael Pinto, Environmental Committee, I don’t know who was the chair of that, and the finance committee chaired by myself and a property management committee chaired by Walkie Ray. The purpose of these committees was that they would do the analysis of the various proposals that were brought before the Board and then each committee would make a recommendation to the executive committee and then the executive committee would enact that. In that way we made sure that there was a lot of daylight in all the items that were discussed and that they were following proper business practices and good ethical practices, bidding contracts so that when it was proposed to the executive committee the executive committee would know that these issues were vetted and had a lot of daylight in them.”

Sim also questioned the alternative structures that might have set up the City and the GPC as dual entities in charge of the Great Park instead of the single organizational entity that ultimately developed. Sim commented:

“Well, there were basically two organizational structures proposed. Dual organization where the City Council had the redevelopment authority reporting to them and the City Manager and the Assistant City Manager and then the Great Park Board which had the Great Park CEO and General Manager and Deputy CEO reporting to the Board and reporting to the CEO in that area was the engineering manager, planning manager, public affairs manager and the operations manager. That was rejected by a Board vote of 7-2.

. . . .

Then the one that got approved was the single organization staffing structure which was approved 7-2 where the City Council had the City Manager reporting to them, they had the redevelopment authority reporting to them, they had the CEO reporting to them and the Assistant City Manager reporting to them. So, instead of the Great Park Board being responsible for the planning, developing and operating of the Great Park the City Council took all those responsibilities. At the same time after that was approved, Larry Agran was the chairman and also in control of City Council and he wiped out all the entire committee system.”

Clearly in Sim’s view, the dual entity offered more opportunity for checks and balances than the single entity approach. When questioned on the purpose for selecting the single entity approach, Sim responded very directly:

“I think he [Agran] did it in order to make sure there was only one person in charge and that was him and that nobody had much to say about

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79 Sim sworn statement pg. 3.
80 Sim sworn statement pg. 3.
anything because everybody reported to him in effect because he controlled the City Council and he controlled the Great Park Board."\textsuperscript{81}

Mr. Sim retired from the GPC Board in May of 2005 after serving for a year and half citing policy differences and concerns.

(c) \textbf{For Local Government Entities, Good Public Administration Practice Has Come To Entail Separating The Policy-Making Function Of The Elected Legislative Body From The Administrative Function Of The Appointed Managers. The Council-Manager Form Of Government Has This Premise, And The City Of Irvine Structure Embodies These Concepts.}

There are generally two forms of local government in the United States. One is often called the Mayor-Council form of government, or “strong mayor” by some. The other, which is the most common is referred to as the “Council-Manager” form of government. It originated with the progressive reform movement at the turn of the last century.\textsuperscript{82} Either form of government could be instituted through a charter.

In the Council-Manager form of government, the council is the governing body of the city, elected by the public, and the manager is hired by the council to carry out the policies the legislative body establishes. The manager is responsible for day-to-day administrative operations of the city based on the council’s polices and ordinances. The mayor and council are responsible for setting policy and approving the budget. The manager serves as the council’s chief advisor. Managers also serve at the pleasure of the council and are responsible for preparing the budget, directing day-to-day operations, and hiring and firing personnel.

The purpose of this structure is to have governmental operations run by an experienced professional administrator, to take the politics out of administrative operations, and keep the elected officials dealing with broad policy issues.

As in the rest of the United States, in California, the Council-Manager system is the preferred form of governance. Such a system allocates full administrative authority to the City Manager and reserves policy matters to the City Council.\textsuperscript{83}

The City of Irvine elected to establish such a governance structure when the City Charter was adopted. Article 5 of the City’s Charter reads as follows:

\begin{quote}
\textit{Section 500. City Manager. Selection and qualifications.}
There shall be a City Manager who shall be the chief administrative officer of the City. The Council shall appoint the person who it believes to be best
\end{quote}

\textsuperscript{81} Id.
\textsuperscript{82} First significant city to implement was Dayton, Ohio, in 1914. International City Managers Association (ICMA) surveys in 2006 stated that 55% of cities in U.S. were in the council-manager form (www.nlc.org/www.ci.santa-ana.ca.us).
\textsuperscript{83} Cal. Const. article XI §5(b), Government Code §34450.
qualified on the basis of executive and administrative qualifications, with special reference to experience in, and knowledge of, accepted practice in respect to the duties of the office as set forth in this Charter.

Section 501. City Manager. Appointment, removal, powers and duties. The appointment, removal, powers and duties of the City Manager shall be as established by ordinance of the City Council.

The City’s Municipal Code also provides rules as to how members of the City Council are to interact with the City Manager and with City staff as follows:

Sec. 1-3-109. Council-Manager relations.

The City Council and its members shall deal with the administrative services of the City only through the City Manager, except for the purpose of inquiry, and neither the City Council nor any member thereof shall give orders or instructions to any subordinates of the City Manager. The City Manager shall take his or her orders and instructions from the City Council only when sitting in a duly convened meeting of the City Council and no individual Council member shall give any orders or instructions to the City Manager.

(d) Both The Great Park Board/Chief Executive Officer And City Council/City Manager Relationships Were Established In Their Legal Structures To Model The Council/Manager Structure.

As noted above, the Irvine City Charter is quite specific as to the role of the City Manager and the duties of members of the City Council with regard to the City Manager – City Council relationship. The creation of the GPC as part of the governance structure for the project created another layer of management that caused confusion and at times contradicted the clearly established roles of Council and Manager. As members of the GPC Board, Board members had, or believed they had, greater powers over GPC management and greater control over the CEO.

(1) Role of the Chairman of the Board.

“Larry Agran was the chair, so he was kind of overseeing everything and more involved than anyone else. . . . There were times when Larry Agran publicly stated that when he needed something done, he would come to me and seek my management leadership to get things done.” - Yehudi Gaffen

Under the bylaws as amended in 2004, the powers of the directors were established and included the general corporate powers afforded members of nonprofit organizations. All corporate powers were to be exercised by or under the direction of the Board of Directors. The Board was empowered to hire and remove all officers, agents

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84 Gaffen depo pgs. 67, 129.
and employees and set their compensation, change the principal office from one location to another within the City of Irvine, adopt a seal and borrow money on behalf of the corporation including issuance of bonds, deeds of trust and other evidences of debt.\textsuperscript{85}

The bylaws require compliance with the Brown Act with regard to meetings of the Board of Directors. The Chairman of the Board is specifically given the authority to preside at all meetings of the Board and exercise such other powers and duties that the Board may assign to him. Beyond that, the Chairman has no special powers but is subject to the decisions made by the Board unless a decision is made not to have a CEO. In that case the Chairman of the Board assumes the powers of the CEO.\textsuperscript{86} Thus the role was intended to be the typical Council/Manager form, not the “strong mayor” form.

Despite the advisory role of GPC established in 2006, the Chairman of the Board of Directors, Larry Agra, who was also Mayor of the City of Irvine from 2000-2004 and served on the Council until 2014, controlled the direction of the project according to deposition testimony and even after leaving the office of Mayor, Mr. Agran continued to control GPC as its Chairman until 2011, supported by Councilmembers Beth Krom and Sukhee Kang.

\textbf{(2) Role of the Chief Executive Officer.}

"Mike Ellzey was retained by the Great Park board. . . That was the first employment contract entered into by a member of City staff other than for the city manager, making clear that Mike reported directly to the board, was evaluated by the board, had terms of his employment determined by the board." – Sean Joyce\textsuperscript{87}

Under the bylaws as adopted by GPC on December 5, 2003 and ratified on January 29, 2004, the Chief Executive Officer of GPC has the duty to generally supervise, direct and control the business of the corporation as well as exercise specific additional duties as may be prescribed by the Board of Directors.\textsuperscript{88} Like the provision relating to the Chairman of the Board, if there is no Chairman elected by the Board, the CEO assumes that role as well. The CEO, like the City Manager, became an employee of the City of Irvine serving in the capacity of a CEO for the nonprofit corporation when the City adopted Resolution 06-42 on April 25, 2006.\textsuperscript{89} Originally, the City Manager also served as CEO of GPC.

\footnotesize{\textsuperscript{85} Article VII, Section 1 of the Bylaws as amended March 3, 2004.  
\textsuperscript{86} Article VIII, Section 7.  
\textsuperscript{87} Joyce depo pg. 42.  
\textsuperscript{88} Article VIII, Section 1 and Section 8.  
\textsuperscript{89} Resolution 06-42 adopted, April 25, 2006, subsequently codified by voter approved Ordinance 08-17 as Title 1, Division 11 of the Irvine Municipal Code.}
(3) Role of the City Manager.

“Early on, I saw it [the CEO/City Manager relationship] as the CEO working with the board for me. So Wally [Kreutzen], and Sharon [Landers] who followed him accepted that they worked for me, but reported directly to the board.” – Sean Joyce 90

Under Title 1, Division 3, Chapter 2 of the Irvine Municipal Code, the City Manager is designated as the administrative head of government under the direction and control of the City Council. He is responsible for the efficient administration of all the affairs of the City under his control and is responsible for enforcing the laws and ordinances of the City and administering all contracts, franchises, permits and privileges in the City. The City Manager also has the power to control, order and direct the City Attorney, City Clerk, City Treasurer, all department heads and subordinate officers and employees of the City. The City Manager is also in charge of all finances and budgets as well as all purchasing and investigations that may arise and may be assigned such additional duties as may be deemed appropriate by the City Council.

With regard to the GPC, however, no specific relationship with the City Manager was established since the GPC was a free standing entity initially. Instead, the Board controlled most of the executive functions along with the CEO outside the purview of the City or the City Manager. This relegated the City, and its various development standards and procedures, into a relatively limited role which precipitated actions to clarify the GPC as an advisory body and to give the City Council more control.

3. In Fact There Was Overwhelming Testimony That The Policy-Making/Administrative Dichotomy Broke Down And That Chairman Agran Directly Interjected Himself In The Administrative Operations Of The Great Park, And This Ultimately Affected How The Managers’ Performed Their Function.

“The complaints concerned a good many things, not least of which was Yehudi Gaffen’s influence over Chairman Agran. I had my own concerns as well about the role that Yehudi Gaffen viewed himself as playing. But staff had complains about the Design Studio from the early days through the end of the contract as related to who was leading and who was following.” 91

The roles of the City Manager and the CEO were undermined by the political leadership and the various consultants who were directed by those leaders rather than by City or GPC management executives. This created a stressful and complicated system that led to management by individuals who were largely unfamiliar with local government practices and constraints, as Sean Joyce noted above.

90 Joyce depo pg. 42
91 Joyce depo pg. 122.
Sean Joyce, stated that Chairman Agran “was much more involved than any policymaker [Joyce] had seen before” which concerned Joyce, because staff were not responsive to the entire board but only to Agran. It was reported that sometimes policy would come from Agran and not the board. 92 As a result of these actions, staff expressed a sense of pressure with regard to appropriate procedures that the City would ordinarily follow. Sharon Landers, former interim CEO, said,

“I feel that I was under pressure to tie up loose ends, and one of the loose ends was that work had proceeded at the council’s direction without any contractual provisions. I believe it was related to the balloon park.” 93 and

“They certainly had the tendency to operate beyond the scope of what they were authorized to do.” 94

Arnold Forde commented that:

“I didn’t think it was a good idea to have the Design Studio, Ellzey, and all the city staff following Agran around the property where he was pointing things out. My personal opinion is that that was counterproductive. . . .It just added too much confusion into the process.” 95

Similarly, William Kogerman, a former GPC Board member, said Mr. Agran just “got his way” with respect to projects done at the Park. Yehudi Gaffen stated that Larry Agran made many hiring requests to the Design Studio. 96

Part of the issue may have been caused by the non-expert policy makers trying to advise management on technical issues.

“And one of the problems, I think, was that…is that nobody on the board or council were experts in development. They weren’t. They – they had – they had desires, visions, all well – well and good. But I’m more accustomed to working with commissions and boards that have had appointees to the board that have – have some profound knowledge and expertise. This was a very complex project. And I don’t believe that the board/city council members had the expertise, you know. A lot of times you have some – maybe a retired person who’s done this before, or whatnot, who could – who could understand some of the constraints.”  - Brendan McDevitt. 97

92 Joyce depo pg. 46-47.
93 Landers depo pg. 62.
94 Landers depo pg. 169.
95 Forde depo pg. 69.
96 Kogerman depo pgs. 102-103; Gaffen, p. 117.
97 McDevill depo pgs. 59-60.
In Mr. Forde’s deposition he commented on Chairman Agran’s directing of the CEO, “Ellzey, was trying to keep Agran, in a way, somewhat limited from day-to-day activity. And I communicated back to Agran from him that, you know, maybe you’re doing a little too much here.” 98 Arnold Forde agreed that Agran had more of an active role in requesting particular plan changes than other board or council members. 99 “I believe [Agran] had many meetings with Mike Ellzey. He wasn’t shy about talking about some of the things he wanted in the park.” The elements desired included restroom facilities, shaded areas, benches, the balloon, the carousel and the farm. 100

Chairman Larry Agran would not be the first city councilmember to involve himself directly in day-to-day administrative issues of his agency, contrary to policy. It is a major problem of public administration because it is such a temptation. Councilmembers are the leaders of their communities and feel responsible to the public for the performance of their organizations. When they hear complaints or feel that things are moving too slowly, they naturally want to “fix the problem.” Moreover, Chairman Agran saw the Great Park as his legacy project.

Nevertheless, as a councilmember first elected 34 years ago, Mr. Agran should have understood the problems which arise from this. The problems are twofold, affecting relations with colleagues and relations with staff. The active boardmember makes themselves the primary actor, instead of sharing influence with all board members. And with regards to staff, instead of a management team utilizing the expertise of all the team members in giving professional advice to the board, the active boardmember brings political influence into the formation of the staff opinions, and colors them, so that the professional opinions are tainted. This is directly contrary to the Council/Manager government model.

In the case of the Great Park, the influence of these political opinions is clear. The Chairman as the most visible advocate for the truly “great” Great Park, was such an enthusiast, is it a wonder that, as the budgets rose from $401 million to $1.24 billion, to $1.6 billion, why critical questions were not asked? Clearly, under the political circumstances, project management was not able to do its job. The Council/Manager structure presumes that management can do its job, bring forward the right information and analysis, and the political process makes the final decision but from a common base of unbiased and professional information. Where the structure is not respected, the political influence is exerted directly and indirectly and affects the managers even as they are formulating their opinions. Thus the process loses the independent perspective of the professional which is supposed to be distinct from political opinion.

And in the case of the Great Park, the situation was made even more difficult because the politicians had . . . consultants.

98 Forde depo pg. 69, lines 3-6.
99 Forde depo pg. 67.
100 Forde depo pg. 128:7-129:7.
4. Management Was Not Able To Perform Its Function As Provided By City Ordinance Due To The Fact That The Consultants Themselves Had Strong Connections to Chairman Agran And Were Not Responsive To Management And, They Took On A Management Function Themselves, According To Deposition Testimony.

“The real focus of the Design Studio was this relationship between Yehudi Gaffen and Arnold Forde and Larry Agran and – making sure that they had their act in sync, and then they would direct everybody else below them, including, effectively, the CEO.” Mike Ellzey\(^1\)

There is little doubt that management of the Great Park project was confused and somewhat sporadic. The roles of the City Manager and the CEO were at odds to begin with, but as consultants were hired and direction was given informally by elected officials, confusion increased. Some believed that Gafcon was in charge. Others thought Forde & Mollich ran the show. Most significantly, staff and city management were left without sufficient guidance or respect. As Mike Ellzey said of the period after he was hired,

“Over the next several months, as I became familiar with the project structure – Design studio personnel (Gafcon, Ken Smith, Fuscoe staff), Great Park Corporation project staff and the City’s Program Manager, Bovis, and of course, a very involved Chairman Agran, Arnold Forde and Yehudi Gaffen (the “Power structure”) – it became increasingly clear that Mr. Gaffen was running the project and that City staff had been relegated to virtual irrelevance. The Design Studio was informing staff which projects would be undertaken.”\(^2\)

Mr. Ellzey reiterated that evaluation in his deposition testimony as well, noting:

“And so the staff – the culture was the staff being subservient to the Design Studio, and there were a lot of highly capable professionals – and I’d like to include myself among those – highly capable professionals that were being marginalized regularly by the Design Studio, and that’s the – the culture. It just was a – it was a way of doing business. And I could not and Brendan [McDevitt] could not accept that a consultant was directing a client.”\(^3\)

The coalition of Gaffen, Forde and Agran was criticized by virtually all staff members who were deposed for this audit, including members of the GPC Board itself.

“Yehudi communicated with the chairman regularly, which in and of itself isn’t inherently bad. But among the concerns I heard from staff was that

\(^1\) Ellzey depo pg. 53; (see also McDevitt Deposition, pg. 99); Kogerman Depo pgs. 82-83: Larry Agran put F&M into management roles with the Park, including design.
\(^2\) Ellzey statement June 4, 2014, pg. 3
\(^3\) Ellzey depo pg. 144.
Yehudi Gaffen was pursuing or performing work for which authority did not exist from the board of directors. And that was a constant concern, which was addressed more than a few times.” – Sean Joyce104

In a statement submitted with his deposition testimony, Mike Ellzey explained the nature of the problem as follows:

“While serving as Deputy CEO, I developed a working relationship, directly and through senior and subordinate staff and consultants, with the Great Park Design Studio. During my tenure as deputy, it became increasingly apparent that the friction between the Design Studio and Great Park staff, consultants (particularly the Program Manager, Bovis Lend Lease) and contractors was extraordinary and counterproductive. The Great Park Design Studio and the Great Park staff did not have a healthy consultant-client relationship. Directives by staff were routinely questioned and often times ignored; invoice review and reconciliation was a persistent battle; respect for City staff was fleeting- for the program manager, non-existent.

By my observation, the Design Studio leadership systematically marginalized Great Park, other City department staff and consultants. They viewed themselves as supremely empowered. As a result, Design Studio executives effectively served as the Great Park project lead. Staff was relegated to a subordinate role, and the program manager was assigned adversarial stature.”105

In a parallel with the issue of non-technical policymakers directing the experts, we also find the experts themselves in disagreement, between the City and its consultants. As noted by Mike Ellzey,

“Yeah, we had constant push-back on our technical people, meaning our planning managers – our planning manager, Glen Worthington, our engineering manager, Christina Templeton -- on ways that they thought would be more appropriate ways to manage public projects. The Design Studio essentially would roll over them…Their combined 50 years of experience on public projects was ignored in favor of the Yehudi-Gaffen-led Design Studio approach.”106

104 Joyce depo pg. 123.
106 Ellzey depo pg. 128.
Many of the considerations involved in the Great Park Project included highly technical issues. Without a clear understanding of those issues, determining cost and feasibility became highly speculative. As noted by Sean Joyce,

“Conversations about terraforming occurred, and I was in those, where the suggestion by the Design Studio that terraforming made sense. Staff argued otherwise. There were conversations about the heft of the Design Studio contract. Concerns about the city’s responsibility for overhead with a single Design Studio that would be far greater than if we were paying a portion of a firm’s overhead.”

This situation arose again with regard to the proposed 20-acre lake. That aspect of the project had been reviewed with regard to design, but the cost of maintenance had been ignored. According to projections the ongoing cost of maintaining a 20-acre lake filled with reclaimed water pumped to the top of a canyon was on the order of $250,000 per month.

We thus had a number of issues disrupting the management/administrative role of staff: the issue of technical disagreements with consultants, the divided view of policy decision-making with two policy-making boards, a governance structure permitting policy makers to cross over into administrative decision-making, and direct access of consultants to policy-making officials. All of these undermined the traditional governmental structure of authority and led to uncertainty among staff and management as to which directive should be implemented. As noted by Arnold Forde,

“I think everybody wanted to run the park. A number of the board members really felt they should run things. Mike Ellzey felt he should run things. Ken Smith felt he should design things and have the freedom. Gafcon felt they should have more input, and that Ellzey’s job was more just to implement the plans… Ellzey felt that, no, it was his job to evaluate these things; and he felt they weren’t buildable, right, doable, or whatever. And just try to put all those people together and try to get them all—I wouldn’t say anybody’s role was invalid in a way. Everybody thought they were in charge.”

Of course, if one paid attention to the discussion of the council/manager governmental structure and the City’s ordinances, above, the answer would be clear. The CEO was correct to feel that he should have been the manager. The confusion described above rests ultimately at the feet of the policy-making body.

107 Joyce depo pg. 117.
108 McDevitt depo pg. 45.
109 Forde depo pg. 70-71.
Sharon Landers also noted “...the contractor tended to deal directly with the members of the board and went around staff.”110 This was confirmed by Arnold Forde when he described his role in the project,

“Stu [Mollrich] was the person that handled the public relations. My role was in the more strategic work with the various staffs and the—that I mentioned earlier, the coordination between Ellzey and the corporation and the city and that kind of thing.”111

So here is a clear admission that the major partner of what was ostensibly a public relations firm was actually playing a critical role of management and strategic direction.

5. There Is Testimony That The Staff Of The Great Park Were Intimidated From Exercising Their Responsibilities By Consultants, Due To Consultants’ Influence On Board Members.

The Great Park was a massive undertaking, with many significant technical challenges and lofty goals. However, testimony from multiple depositions revealed that senior project management were marginalized, and to an extent, that some actually feared for their jobs. Mr. Ellzey testified that

“it became clear that people were afraid of Larry [Agran], and they were afraid of Arnold [Forde]. And because they figured that Yehudi Gaffen had Arnold’s and Larry’s support, they were afraid of Yehudi Gaffen. So the project was being managed by those three, basically.”112

Many witnesses have further testified that Mr. Forde played the role of a de facto project manager, and that he “played a greater role than that which was described in the scope of work for his firm’s contract, that he was undeniably a major presence in most phases of the Great Park.”113 Mr. Fuscoe also testified that while Forde & Mollrich were ostensibly, “public relations – and external communications. . . they became de facto managers or decision-makers because they had a lot of influence and, frankly, a fairly rational cut-to-the-chase decision-making demeanor.”114

This was problematic for many reasons, and ties in directly to issues with poor estimates for construction and design costs, in addition to many of the other problems faced by the Great Park, including familiarity with City contracting procedures. As Mike Ellzey noted, “…staff were essentially facilitators and implementers of a policy. In other

110 Landers depo pg. 68.
111 Forde depo pg. 41.
112 Ellzey depo pg. 61.
113 Joyce depo pg. 126.
114 Fuscoe depo pg. 120.
words, the CEO was not necessarily a part of the creation of the project, but was in charge of facilitating the organization to get it processed and through.”

As discussed previously, another common observation in deposition testimony with regard to the structure that was created and maintained during the audit period from 2005 to 2012 is that power was accreted by the Chairman of the Board of GPC together with design and public relations consultants. As a result, deposition testimony reported that employees from the Chief Executive Officer down were intimidated and at risk as employees within the GPC organization and within the City of Irvine. Management staff input was simply ignored even though it was grounded in experience and a realistic appraisal of what might work. As Mike Ellzey noted,

“The kinds of projects that they thought – I mean they would actually come up with project-concept project ideas without necessarily even involving staff. . .”

As things evolved, it appears that the GPC Board of Directors, and therefore, the Chairman had essential control over the direction of the project, and allowed consultants (i.e. Design Studio and Forde & Mollrich) to control the client. In the words of Mike Ellzey:

“The Design Studio behaved and functioned as the ‘Client’ and dictated all work, scope, direction, contract execution, budgets and invoice payments. The Design Studio senior management met regularly with elected City Officials without the Great Park CEO present. This regular direct contact empowered the Design Studio executives and fostered a culture of superiority over City staff. This direct relationship undermined staff’s authority and credibility, and for several years effectively prevented staff from effectively managing the Design Studio. This culture engendered by Studio executives resulted in mistreatment of staff, disrespect, intimidation, threats, and manipulation of contractual terms by the Design Studio leadership.”

We discuss in Section V (Contracts) the difficulties Bovis had getting the Program Management Plan complete. It is suggested that management was ineffective in securing contract compliance. The discussion above provides, in part, an explanation of some of the difficulty. Strong contract compliance efforts ran the risk of offending politically a connected contractor. This might not have even been intended by the policy-maker, but it was the ultimate effect. This may make CEO Ellzey’s statement more understandable.

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115 Ellzey depo pg. 73.
116 Ellzey depo pgs. 72-73.
117 Ellzey statement pg. 6.
“It was one of those things where if we eventually rose to the level of trying to shut down something that we didn’t believe was being – was worth our investment, it would go to – it would go to Gaffen, it would go to Arnold Forde, it would come back and we would be told to shove it, basically.”\textsuperscript{118}

The most compelling example was given by CEO Elzey when he tried to accomplish budget reductions by scaling back the Forde & Mollrich public relations contract which he thought was excessive. Mr. Elzey testified at his deposition that when Mr. Elzey sought to reduce the Forde & Mollrich contract from $100,000 per month to a lower amount, Mr. Elzey had a meeting with Arnold Forde and Stu Mollrich at a local restaurant during the holiday season in 2011.\textsuperscript{119} Mr. Elzey testified that during the course of that meeting Mr. Forde became angry, stared Mr. Elzey straight in the eyes, and said “I’ll come after you [and] I’ll come after your people” if the Forde & Mollrich $100,000 per month contract (at that time) was reduced.\textsuperscript{120}

When asked about this testimony at their respective depositions, both Mr. Forde and Mr. Mollrich denied that Mr. Forde ever made the above-referenced statement.\textsuperscript{121}

D. CONCLUSION.

Deposition testimony indicates that City staff and managers understood City procedures and observed instances where they were not followed, but they felt constrained from stating their concerns in part due to the corporate and governance structure. Two different governmental entities were operative and the structure and division of responsibilities changed over time even bringing forth Grand Jury review and an Initiative Measure. The project was supposed to be governed by the Board, but the Board did not have technical expertise or project management experience. The City has an enviable track record of successful Council/Manager governance, but here there was significant interference by some board members in administrative functions.

On top of these internal issues, the project was turned over to an unusual degree to the team of consultants represented by Design Studio, a team which had collectively never undertaken such collaboration previously. There was a clear record of huge cost escalation, and cases where work began with inadequate project scope definition. Management staff expressed great frustration in getting consultants to produce adequate work product, which is discussed further in the next section. Management staff felt two consultants in particular, Arnold Forde and Yehudi Gaffen were seen as the key movers along with Larry Agran in strategic decision making.

The first two sections of this report, the Finance section (III) and this section on Governance (IV) each depict a problem which taken singly might have been overcome, but taken together, set in motion the events which in hindsight seem almost inevitable.

\textsuperscript{118} Elzey depo pg. 39.
\textsuperscript{119} Elzey depo pgs. 173-178.
\textsuperscript{120} Elzey depo at pgs. 176-177.
\textsuperscript{121} Forde depo pg. 196; Mollrich depo pg. 191
In the Finance section we demonstrate that until the Design Studio was retained, the City had a reasonable financial plan for a $401 million project. The Design Studio envisioned a considerably grander project for a billion dollars, and the Chairman approved this vision, which grew to a projected cost of $3-4 billion before terminated in lieu of the $65 million Western Sector plan. Clearly there was a failure to track revenue potential with the doubling and tripling of costs (and going from $401 million to $4 billion represents a factor of 10).

This problem might have been addressed had there not also been the breakdowns we have described in what we have called “governance.” The consultants do not necessarily have an incentive to design within a budget. It is a story as long as there have been architects that the architect would like to leave a monument. Often the owner also likes a monument, and when the owner has plenty of money, that’s how monuments like Hearst Castle get built.

Here the consultants were given the message that this should be a monument, and when they picked a number 2.5 times the 2004 Business Plan for a budget, they were told to be creative. Accordingly, the escalating cost estimates were no surprise. And the dysfunctional governance structures discussed here, show there was no ability at management to bring things under control until CEO Ellzey’s efforts in 2009 finally created a Business Plan which got the Western Sector built for $70 million. Along the way he had to face down the consultants. The testimony given numerous examples of these difficulties.

Dreaming big and not having a fixed budget might have worked to a point had strong management been allowed to control the carrying out of the contracts. Coupling the lack of initial budget or respect for cost issues with the political connections of the consultants, left management in a weak position to manage the project.

Trying to construct a project with an open ended budget almost certainly encouraged expansive ideas and possibilities, many of which could not be financially supported by existing or reasonably foreseeable future resources. However, for the reasons discussed above. There has been a failure to make sufficient progress toward completion of the Great Park during the Audit period, at a cost of more than $350 million. Hopefully the reasons for this are becoming clear.\footnote{Gaffen depo pg. 141.}
E. REPRESENTATIVE STATEMENTS.

The following statements are excerpted from depositions taken during the investigation as noted with each comment.

1. The Effect Of The Governance Structure.

- “As one who has worked in government for over 40 years, I have never witnessed a more complicated governance and management environment than the Great Park.” (See Robert Sullivan Letter of Recommendation)
- Ellzey depo pg. 53: "The real focus of the Design Studio was this relationship between Yehudi Gaffen and Arnold Forde and Larry Agran and – making sure that they had their act in sync, and then they would direct everybody else below them, including, effectively, the CEO"
- Landers depo, pg. 62, line 15: “I feel that I was under pressure to tie up loose ends, and one of the loose ends was that work had proceeded at the council’s direction without any contractual provisions. I believe it was related to the balloon park.”
- Landers depo pg. 169, line 15: “they certainly had the tendency to operate beyond the scope of what they were authorized to do.”
- Gaffen, p. 67: “Larry Agran was the chair, so he was kind of overseeing everything and more involved than anyone else”; he was involved on a day to day basis; there was no board member or council member that was involved anywhere close to that level.
- Sim Statement, pg. 2: Original plan was to have many committees chaired by different members of the board to analyze each proposal and make recommendations to executive committee in public way. This was voted against 7-2 in favor of a single-organization staffing structure where the City Council had the City Manager reporting to them, and had authority. In other words, the City Council was in charge.
- Joyce depo, pg. 25: Sean Joyce and Allison Hart discussed importance of governance structure incorporating a “firewall” whereby the City was blocked off from governance or management of the Great Park (i.e. the committee structure).
- McDevitt depo, pg. 59: “And one of the problems, I think, was that…is that nobody on the board or council were experts in development. They weren’t. They – they had – they had desires, visions, all well – well and good. But I’m more accustomed to working with commissions and boards that have had appointees to the board that have – have some profound knowledge and expertise. This was a very complex project. And I don’t believe that the board/city council members had the expertise, you know. A lot of times you have some – maybe a retired person who’s done this before, or whatnot, who could – who could understand some of the constraints.”
- Sim sworn statement pg. 4-5: Project began with a business plan when Mike Ward and Chris Mears had control. When Larry Agran took over, the business plan was tossed away, committee system tossed away, business practices
tossed away - they started doing no-bid contracts and basically it was an uncontrolled situation.

- Gaffen, pgs. 65-66: “There were these multiple city agencies or city people that were involved. And we never quite got any formal notification of exactly what each person or entity’s role was going to be in the project. It was kind of a moving target.”
- Gaffon, pg. 41: “There were many people from the [Great Park Corporation] who gave [Gafcon] direction and it often became fairly confusing as to who was doing what. The [Great Park Corporation] did not have very formalized, focused roles for people.”

2. Failure To Abide By Clear Demarcation Of Roles.

- Ellzey depo pg. 144: “And so the staff – the culture was the staff being subservient to the Design Studio, and there were a lot of highly capable professionals – and I’d like to include myself among those – highly capable professionals that were being marginalized regularly by the Design Studio, and that’s the – the culture. It just was a – it was a way of doing business. And I could not and Brendan could not accept that a consultant as directing a client.”
- Kreutzen depo pg. 45: “I really came in thinking that it would be more or less a normal governmental operation where you would have a staff that would implement the policy of the Board. And that would be staff working with and directing consultants, as opposed to consultants working with and directing staff.
- Ellzey depo pg. 73: “…staff were essentially facilitators and implementers of a policy. In other words, the CEO was not necessarily a part of the creation of the project, but was in charge of the facilitating organization to get it processed and through.”
- Joyce depo pg. 123: “Yehudi communicated with the chairman regularly, which in and of itself isn’t inherently bad. But among the concerns I heard from staff was that Yehudi Gaffen was pursuing or performing work for which authority did not exist from the board of directors. And that was a constant concern, which was addressed more than a few times.”
- Ellzey depo pg. 70: “I had been told almost from my first day, if not from my first day, that Yehudi Gaffen was in charge of this project.” (see also McDevitt depo pg. 69-70)
- Ellzey depo pg. 144: “And so the staff – the culture was the staff being subservient to the Design Studio, and there were a lot of highly capable professionals – and I’d like to include myself among those – highly capable professionals that were being marginalized regularly by the Design Studio, and that’s the – the culture. It just was a – it was a way of doing business. And I could not and Brendan could not accept that a consultant as directing a client.”
- Ellzey depo pg. 73: “…staff were essentially facilitators and implementers of a policy. In other words, the CEO was not necessarily a part of the creation of
the project, but was in charge of the facilitating organization to get it processed and through.”

3. **Exercise of Administrative Authority.**

- Joyce depo pg. 42-43: When Mike Ellzey was hired, the CEO no longer reported to city manager but rather directly to the board, specifically through the chairperson. According to Mr. Joyce, this was due to frustration with people working through Mr. Joyce, because he “regularly applied existing city standards and protocols that [he] believed applied to circumstances at the Great Park.”
- Kogerman depo pg. 83: Larry Agran put Forde & Mollrich into management roles with the Park, including design.
- Kogerman depo pg. 102-103: Mr. Agran “just got his way” with respect to projects done at the Park.
- Ellzey depo pg. 39: “It was one of those things where if we eventually rose to the level of trying to shut down something that we didn’t believe was being – was worth our investment, it would go to – it would go to Gaffen, it would go to Arnold Forde, it would come back and we would be told to shove it, basically.”
- Joyce depo pg. 46: Chairman Agran “was much more involved than any policymaker [Joyce] had seen before” which concerned Joyce, because staff were not responsive to the entire board but only to Agran. Sometimes, policy would come from Agran and not the board.
- Forde depo pg. 69, lines 3-6: “Ellzey, was trying to keep Agran, in a way, somewhat limited from day-to-day activity. And I communicated back to Agran from him that, you know, maybe you’re doing a little too much here.”
- Forde depo pg. 69: “I didn’t think it was a good idea to have the Design Studio, Ellzey, and all the city staff following Agran around the property where he was pointing things out. My personal opinion is that that was counterproductive.” … “it added too much confusion into the process.”
- Joyce depo pg. 126: Complaints… “that Arnold played a greater role than that which was described in the scope of work for his firm’s contract, that he was undeniably a major presence in most phases of the Great Park.”
- Gaffen depo pg. 129: “there were times when Larry Agran publicly stated that when he needed something done, he would come to me and seek my management leadership to get things done.”
- Forde depo pg. 66:6-10: “I-the specific-that’s where [Agran] got involved, that’s where he wanted to be involved. He held some meetings. He had staff come out and he took them around to show them some things that he wanted.”
- Forde depo pg. 67: Forde agrees that Agran had more active role in requesting particular plan changes than other board or council members.
- Forde depo pg. 128:7-129:7: “I believe [Agran] had many meetings with Mike Ellzey. He wasn’t shy about talking about some of the things he wanted in the
Section IV
Corporate Structure and Governance

park.” After Q & A, these included, restroom facilities, shaded areas, benches, the balloon, the carousel and the farm.

- Ellzey depo pg. 72: “The kinds of projects that they thought – I mean, they would actually come up with project – concept project ideas without necessarily even involving staff…”
- Landers depo pg. 48, line 5: “The city was not involved, nor the Great Park Corporation, in negotiating a subcontract. The only contract that we were involved in negotiating was the actual contract with the Design Studio.”
- Landers depo pg. 49, line 4: “The contract that we have with the Design Studio lays out the scope of work for the Design Studio. It includes a list of subcontractors that they already planned on using for that work. I did not see their subcontracts.”
- Landers depo pg. 68, line 23: “…the contractor tended to deal directly with the members of the board and went around staff.”
- Forde depo pg. 41: “Stu was the person that handled the public relations. My role was in the more strategic work with the various staffs and the—that I mentioned earlier, the coordination between Ellzey and the corporation and the city and that kind of thing.
- Forde depo pg. 70-71: “I think everybody wanted to run the park. A number of the board members really felt they should run things. Mike Ellzey felt he should run things. Ken Smith felt he should design things and have the freedom. Gafcon felt they should have more input, and that Ellzey’s job was more just to implement the plans… Ellzey felt that, no, it was his job to evaluate these things; and he felt they weren’t buildable, right, doable, or whatever. And just try to put all those people together and try to get them all—I wouldn’t say anybody’s role was invalid in a way. Everybody thought they were in charge.”
- Forde depo pg. 128, line 3: Forde “strongly agree[s]” with Ellzey’s statement that Agran was “very involved.”
- Forde depo pg. 130-131: Forde agrees Gaffen was trying to control City staff and GP staff. That Gaffen’s nature is “very aggressive.”
- Forde depo pg. 142:17-143:13: Forde agrees there were meetings (3-7) between Gaffen, Forde and elected city officials or board member and the GP CEO was not present.
- Forde depo pg. 73, line 14-15: “Well, I wasn’t trying to be a project manager, I was just trying to keep everybody working in the same direction.”
- Ellzey depo pg. 128: “Yeah, we had constant push-back on our technical people, meaning our planning managers – our planning manager, Glen Worthington, our engineering manager, Christina Templeton -- on ways that they thought would be more appropriate ways to manage public projects. The Design Studio essentially would roll over them. ...Their combined 50 years of experience on public projects was ignored in favor of the Yehudi-Gaffen-led Design Studio approach.”
- McDevitt depo pg. 38-39: “You want to be able to project – it becomes a combination of, you know, engineering and economics matched together. You
project over a certain schedule. You develop a master schedule and you cost-load that schedule and you match that to your revenue income.”

- McDevitt depo pg. 45: (Example is failure to consider ongoing costs of keeping a 20-acre lake filled with reclaimed water pumped up to the top of a canyon, approximately $250k/month).
- Joyce depo pg. 117: “Conversations about terraforming occurred, and I was in those, where the suggestion by the Design Studio that terraforming made sense. Staff argued otherwise. There were conversations about the heft of the Design Studio contract. Concerns about the city’s responsibility for overhead with a single Design Studio that would be far greater than if we were paying a portion of a firm’s overhead.”
- Landers depo – pg. 79, line 14: “city staff negotiating … a fair price was also more difficult since there were no other offers…line 19: benchmarks, rel[led][sic], to a great extent, on the projected cost of the construction, which itself was heavily debated...”
- Joyce depo pg. 122: “The complaints concerned a good many things, not least of which was Yehudi Gaffen’s influence over chairman Agran. I had my own concerns as well about the role that Yehudi Gaffen viewed himself as playing. But staff had complaints about the Design Studio from the early days through the end of the contract as related to who was leading and who was following.” (Staff also had concerns about Gaffen influencing Agran).
- Forde depo pgs. 14-15: Mr. Forde saw it as his responsibility and within his scope of services (strategic consulting) to “herd cats,” that is mediate or moderate City staff, consultants, CEO, the Board, etc. (that is, all parties involved in the Great Park project).
- Forde depo pg. 114, line 6-7: “I think you can replace all ‘herding cats’ with ‘managing conflicts’.”
- Forde depo pg. 115, line 3-9: “Q. And when we talk about your role in managing these conflicts, who were the main conflicts among different people or entity that you—entities that you were managing? A. That would be—Ellzey, the Great Park board, some of the other staff people. That people that worked for Ellzey, Brendan McDevitt, others.”
- Forde depo pg. 152, line 20: “Q. Was there anyone else besides yourself that Chairman Agran was closer to in terms of day-to-day affairs? … . A. I would say Yehudi Gaffen was close to him. He talked to him a lot.”
V.

CONTRACT FORMATION AND ADMINISTRATION

“No bidding, giving contacts to favored people that were referred to “FOL” that the staff referred to privately as “Friends of Larry.” When that happened, also I think I mentioned to some of the councilmembers, particularly Chairman Agran that you know this was an unethical way to do business and a bad business practice and I think his comment was “but it was not illegal.” Once I realized this was the way the Board was going to do business I decided it was time for me to resign because in my 43 years of being in the development business and my last 20 years with the Irvine Company ethics, good business practices were a way of life for us because that is the only way we as private developers stayed in business over the long term. To hear that we were going to operate this business in a slip shod manner and having no-bid contracts and ethics were not important, it was just something I could not tolerate and I had to resign and I did.” – Richard Sim

A. SUMMARY STATEMENT.

The City engaged in a hugely complex international design competition process for the Great Park involving design juries and ultimately attracting 30 proposals which were narrowed to seven, with each firm paid $50,000 to prepare a conceptual plan. Forde & Mollrich oversaw the design competition though they had never administered one before, but they had the services of an expert with Chapman University. A small New York architectural firm was ultimately selected but were then partnered with a San Diego construction management firm, Gafcon, to form Design Studio, created solely for this project. The end result of the international design competition was an amalgamation of disparate entities without any major project they had ever accomplished as a team.

From the beginning of the Great Park project, it appears that appropriate City requirements concerning bidding and sole source contracts were not followed consistently. The City did not involve itself in the selection of subcontractors although there were restrictions on Design Studio’s ability to terminate subcontracts such as with Forde & Mollrich. More than a third of the various contracts awarded over $100,000 were awarded on a sole source basis. There was management confusion in administration of the Project as discussed in Section IV (Governance).

As is fully discussed in Section III (Finance), although cost estimates were made along the way, budgets and time schedules were not necessarily included in contracts as constraints or project management mechanisms, and if they were in the contract, they were not necessarily kept. Budgets can be used not only as an objective for design, but also as a constraint on the cost of the design services themselves. This is generally accomplished through competitive bid processes. The City’s rules and regulations not only required such processes, the 2004 Business Plan included financial

123 Sim sworn statement, pg. 4.
policies, set reasonable objectives, and required quarterly updates of budgets and schedules.

In addition, there is substantial evidence that there was not an appropriate Project Management Plan prepared for the project as required by contract.\textsuperscript{124} Contract provisions were not closely monitored or enforced in several situations and consultant roles were somewhat overlapping, causing duplication of effort or confusion of roles.\textsuperscript{125} When the City program manager did critique Design Studio work product, there is evidence they were ignored. And evidently the program manager was not always effective in securing performance.

The many change orders that were processed on the two major contracts, the agreements for Master Design Services and the Schematic Design Agreement reflected poor planning and administration of the contracts and budgets. At least one major contract close out agreement was approved administratively without review of the Close Out Agreement itself by the City Council. That close out agreement is discussed further in Section IV (Conflicts) of this report.

Finally, although contract provisions required full cooperation, contractors were not always entirely cooperative in working with auditors.

B. FINDINGS.

1. Despite one of the most extensive design competitions ever undertaken in Orange County, which communicated the desire to build a world-class, iconic Great Park, ultimately the process resulted in melding together a small New York architectural firm, various consultants, and a San Diego construction design and management firm, where the assembled team had never collaborated before on a major public project.

2. The 2004 Business Plan established fiscally prudent policies for management of project expense, requiring monitoring of expenses and adequate funding for all operations, through requiring development of a Project Management Plan and retaining an independent experienced Program Manager.

3. The City has extensive requirements concerning bidding of contracts and limiting sole source contracts. City contracting requirements were not followed consistently, as one-third of 83 contracts over $100,000 were not bid competitively or subject to “open competition,” nor was a record consistently made justifying sole source awards. The City was not involved in the awarding of Design Studio subcontractors, although there is a list of subcontractors including Gafcon and Forde & Mollrich which could not be terminated without City approval.

\textsuperscript{124} Landers depo pg. 158; McDevitt depo pg. 129.
\textsuperscript{125} Kogerman depo pgs. 57, 64-65.
4. A Project Management Plan including goals and cash flow projections was contractually required of Design Studio but a final plan was never produced or approved, depriving the Project of what could have been a valuable management tool.

5. The lack of control over contracts was illustrated in the construction of the Preview Park which was initially based around the balloon ride resulting from a donation from Lennar. This led to a $4.1 million contract to construct the area. A contract with Belaire-West for $1.75 million had $7.7 million in change orders. In total the Preview Park went through three phases with a total cost for the facilities ultimately totaling $25.4 million.

6. There is testimony that there were frequent disputes with Design Studio as to its invoices as to whether services were within scope or outside of scope, and that Design Studio was operating beyond the scope of what they were authorized to do. There was testimony of work being begun before the scope of work was fully defined or there not being clear budgets for the work, making monitoring of compliance difficult.

7. Significant program change orders are generally a sign of lack of definition of project scope at the beginning of the project, or poor project management, and with the Great Park there are numerous examples of change orders of more than 25%, amounting to millions of dollars.

8. As a primary management strategy, as contemplated by the 2004 Business Plan, the Great Park Board awarded a contract to Bovis Lend Lease for “Program Management,” to include “over the shoulder review” and monthly reports. But Bovis contents these services only needed to be performed at specific milestones.

9. Forde & Molllrich had the distinction of both being a subcontractor under Design Studio and then a subcontractor in the Western Sector contract. Total payments were $7,108,271.84 ($3,908,271.84 + $3,200,000.00). Accordingly, the public relations firm was paid nearly as much as the architect, Ken Smith. Their contract relations went through four phases from a fixed fee of $50,000 per month, to time and materials (from $20,000 to $100,000 per month), back to a fixed fee of $100,000 per month, and finally back to $50,000 per month. There was no clear evidence justifying a doubling of cost in one period and halving it in another.

10. Contracts contained explicit provisions giving access to books and records and permitting audits of contract performance and certain contractors have resisted compliance with these requirements.
11. According to HSNO, Design Studio was paid $46,871,867.70. Some 60% of the payments went to three entities: Gafcon ($13,457,433.93); Fuscoe Engineering ($8,934,360.53); and Ken Smith Architect ($7,871,707.31). Other major contractors (above $5 million) include the following:

<table>
<thead>
<tr>
<th>Entity</th>
<th>Function</th>
<th>Amount Paid</th>
</tr>
</thead>
<tbody>
<tr>
<td>USS Cal Builders</td>
<td>Built Western Sector</td>
<td>$19,445,862.84</td>
</tr>
<tr>
<td>WRNS Studio</td>
<td>Design &amp; Construction Mgmt.</td>
<td>$17,207,176.16</td>
</tr>
<tr>
<td>LA Engineering</td>
<td>Engineering</td>
<td>$14,184,530.88</td>
</tr>
<tr>
<td>Belaire-West Landscape</td>
<td>Landscaping</td>
<td>$9,421,990.35</td>
</tr>
<tr>
<td>Bovis Lend Lease</td>
<td>Program Manager</td>
<td>$9,331,498.95</td>
</tr>
<tr>
<td>DMC Engineers</td>
<td>Engineering</td>
<td>$6,411,299.11</td>
</tr>
<tr>
<td>Atkins North (PBS&amp;J)</td>
<td>Engineering Oversight</td>
<td>$5,548,025.75</td>
</tr>
<tr>
<td>AMCI</td>
<td>Staffing/Equipment Rental</td>
<td>$4,912,156.25</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td><strong>$86,462,540.29</strong></td>
</tr>
</tbody>
</table>

C. DISCUSSION.


(a) The Design Competition.

Ken Smith Architects was selected after a design competition to design the Great Park. That design competition began on or about April 2005 and was managed by F&M. F&M had never managed a design competition before.

Initially, a program called the Great Park Design Symposium was put together for the design competition. The Great Park Design Symposium was a series of four to five informational meetings with leading design experts who offered their opinions to the Great Park Corporate Board in public meetings. Dr. Hamid Shirvani, a professor of architecture at Chapman University, was retained as an expert to manage the design competition.

F&M worked with Dr. Shirvani to compile a list of the leading firms throughout the world that would be invited to submit a request for qualification (“RFQ”). Two design juries were put together. A list of 30 firms that proposed was reduced to a list of seven firms by a design jury. Extensive public opinion research was also done. F&M started with a series of focus groups, about nine or ten of them. From those sets of focus groups, a symposium at Chapman University was put together. Another group of approximately 300 people was brought in that represented the interests of focus groups.

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126 Forde depo at pg. 76; Mollrich depo pg. 81
127 Forde depo at pg. 76
128 Id. at pgs. 80-82
129 Mollrich depo at pgs. 80-83
A telephone survey of public opinions was also done to test various concepts and ideas for the park.\textsuperscript{130}

Group discussions were held and a report was developed that was ultimately given to the seven firms that were selected from the initial group of 30 firms.\textsuperscript{131} A $50,000 stipend was paid to each of the seven firms that were selected to prepare conceptual plans. Each of the seven firms was given the information generated from all of the public outreach.\textsuperscript{132}

Each of the seven firms put together conceptual plans.\textsuperscript{133} Those conceptual plans were vetted by a design jury convened by Dr. Shirvani. Additional public opinion research was done through on-line polls that allowed citizens to comment on the various conceptual designs. A second design jury whittled the seven firms down to three firms, who were Ken Smith, EMBT and Royston Hanamoto.\textsuperscript{134} The Great Park Corporate Board (the "Board") then conducted site visits to each of the three finalists to review actual projects they built. That information was then analyzed by the Board and the Board then made the final selection of the Ken Smith team by a vote of 7-1 on January 23, 2006.

Gafcon was not originally part of the Ken Smith proposal. Gafcon was added in October 2005.\textsuperscript{135}

No construction budget was provided by the City as part of the design competition for the Great Park.\textsuperscript{136} Cost concerns were not appropriately addressed during the design competition based on the deposition testimony received during the Audit.\textsuperscript{137} In fact there is testimony from Mr. Agran that Mr. Smith told him during the design completion that the project they had shown him would be $1 billion.\textsuperscript{138}

(b) Ken Smith Landscape Architects (KSLA).

Ken Smith received his bachelor's degree in landscape architecture from Iowa State University in 1976 and a master's of landscape architecture from Harvard in 1986.\textsuperscript{139} He was responsible for master planning and doing park facility and layout design for 1200 to 5500-acre projects for the Iowa Conservation Commission in the early 1980s.\textsuperscript{140} He has been working for the last ten years on the East River Waterfront Esplanade and Piers Project in New York City as well as other urban sites in New York.

\begin{footnotesize}
\begin{enumerate}
\item[130] Mollrich depo pgs. 83-85
\item[131] Mollrich depo pg. 85.
\item[132] Id. at pg. 86.
\item[133] Id. at pg. 86.
\item[134] Id. at pg. 87.
\item[135] Smith depo pgs. 55-56.
\item[136] Mollrich depo pgs. 87-89; Forde depo pg. 87.
\item[137] Id.; Sworn Statement of Richard Sim pg. 7-8.
\item[138] Agran depo at pg. 42.
\item[139] Smith depo pg. 14.
\item[140] Smith depo pg. 15.
\end{enumerate}
\end{footnotesize}
City and across the country. He is currently designing landscaping for a condominium site in Mumbai, India, which includes the world’s tallest residential tower. He has been a registered architect since 1983 and licensed by the State of California since 1992. Mr. Smith formed his business, Ken Smith Landscape Architect in 1992. When he first proposed to do work on the Great Park he had six or seven employees. Currently, he has nine employees.

Prior to being selected to design the Great Park, Mr. Smith had never worked on a project that involved an estimated billion dollars or greater of landscape architecture work, such as the Great Park appears to require. Besides the Great Park, the largest project in terms of landscape architecture and in terms of dollars that he has worked on at any point in time are projects in the $50 million dollar range.

(c) **KSLA and Gafcon form the Design Studio.**

After the Ken Smith design team was selected as the master plan designer for the Great Park, KSLA and Gafcon, Inc., a San Diego based construction management firm, formed a joint venture to become the Great Park Design Studio.

Gafcon was a construction management firm formed in 1987 by CEO Yehudi Gaffen. Mr. Gaffen obtained a bachelor’s degree in construction management from the University of Cape Town in South Africa in 1975. After that, he worked for construction management firms as project manager on various projects in South Africa and San Diego in the late 1970’s to early 1980’s. Since founding Gafcon, the company has been responsible for managing construction projects for San Diego Community College, the Grossmont-Cuyamaca Community College District, the Del Mar Fairgrounds in the early 90’s, the San Diego Hall of Justice in San Diego, the San Diego Unified School District, the San Pedro waterfront, and the Reagan hospital facility renovations at UCLA, among others. The cost of these projects ranges from millions to billions of dollars.

Today, Gafcon employs roughly 140 to 150 people and consists of multiple departments designed to make the firm a “one-stop shop” for management services. At the time Gafcon joined Ken Smith to form the Design Studio, Gafcon had approximately 70% of the workforce it has today or approximately 100 to 105 people.

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141 Smith depo pg. 17, 24.  
142 Smith depo pg. 18.  
143 Smith depo pgs. 22-23.  
144 Smith depo pg. 40.  
145 Smith depo pgs. 19-20  
146 Smith depo pg. 28  
147 Smith depo pgs. 28-29  
148 GPC Staff Report , March 9, 2006; Gaffen depo pgs. 54-58.  
149 Gaffen depo pgs. 11-12.  
150 Gaffen depo pgs. 27-28.
According to Mr. Gaffen’s deposition, the largest project in terms of construction costs Gafcon has managed is the San Diego Unified School District with a budget of roughly $5 billion, which primarily consists of renovating school buildings.\(^{151}\) When asked which projects Gafcon has worked on that are similar to the Great Park, Mr. Gaffen referenced the San Pedro waterfront, which was about 400 acres of a pedestrian-oriented park, and a project in Irving, Texas which consists of 500 to 600 acres, but roughly only 40% or 240 acres of the project is open space or park space.\(^{152}\) Mr. Gaffen stated that the large programs Gafcon has been involved with take years and sometimes decades to complete.\(^{153}\) However, Gaffen believes “there isn’t anything similar to the Great Park” that he is aware of.\(^{154}\)

(d) Roles of Consultant Team Members.

The KSLA design team that won the design competition was comprised of Ken Smith, Mia Lehrer, Mary Miss, Steven Handel, Enrique Norton, and Gafcon, Inc. Roles of members of the design team were reasonably described in the various contract documents as follows:

(1) Gafcon.

Gafcon was essentially the project manager of the Great Park. Its responsibilities included Joint Venture Administration (managing the physical facilities for the Design Studio, providing contract, legal support and accounting services for the joint venture), Design Management (cost oversight, contract compliance, scope and schedule development, providing monthly status workshops) and Specialty Services.

One key employee of Gafcon that is discussed in this Report is George Urch. He was initially given the job title by the Design Studio of “Public Sector Liaison” when he was hired on July 2, 2007. His role was, as provided during his deposition testimony, both for public affairs and as the Great Park Design Studio’s liaison to the Great Park Board of Directors. According to Mr. Urch and based on his deposition testimony, his role in public affairs was to establish and maintain relationships with key stakeholders and decision-makers that would care about the Project, providing them information on what is happening at the Project, and providing individuals who worked on the Project with potential opportunities for improvements that might help make the Project work more smoothly. Later Mr. Urch’s job title was changed to “Public Affairs Manager” for the Great Park through his employment with Gafcon after the Close Out Agreement with Design Studio and through the end of the audit period in 2012.\(^{155}\)

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\(^{151}\) Gaffen depo, pgs. 16-17.
\(^{152}\) Gaffen depo, pgs. 19; 22.
\(^{153}\) Gaffen depo, pg. 17.
\(^{154}\) Gaffen depo, pg. 24.
\(^{155}\) Urch depo pgs. 34, 94-100.
(2)  Forde & Mollrich.

Forde & Mollrich was the lead consultant for Strategy and Communication services which included Public Information (management of ongoing PR to promote the Great Park), Community and Stakeholder Relations (grouped presentations), Marketing and Advertising (marketing plan for Great Park Balloon) and Consulting Services (planning strategies related to design, development and operation).

(3)  Ken Smith and Mia Lehrer.

The Ken Smith Architect team directed and led design subcontractors to develop the conceptual site plan, preliminary building and bridge plans with elevations and sections, sketches, models, electronic visuals and a statistical summary of the design area and other characteristics in comparison to the program. The Design section performed design services for Park Planning and Design; Park Ecology and Habitat, Engineering and Support Coordination with Design Features, Sustainability, Structural Engineering and support services.

(4)  Fuscoe Engineering.

Fuscoe Engineering was responsible for developing engineering documents such as Engineering Schematic Design Mass Grading documents, IT/CAD and related support services.

(e)  Design Studio Selected All Subconsultants.

The Design Studio selected other key subconsultants to handle various tasks under both the Master Designer Agreement and Schematic Design Contract. The City and GPC were not involved in the selection of the subcontractors or negotiating the subcontracts. The City and GPC were only involved in negotiating the contract with the Design Studio. The approved the Master Designer Agreement and Schematic Design Contract included a list of subcontractors that Design Studio planned to use for that work. Therefore, there was no competitive bidding by the City for the selection of the subcontractors.

However, Gafcon stated that an internal competitive process was done by the Design Studio to select its subcontractors. According to Yehudi Gaffen, the Design Studio’s competitive process involved four steps that included (i) gathering a large list of potential firms that could perform the tasks needed; (ii) the list was then narrowed to three firms by the Design Studio executive committee consisting of Yehudi Gaffen, Mia Lehrer, Pat Fuscoe and Ken Smith; (iii) member(s) of this executive committee would evaluate and interview the three firms; and (iv) a recommendation would be made to Great Park CEO Wally Kreutzen for approval. This internal competitive process was not subject to public review or involvement from the City. It also appears that this

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156 Landers depo pg. 49.
157 Landers depo pgs. 48-49.
158 Landers depo pgs. 48-49.
internal selection process was only done for the Master Designer Agreement and not the Schematic Design Contract.

Under the Master Designer Agreement, the selected subcontractors were subject to the GPC and the City and each entity had the power to remove any subcontractor for poor performance. 160

As for the Schematic Design Contract, the Design Studio was responsible for retaining all subconsultants without the need for prior approval by the City. 161 However, the Design Studio could not terminate subcontracts or services with certain key subconsultants without the City’s prior written approval. These key subconsultants included Master Designer KSLA, Design Manager Gafcon, Habitat/Ecology Consultant Green Shield, Structural Engineer Buro Happold, Bridge and Facilities Designer TEN Arquitectos, Landscape Architect Mia Lehrer, Civil Engineering Firm Fuscoe Engineering, and Outreach/Communications consultants Forde & Mollrich. (Id.) These consultant roles are discussed in more detail below.

(f) Competitive Bidding of Subcontracts Was Not Required.

“The City was not involved, nor the Great Park Corporation, in negotiating a subcontract. The only contract that we were involved in negotiating was the actual contact with the Design Studio.” – Sharon Landers 162

At the time the Master Designer Agreement and Schematic Design Contract were entered into, the City’s contract procedures provided that professional services agreements over $30,000 were to go through a formal bidding process yielding at least three qualified bids/proposals. Moreover, for request for proposals where pricing is a secondary consideration to qualification such as for engineering and architectural services, pricing would be submitted in a separate sealed envelope. Also, final pricing would be negotiated with the selected consultant. 163 The contract procedures do provide some exceptions to competitive bidding requirements for situations where only one vendor has the ability to perform, then the City is permitted to award a contract on a sole source basis.

Many of the subcontracts under the Master Design Agreement and Schematic Design Contract would have been subject to these competitive bidding requirements if they were separately contracted for with the Great Park Corporation or the City. The GPC did not mandate that subcontracts over a certain size be subject to a competitive process, though it could have, just as it protected specified subconsultants by contractually requiring approval for their termination.

160 Master Designer Agreement §§ B. 4, 1.7.1, 1.7.3.
161 Schematic Design Contract, §1.1.3.5.
162 Landers depo pg. 48.
2. City Contracting Requirements Were Not Followed Consistently, As One-Third Of 83 Contracts Over $100,000 Were Not Bid Competitively Or Subject To “Open Competition,” Nor Was A Consistent Record Made Justifying Sole Source Awards.

Irvine Municipal Code, Section 6-10-201 (c) states that contracts for public works projects of more than one hundred thousand dollars ($100,000) must go through formal bidding procedures, and must be awarded to the lowest responsible bidder. Section 1004 of the Irvine City Charter states that contracts may be awarded without going through the bidding process “if such work shall be deemed by the Council to be of urgent necessity for the preservation of life, health, or property, and shall be authorized by resolution passed by at least four affirmative votes of the Council and containing a declaration of the facts constituting such urgency.” These standards, however, generally apply only to public works contracts.\(^\text{164}\)

The design and planning contracts were processed as professional services contracts that do not require a bidding process. Section 2-8-104 of the Irvine Municipal Code, however, does impose some specific limitations that apply to contracts for professional services. That section states,

“Except as otherwise provided by law, the Purchasing Agent will contract for the purchase of all supplies, equipment, and services in a manner that is consistent with sound professional practices and which allows for open competition. . . .”

Thus it appears that even in professional service contracts competition was intended to be part of the process.

Under the City’s adopted financial policies, a Purchasing Agent can make the determination that “the competitive bidding process cannot be accomplished due to a sole source condition” in some cases. This determination must be supported by a justification memo maintained in the Purchasing Department’s central files, attached to the corresponding Purchase Order.\(^\text{165}\) If a sole source condition exists, the City project manager can select an unlisted firm without going through the bidding process. In order to approve such a contract, the City project manager must prepare and present a Staff Report explaining the reasons a sole sourced contract was selected and why it should be approved. The City Council must then determine by a majority vote (i) the utilization of the sole sourced selection method is appropriate as outlined in City policy, (ii) utilization of a sole sourced contract is the best method to obtain the services required, and (iii) the approval of the contract is in the best interest of the City.\(^\text{166}\)

\(^{164}\) Public Contract Code §1102, 20168 and 22050.  
\(^{166}\) HSN0 Report pg. 24.
HSNO reported that of the 83 contracts valued at over $100,000, approximately 30 were awarded as sole sourced contracts. Thus, there were no bidding competitions for more than a third of the 83 contracts.\textsuperscript{167}

There is evidence to show that the City may not have always followed the requirements for competitive bidding and awarding a sole source contract for the Great Park. For example, the City awarded public relations firm Forde & Mollrich a sole source contract. According to Mr. Mollrich’s testimony, his firm had been renewing their contract with the City from 1999 through the inception of the Design Studio on an annual basis. After Forde & Mollrich was awarded a contract to be a subcontractor for the Design Studio through a competitive bidding process in Spring 2006, the “renewals of those contracts and changes in them were simply negotiated…there was no competitive bid process that took place after that.”\textsuperscript{168} Mr. Mollrich admitted there were other firms in southern California that provide similar services that Forde & Mollrich does.\textsuperscript{169}

The HSNO report discusses only four of the sole source awarded contracts. The Design Studio contract is one of those contracts. Another contract of note is Contract No. 7027 for Strada Investment Group Strategic Transactional Advice. According to the Staff Report, this contract was “to perform the public/private partnership negotiations and public financing evaluations necessary and critical to the advancement of the Park’s development strategies and programs.” The contract was for a fixed fee and totaled $345,000.

The Staff Report states that the City could choose to conduct an RFP rather than provide Strada Investment with a sole source contract. However, the staff “strongly believe[d] that Strada Investment Group is the most uniquely qualified firm in the state to deliver these services.”\textsuperscript{170} Former Great Park CEO Mike Ellzey also advocated on behalf of Strada Investment, citing his previous professional relationship with one of the firm’s principals, his national reputation, and the 14 years’ experience that principal had in representing City and County interests in development negotiations on complex military base planning and development.\textsuperscript{171} However, there is no indication that any other potential firms were researched or considered prior to awarding this contract to Strada Investment.\textsuperscript{172} The Preview Park is another strong illustration of how the City did not follow proper contract bidding procedures. The contract to develop the Preview Park (Contract no. 5880) was a contract that increased from $1.7 million to nearly $10 million as a result of more than $7.5 million in change orders. The Preview Park contract refers to Standards Specifications for Public Works Construction (“the Greenbook”).\textsuperscript{173} The Greenbook provides that change orders exceeding 25% of the original contract price should not be approved, unless necessary, such as the discovery of unforeseen

\textsuperscript{167} HSNO Report pg. 24.  
\textsuperscript{168} Mollrich depo pg. 197.  
\textsuperscript{169} Mollrich depo pg. 197.  
\textsuperscript{170} GPC board staff report May 24, 2011.  
\textsuperscript{171} Ellzey Statement pg. 18.  
\textsuperscript{172} HSNO Report pgs. 29-30.  
\textsuperscript{173} Contract No. 5880 at pg. C-1.
conditions that drastically change performance.\textsuperscript{174} There is little, if any evidence, to show almost $8,000,000 in change orders were justified due to unforeseen conditions that drastically changed performance for developing the Preview Park.

Nevertheless, the main problem with this contract appears to stem from the bidding process rather than the change order process. Section 6-10-202 of Irvine Municipal Code states that it is unlawful to split or separate smaller work orders or any project for the purpose of evading the competitive bidding process.

The City only received bids for one piece of the Preview Park, rather than the complete design. There were almost $8,000,000 in change orders negotiated for a single contract originally only awarded for roughly $1.7 million.\textsuperscript{175} A total budget of an estimated $6.92 million had been previously set aside for construction of the entire Preview Park, which shows the Council and staff were aware it would cost more than the original contract amount to complete the project.\textsuperscript{176} Although the City may have had reasonable concerns justifying this action, it appears the City was not following the competitive bidding process by expanding the project in increments.

This can happen when the design is not complete but the agency decides to proceed. They would want to proceed with one contractor to avoid confusion and liability issues for multiple contractors working in the same area. Although the City may have had reasonable concerns justifying this action, “there is no question that the process followed deprived the City of the ability to learn if the work could have been done for less, and deprived other contractors who might have bid less overall of the ability to bid on the contract for all of the work rather than only a small portion of it.” This was improper process and was contrary to the intent of the Great Park fiscal policy.

3. **A Project Management Plan Including Goals And Cash Flow Projections Was Contractually Required Of Design Studio But An Adequate Plan Was Never Produced Or Approved, Depriving The Project Of What Could Have Been A Valuable Management Tool.**

According to section 1.5.1.1 of the Design Studio Schematic Design Contract, a project management plan was required within 15 days of the execution of the contract. The contract stated that the plan would include project goals, objectives, and implementation strategy, team roles and responsibilities, a baseline schedule, project cash flow projections, and project invoice procedures, among other items.\textsuperscript{177}

This plan was intended to be the “road map to how [Design Studio] would carry out their whole contract.”\textsuperscript{178} In other words, the plan would serve as a measuring stick by which Design Studio would be able to track their progress. From this plan, they could determine whether they were on schedule with their other deliverables and within

\textsuperscript{174} Greenbook Section 3-2.1.  
\textsuperscript{175} HSNO Report at pg. 23.  
\textsuperscript{176} City Council Staff Report March 25, 2008 at p. 7.  
\textsuperscript{177} Schematic Design Contract, Appendix C of Scope of Services, Section C.2.1.  
\textsuperscript{178} McDevitt depo pg. 131.
budget. If Design Studio was not on schedule, then project management and Design Studio could have discussed what adjustments could be made. This Management Plan was then perhaps the most significant contractual requirement for keeping the Project on track and on budget. Without it, there was no criterion to measure whether the Project was “on time and on budget.” Without such a tool, cost-effective management of the Project was hopeless.

Bovis Lend Lease, the program manager for the Orange County Great Park, reviewed a version of the project management plan in September of 2007. The review consisted of 171 comments on the 81 page document. Ultimately, the program management team concluded that they “cannot support and recommend approval of the [project management plan] to the GPC as it is written.”

Onisko & Scholz, LLP (“Onisko”), an independent public accounting firm was hired by the City and Board in November 2011 to conduct a compliance review of Design Studio’s Schematic Design Contract with the City. Onisko found that while conducting the review, “there wasn’t evidence of a project management in the invoice backups, nor documentation of project schedule and earned value (EV) curve as required by section 1.5.5.1, paragraph (c) of the contract.” When Onisko inquired as to whether a project management plan existed, Design Studio responded that it “provided documentation of draft submission of the project management plan to the GPC as well as subsequent reviews and comments,” but Onisko never received the actual plan. The GPC responded to Onisko’s inquiry by stating that “the lack of a final Project Management Plan did not prevent or hinder the progression of the project.” After making these inquiries, Onisko could only note that Design Studio submitted a draft Project Management Plan early in the planning process, but only received “partial payment,” (since they hadn’t completed the task).

Mr. Brendan McDevitt, a consultant who was hired by Mike Ellzey to evaluate the schematic design progress, testified that a plan was not delivered “until a year and a half after….they had already begun work….and in fact, it was never really delivered because the one that was delivered was so incomplete that it…won’t have been approved by day one if it had been submitted on time.”

Testimony from Sharon Landers, Assistant City Manager and Interim CEO for the Orange County Great Park Corporation between 2007 and 2008 is similar to Mr. McDevitt’s. According to her testimony, Ms. Landers stated that Design Studio was required to provide a management plan that laid out their work schedule. However, the document Ms. Landers recalled Design Studio providing was not a satisfactory plan because it did not provide enough detail. When asked if Ms. Landers recalled any other details about the management plan Design Studio eventually provided, she replied that

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180 Schematic Design Contract Compliance Review, pg. 5.
181 Id.
182 Id. (emphasis added).
183 McDevitt depo p. 130.
she believed “they never submitted anything that was satisfactory.”\textsuperscript{184} The failure of Design Studio to submit a timely project management plan or one with adequate detail to obtain project compliance is a key contractual failure. There is no evidence that a final project management plan was ever submitted or approved by the City or Orange County Great Park Board. However, it is also apparent that there was a failure of contract management to enforce the contract requirements.

An acceptable project management plan from the beginning would have encouraged fiscal accountability and improved performance. If control was in place from the start and had been maintained, it is reasonable to conclude that the Board and Council would have been able to more accurately match the amount of compensation paid to the amount of actual work done and better track progress on deliverables, curtailing the likelihood of exceeding budget and falling behind schedule. This is not only a failure by the contractor, it is a failure by project management, as discussed further below.

4. **There Is Testimony From Various Managers That They Tried To Achieve Contract Compliance From Design Studio Without Success But Decisive Action Was Not Taken Until The Close-Out Process.**

“It was one of those things where if we eventually rose to the level of trying to shut down something that we didn’t believe was being – was worth our investment, it would go to – it would go to Gaffen, it would go to Arnold Forde, it would come back and we would be told to shove it, basically.”\textsuperscript{185}

In its role as Program Manager, Bovis reported some points of contention that arose with regard to the project and the Design Studio as follows:

“Recommendations made by Bovis Lend Lease were generally ignored. . . . Key key milestone -- key design milestone deliveries were supplied to us by the Orange County Great Park Corporation for review and comment by our team, by our internal team. Those recommendations and comments would then be made, distributed back to the Orange County Great Park Corporation, who would then supply to the design team for action... The comments were never followed up on and/or incorporated and/or completed.”\textsuperscript{186}

So, while efforts were made to monitor various contracts and subcontracts, that task was made more difficult by the business practices of the Design Studio and some of the subcontractors.

Bovis representatives specifically reported concerns about the lack of documentation and time records proving up the value of billings received for work performed by various employees and subcontractors on the project as well.

\begin{footnotes}
\item[184] Landers depo pg. 158.
\item[185] Ellzey depo pg. 39.
\item[186] McDonnell depo pg. 33.
\end{footnotes}
“I can give you general -- general examples, from memory. As indicated in some of the previous exhibits, you know, we started off the program with -- with, you know, elements of team members of the design team studio not submitting time sheets at all. I think, over time -- and one of the previous exhibits outlined, you know, 2 through 9. Over a period of that time, you know, we did, through the assistance of the Orange County Great Park team, push and get the Design Studio to actually get to some kind of time sheet accountability program, you know, as per -- as per our multiple questions. So I think there was an improvement on there. Did it get to, you know, a final, acceptable resolution? I don't think it was there during my time on the program. That would be a general example of my comment of improvement. . . . I think report detail improved, but I think it improved because of the multiple and extensive amount of questions that were directed at the design team throughout various reviews and reports. . . . I think accountability and progress against milestones improved, in terms of the level of detail of reporting and backup and consistency and just being able to verify what they were saying as a progress -- as progress.”

In summing up the experience and evaluation of the performance of the Design Studio on the project, Bovis representative Keith McDonnell testified:

“The only specifics I can give is that, you know, the time frame and the deliverables were very clearly set out. And I think when you have deliverables that are clearly set out, then it’s the responsibility of the design team to resource sufficiently and to understand the project sufficiently to have the right number of people, the right schedule, and the right ability to meet those milestones. . . . I think, again, referring to -- referring to the comments in Exhibit 9, there was multiple cases of -- of progress not matching expectations.”

Additionally, there were a number of deliverables due to the Orange County Great Park Corporation that were not delivered in a satisfactory manner according to deposition testimony. For example, Mr. Ellzey and Ms. Landers each testified that the various Priority Program Feasibility Studies did little more than “churn fee” , and were so “poorly written” that they required extensive work from Orange County Great Park Corporation staff to fix the studies. Another example is the 70 Percent Schematic Design, which, according to Mr. Ellzey, was delivered “six months behind schedule and was a poor quality product.” Review of the design by Orange County Great Park staff and Bovis necessitated significant commenting – over 3000 comments – and was ultimately rejected by Bovis. Numerous additional examples exist with respect to the Design Studio and deliverables that were not provided of this nature as required.

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188 McDonnell depo pgs. 89-90.
189 Ellzey depo pgs. 75-76.
190 Landers depo pgs. 127-129.
191 Ellzey Statement pg. 6.
With all this testimony on contract compliance failures, the question becomes, why didn’t management take effective action to enforce contract compliance? With a recalcitrant contractor, the ultimate threat becomes contract termination. Mr. Ellzey responded to these questions as follows:

“It was one of those things where if we eventually rose to the level of trying to shut down something that we didn’t believe was being – was worth our investment, it would go to – it would go to Gaff, it would go to Arnold Forde, it would come back and we would be told to shove it, basically.” 192

5. As Primary Project Management, As Contemplated By The 2004 Business Plan, The GPC Awarded A Contract To Bovis Lend Lease For “Program Management,” But They Now Contend These Services Needed To Be Performed Only At Specific Milestones.

On March 23, 2006, the GPC awarded a contract to Bovis Lend Lease, Inc., a Florida corporation (“Bovis”) to serve as the Program Manager for the Great Park project.193 A novation agreement was entered into in May of 2006, following Council action limiting the role of GPC to that of an advisory Board,194 transferring the contract between GPC and Bovis to the City of Irvine.195

The role Bovis played in the Great Park was described this way by Keith McDonnell, its Vice President in charge of operations:

“The Bovis Lend Lease role was to perform program management services at specific milestones, and agreed-upon milestones, for lack of a better term, on the project. And we were to review and recommend -- make recommendations to the Orange County Great Park Corporation. We were not what you would refer to as day-to-day, over-the-shoulder reviews. That’s not what our position was. It wasn’t staffed up to be that and it wasn’t outlined in the RFP as that.”196

This view is not consistent with their contract as we view it. Bovis’ contract provides that Bovis “shall provide Corporation or its designee with the opportunity to perform continuous “over the shoulder” reviews of the work in progress.197 Bovis’ work was guaranteed to be to the satisfaction of the Corporation.198 Program management services provided by Bovis included “management, oversight, and coordination of all design and specialty consultants, contractors, vendors, and suppliers in connection with, and in the performance of, the delivery of the projects, including, without limitation, progress reporting at monthly intervals and coordination of the planning and execution

192 Ellzey depo pg. 39.
197 Bovis Contract, at p. 6; Section 1.5.
198 Id. at pg. 5; Section 1.4.
of each component of the project with the client’s personnel and governing public agencies.”  

Bovis was also responsible for Cost Control, Cash Flow Projections and Project Schedules as well as the review of invoices from the Design Studio. This is exactly the sort of program management services envisioned in the 2004 Business Plan.

Bovis has taken the position in the Audit that their program management operations were limited to review of certain tasks only rather than “day to day” project management. Bovis has also claimed that Gafcon took control over their position as program management. The pertinent provisions to the contract between the GPC and Bovis required that the GPC was to notify Bovis of writing of any deficiencies and provide Bovis with the opportunity to cure the same. Bovis’ position is that they provided complaints to the GPC that were not properly addressed by GPC staff. The sworn testimony provided in the Audit is in conflict on this topic.

Bovis’ contract with the GPC also required that Bovis “assist client in requesting, conducting and summarizing the results of audits of contractor’s books and records . . .” Bovis was also required to “report to client at once if it determines that any request or claim by contractor contains any statement that is false or materially misleading; and assist in investigating any allegations that contractor has submitted a false claim in violation of Government Code Section 12650, et seq.”

We have discussed these contract sections with counsel for Bovis and he responded:

“...As you may have noted during your review of Paragraph 6.6, this is just one part of a much broader description of the services Bovis was going to provide as program manager for GPC. You will note that on page 35 of Part IV, Scope of Services, Paragraph 6.6 is part of Article 6.0 entitled: “Close-Out Phase Services”. Putting Paragraph 6.6 into its proper contractual context is extremely important since to my knowledge the project was suspended years ago and never reached the Close-Out Phase. Accordingly, unless you have more or different information to assist us in evaluating this issue, it appears that Paragraph 6.6 never became operative in connection with the GPC project due to the suspension of work on the project.

As such, it does not appear to us that Bovis was obligated to assist in any investigation of potential false claims until the project construction was completed and an audit was initiated. Moreover, Bovis was never directed by GPC to assist in the performance of any such analysis or investigation.

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199 Id. at pg. 25; Section 1.1.
200 Id. at pg. 25; Section 1.4, 1.5 and 1.6.
201 Id. at p. 5; Section 1.4.
202 Id. at pg. 36; Section 6.6.
203 In a February 5, 2015 letter from Gibbs Giden, Bovis’ attorney, Glenn Turner III, Esq.
We know of no direction from the City of Irvine or GPC to Bovis requesting that it provide such service. …

Finally, we think that the record is very clear that Bovis alerted GPC numerous times to billing irregularities and abuses by Design Studio based upon Bovis’ evaluation and review of Design Studio’s invoices and pay applications during the design phase of the project. It appears to us that GPC chose to ignore Bovis’ warnings and proceeded to pay Design Studio (and Gafcon) millions of dollars over the stated objections of Bovis.”

We investigated this matter in light of these allegations by legal counsel for Bovis that millions of dollars were paid by the Corporation over the stated objections of Bovis. We reviewed prior written comments made by Bovis concerning Design Studio billings. For example, there are statements made by Bovis in their reports in September 2006 and in November 2006 about a few members of the Design Studio team that were billing over 12 hours per day. There were also complaints by Bovis during this same time period about a lack of detailed timesheets or other supporting records for members of the Design Studio team.

Mr. McDonnell testified at his deposition that there was a “general issue” of Design Studio employees billing more than 12 hours per day around 2006. Mr. McDonnell thought that was “unusual” and eight or nine hours billed per day was more typical. Mr. McDonnell further testified that this billing issue “improved over time” although he did not recall if it was resolved completely or not. Gafcon has denied all allegations of overbilling or billing abuses.

We cannot ascertain how much money was at issue in the above-referenced complaints by Bovis based on the records and testimony received from Bovis. Additionally, despite our efforts to obtain additional witnesses from Bovis to testify during the Audit through our communications with their legal counsel, the only employee Bovis currently had employed that worked on the Project was Mr. Donnell, who left the Project in 2007, and this is the only witness Bovis produced for the Audit. Gafcon’s position is that additional witness testimony from Bovis employees that worked on the Project after 2007 is required before a finding could be made about this allegation of billing abuses and overcharging by Design Studio. Based on the information reviewed and testimony received during the Audit, we do not have sufficient information to make a legal finding or conclusion concerning Bovis’ allegations of billing abuses and overcharging by Design Studio.

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204 Id. at pgs. 77-78.
6. **Significant Project Change Orders Are Generally A Sign Of Lack Of Definition Of Project Scope At The Beginning Of The Project, Or Poor Project Management, And With The Great Park There Are Numerous Examples Of Change Orders Aggregating More Than 25% Amounting To Millions Of Dollars.**

The two master contracts for the Great Park during this Audit Period were the Master Plan Agreement and Schematic Design Contract.

(a) **Master Plan Agreement.**

On March 9, 2006, the Council approved the Master Plan Agreement between the GPC and Design Studio to complete the Master Plan, a Phasing Plan for Great Park construction, Great Park Design Guidelines, and a Plan for Phase One Construction of the Great Park. The Master Plan was to be the framework to guide the long term development of the Great Park. The goal of the Master Plan was to provide guidelines for future development; integrate the physical, environmental and socioeconomic connection between the park and community; and address community needs in a financially feasible manner.\(^{205}\)

The Master Plan Agreement included five specific work tasks: (i) Critical Issues Assessment; (ii) Conceptual/Preliminary Master Plan; (iii) City Approval of the Final Master Plan; (iv) Phasing Plan; (v) Phase One Plan and Design Illustrations. In addition, a budget not to exceed $372,000 was approved for Task 1 – Critical Issues Assessment. Fifteen percent (15%) of this budget was for contingency to deal with potential increases in Task 1. This Master Plan Agreement was only budgeted for Task 1 since Tasks 2 through 5 were going to be revised later after the critical issues assessment.

Payment for this contract was made on a time and materials basis based on contractor’s and subcontractors’ hourly rates. Invoices were to be sent on a monthly basis and GPC was to pay Design Studio on a monthly basis in accordance with the cost and services actually rendered as certified and billed by the Design Studio in its monthly invoices.\(^{206}\) The invoices were required to have backup information including invoices from subcontractors and suppliers, copies of receipts, time sheets, and authorized travel among other things.\(^{207}\)

Design Studio completed Task 1 and presented it to the Board and Council on April 13, 2006.\(^{208}\)

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\(^{205}\) May 23, 2006, Council Staff Report, p. 4; Council Resolution 60-60.

\(^{206}\) Section 1.9.4.

\(^{207}\) *Id.*

\(^{208}\) Staff Report Council Meeting May 23, 2006.
(b) Amendment to Master Plan Agreement and Novation.

On May 23, 2006, the Council approved the Scope of Work for Tasks 2 through 5 of the Master Plan Agreement and authorized a Novation Agreement to assign the agreement to the City. In accordance with Section 1.9.1.1 of the Master Plan Agreement, Tasks 2 through 5 were revised and expanded to include schematic design and design development for Phase One in the process to provide refined cost estimates. Specifically, Task 2 was expanded to consider design alternatives and studies to address desired ideas, refinements and elements of the park program and design; Task 4 was revised to extend the time period for an additional two more months to complete the phasing plan; Task 5 was revised to include the schematic design plan for Phase One and to provide an additional two months to complete this task.

A budget adjustment of an additional $9,575,000 for Tasks 2 through 5 was approved bringing the total contract amount for the Master Plan Agreement to $9,947,000. Tasks 2 through 5 included Preliminary Master Plan, City Review and Approval of the Master Plan, Phasing Plan, Phase One Park Schematic Design and Design Guidelines, reimbursable expenses and a contingency for additional work efforts required to complete individual tasks.

On January 9, 2007, the Council approved a Contract Task Order to the GPDS for $734,688 to prepare design and construction drawings and for expenditures up to $3,695,269 to fund development, construct and insurance coverage of the Great Park Balloon Project. The council also approved an amendment to Fiscal Year 2006-2007 Budget increasing revenue by $905,000 to record donation from Lennar for a balloon construction budget of $4,075,269. On May 8, 2007, the Council approved the addition of Task 7 to the Master Design Agreement for the beginning of the schematic design for the Great Park. This was done in order to allow the Design Studio team to ramp up to begin performance on the Schematic Design Contract even though negotiations for this contract were not completed.

This caused a temporary budget to increase to $12.7 million. When the Schematic Design Contract was approved, Task 7 and the budget adjustment was rescinded and moved to the Schematic Design Contract, the next phase of the Great Park Project.

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209 Staff Report May 23, 2006 Council Meeting.
210 Id. at 2.
211 The City was authorizing this budget adjustment of $2.2 million in order to give assurances to the Design Studio team that there would be money to pay them for the next phase of the project. However, the contract for the next phase of the project (Schematic Design Contract) was still being negotiated. Also, there was still $2.5 million left in the prior budget for the Master Designer Contract that was unspent so it was not clear in the meeting why this budget adjustment would be needed. Mr. Gaffen and GPC CEO stated it had to do with cash flow, but this didn't seem to be clear explanation during the Council meeting. Council and the GPC was under pressure to authorize this budget adjustment because the Design Studio had stated their team would have to demobilize and their subconsultants would work on other projects if this budget adjustment and assures were not in place. Councilwoman Shea and Choi expressed concerns over the losing leverage and negotiating power essentially authorizing a budget for work that was not yet under contract.
(c) **Schematic Design Contract.**

On July 24, 2007, prior to the completion of the Master Plan Agreement, the Council approved the Schematic Design Contract with the Design Studio. This agreement was for the schematic design of the entire Great Park which represented 30% of the final design.\(^2\) The agreement provides for schematic design for the entire Great Park, construction documents for early site delivery, mass grading of the entire Great Park property, construction documents for the upper portion of the Wildlife Corridor and for Agua Chinon, and establishes reasonable final design and construction cost estimates for the Great Park features included in the schematic design.\(^3\) In addition to the schematic design aspect, this agreement also covered strategy and communication services.

The Schematic Design Contract represented the second Phase of the Great Park design. The staff recommended and the GPC Board and Council approved moving forward with the Design Studio for this second phase of the project without going through a competitive bid process.\(^4\)

The contract also included completion of the Master Plan and developing a budget estimate. In other words, the City was proceeding with detailed design of the Project even though there was no cost estimate or working budget, nor was there an updated funding plan. The ultimate cost of the Master Plan or how it would be funded was not a determining factor in whether to proceed.

The total budget for this contract was $27.3 million which was broken down as follows:

- $12,060,000 for Design
- $10,285,000 for Engineering for the Design
- $2,415,000 for Design Management
- $1,140,000 for Strategy and Communications
- $1,400,000 for Reimbursable Expense
- $27,300,000

A contingency fund of $2.6 million was set aside for any additional costs for the scope of services above.

About 90% of the Schematic Design Contract was done on a fixed fee basis based on deliverables. However, many of the deliverables were not fully defined. The remainder of the contract was done a time and material basis.

The fixed fee portion of the contract was supposed to work so that Design Studio would perform a specific scope of work and provide completed products or deliverables.

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\(^2\) Staff Report for July 24, 2007 Council Meeting.
\(^3\) Id. at pg. 4.
\(^4\) March 13, 2007 Council Meeting Minutes. Although staff was directed to come back with a contract amendment, a new contract was brought back for approval.
for a fixed price. Payments on fixed fee services were to be made based on progress toward completion of deliverables as determined by the City upon consultation with the Design Studio.

Invoicing and payments were to be based on the actual work performed as a percent of the total project. Progress was to be measured against a schedule developed by the Design Studio and delivered to the GPC. The schedule included major milestones tied to specific deliverables at 30%, 70%, 97% and 100%. It was supposed to be structured so that payments would not be made until the requirements of the milestones were met to ensure that the City paid no more for its deliverables than the fixed fee. However, the problem was that the City did not know exactly what the finished product or deliverable would be so it was often difficult to determine how close to complete a given deliverable was under the scope of services. This led to many change orders and caused the Schematic Design Agreement to expand to more than $15 million over the original budget.

For example, in the 70% Milestone Review of Design Studio’s Schematic Design Contract, Bovis found the equestrian trail system as it was laid out in the design to be incomplete, “due to the drawing not indicating the trail location fully.” 215 The graphic symbols did not fully define the layout of the trail system in a certain portion of the park and it was unknown where the trail ended and how it crossed a major street. Additionally, there appeared to be conflicting numbers for the width of the trail and the surface material the horses would walk on was not indicated. 216 Furthermore, Bovis also found designs for the park features lacking because many of the features were shown without any utilities such as power, water, and sewer. 217

During the life of the Schematic Design Contract, there were 49 change orders for additional work which account for $15.4 million of additional expenses to the original budget of $27.3 million bringing the total value of the contract to $42.7 million, although because the Schematic Design contract was terminated early, the amount paid was actually only $36 million, still a one third increase in the contract amount.

Under the Schematic Design Contract, the City was permitted to make change orders for work that changed, added to or deleted work in the scope of services. The change order provided that:

“It is expressly understood by the [Design Studio] that the provisions of this Section 1.3.3.1 shall not apply to Services specifically set forth in the Scope of Services or reasonably contemplated therein. The [Design Studio] hereby acknowledges that it accepts the risk that the Services to be provided pursuant to the Scope of Services may be more costly or time consuming than the [Design Studio] anticipates and that the [Design Studio] shall not be entitled to additional compensation or time therefore,

215 70% Schematic Milestone Review, Narrative, pg. 2.
216 Id.
217 Id. at pg. 7.
except to the extent such additional cost or delay is a direct result of a Differing Site Condition…” (§1.3.3.1.)

Here the contract had favorable language saying that the contractor bore the risk that it would take more effort than the contractor had anticipated to perform the services. Such language is useful to keep a contractor within budget. Clearly when a contract increases in expense by over 50%, in practical reality, the contractor is not being held to the contractor’s own budget estimates, and the risk allocating language is not being enforced.

In sum, the Master Design Contract started as a planning program for $372,000 contract. It was ultimately increased to almost $10 million to actually prepare the Master Plan. A concept plan was developed. The Schematic Design was then initiated without completion of the Master Plan and without a budget or funding plan, but with a contract of $27.3 million, and was increased to $42.7 million, although the ultimate amount paid during the course of performance was $36 million when it was terminated early. These changes suggest a lack of project definition at inception and poor contract administration during performance.


“There was no accounting of payment to subcontractors “And there was talk in terms of getting -- reaching a settlement, [with Mia Lehrer] and I -- and I told them you can’t reach a settlement without ensuring that all subcontractors have been paid and they sign off, acknowledging to the corporation and to the city that they have been paid. . . .” – William Kogerman 218

With the scaling back of the Project in late 2009 and early 2010 due to the economic infeasibility of the construction of the Master Plan, as described in Section III (Finance) a settlement agreement (the “Close Out Agreement”) was negotiated with Design Studio in 2010 to settle accounts. However, while the settlement was originally discussed at a public joint meeting between the Corporation Board and City Council on June 17, 2010, the Close Out Agreement itself was not finalized until August 13, 2010. The Close Out Agreement was not included in the agenda package when the item was discussed at the public meeting in June 2010.219

At that joint Corporation Board/City Council meeting, a motion was approved for a payment of $554,585 by both the Corporation Board and City Council. No contract

218 Kogerman depot at p. 57.
219 to prevent future similar occurrences, the City has recently updated policy to require agreements as to form to be attached to staff reports prior to approval. If the agreement is not attached to the report, it will not be approved.
was presented to the Board/Council for review or approval at the time. Instead, staff merely presented the items it believed were subject to review by the City Council and when payment of those items was approved in concept, staff moved forward to draft the Close Out Agreement without further Board or Council action.

The final Close Out Agreement, as discussed more fully in Section V (Conflicts) below, included terms and conditions of payment, recitals that described that the City was fully satisfied with Design Studio’s work, and other specific representations that were never part of the motion approved by the Council. Moreover, the Close Out Agreement provided that it was for a total of $1.39 million including payment of an additional amount of $833,000 that had received administrative approval but was not part of the motion by the City Council at the June 2010 action.

The June 17, 2010 Request for Board and City Council Action regarding the Close Out Agreement states that “Of the remaining items to process, staff can administratively process payments up to approximately $833,000.”220 At the time of his deposition, former City Attorney Philip Kohn stated it was his belief that $833,000 could be administratively approved without going to the Council, but that he did not know for certain whether staff specifically had the authority to do so.221 However, staff only brought the $554,585 amount before Council and the Board at the joint meeting for approval because they determined those invoices fall outside of the administrative opportunity or entitlement of staff to approve.222 Mr. Kohn’s explanation of the discrepancy of authority is that the staff and Design Studio were engaged in a reconciliation process, where if agreement could be reached on a payment of specific invoices, staff was authorized to approve payment.223 Agran wanted close out issues resolved at staff level and not by the Board.224

In terms of transparency, the public was not given advanced notice of the specific terms and conditions of the Close Out Agreement and the total payment of nearly $1.39 million authorized to be paid to Design Studio in the Close Out Agreement. The public was also deprived of the opportunity to comment at a public meeting on a draft of the Close Out Agreement before the execution of the final version of the Close Out Agreement. There was no explanation as to why there was not sufficient time to bring this back before the City Council with the actual settlement agreement other than to avoid further public controversy over the high costs of the Project and the making of further payments to Design Studio.

In fact, former GPC Board member William Kogerman, who made the motion to approve the $554,585 payment to Design Studio to close out the contract, testified that he had never seen the actual contract and would never have voted in favor of it as it was written. Mr. Kogerman specifically did not agree with the statement that Design Studio “performed its obligations under the Schematic Design Contact in a manner

220 GPC and Irvine City Council staff report June 17, 2010, Item 8, p. 4.
221 Kohn depo p. 65.
222 Kohn depo, Exhibits 15, at p. 4.
223 Kohn depo pg. 67.
224 Kohn depo pg. 81:3-10
satisfactory to the City,” because he didn’t “think they, in fact did what the [GPC] had asked of them.”

According to Ms. Landers’ testimony, “thinking about practice and [her] knowledge,” close out agreements “typically go to the Council.” The testimony of Mr. Kohn, the drafter of the close-out agreement, states that although he could not recall specifically, it would have been his “state of mind” to have told people that a subsequent [post June 2010] close out contract with Design Studio would be presented to the City Council.

8. Forde & Mollrich Was A Subcontractor Engaged In Strategy And Media Activities, And Was Paid $7.0 Million Over The Course Of The Project. Their Contract Relations Went Through Four Phases From A Fixed Fee Of $50,000 Per Month, To Time And Materials At An Average Of $70,000 Per Month, To $100,000 Per Month, And Back To $50,000 Per Month. There Was No Clear Evidence Justifying A Doubling Of Cost In One Period And Halving It In Another.

In terms of contract administration, a fixed price contract might be desirable when known deliverables can be produced, or for a services contract where a regular set of services will be provided on an ongoing basis. An alternative form of contract would be time and materials, where the contractors is paid for their time and the services would vary considerably over time, or the product of the service is hard to measure. In the case of Forde & Mollrich, their services were provided in each format for periods of time.

Forde & Mollrich received $7,217,040.95 in fees for work they were to perform concerning strategy and public relations for the Great Park during the Audit period. As provided in Exhibit 9 to the preliminary audit report, these fees were paid to Forde & Mollrich as follows:

- Non-Design Contract (Contract 5050 between July 2005 – June 2006), which totals $600,000. This time period is when Forde & Mollrich managed the design competition.

- Sub-Contract of Design Contracts (Contracts 5309, 5759, 5759 and Change Orders 13, 28, 35, 35B, 35C between July 2006 to June 2012), which total $6,317,040.95, during the design phase of the Project.

- Non-Design Contract (Contract 7469 between July 2012 to December 2012), which totals $300,000.

Specifically, between July 2005 and June 2006 Forde & Mollrich was paid $50,000 per month. Between July 2006 and December 2008 Forde & Mollrich was paid various amounts ranging from $19,862.50 to $102,914.81 per month based on the

225 Kogerman depo pg. 56.
226 Landers depo pg. 151.
227 Kohn depo pg. 69.
number of hours worked. The average billed per month by Forde & Mollrich during this time period was $70,568.

Between January 2009 through June 2012 Forde & Mollrich was paid $100,000 on a flat fee basis per month. Significantly this increased compensation covered the period after the scaling back of the Business Plan in 2009 and the following of the project on the $65 million Western Sector plan. This amount was 141% greater than the amount Forde & Mollrich was paid between July 2006 and December 2008. This is also the period when CEO Ellzey tried to get the compensation scaled back as related in his deposition.\(^{228}\)

Then after 3.5 years of the $100,000 monthly compensation, it was scaled back. Between July 2012 and December 2012 Forde & Mollrich was paid $50,000 per month. This was back to the level in 2005 and 2006.

In HSNO’s preliminary report, HSNO reported that they “attempted to have meaningful discussions with Forde & Mollrich, who has refused to speak with [them].”\(^{229}\) The City commenced a second stage of the Audit on January 28, 2014, during which phase a subpoena was served on Forde & Mollrich on May 2, 2014. The subpoena called for various financial records including “all documents relating to . . . submissions for payments” for all invoices by Forde & Mollrich to the Great Park Design Studio, including, without limitation, “[a]ll timesheets ... and other documents supporting costs incurred”. All timesheets for the period of 2005 through 2013 were also requested through this subpoena and “any and all documents relating to submissions for payments.”

Forde & Mollrich continued to resist efforts undertaken by Special Counsel and HSNO at the deposition of Stu Mollrich in July 2014 to obtain the above-referenced information. After the City Council in August 2014 authorized Special Counsel by a 5 to 0 vote to seek a court order for Forde & Mollrich to provide the requested information, then Forde & Mollrich provided 30 boxes of documents, including many new documents, to HSNO. However, for the most part those boxes contained insufficient information to fully analyze whether or not the City received a fair price for the work performed by Forde & Mollrich, especially between January 2009 through June 2012, when Forde & Mollrich was paid $100,000 on a flat fee basis per month.

None of the witnesses in the depositions taken in the Audit provided sufficiently detailed testimony or documentation to fully support whether or not the City received a fair price for the work performed by Forde & Mollrich, especially between January 2009 through June 2012, when Forde & Mollrich was paid $100,000 on a flat fee basis per month, during the period the Great Park had been reduced in scope.

For example, the deposition of Larry Agran was recently taken on March 13, 2015. There, Mr. Agran testified that he felt that the $100,000 per month paid to Forde &

\(^{228}\) Ellzey depo at pgs. 176-177
\(^{229}\) Id. at p. 41.
Mollrich between January 2009 through June 2012 was justified. However, Mr. Agran also testified that between 2005 to 2012 Forde & Mollrich “worked hard all those years” and that their level of effort depended on “what project they were working on at the time.” Mr. Agran could not quantify the difference in volume of work that Forde & Mollrich did between 2005 to 2012 to support the increase of their charges to $100,000 per month in January 2009 compared to their prior billings.

We also tried to ascertain whether Forde & Mollrich hired a substantial number of additional personnel around January 2009 to explain why their fees increased to $100,000 per month. We could not find support for that. For example, Mr. Mollrich testified at his July 30, 2014 deposition that between 2005 and 2010 Forde & Mollrich had between six to eight employees.

Mr. Forde testified at his deposition as follows:

Q Did you personally observe instances where the work was different in 2009 than what it was previously?
A I don't remember.
Q Do you recall any type of internal analysis that was done by your company in 2009 in terms of why additional costs and charges would be necessary and why the internal — or why the hundred-thousand dollars a month would be necessary?
A I don't know. Because I don't know when we started doing more of the outreach and that kind of thing. I don't remember what years all that started, so I just don't know the answer to that question.
Q Do you recall hiring -- and we talked earlier about one particular employee. Do you recall hiring multiple additional employees in 2009?
A No. But — I don't know. Maybe we had — maybe people were working more on this account, because it required more work. There, again, you'd have to ask my partner. He'd be able to give you a better answer on that than I would.

When asked, Mr. Mollrich was not able to provide any better answer to these questions. Specifically, we carefully considered Mr. Mollrich’s deposition testimony on July 30, 2014 before making this conclusion. Mr. Mollrich admitted at his deposition that “[w]e didn't track hours at that time (in 2009)” and “it’s not something that I have any records to support.” While Mr. Mollrich provided lengthy explanations and rough

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230 Id. at pgs.100-114.
231 Id. at p. 111.
232 Id. pg. 38.
233 Forde depo pgs. 97-98.
234 Id. for example, at pgs. 163-169; 221-224.
235 Id. pg. 223. Mr. Mollrich signed a contract with the Design Studio for the Great Park on October 3, 2007 that contractually obligates Forde & Mollrich to provide all of the accounting records that have been requested in any audit. That contract specifically requires that Forde & Mollrich will "maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all invoiced amounts." (Id., at Section M, "Access to Records"). That provision also allows the City per its
estimates at his deposition to try to justify the $100,000 per month charges, after carefully analyzing his deposition transcript, we conclude that Forde & Mollrich has not provided sufficient support for their $100,000 monthly fees between 2009 to 2012.

The bottom line is that for a year the F&M cost was $50,000 per month, then went to time and materials averaging $70,00 per month for 30 months, then was increased to a fixed fee of $100,000 per month for 42 months when the Great Park program was being scaled back (2009 through June 2012), before the fees were reduced back to $50,000 a month, as they had been originally. The fixed fee at $100,000 appears to have been much less advantageous to the City than either the time and materials fee (payment for actual time spent), or the reduced $50,000 fixed fees.

In summary, we find insufficient support based on the above-referenced testimony and analysis to explain the increase in price for Forde & Molrich’s services in January 2009 to $100,000 per month compared to the level of service they previously provided for the Project.


Both the Agreement for Master Design Services and the Schematic Design Agreement contain explicit clauses requiring full cooperation by the consultants with any audit requested or performed by the City. The Master Design Services contract provides as follows in this regard:

“4.2 Records and Reports

Upon request by the Corporation [GPC] Master Designer [Design Studio] shall prepare and submit to Corporation any reports concerning Master Designer’s performance of the services rendered under this Agreement. Corporation shall have access, upon reasonable notice, to the books and records of Master Designer related to Master Designer’s performance of this Agreement in the event any audit is required. All drawings, documents and other materials prepared by Master Designer in the performance of this Agreement (i) shall be the property of Corporation and shall at no additional cost be delivered to Corporation upon request of Corporation or upon the termination of this Agreement, and (ii) are confidential and shall not be made available to any individual or entity without prior written approval of the Corporation. Master Designer shall keep and maintain all records and reports related to this Agreement for a period of three (3) years following termination of this Agreement, and Corporation shall have access to such records in the event any audit is required. Corporation
shall have the right to review and audit the books and financial records of Master Designer regarding this Agreement during the term of this Agreement and for a period of not less than four (4) years following the completion or termination of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Master Designer agrees to maintain the same until Corporation and its duly authorized representative have disposed of all such litigation, appeals claims or exceptions thereto. Master Designer agrees to permit Corporation to reproduce by any means whatsoever to copy excerpts and transactions as reasonably needed. Master Designer also agrees to include these requirements in each first tier subcontract, modified only if necessary to identify the affected parties.” (emphasis added)

Thus all of the level one subcontractors identified in the Agreement for Master Design Services were also subject to this requirement as well as KSLA and Gafcon.

In August of 2008, Diehl Evans and Company LLP, an independent public accounting firm, was hired by the GPC to conduct an audit of Design Studio's Agreement for Master Designer Services (“Contract 1”). The auditors found “weaknesses” in the systems and procedures under Contract 1, specifically as it related to invoices submitted by Ken Smith, Gafcon, and other contractors. The auditors often found the explanations or descriptions of work performed to be vague and general and in many instances it was “not possible” to connect the description of work performed to the deliverables.

In addition, the auditors of Contract 1 found that despite Design Studio's statements that each subcontractor invoice was thoroughly reviewed, there was a “lack of discernable evidence” that the hours worked or time cards submitted were ever reviewed and approved by supervisors. When the auditors questioned a potential double billing of roughly $15,500, Design Studio said it was not a double billing, but the auditors never received documentation to support Design Studio's statement.236

When Mr. McDevitt tried to analyze invoices under the Schematic Design Contract (“Contract 2”), he could not determine what charges were included in the overhead and what was being paid to the subcontractors. Mr. McDevitt asked Design Studio for the raw rates that they were paying people and how much overhead was being applied to those rates, but Design Studio refused to provide that information. When he asked to see the invoices from their subcontractors attached to their billing, he was denied that documentation as well.237

HSNO reported that it has also experienced a lack of cooperation from Forde & Mollrich in producing documents, which continued into the second phase of the Audit. During the first phase of the Audit, Forde & Mollrich refused to speak to HSNO directly.

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236 Contract Compliance Review of Agreement for Master Designer Services, pg. 10.
237 McDevitt depo pgs. 134-136.
and would only allow questions if they were in writing.\textsuperscript{238} As a result, the City deposed Mr. Forde and Mr. Mollrich in the Summer of 2014.

According to Mr. Forde’s testimony, Forde & Mollrich had no internal accounting records that tracked employee hours, no accounting records showing expenses, including reimbursables or overhead costs, and no records that tracked the amount of profit achieved from Orange County Great Park matters.\textsuperscript{239} When asked whether Mr. Forde had anything to offer that would allow someone to measure whether or not certain work was performed where there is not a specific deliverable, Mr. Forde replied, “No.”\textsuperscript{240}

At Mr. Mollrich’s deposition, Mr. Mollrich stated that “all production records were turned over and all the financial records and all of the reports.”\textsuperscript{241} However, Mr. Mollrich further acknowledged that internal financial documentation, which would be relevant to measuring the value received by the City for the $100,000 monthly retainer, was withheld.\textsuperscript{242}

In order to retrieve these documents, after meeting and conferring with Forde & Mollrich on several occasions throughout August of 2014, we ultimately had to seek Council approval to obtain a court order compelling Forde & Mollrich to comply with the document requests and requests for further deposition testimony from Mr. Mollrich.

Immediately following the Council action on August 20\textsuperscript{th}, Forde & Mollrich did come forward with 30 boxes of documents including many documents not previously disclosed after the Council’s 5-0 vote to compel records from Forde & Mollrich. We refrained from seeking a court order then as HSNO and our firm reviewed the new documents. However, Forde & Mollrich continued to produce additional documents after this point, including documents never before produced to the City.

There is no doubt that the City has been put to considerable additional expense trying to obtain the records necessary to complete this Audit, and these actions by Forde & Mollrich do not comply with the letter or spirit of the contracts. Forde & Mollrich’s attorney sent us letters consisting of approximately 26 pages of responses and objections to Audit matters.

Besides Forde & Mollrich, we also note that Gafcon, through its attorneys, were cooperative in providing documents to the City during the Audit. We found no instances where Gafcon did not provide documentation when requested by the City and many documents were obtained from Gafcon informally without the need for a subpoena.

However, Gafcon made an excessive number of objections in communications with special counsel that were not well grounded in the contract provisions at issue or in

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\textsuperscript{238} HSNO Report pg. 9.
\textsuperscript{239} Forde depo pgs.19-20.
\textsuperscript{240} Forde depo pg. 104.
\textsuperscript{241} Mollrich depo pg. 244.
\textsuperscript{242} Mollrich depo pgs.244-245.
\end{flushright}
applicable law. Gafcon objected to the City having the current performance review of their services and claimed that the review process was purely political. However, the Schematic Design Agreement for the Project requires that: “Owner (the City) shall conduct a performance and financial audit of this Agreement upon completion of the Services and at such other times as determined advisable by Owner (the City), the scope and procedures of which shall be determined by the Owner (the City) in its discretion.” “The Architect (Design Studio) also agrees to include these requirements in each Subcontract . . .”243

Despite these contract provisions, Gafcon attempted to impose additional demands on special counsel and HSNO to give them advance notification of every potential negative statement made against Gafcon in the HSNO and Special Counsel reports.

Managing the excessive number of objections raised by Gafcon is one of the primary reasons why the audit costs have increased substantially and why the Audit has been delayed. Gafcon’s attorneys sent us numerous letters with responses and objections which total approximately 114 pages and numerous additional email communications with objections and responses. Analyzing each of those legal arguments by Gafcon’s attorneys took considerable time and effort and increased the cost of the Audit.

Furthermore, Gafcon made an evidence preservation and electronic record preservation (“ESI”) demand on Irvine in December 2014. That type of demand is typically used to preserve records before a lawsuit is filed in a dispute among private parties. This evidence presentation/ESI demand will cost the taxpayers of Irvine $300,000 annually based on estimates provided by the City. There were additional legal fees that were incurred because of Gafcon’s attacks on the Audit.

We have attempted to discuss these matters with Gafcon’s attorney in good faith on numerous occasions over the last eight months. For example, recently on March 19, 2015, special counsel wrote to Gafcon’s attorney, after Gafcon asked for more time to provide information for the Audit and raised additional objections, as follows: “I’m trying to better understand, out of fairness to your client, what additional information Gafcon would provide if they had more time to provide it?” Special counsel offered to have another telephone conference with Gafcon’s attorneys to resolve this latest dispute with Gafcon before the HSNO and Special Counsel reports were completed; however, Gafcon’s attorneys did not agree to participate in that phone call. Special counsel has treated Gafcon fairly throughout the Audit.244

243 Id. at p. 28 (emphasis added)
244 For example, we traveled to downtown San Diego on August 8, 2014 and conducted Mr. Gaffen’s deposition on that date in downtown San Diego to accommodate Mr. Gaffen. We covered all of the relevant matters known to us at that time in the Audit with Mr. Gaffen, we provided Mr. Gaffen a full opportunity to respond to these matters and we have provided written notice to Gafcon’s attorney of additional areas of inquiry to respond to since that time. Nevertheless, Gafcon continues to maintain that
Additionally, former Chairman Larry Agran has provided strong resistance to the Audit over the last three months, starting with serving approximately ten pages of legal objections to the City’s document subpoena in January 2015, then refusing to appear at a deposition scheduled in February 2015, and numerous objections were made by his two attorneys at his deposition on March 13, 2015. Mr. Agran has not answered all deposition questions that are relevant to numerous provisions under the Schematic Design Agreement, as explained in detail in the staff report for the March 24, 2015 City Council meeting. This unanticipated level of strong resistance from Mr. Agran has substantially increased audit costs and has also caused a delay in the release of this report.

Had Forde & Molrich, Gafcon and Mr. Agran fully cooperated with the Audit, then both the total Audit costs and time needed to complete the Audit would have been substantially less.

D. CONCLUSION.

In a prior section of this report (Section III, Finance), we discussed the fact that the design of the Great Park was allowed to escalate past any level of possible funding, that no real budget constraints were imposed until the 2009 Business Plan, and that as a consequence, the City has spent $350 million, and now only has improvements in the 75-acre Western Section which cost $65 million to build.

This section of the Audit Report focuses more specifically on contracts, how contracts were awarded, whether the contracts contained budget controls, whether the provisions on budget and schedule were enforced, whether contract requirements to develop program management plans were carried out, and whether the checks on the system, the internal and external program managers and audit entities, were able to enforce contract compliance.

The short answer is that with respect to each of these questions, significant failures are evident. Collectively the failures of contract formation and administration play just as an important role in the Great Park failures as the failure to assure sufficient revenue to fund the grandiose project design.

The failures of contract formation and administration include the following illustrations:

1. The Contract bidding and award processes were flawed:
   (a) A team was cobbled together of disparate elements after the bid process who had never carried out a major public works project together.

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they have been treated unfairly in the contract performance review process. These contentions are baseless.
(b) The team further assembled subcontractors without competitive bidding including politically connected subcontractors some of whom could not be fired except with City approval.
(c) Over one-third of the contracts for the Great Park of $100,000 or more were not competitively bid.
(d) Some contracts varied from fixed fee to time and materials, and contract fees changed without documented changes in the level of services. The City entered fixed fee arrangements for more money than being charged through time and materials.

2. Scopes of work were vague and constantly evolving without budget constraints.

(a) There was not a $401 million budget requirement of the Design Studio’s Master Designer Contract, or any other budget constraint as the Design Studio was encouraged to be creative with no limitation.
(b) The City proceeded to Schematic Design on July 24, 2007 and included funding to produce a budget without a projection of the Master Plan cost. The budget of $979.8 million was provided on September 27, 2007, three months after proceeding with the $27.3 million contract. Yet in another three months the estimate went to $1.24 billion, three times the original amount projected to the public of $401 million. The budget was never a contract constraint.

3. Contracts continually increased in cost by margins of more than 25%.

(a) The Design Studio Schematic Design Contract increased from $27.3 million to $42.8 million over 35 months.
(b) The Preview Park involved a series of contracts. The Belaire-West contract at $1.75 million had change orders of $7.7 million. Total costs of the Preview Park were $25.4 million.
(c) The Western Sector Contract increased from $65.5 million to $69.8 million.

4. The contract requirements for a Management Plan were not implemented.

(a) A management plan was not timely produced by Design Studio, nor were corrections requested by the Program Manager made, such that this never became the contract management tool intended.
(b) The record contains testimony that Design Studio resisted the efforts of other City managers to manage their work, that they worked outside of their scope of work, and they did not meet contract requirements.

5. Despite the testimony that suggests failures on the part of Design Studio, it is nevertheless the role of program managers to obtain contract
compliance, and the conclusion is that program managers were not always effective. Bovis is now arguing through their legal counsel that their role was limited.

6. Finally, as discussed more fully in Section IV (Governance), a part of the reason for the ineffective management of contracts appears to be caused by the actions of Chairman Agran, or consultants perceived to be acting on his behalf. Mr. Agran, Gafcon and Forde & Mollrich deny this.

E. REPRESENTATIVE STATEMENTS.


- Landers depo pg. 158-line 8-9: when asked about whether Design Studio turned in a management plan: “I believe they never submitted anything that was satisfactory.”

2. Adherence to City Competitive Bidding Requirements.

- McDevitt depo pg. 50” (Design Studio phase 2 contract, no competitive process or bid; pg. 51, forced to go through Design Studios for all needs (continued through 53).
- Mollrich, pgs. 197-98 – F&M sole sourced; no competitive bidding.
- Kohn depo: Knows Irvine is charter city with municipal code and that he represents the entire entity, not individuals. “Q: So you know there were some [contract] approval processes and procedures, you just don’t recall them? A: That’s correct.” 20:21-23:2 He does not know protocols, customs and procedures for requesting Board and City Council Action 61:8-62:2. States “approved as to form” means “document in question complied with applicable requirements as to form and contained matters necessary to constitute a valid, effective, and enforceable agreement.” 23:7-24 (emphasis added.)
- Sim, Sworn Statement pg. 4: “No bidding, giving contracts to favored people that were referred to “FOL” that the city staff referred to privately as “Friends of Larry.” When that happened, also I think I mentioned to some of the councilmembers, particularly Chairman Agran that you know this was an unethical way to do business and a bad business practice and I think his comment was “but it was not illegal.” Once I realized this was the way the Board was going to do business I decided it was time for me to resign because in my 43 years of being in the development business and my last 20 years with the Irvine Company ethics, good business practices were a way of life for us because that is the only way we as private developers stayed in business over the long-term. To hear that we were going to operate this business in a slip shod manner and having no-bid contracts and ethics were not important, it was just something I could not tolerate and I had to resign and I did.”
• Sim Sworn Statement pgs. 3-4: did not follow bidding procedures with F&M; instead, allowed $100k/month contract under existing City contract as an add-on.

3. **Contract Administration.**

• Kogerman depo pg. 56: “Because I don’t think [Design Studio], in fact, did what we had asked of them. I also don’t believe that some of their subcontractors or associates were fully paid.”

• McDevitt depo pg. 122: failure to pay Mia Lehrer’s invoices: “There’s a number of invoices. I believe she felt like she was owed well over $200,000. So maybe some of them were in our process, but it – we all – we all wanted resolution to whatever the correct resolution was.”

• Kogerman depo pg. 57: there was no accounting of payment to subcontractors “And there was talk in terms of getting -- reaching a settlement, [with Mia Lehrer] and I -- and I told them you can't reach a settlement without ensuring that all subcontractors have been paid and they sign off, acknowledging to the corporation and to the city that they have been paid.”

• Landers depo pg. 72: discussion related to Design Studio submitting subcontractor invoices on Design Studio letterhead

• But, see Gaffen, re paying subcontractors, pg. 167: “We paid [subcontractors] as soon as we got paid. There was no holdup. The delay in payments was due to city process.”

• Landers depo pg. 48, line 5: “The city was not involved, nor the Great Park Corporation, in negotiating a subcontract. The only contract that we were involved in negotiating was the actual contract with the Design Studio.”

• Landers depo pg. 49, line 4: “The contract that we have with the Design Studio lays out the scope of work for the Design Studio. It includes a list of subcontractors that they already planned on using for that work. I did not see their subcontracts.”

• Joyce depo pg. 51: Balloon was treated as an interim improvement instead of a long-term improvement, potentially to avoid planning approvals.

• Joyce depo pg. 55: “Well, if we can return to the example of the balloon, getting approvals for land use specific to the balloon as opposed to a passive park area, for example, requires time. And in instances like that, [Agran] was less concerned about process requirements than advancing the balloon project.”

4. **Need to get Council or Board Approvals.**

• Kogerman depo pg. 59-60: Kogerman had never seen the [Schematic Design Close Out] agreement and disagreed with the recitals fundamentally. For example, “And the statement that you just read, that would only be true if, in fact, at the time this document was prepared, all those moneys had been paid. And, quite frankly, I think who you need to talk to is to talk to Mia, for one, because my understanding was she was never fully paid.”
• Phil Kohn’s April 30, 2010 email: “…that the close-out has been finally completed, without the need for any discretionary action on the part of the Board, and that performance review process will now go forward.”

• Voicemail from Larry Agran to Gaf (date unknown) “Gaf, its Larry, its pushing toward 10:00 Thursday morning. I am going into a whole bunch of meetings in fact I am hoping to drop by the Design Studio with some kinda important folks but otherwise I am real busy all day but I wanted to let you know Phil is pulling together the summary letter, the status letter and that will be available to me probably midday, certainly by the end of the day and it will be sent to Roger at the same time. So that will give us a chance to eyeball that and begin to moving from there. I am tracking this very closely and I will talk to you later on probably at the end of the day.”

• Landers depo pg. 150, line 18: settlement agreements generally go to council.

• Landers depo pg. 151, line 13: “thinking about practice and my knowledge … they typically go to the council.”

• Kohn depo: Does not know why Ex. 6 (his letter responding to disputed issues) was labelled “confidential settlement communication”. He viewed the dispute as a threat of litigation but can’t recall if he discussed it in closed session. 52:15-53:14 All issues raised were resolved “by action taken either by staff or by the City Council.” 54:1-9, 57:13-22 City did not take action on close out agreement after June, 2010. He does not know why he forwarded Roger Grable a copy of draft staff report for comment. 58:16-25 Does not know why he told Grable that draft staff report was “for your eyes only” 59:16-24 (emphasis original) He does not know who listed three recommendations on Ex. 7. 63:12-21 He likely commented on recommendations, but cannot recall what his comments were. 64:3-9.

• Kohn depo: “It was the belief that payment of invoices in the amount referenced ($833,000) were capable of being administratively approved in the meeting without the need to elevate the matter to the city council.” 65:15-18.

• Kohn depo: He did not know the authority staff had to do this, but assumed it was in accordance with the terms of the Design Studio contract [#2] 65:19-25 He does not know of any instance (other than contract #2) where the $833,000 was brought to city council for approval. 66:9-13 Staff brought $554,585 request to City Council because they were not prepared to authorize payment of those invoices themselves. 67:18-68:2.

• Kohn depo: Although he could not recollect specifically, it would have been his “state of mind” to have told people that a subsequent [post June, 2010] closeout contract with Design Studio would be presented to the City Council. 68:20-69:12 (note: this is evidence that Mr. Kohn knew the close out contract should have gone to the City Council after it was prepared).

• Kohn depo: The close out agreement was extensively negotiated. 75:11-14; 77:7-13.

• Kohn depo: “…there was an ability for the contract to be closed out in its entirety without having any aspect of it brought back to the Board…” 79:7-9
Kohn depo: Agran wanted close out issues resolved at staff level and not by the Board. 81:3-10.

Kohn depo: The “sum and substance” of the agreement were approved on June 17, 2010…the physical agreement came later. 82:2-6 (looking at Ex. 13, the final contract, it contains much more than what was conceptually approved on June 17, 2010).

Kohn depo: He had not been involved in prior close outs and does not know what he meant when he wrote of his “prior close outs”. 83:3-10.

Kohn depo: He wrote the close out agreement. 84:3-7.

Kohn depo: Releases were negotiated after June 17, 2010. (note: Per Ex. 7, City only authorized obtaining a release from Design Studio…it did not authorize the language ultimately found in the agreement whereby the City releases Design Studio).

Kohn depo: He does not know why staff didn’t just pay the $833,000 it was authorized to pay (according to Kohn) rather than include it in the written agreement. It could have been just to have everything memorialized in a single document. 89:16-22.

Kohn depo: The final form of the written contract was not provided to the City Council. 90:10-14 He did provide it to Mayor Kang for signature. 90:15-21.

Kohn depo: He drafted the recital that Design Studio performed in a manner satisfactory to the City, and his due diligence for such recital is (1) Board and City accepting the work product of Contract 1, (2) statements by Council members (Agran, Kang, and Krom). 91:25-93:4.

Kohn depo: The City did not approve paying penalties to Design Studio’s former landlord as set forth in the final written agreement. 95:7-96:6.

Kohn depo: He states that the representation at section 7 of the agreement is true; namely, that the City Council carefully read and understood the entire agreement and are entering into it based on their own judgment. 98:11-99:9

Kohn depo: He agrees with Melching’s explanation of why the agreement did not go to Council (Ex. 14). 100:11-18.

Kohn depo: Sean Joyce was involved with negotiating close out agreement. 111:24-112:11.

Kohn depo: 23:3-6: Is not familiar with check-signing procedures.

Kohn depo Exhibit 5: - he did write letters showing fairly detailed and intimate knowledge of Design Studio work. (Exhibit 5)

Kohn depo 62:24-63:11: Knows that Design Studio contract called for a compliance audit, but does not know if one was performed.

Kohn depo pg. 62-63: A: There was a provision in Contract 2 to which this business item pertains that called for a contract compliance review, which some others may refer to as a performance audit or some other terminology, to evaluate certain matters relating to the services completed under the contract. In that it makes reference to the subsequent need to initiate an R.F.P. process, to engage a professional in order to perform that review. Q: Did you participate in that R.F.P. -- or strike that. Do you know if an R.F.P. was done for a contract compliance review? A: I don't recall if it was done or not.

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• McDevitt depo pg. 72: emails from Thom Maxwell-Miller; pg. 78, re fixed fee and controlling hours with DS.
• Mollich depo pg. 208-09: there may have been one or two instances where F&M did work outside their scope of services, but never brought to our attention by staff.
• Landers depo pg. 64, line 16: “This is reflecting an ongoing problem that existed between Design Studio and the Great Park staff in making payments under – on the invoices under the first contract. And there were constant disagreements between staff and the Design Studio about information that was submitted, whether things were in scope, out of scope, whether the documentation was appropriate, invoices being held up for very long periods of time trying to work those things out.”
• McDevitt depo pg. 125-126: “So a lot of [Design Studios’] invoices were difficult to review and required this level of scrutiny.” Disallowed several millions from Design Studio Invoices. Review of design studio invoices were dubious, did not pay up to several millions to Design Studio (not allowed).
• McDevitt depo pg. 128: poor work quality and large bills – “I measured their progress at various points in time through whatever documentation I could review, to prove that they were behind schedule on their own account throughout the entire process.”
• McDevitt depo pg. 129: no project management plan ever provided until very late in program despite this being required (City rejected invoice), so no way to prove delays or over-spending.

5. Consultant and Contractor Cooperation and Compliance.

• Ellzey depo pg. 52: “I was starting to get to understand a little bit more about the reviewing process that Glen Worthington was performing with the invoices. The Bovis relationship, the way that the Design Studio was treating the Bovis relationship, minimizing it, and kind of pushing back constantly and fighting over invoices and things like that.”
• But, see Gaffen, pg. 165, re being behind schedule: “You would have to qualify which schedule. It was submitted behind the original schedule that we had produced when we were going to complete the schematic design in under 12 months. That did not happen, but it was not our fault, if I'll use that word. We discussed the issue with Lennar and multiple other issues where we just couldn't get information to complete our design, which cost us significant time and effort. So the schedule got extended for reasons beyond our control, but it seems like [Ellzey’s] not taking that into account here and he is looking at the original schedule that was produced by all parties knowing what we did, but that’s not what happened.”
• Forde, pg. 18, line 17-25: in response to a question how F&M tracked expenditures for Great Park, “Well, one year we had an hourly - we had a contract where we were billing by the hour, and that year, we kept what we believe are perfect records for the hours we had worked. Other than that,
no.” “…Because it was a fixed-price contract. There was no reason to do that.”

- Forde, pgs. 19:22-20:12: F&M had no internal accounting records that F&M had to track employee hours, it did not have any specific accounting records to track expenses or profits from Great Park project.

- Forde, pg. 104, line 10-15: “Q. Do you have something else that you can offer, based on your knowledge of the Internal documents of Forde & Mollich, that would allow me to measure whether or not certain work was performed where there’s not a specific deliverable? A: No.”

- Landers depo pg. 130, line 2: “I mentioned earlier that on numerous occasions, the Design Studio had done work that was not authorized by the Great Park Manager. …there was some discussion that it might have been passed on in some way … it may have been by the chairman, that that was what Gafcon might have been saying.”

- Landers depo pg. 169, line 15 – “they certainly had the tendency to operate beyond the scope of what they were authorized to do.”

- Ellzey depo pg. 46: “…it was just way too difficult, way too costly for the program manager, way beyond my experience and industry standards in terms of how difficult it was for [program managers] to get through their review of the Design Studio’s work because of the general sloppy nature of the Design Studio’s work.”

- Joyce depo pg. 86-87: “There were frequent concerns with the billing. If I didn’t already say, they were late, lacked specificity, backup…the problems with bills were numerous.”

- Ellzey depo pg. 78: “I think the whole Design Studio structure and concept and single-project studio where we paid their overhead, where we paid, you know, for their offices, where we paid – you know, where we paid for their coffee, where we paid for their stuff, and then at the same time they charged a premium rate hourly where we paid overhead inside that hourly, that was – that was a waste.”

- McDevitt depo pg. 104-105: Design Studio had a fixed-fee contract, which encouraged low-cost high-profit work. This resulted in poor work quality with the least resources spent to maximize profit for Design Studio: “It wasn't necessarily related to the experience of the staff, but it was a way that we could control the costs. We had no control over the costs unless it's a fixed fee. You owe that entity that number. And the only debate you have at that point is the quality of the work, but it's -- you're incurring the cost.”

- McDevitt depo pg. 113, 114: Design Studio regularly exceeded allotted hours, and were compensated accordingly, because they hired “the least experienced staff because they could hire them at the least possible cost.”

- McDevitt depo pg. 114: Design Studio would submit poor work-quality, and then charge for fixing mistakes.

- McDevitt depo pg. 127-128 - Design Studio submitted poor work quality with large bills.
- McDevitt depo pg. 128-129: Design Studio would become delinquent on submitting schedules, and so it would be impossible to prove delays by Design Studios.

- Mollrich depo pg. 250: F&M does not have documents that would track employee hours or overhead by tasks that would justify the $100,000 per month retainer.
VI.

RELATIONSHIPS AND PERSONAL TIES &
THE APPEARANCE OF IMPROPIETY

“I intend to engage GAFCON as owners representative on the construction projects … in Laguna Beach subject to approval of a scope of work and fees.” Stu Molrich

A. SUMMARY STATEMENT.

Throughout the history of the Orange County Great Park project allegations of special dealing and cronyism have been reported. Coupled with a practice of awarding contracts on a sole source or no bid basis, suggestions have been made that personal loyalties and connections have been the controlling considerations in development of the project as opposed to objective and fiscally efficient standards. As noted by both the CEO and his assistant,

“The real focus of the Design Studio was this relationship between Yehudi Gaffen and Arnold Forde and Larry Agran and – making sure that they had their act in sync, and then they would direct everybody else below them, including, effectively the CEO.”

Review of the personal relationships and history of the various contractors and elected officials involved in the project reveals some data that cannot be ignored in an audit designed to report to the City Council and the public on the limited progress that has been made in the building of the Great Park at a very large expense of time and money. Each of the various contracts that were awarded to the primary contractors and subcontractors contain provisions requiring the contractors to avoid even the appearance of impropriety. Evaluation of compliance with that standard is a necessary part of the audit process to determine whether there were violation of contract provisions with regard to this issue.

The two major contracts for the Orange County Great Park during the Audit period, the Agreement for Master Designer Services and the Schematic Design Contract, each set forth requirements that extend to all contractors and subcontractors employed by the Design Studio to avoid creating even the appearance of impropriety. The appearance of impropriety can be created by a wide variety of actions. Impropriety need not be a violation of law. It is a perception that suggests favoritism or self-dealing or malfeasance.

The appearance of impropriety may arise from City Officials recruiting personal friends for employment on City projects, informal exchanges of services among contractors and supervisory consultants, and approval of a settlement agreement.

245 Email dated May 13, 2008 from Stu Molrich to Jerry Bott.
246 Ellzey depo pg. 53., see also McDevitt depo pg. 99.
without providing the Contract itself for Council approval. Each of these issues creates the appearance of impropriety in violation of the contractual obligations of the parties.

Press coverage has highlighted many of these issues repeatedly from the beginning of the Great Park project and the public asked questions that remain unanswered. This portion of the report certainly has political overtones and we cannot be oblivious to the media coverage surrounding the Audit. Nevertheless, our focus is grounded in the contractual responsibilities of the parties. The fact is that the contractors had a binding contractual obligation to refrain from any actions that could create a doubt as to the integrity of the contracting process for millions of dollars expended in public funds. The various actions have been reviewed here to determine whether there are violations of the obligations of those contractors to avoid the appearance of impropriety set forth in their contracts with the City.

B. FINDINGS.

1. The city’s contracts with Design Studio all required avoidance of situations that could create the appearance of impropriety.

2. An instance that illustrates personal relationships creating the appearance of impropriety was when Chairman Agran recruited George Urch, Chairman Agran’s friend and political ally, to work at the Great Park and Chairman Agran recommended Design Studio hire George Urch.

3. The audit has revealed that Gafcon had an agreement to remodel Stu Mollrich’s Laguna Beach house, which created a potential conflict of interest and the appearance of impropriety based on undisclosed financial terms.

4. There was a failure within the Design Studio and Forde & Mollrich to fully disclose all potential conflicts of interest as required by the Schematic Design agreement. Over $4 million in City funds was paid that would have been held pending an investigation had these conflicts been fully disclosed.

5. Failure to secure Council approval of the final Design Studio Close Out Agreement created the appearance of impropriety.

6. We believe there are grounds for legal recovery including contract claims, claims under the False Claims Act, and professional negligence should the council wish to explore them.
C. DISCUSSION.


The Schematic Design Contract and each Subconsultant Contract provides as follows: at Section 1.2.3.7 and 1.2.3.7.1:

“The Architect [Design Studios] (including the Architect’s Representatives and Key Subconsultants) shall not engage in any activity, or accept any employment, interest or contribution, which could create an appearance of impropriety of business affairs or that would reasonably appear to compromise the Architect’s professional judgment with respect to the Project.”

“Architect represents warrants and covenants that it presently has no interest, direct or indirect, that would interfere with or impair in any manner or degree the performance of Architect’s obligations and responsibilities under this Agreement. Architect further agrees that while this Agreement is in effect, Architect shall not acquire or otherwise obtain any interest, direct or indirect, that would interfere with or impair in any manner or degree the performance of Architect’s obligations and responsibilities under this Agreement.”

“Subconsultant (including Subconsultant’s representatives) shall not engage in any activity, or accept employment, interest or contribution, which could create the appearance of impropriety of business affairs or that would reasonably appear to compromise the Subconsultant’s professional judgment with respect to the Project.” (emphasis added.)

Each of the Subconsultant Agreements that were signed with the Design Studio incorporates by reference the terms and provisions of the Schematic Design Contract in Article 1.

These provisions are an integral part of the controlling agreements between the City of Irvine and the Design Studio and all its subcontractors.

2. Chairman Agran Recruited George Urch, Chairman Agran’s Friend And Political Ally, To Work At The Great Park And Chairman Agran Recommended Design Studio Hire George Urch.

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247 Schematic Design Agreement at section 1.2.3.7
248 Schematic Design Agreement at section 1.2.3.7.1. The Master Designer Services Agreement has a similar provision at Section 3.15
249 Subconsultant Agreement at Article 3 section (S)
George Urch was initially given the job title by the Design Studio of “Public Sector Liaison” when he was hired on July 2, 2007. He was paid between $110,000 to $120,000 annually as his salary working for Gafcon.\textsuperscript{250} His role was, as provided during his deposition testimony, both for public affairs and as the Great Park Design Studio’s liaison to the Great Park Board of Directors. According to Mr. Urch and based on his deposition testimony, his role in public affairs was to establish and maintain relationships with key stakeholders and decision-makers that would care about the Project, providing them information on what is happening at the Project, and providing individuals who worked on the Project with potential opportunities for improvements that might help make the Project work more smoothly. Later Mr. Urch’s job title was changed to “Public Affairs Manager” for the Great Park through his employment with Gafcon after the Close Out Agreement with Design Studio and through the end of the audit period in 2012.\textsuperscript{251}

At his deposition, Mr. Agran testified that he regarded Mr. Urch “as a longtime political acquaintance and friend.”\textsuperscript{252}

Chairman Agran “tried to recruit” Mr. Urch to work at the Great Park Project. Before Chairman Agran contacted Mr. Urch, Mr. Urch had not even thought of working on the Project.\textsuperscript{253}

Chairman Agran recommended that Mr. Gaffen of Design Studio hire Mr. Urch for the Project.\textsuperscript{254} Mr. Urch was subsequently hired by the Design Studio to handle public affairs starting on July 2, 2007.\textsuperscript{255}

The Schematic Design Agreement was entered into on August 27, 2007. There was no applicable provision of the Schematic Design Agreement that appears to prohibit a city official or corporate officer from recruiting a longtime political acquaintance and friend to work at the Project. The closest provision of the Schematic Design Agreement that we have reviewed that is relevant is Section 1.3.6.17, providing that: “[n]o officer, official, employee, agent, representative, or volunteer of the Owner shall have any financial interest, direct or indirect, in this Agreement, or participate in any decision relating to this Agreement which affects his or her financial interest or the financial interest of any corporation, partnership, or association in which he or she is interested, in violation of any federal, state, or Owner statute, ordinance, or regulation. The Architect shall not employ any such person while this Agreement is in effect.” (Id. at p. 27 [emphasis added].) A personal or political interest is not covered under this contract provision unless it results in a financial interest.

\textsuperscript{250} Urch depo pg. 28.
\textsuperscript{251} Urch depo pgs. 34, 94-100.
\textsuperscript{252} Id. at p. 84.
\textsuperscript{253} Urch depo pgs. 127-28.
\textsuperscript{254} Agran depo pg. 85.
\textsuperscript{255} Urch depo pg. 23.
Whether or not Mr. Urch provided any free services to Mr. Agran that would create a prohibited financial interest under the above-referenced contract provision is presently unknown. Mr. Agran refused to answer this line of questioning at his deposition on March 13, 2015. Therefore, at this time, we cannot make any findings other than concluding that Chairman Agran recruited George Urch to work at the Great Park and Chairman Agran recommended Design Studio hire George Urch, Chairman Agran’s friend and political ally. This portion of the report will need to be supplemented if Mr. Agran provides the requested information at a later date.

3. The Audit Has Revealed That Gafcon Had An Agreement To Remodel Stu Mollrich’s Laguna Beach House, Which Created A Potential Conflict Of Interest And The Appearance Of Impropriety Based On Undisclosed Financial Terms.

“I intend to engage GAFCON as owners representative on the construction projects …in Laguna Beach subject to approval of a scope of work and fees.” Stu Mollrich

“§1.2.3.7.1 Architect [Design Studio] represents, warrants and covenants that it presently has no interest, direct or indirect, that would interfere with or impair in any manner or degree the performance of Architect’s obligations and responsibilities under this Agreement. Architect further agrees that while this Agreement is in effect, Architect shall not acquire or otherwise obtain any interest, direct or indirect, that would interfere with or impair in any manner or degree the performance of Architect’s obligations and responsibilities under this Agreement.”

In administering the contract, Design Studio and Gafcon are required to invoice the City and to include certification as to the correctness of each billing as follows:

“§1.5.2.1(h) Certification signed by the Architect or his/her designated alternate that (i) the invoice is a true, complete and correct statement of reimbursable costs and progress; (ii) the backup information included with the invoice is true, complete and correct in all material respects, (iii) all payments due and owing to Subcontractors, Subconsultants and suppliers from payments received by the Architect have been made; (iv) timely payments will be made to Subcontractors, Subconsultants and suppliers from proceeds of the payments covered by the certification, and (v) the invoice does not include any amount which the Architect intends to withhold or retain from a Subcontractor, Subconsultant or supplier unless so identified on the invoice. . .”

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256 Id. at pgs. 138-148.
257 Email dated May 13, 2008 from Stu Mollich to Jerry Bott.
259 Schematic Design Agreement at pg. 41.
The arrangement between Gafcon and Stu Mollrich also presents several issues that raise the specter of the appearance of impropriety. The fact that no signed agreement for the services rendered has been produced is of particular concern because it is apparent that a contract was prepared by Gafcon detailing the terms of the agreement and confirming a 30% discount to Stu Mollrich.\textsuperscript{260}

Email correspondence to Jerry Bott of Gafcon and forwarded by Bott to Dennis Walters, Director of Operations for Gafcon and Josh Sebert, shows that Mollrich confirmed on May 13, 2008 that he intended to engage Gafcon for two residential projects. The contacts at Gafcon, however, were concerned about the situation. In an email discussing Mollrich’s proposed confirmation, Josh Sebert advised Jerry Bott and Dennis Walters as follows:

“This is not good enough to keep working on his project. We need a formal contract in place before we do more work that may put us at risk. (short letter agreement outlining scope/fees and general conditions will suffice)”\textsuperscript{261}

This exchange references work that had already been completed without a contract and resulted in the preparation of a letter agreement as recommended by Josh Sebert. The draft agreement which was dated May 14, 2008 and signed by Dennis Walters for Gafcon, was forwarded to Mollrich by Joshua Sebert of Gafcon on May 23, 2008.\textsuperscript{262} That agreement was faxed to Mollrich on May 23, 2008. No copy of the agreement signed by Mollrich was produced.

The draft agreement explains that the first date when services had been provided on the project was September 5, 2007.\textsuperscript{263} Apparently there were some negotiations that took place after the draft agreement was presented to Mollrich. Email correspondence dated May 26, 2008 from Gaffen to Mollrich outlines an agreement that appears to have been reached with regard to various matters. It reads as follows:

“Hi Stu

Wanted to memorialize my understanding of the agreements reached on Friday.

- For all work shown on the attached you will pay $10,000
- From that date on you will pay our standard rates less 30%
- We will use Irvine based personnel as much as possible to limit travel time charges
- Jerry and Stu will meet to agree on level of effort expectations going forward as well as introduce person who will be taking on the assignments in Irvine. GaF\textsuperscript{264}

\textsuperscript{260}Email dated May 26, 2008 from Yehudi Gaffen to Stu Mollrich.
\textsuperscript{261}Email dated May 13, 2008 from Josh Sebert to Jerry Bott, Dennis Walters and file.
\textsuperscript{262}Fax transmittal dated May 23, 2008 from Joshua Sebert to Stu Mollrich.
\textsuperscript{263}Draft Letter Agreement between Gafcon and Mollrich dated May 14, 2008 at pg. 2.
\textsuperscript{264}Email dated May 26, 2008 from Yehudi Gaffen to Stu Mollrich.
The date of the next correspondence produced regarding this issue is August 19, 2008 when the May 26th email was apparently forwarded to Dennis Walters and Josh Sebert. On August 20, 2008, Dennis Walters summarized the financial issues being addressed by the proposed agreement as follows in an email directed to Jasmine Dizon with a copy to Pam Gaffen:

“Based on the agreement shown below, we will be reimbursed as follows:

<table>
<thead>
<tr>
<th>Invoices prior to 4-1-08</th>
<th>total- $36,974.75</th>
<th>Collect: $10,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Invoices after 4-1-08</td>
<td>total- $11,743.00</td>
<td>Collect $ 8,220</td>
</tr>
</tbody>
</table>

($11,743 less 30% -11743 x 70% = 8220.1)

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$48,717.75  $18,220”

Email correspondence dated August 25, 2008 from Dennis Walters to Josh Sebert reflects that a negotiated agreement had apparently been reached between Gafcon and Mollich. The emails note:

“Based on the email from yesterday and Gaff’s request, I have revised the contract compensation section to match the agreement in the email. I also added a bullet point in the scope area to indicate we will endeavor to use personnel out of the Irvine office to help reduce travel costs. . . .

I suggest we include in the package the revised contract attached. Ask him to sign the revised contract and return with the payments. Just my thought.”

Thus, the result of the negotiation was to reduce the amount owed by Mollich to Gafcon by more than $30,000 on work performed in 2007 and 2008.

Apparently, something in the interaction between Gafcon and Mollich caught the attention of the Internal Revenue Service, however. That sparked exchanges between Mollich and Gafcon relating to invoices for services from 2008. The earliest of those produced is dated August 5, 2011. It notes as follows:

“. . . I am working to get you copies of the invoices paid by Stu Mollich Communications for Gafcon for business development consulting services. According to our records, two payments were made to Gafcon by SMC [Stu Mollich Communications] during the period being audited. One was a payment of $25,000 made on 10/8/2008 and a second payment of $20,000 on 2/26/2009. A third payment of $27,000 was made on 4/30/2009. There were no written agreements which reference these payments only an oral agreement between me and Gaf and the invoices. I

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265 Email dated August 20, 2008 from Dennis Walters to Jasmine Dizon.
266 Emails from Dennis Walters to Josh Sebert, Yehudi Gaffen, Pam Gaffen dated August 22 and 25, 2008.
will try to get copies of the invoices and cancelled checks that match these payments.\textsuperscript{267}

Invoice 27771 was produced dated February 16, 2009 and showing an un-itemized total due of $20,000 for the time period from September 2008 – January 2009 for Consulting Services. No tasks or time are reflected on the invoice. Invoice 29229 was also produced. That invoice shows a total due of $30,987.52 for 12 outstanding invoices. The invoice also itemizes 22.8 hours of labor for a total fee of $3523.50 reduced by a 30% discount to $2466.45.

According to email correspondence dated August 10, 2011, from Molllrich to Gafcon, Molllrich provided statements for Gafcon to use in response to the IRS investigation of Stu Molllrich Communications, Inc.:

“Here is some information that you can use to respond to the IRS request for information regarding work performed by Gafcon for Stu Molllrich Communications Inc. during the period May 1, 2008 through April 30, 2009.

1. Written description of the scope of work performed, starting and ending dates of the project. – Here is the statement which my accountant provided to the IRS “‘Per review of the items in my file, we previously reviewed areas of SMC services that fit into one of Gafcon’s areas of program management—that of large public works projects. These projects typically require public outreach, communications and community based planning services of the type provided by Stu Molllrich Communications. SMC made an agreement with Gafcon to help SMC identify opportunities to provide services to these projects.”

The time referenced by the invoices 27771 is September 2008 through January 2009. We need to check invoice 27078 to see what the starting date of the project was.

2. Provide written contract agreement, etc. [sic] – There was no written agreement, contract or letter of engagement.

3. Written correspondence between Gafcon and the client. There was no written correspondence between Gafcon and the client.

4. Invoices between Gafcon and the client. Two Invoices were issued by Gafcon Stu Molllrich Communications, Inc. invoices paid by Stu Molllrich Communications. Two invoices were issued. One is attached. It is invoice 27771 for $20,000 we do not have a copy of the second invoice #27078, for $25,000 but presumably you do.

\textsuperscript{267} Email from Stu Molllrich to Robin Duveen at Gafcon dated August 5, 2011.
5. Amounts paid to Gafcon by client. Both these invoices were paid for a total of $45,000.”

An email from Stu Mollrich to Casey San Fillipo of Gafcon dated August 12, 2011 asks:

“Do you have copies of the invoices references in these invoices [27771 and 29229] 26894, 26893, 27167, 27307, 27491, 27561? Who were they issued to – Stu Mollrich or Stu Mollrich Communications, Inc.?”

A final email sent by Stu Mollrich to Gafcon dated August 12, 2011 indicates that Mollrich’s CPA has negotiated a settlement with the IRS that will make it unnecessary for you to respond to the information request you received. I will confirm this with you on Monday. 268

It is difficult to know exactly what is being discussed here. Each of the two invoices provided are directed to Stu Mollrich with the second line showing Stu Mollrich Communications (SMC) as the recipient. The draft letter agreements relating to work performed on Mollrich’s residences, however, are directed to Stu Mollrich at the same address shown for SMC. Nothing produced in this Audit, however, indicates that Gafcon performed additional services to SMC above and beyond the services provided to Mollrich for his personal residences.

Section 1.3.6.25 of the Schematic Design Agreement provides that “[a]ll office furnishings, tools, equipment and materials purchased for the Architect’s use, at the Owner’s costs, in connection with performing services hereunder, including but not limited to any computer hardware and software purchased or licensed in connection (herewith) shall be the property of the Owner, and shall be dedicated by the Architect to use exclusively in connection with performing Services for the Owner hereunder.” 269 A critical change order, Change Order 35, was approved between May and June 2009 by the Corporation Board and City Council for the City to directly pay overhead expenses for the Design Studio Offices as an item of reimbursable expense. 270

Prior to that approval, Mr. Mollrich had requested that the Design Studio offices be used for his personal remodel job on his Laguna Beach home, as explained above. That is a potential violation of Section 1.3.6.25 of the Schematic Design Agreement because Gafcon provided professional services to Mr. Mollrich for his home through 2010, after Change Order 35 was approved. We have not determined during the Audit if the Design Studio office was actually used for Mr. Mollrich’s personal remodel project for his home in Laguna Beach. Gafcon denies this allegation and has provided us with documentation showing that the work done by Gafcon on Mr. Mollrich’s personal remodel project for his home in Laguna Beach was actually done through an employee out of Gafcon’s San Diego office.

268 Email from Stu Mollrich to Robin Duveen of Gafcon dated August 12, 2011.
269 Id. at pg. 30 (emphasis added).
270 Id. pg. 2; Exhibit H.
Another relevant issue here is, however, if the City Council would have ever approved Change Order 35 had the City Council known about this arrangement Gafcon had agreed to with Mr. Mollrich to use resources from the Design Studio offices for Mr. Mollrich’s personal remodel project for his home in Laguna Beach. At a minimum, this arrangement created an appearance of impropriety under Section 1.3.6.25 of the Schematic Design Agreement because Gafcon provided professional services to Mr. Mollrich for his home through 2010, after Change Order 35 was approved.

The fact that Gafcon, as the project manager for the Design Studio, was required to review invoices for services provided to the Corporation for payment to Forde & Mollrich, however, creates a supervisory role that could be compromised by contracts entered into by Gafcon to provide professional services to either Stu Mollrich individually or to his privately held company.

On March 20, 2015, Gafcon’s attorney provided declarations of Santiago Ruiz and Robin Duveen of Gafcon. The position taken by these employees of Gafcon is that they merely received and forwarded bills received from Forde & Mollrich to the City for payment. These claims by these Gafcon employees are inconsistent with the deposition testimony of former Corporation staff and the requirement that Gafcon certify all Forde & Mollrich bills for accuracy under the Schematic Design Agreement.²⁷¹

It is clear from various email exchanges between Gafcon and Mitzy Dudly of Forde & Mollrich that there were instances of dispute and disagreement over billings for the Great Park that had to be reviewed and signed off on by Gafcon.²⁷² At such times the nature of the overall relationship between these two entities would be an important and potentially conflicting point of interest.

Mollrich was clearly a principal in Forde & Mollrich, and in that capacity was a subcontractor to the Design Studio which was managed by Gafcon. Exchange of professional services at discounted prices for private issues creates at a minimum the appearance of impropriety contrary to the contractual obligations of each entity to the Great Park and the City of Irvine.

4. **There Was A Failure Within The Design Studio And Forde & Mollrich To Fully Disclose All Potential Conflicts Of Interest As Required By The Schematic Design Agreement. Over $4 Million In City Funds Was Paid That Would Have Been Held Pending An Investigation Had These Conflicts Been Fully Disclosed.**

The recent Declarations of Sean Joyce and Michael Elzey and the depositions of Sukhee Kang and Larry Agran each support that there were non-disclosed conflicts of interest that were in material violation of the terms of the Schematic Design Agreement.

²⁷¹ Schematic Design Agreement, pg. 41; Burgess depo at pgs. 23-25. City staff relied on Design Studio and could not verify F&M billings for accuracy.
²⁷² See email exchanges where adjustments to billings are discussed at Allevato depo, Exhibits 4 and 7.
Specifically, Sean Joyce and Michael Ellzey were unaware, as provided in their respective declarations for the Audit, of the professional services provided by Gafcon, Inc. to Stu Mollrich for at least one home in Laguna Beach between 2008 to 2010. This information was not previously disclosed to them by any member of the Design Studio, Mr. Mollrich or any other person or entity prior to the Audit. Sukhee Kang and Larry Agran also testified that they did not know of the professional services provided by Gafcon, Inc. to Stu Mollrich for at least one home in Laguna Beach between 2008 to 2010.273

The City relied on the Great Park Design Studio to oversee work done by Forde & Mollrich, who was a subconsultant of the Design Studio under the Schematic Design Agreement. The City also relied on the Great Park Design Studio and Forde & Mollrich to fully disclose all potential conflicts of interest to the City prior to the approval by the City Council of any contracts or change orders involving them or their principals.

The Schematic Design Agreement contained a number of provisions prohibiting conflicts of interest and requiring full disclosure of any potential conflicts of interest as previously explained in detail in this report. Full compliance with these Conflict of Interest Provisions is of critical importance to the City to protect the integrity of the contracting process. Compliance with these Conflict of Interest Provisions was required.

Had Mr. Joyce or Mr. Ellzey been provided with the information concerning professional services provided by Gafcon, Inc. to Stu Mollrich for at least one home in Laguna Beach during that time period, they would have contacted the City Attorney and initiated a review of the matter.

Mr. Ellzey has provided in his declaration that corporation staff would have been instructed by him to process no further payments to the Design Studio and Forde & Mollrich unless and until the matter was resolved. Based on information reviewed during the Audit, the total amount paid by the City exceeds $4 million for the change orders and the amount of the Close Out Agreement that was approved by the City Council during the relevant time period in 2009 to 2010, without the disclosure of this potential conflict of interest that was in violation of the Schematic Design Agreement.

We have also reviewed during the course of the current phase of the Audit other potential conflicts of interests that could violate provisions of the Schematic Design Agreement. For example, Sam Allevato was an employee of Forde & Mollrich from August 2007 through the fall of 2012 while he was also an elected member of the San Juan Capistrano City Council.274 Mr. Allevato’s official job title was “Community Relations/Public Information Officer for the Great Park Design Studio” at all relevant times discussed below.275

On December 10, 2007, Gafcon submitted a proposal for the Lower Rosan Ranch project to the redevelopment agency of the City of San Juan Capistrano. Gafcon

273 Kang depo pgs. 26-27; Agran depo pgs. 143-145
275 Allevato depo pg. 23.
listed in that proposal the Great Park Design Studio Office in Irvine as its location for that work in San Juan Capistrano, rather than listing its location to do the work for the proposal through its San Diego office or Los Angeles office.\textsuperscript{276}

As a councilmember and redevelopment agency board member for the City of San Juan Capistrano, Mr. Allevato voted to hire Gafcon, Inc. as a consultant for that City’s redevelopment agency in February 2008.\textsuperscript{277} Mr. Allevato could have read Gafcon’s RFP and realized that the Great Park Design Studio location was being used by Gafcon in its bid.

Additionally, there was also testimony received during the Audit that SharePoint360, a software program used by Design Studio, did not function properly during much of the Project. Witnesses also testified at their depositions that Gafcon did not disclose that the SharePoint360 product used by the City was owned by the wife of Mr. Gaffen, who owns Gafcon.

The potential conflict of interest matters involving Mr. Allevato and SharePoint360 should have been fully disclosed to the City during the Project pursuant to the Schematic Design Agreement.

5. Failure To Obtain Council Approval Of The Final Design Studio Close Out Agreement Created The Appearance Of Impropriety.

Question: “Let me show you a document. . . It’s entitled ‘Agreement Concerning Close-Out of Schematic Design Contract.’ The date of the agreement is August 13, 2010. . . I just want to see if you’ve ever seen it before.”

Answer: “To my knowledge, I have never seen this document.” – William Kogerman\textsuperscript{278}

The Close Out Agreement (which is also discussed in Section III of this Audit Report), purports to terminate the Master Designer and Schematic Design Contracts and settle all matters between the City and Design Studio related to that contract. The Agreement was proposed in late 2009 when serious concerns were expressed regarding the feasibility of the Master Plan by staff and the public. The terms of the Close Out Agreement were negotiated during early 2010 by staff and the Design Studio and an outline of the settlement was presented to the City Council at a joint Council/GPC meeting on June 17, 2010. At that meeting, a staff report asked for Council approval to compromise several outstanding claims for the amount of approximately $554,585. The staff report for that item provided that additional amounts would be handled administratively that could amount to an additional $833,000. A motion was made in public to approve in concept a settlement of the $554,585 amount, but no settlement agreement or other contract was presented to the City Council for

\textsuperscript{276} Agran depo, Exhibit 2.
\textsuperscript{277} San Juan Capistrano Redevelopment Agency minutes February 19, 2008.
\textsuperscript{278} Kogerman depo pg. 55-56.
approval. Discussion only affirmed the amount of the settlement and the concept of settlement with Design Studio.  

Rutan & Tucker in its role as City Attorney subsequently prepared the Close Out Agreement that stated affirmatively that the City was satisfied with the performance of the Design Studio under the Schematic Design Contract and itemized the amount of the settlement including the $833,000 that had been administratively reviewed and approved. The Close Out Agreement was not presented to the City Council for approval. Moreover, the Close Out Agreement was never placed later on a subsequent City Council agenda for public comment or City Council approval prior to its execution by the Mayor in August 2010.

The Close Out Agreement included significant recitals relating to performance by Design Studio. Recital A states that the Design Studio “performed its obligations under the Master Designer Contract in a manner satisfactory to the City and Corporation.” Recital B states that Design Studio “performed its obligations under the Schematic Design Contract in a manner satisfactory to the City.” Recital C states that “GPDS and the City now desire and hereby intend to close out the Schematic Design Contract in order to comprehensively and finally determine, reconcile and authorize for prompt payment outstanding change orders, change order requests, invoices and all other requests by or on behalf of GPDS for compensation arising under or in any way relating to the performance of services in accordance with or pursuant to the Schematic Design Contract.”

It is beyond the scope of this Audit to comprehensively address theories by which some of the legal issues which arise from the above facts, and if they are to be addressed, a confidential closed session memorandum is more appropriate. City Attorney Philip Kohn’s deposition provides his answers to the questions we raised. However, there are two points we would like to raise. First, even if there were a legal theory to justify the administrative approval of $800,000 of expenses without formal Council action, the effect of the agreement provisions limiting the City’s ability to pursue any other theories of recovery against Design Studio would appear to be a contract provision which should have gone before the Council. Second, when asked to provide an explanation of why this could not have been brought back to the Council for action, Attorney Kohn testified that Chairman Agran wanted the close-out issues resolved at the staff level and not by the Board.

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279 Minutes, meeting of June 17, 2010.
280 Kohn depo pg. 90.
281 These recitals appear to be internally contradictory and include representations with regard to City acceptance of performance under the Schematic Design Contract that are not supported by the record. The Schematic Design Agreement clearly was not performed in full. If it had been, no Close Out Agreement compromising on an assortment of incomplete and questioned issues would have been necessary. As noted by William Kogerman “And the statement that you just read,[that Design Studio performance was satisfactory to City] that would only be true if, in fact, at the time this document was prepared, all those moneys had been paid. And, quite frankly, I think who you need to talk to is to talk to Mia, for one, because my understanding was she was never fully paid.” (Kogerman Depo., pgs.60).
282 Agran depo pg 81:3-7.
The importance of the failure to present the Close Out Agreement to the entire Council at a public meeting coupled with the finding of satisfactory performance on the part of Design Studio is shown by the testimony of former Great Park Corporation Board Member William Kogerman during the Audit. Mr. Kogerman is the Board Member who made the motion to approve the $554,585 payment to Design Studio to close out its work. When shown the Close Out Agreement at his deposition, however, Mr. Kogerman indicated he had never seen it before, and testified that he would have never voted in favor of the Close Out Agreement as drafted. Mr. Kogerman specifically did not agree with the statement that Design Studio "performed its obligations under the Schematic Design Contract in a manner satisfactory to the City," because he didn’t “think they, in fact, did what [the Great Park Corporation] had asked of them.”

Under the Schematic Design Contract, the City was entitled to terminate the Agreement at any time with or without cause. If the Schematic Design Agreement had been terminated for cause, the contract provides:

“The Owner shall be entitled to recover against the Architect the reasonable cost of completing the Services, and such other costs, including losses, damages, attorney’s fees and expenses, incurred by the Owner in connection with the re-procurement and defense of claims arising from the Architect’s default.”

There were ongoing disputes at the time of the Close Out Agreement regarding a number of deliverables due to the Great Park Corporation that were not delivered in a satisfactory manner. For example, Mr. Ellzey and Ms. Landers each testified that the various Priority Program Feasibility Studies did little more than “churn fee”, and were so “poorly written” that they required extensive work from staff of the Great Park Corporation to fix these studies. Ms. Landers testified that it was “unacceptable that [Design Studio] provided [the Great Park Corporation] with material that was not in a final form.”

Another example of disputes concerning alleged lack of performance by Design Studio is the 70 Percent Schematic Design, which, according to Mr. Ellzey, was delivered “six months behind schedule and was a poor quality product.” Review by Great Park staff and Bovis Lend Lease necessitated significant commenting – over 3000 comments – and was ultimately rejected by Bovis.

A final example of disputes over the alleged lack of quality of Design Studio’s work is a project management plan, which, according to Mr. McDevitt, was an “early

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283 Kogerman depo pg. 56;60.
284 Kogerman depo pg. 56.
285 Schematic Design Contract at section 1.3.8.2 and 1.3.8.3.
286 Schematic Design Contract at section 1.3.8.2.
287 Ellzey depo pgs. 75-76.
288 Landers depo pgs. 127-129.
289 Lander depo pg. 129.
290 Ellzey Statement at p. 6.
“until a year and a half after … they had already begun work… and, in fact, it was never really delivered because the one that was delivered was so incomplete that it …wouldn't have been approved by day one if it had been submitted on [the correct] time.”

Numerous additional examples exist with respect to the Design Studio and deliverables that were allegedly not provided as required based on witness testimony during the Audit. Each of these examples provide significant concern when analyzed in the context of the Close-Out Agreement. Questions certainly existed by 2009 about the performance of Design Studio. Why those matters were not fully assessed by the City then is unknown. The controlling issue here, however, remains the fact that the Council was never presented with the actual Close Out Agreement itself to determine contract compliance.

In December 2014, Gafcon obtained a declaration from former PBS&J employee Sam Hout. PSBS&J was a subconsultant to Bovis. Mr. Hout made allegations in his declaration that HSNO failed to follow up on positive statements he made about Gafcon. A review of the prior communications between Mr. Hout, HSNO and the City's former special counsel, Kim Barlow, does not support this contention.

The City's current special counsel reviewed Gafcon's allegations from the Sam Hout declaration with legal counsel for Bovis, the general counsel of PBS&J (now called Atkins) and also with the legal counsel of Mr. Hout's current employer. Neither legal department agreed to represent Mr. Hout in a deposition.

Because of legal concerns, Mr. Hout's deposition could not be taken without the cooperation of an attorney from his current or former employer because Mr. Hout's testimony could create the risk of potential liability for them based on the allegations in his declaration.

Mr. Hout's statements in his declaration obtained by Gafcon have been fully considered. Mr. Hout made statements to support Gafcon's argument that they did quality work in general for the Great Park. Other witnesses as explained in this audit report have disagreed in sworn testimony that Gafcon did quality work on specific aspects of the work they did on the Great Park.

The testimony about Gafcon's performance in general is in conflict. Because there is conflicting testimony, no finding is made with regard to any alleged general lack of quality work by Gafcon. Performance deficiencies that are disputed by Gafcon are described in this report based on testimony received during the Audit. Gafcon denies having any deficiencies.

291 McDevitt depo pg. 130.
292 McDevitt depo pg. 130.
293 Mr. Hout's declaration that Gafcon obtained was not sworn under penalty of perjury.
6. Special Counsel If Requested By The City Council Could Analyze Potential Grounds For Recovery In A Confidential Opinion To The City Counsel For Closed Session, Including For Breach Of Contract, False Claims And Professional Malpractice.

The focus of the Audit to this point has been on explaining how the money got spent, and what the community received during the development of the Great Park for the monies expended. There are remedial areas which could be explored in the future. These include the potential restructuring of the governance structure, modifying current Great Park and City rules and procedures, considering Charter changes, and considering whether there is any basis to recover monies against vendors and entities.

Of course, criminal matters are handled by the District Attorney’s Office. As for the other matters described above, it would be for the City Council to determine whether these matters should be pursued. There are several theories of recovery which could be considered.

The following discussion is intended for general informational purposes only for this report. A more specific legal discussion with the City Council concerning the particular facts and circumstances discussed in this report is appropriate for a closed session discussion under the Brown Act.

(a) Contract Claims.

There are different types of breach of contract claims. One type of contract claim arises when a party breaches a material term of a written contract and where the injured party sustains damages because of the breach of contract. The injured party, the plaintiff, typically has four years to file a lawsuit over a breach of contract claim from when the breach occurred. (Code of Civil Proc. Section 337) There are numerous defenses that can be raised to a breach of contract claim such as that the breach of contract was excused or consented to by the plaintiff or that the breach of the contract was not material or did not cause damages to be suffered by the plaintiff.

Another type of contract claim is for rescission of the contract based on new information learned by a plaintiff that was concealed from it on grounds of fraud or mistake when the contract was entered into. “Where the ground for rescission (of a contract) is fraud or mistake, the time does not begin to run until the discovery by the aggrieved party of the facts constituting the fraud or mistake.” (Code of Civ. Proc. Section 337, subpart (3).) There are defenses that can be raised against a lawsuit for rescission of contract such as that there was not sufficient evidence to support a claim of fraud or mistake.

(b) False Claims Act.

Courts in California recognize broad recovery rights for public agencies under the False Claims Act for undisclosed violations of material contract provisions that result in the payment of public funds by a public agency that the public agency would not
otherwise pay. ([San Francisco Unified School Dist. ex rel. Contreras v. Laidlaw Transit, Inc. (2010) 182 Cal. App. 4th 438]”a vendor implies certifies compliance with its express contractual requirements when it bills a public agency for providing goods or services. Allegations that the implied certification was false and had a natural tendency to influence the public agency’s decision to pay for the goods or services are sufficient to survive a demurrer”).

Under the California False Claims Act, public agencies can go back up to 10 years to assert claims that were previously unknown and a public agency has three years from discovery, or when it should have reasonably discovered, a false claim to file suit. ([Government Code Section 12654(a).] A party can raise defenses to a false claim such as that they disclosed all material information prior to receiving payment from a public agency or that a false claim for payment was not made.

(c) Professional Negligence.

A cause of action for professional negligence arises when a plaintiff incurs significant expenses, actual and appreciable harm, due to the failure of an architect or engineer to meet the general standard of professional care and skill on a particular design project for the plaintiff. There are defenses that a design professional can raise to a professional negligence claim such as that the design professional did in fact meet the proper standard of care, that the costs incurred by the client were unforeseeable by the design professional or caused by the client’s requests or the statute of limitations.

A two year statute of limitations has been found to apply when a client of a design professional incurs significant expenses because of an alleged breach of the professional standard of care by a design professional. ([Code of Civ. Proc. Section 339(1); Roger E. Smith v. SHN Consulting Engineers & Geologists (2001) 89 Cal.App.4th 638, 650-53.] Each of the above legal theories for recovery can be discussed in greater detail with the Council in closed session.

D. CONCLUSION.

The Design Studio’s Schematic Design Agreement with the City and the Design Studio’s agreements with its subconsultants both contain detailed provisions prohibiting potential conflicts of interest and the appearance of impropriety.

We have provided several examples in the above section of this report of potential conflicts of interest and matters creating the appearance of impropriety, including: (i) Chairman Agran recruiting George Urch, Chairman Agran’s friend and political ally, to work for Gafcon on the Great Park in 2007, (ii) Gafcon’s agreement with Stu Mollrich for remodeling work on Mr. Mollrich’s Laguna Beach house between at least 2008 to 2010, while Forde & Mollrich was a subconsultant of Design Studio, and (iii) the failure to obtain Council approval of the actual Close Out Agreement at the conclusion of Design Studio’s services in 2010 on the Great Park.
The City has potential legal claims against Gafcon, Forde & Mollrich and potentially others for these matters that created potential conflicts of interest and matters creating the appearance of impropriety. The decision of whether or not to pursue these claims rests in the sound discretion of the City Council and is the proper subject of a closed session discussion.

E. REPRESENTATIVE STATEMENTS.

- Sim Sworn Statement pg. 4: “No bidding, giving contracts to favored people that were referred to “FOL” that the city staff referred to privately as “Friends of Larry.” When that happened, also I think I mentioned to some of the councilmembers, particularly Chairman Agran that you know this was an unethical way to do business and a bad business practice and I think his comment was “but it was not illegal.” Once I realized this was the way the Board was going to do business I decided it was time for me to resign because in my 43 years of being in the development business and my last 20 years with the Irvine Company ethics, good business practices were a way of life for us because that is the only way we as private developers stayed in business over the long-term. To hear that we were going to operate this business in a slip shod manner and having no-bid contracts and ethics were not important, it was just something I could not tolerate and I had to resign and I did.”

- Sim Sworn Statement pg. 4: did not follow bidding procedures with F&M; instead, allowed $100k/month contract under existing City contract as an add-on.

- Ellzey Depo pg. 39: “It was one of those things where if we eventually rose to the level of trying to shut down something that we didn’t believe was being – was worth our investment, it would go to – it would go to Gaffen, it would go to Arnold Forde, it would come back and we would be told to shove it, basically.”

- Kogeram Depo pg. 56;60: Kogeram had never seen the agreement and disagreed with the recitals fundamentally. For example, “And the statement that you just read, that would only be true if, in fact, at the time this document was prepared, all those moneys had been paid. And, quite frankly, I think who you need to talk to is to talk to Mia, for one, because my understanding was she was never fully paid.”

- Phil Kohn’s April 30, 2010 email: “…that the close-out has been finally completed, without the need for any discretionary action on the part of the Board, and that performance review process will now go forward.”

- Kohn Depo: “It was the belief that payment of invoices in the amount referenced ($833,000) were capable of being administratively approved in the meeting without the need to elevate the matter to the city council” 65:15-18.

- Kohn Depo: He did not know the authority staff had to do this, but assumed it was in accordance with the terms of the Design Studio contract [#2] 65:19-25. He does not know of any instance (other than contract #2) where the $833,000 was brought to city council for approval, 66:1-13. Staff brought
$554,585 request to City Council because they were not prepared to authorize payment of those invoices themselves. 67:18-25.

- Kohn Depo: Although he could not recollect specifically, it would have been his "state of mind" to have told people that a subsequent [post June, 2010] closeout contract with Design Studio would be presented to the City Council 68:20-69:12.

- Kohn Depo: The close out agreement was extensively negotiated 75:11-14; 77:7-13.

- Kohn Depo: “…there was an ability for the contract to be closed out in its entirety without having any aspect of it brought back to the Board…” 79:7-9

- Kohn Depo: Agran wanted close out issues resolved at staff level and not by the Board 81:3-10.

- Kohn Depo: The “sum and substance” of the agreement were approved on June 17, 2010…the physical agreement came later. 82:2-6. (looking at Ex. 13, the final contract, it contains much more than what was conceptually approved on June 17, 2010).

- Kohn Depo: He had not been involved in prior close outs and does not know what he meant when he wrote of his “prior close outs” 83:3-10.

- Kohn Depo: He wrote the close out agreement 84:3-7.

- Kohn Depo: Releases were negotiated after June 17, 2010 (note: Per Ex. 7, City only authorized obtaining a release from Design Studio…it did not authorize the language ultimately found in the agreement whereby the City releases Design Studio).

- Kohn Depo: He does not know why staff didn’t just pay the $833,000 it was authorized to pay (according to Kohn) rather than include it in the written agreement. It could have been just to have everything memorialized in a single document. 89:16-22.

- Kohn Depo: The final form of the written contract was not provided to the City Council 90:10-14. He did provide it to Mayor Kang for signature 90:15-21.

- Kohn Depo: He drafted the recital that Design Studio performed in a manner satisfactory to the City, and his due diligence for such recital is (1) Board and City accepting the work product of Contract 1, (2) statements by Council members (Agran, Kang, and Krom) 91:25-93:4.

- Kohn Depo: The City did not approve paying penalties to Design Studio’s former landlord as set forth in the final written agreement 95:7--96:6.

- Kohn Depo: He states that the representation at section 7 of the agreement is true; namely, that the City Council carefully read and understood the entire agreement and are entering into it based on their own judgment. 98:11-99:9.

- Kohn Depo: He agrees with Melching’s explanation of why the agreement did not go to Council (Ex. 14) 100:11-18.

- Kohn Depo: Sean Joyce was involved with negotiating close out agreement 111:24-112:11.

- Kohn Depo, Exhibit 5: he did write letters showing fairly detailed and intimate knowledge of Design Studio work (Exhibit 5).
• Kohn Depo, 62:24-63:10: Knows that Design Studio contract called for a compliance audit, but does not know if one was performed.

• Kohn Depo, pg. 62-63: A: There was a provision in Contract 2 to which this business item pertains that called for a contract compliance review, which some others may refer to as a performance audit or some other terminology, to evaluate certain matters relating to the services completed under the contract. In that it makes reference to the subsequent need to initiate an R.F.P. process, to engage a professional in order to perform that review. Q: Did you participate in that R.F.P. -- or strike that. Do you know if an R.F.P. was done for a contract compliance review? A: I don't recall if it was done or not.

• McDevitt depo pg. 72: emails from Thom Maxwell-Miller; pg. 78, re fixed fee and controlling hours with DS.

• Mollichdep pg. 208-09: there may have been one or two instances where F&M did work outside their scope of services, but never brought to our attention by staff.

• Landers depo pg. 64, line 16: “This is reflecting an ongoing problem that existed between Design Studio and the Great Park staff in making payments under – on the invoices under the first contract. And there were constant disagreements between staff and the Design Studio about information that was submitted, whether things were in scope, out of scope, whether the documentation was appropriate, invoices being held up for very long periods of time trying to work those things out.”

• McDevitt depo pg. 125-126: “So a lot of [Design Studios'] invoices were difficult to review and required this level of scrutiny.” Disallowed several millions from Design Studio Invoices. Review of design studio invoices were dubious, did not pay up to several millions to Design Studio (not allowed).

• McDevitt depo pg. 128: poor work quality and large bills – “I measured their progress at various points in time through whatever documentation I could review, to prove that they were behind schedule on their own account throughout the entire process.”

• McDevitt depo pg. 129: no project management plan ever provided until very late in program despite this being required (City rejected invoice), so no way to prove delays or over-spending.

• Ellzey depo pg. 52: “I was starting to get to understand a little bit more about the reviewing process that Glen Worthington was performing with the invoices. The Bovis relationship, the way that the Design Studio was treating the Bovis relationship, minimizing it, and kind of pushing back constantly and fighting over invoices and things like that.”

• But, see Gaffen, pg. 165, re being behind schedule: “You would have to qualify which schedule. It was submitted behind the original schedule that we had produced when we were going to complete the schematic design in under 12 months. That did not happen, but it was not our fault, if I'll use that word. We discussed the issue with Lennar and multiple other issues where we just couldn't get information to complete our design, which cost us significant time and effort. So the schedule got extended for reasons beyond
our control, but it seems like [Ellzey’s] not taking that into account here and he is looking at the original schedule that was produced by all parties knowing what we did, but that’s not what happened.”

- Forde pg. 18, line 17-25: in response to a question how F&M tracked expenditures for Great Park, “Well, one year we had an hourly—we had a contract where we were billing by the hour, and that year, we kept what we believe are perfect records for the hours we had worked. Other than that, no.” … “Because it was a fixed-price contract. There was no reason to do that.”

- Forde pg. 19:22-20:12: F&M had no internal accounting records that F&M had to track employee hours, it did not have any specific accounting records to track expenses or profits from Great Park project.

- Forde pg. 104, line 10-15: “Q. Do you have something else that you can offer, based on your knowledge of the Internal documents of Forde & Mollrich, that would allow me to measure whether or not certain work was performed where there’s not a specific deliverable? A: No.”

- Landers depo pg. 130, line 2: “I mentioned earlier that on numerous occasions, the Design Studio had done work that was not authorized by the Great Park Manager. …there was some discussion that it might have been passed on in some way … it may have been by the chairman, that that was what Gafcon might have been saying.”

- Landers depo pg. 169, line 15 – “they certainly had the tendency to operate beyond the scope of what they were authorized to do.”

[END OF REPORT]
Exhibit A
Map of Great Park Master Plan
A Park for Everyone

EXHIBIT A
Exhibit B
General Map of Western Sector
A Park for Everyone

EXHIBIT B
Exhibit C
Detailed Map of Western Sector
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**INTERIM USE AVAILABLE FOR PUBLIC USE**

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**TOTAL IMPROVED AND INTERIM USE ACRES AVAILABLE FOR PUBLIC USE**

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**NOTES:**

(1) IMPROVEMENT WAS BUILT TO MASTER PLAN MODIFICATION 1 (2011), BUT MODIFIED BY MASTER PLAN MODIFICATION 2 (2014), THE 688-ACRE GREAT PARK IMPROVEMENT PLAN

(2) AREAS THAT HAVE BEEN ACTIVATED FOR PUBLIC USE BASED ON INTERIM CONDITION. PERMANENT IMPROVEMENTS HAVE NOT BEEN CONSTRUCTED FOR THESE AREAS.

(3) ACREAGES DO NOT INCLUDE AGRICULTURAL LEASE AREAS

3/20/2015