

MEMORANDUM

TO: Steven R. Onstot, Aleshire & Wynder, LLP
FROM: Philip D. Kohn *PK*
DATE: August 29, 2014
SUBJECT: In re: Orange County Great Park Corporation
Transcript of Deposition of Philip D. Kohn (held on August 11, 2014)

I received the original transcript from iDepo Reporters on August 25, 2014. The transmittal letter states that I “have seven (7) days from receipt to read, make any changes necessary, sign and return [the transcript] to” you.

I have reviewed the original transcript and signed it subject to the following comments. This Memorandum and the attachment hereto (described below) are to be included with my original transcript.

Page 11, line 1: Change “is” to “as”

Page 13, line 2: Change “in” to “and”

Page 13, line 4: Insert “a” between “awarded” and “Master”

Page 22, line 16: Change “supplement” to “settlement”

Page 32, line 1: Change “retained” to “obtained”

Page 51, line 7: Change “renewed” to “reviewed”

Page 68, lines 10-15: My answer that I did not recall whether I had spoken at the June 17, 2010 joint meeting of the Great Park Corporation Board of Directors and Irvine City Council meeting was accurate and truthful at the time of my deposition. After my deposition was taken, I accessed the City of Irvine web site and reviewed the video recording of the portion of the joint meeting related to Agenda Item No. 8 – the close-out of the Schematic Design Contract. (See <http://www.irvinequickrecords.com/SIREICTV/mtgviewer.aspx?meetid=3959>, from time stamp 2:38.50 to 3:23.40.) The video recording reflects, and refreshes my recollection, that I indeed spoke at the meeting. The comments of staff, including myself, and the remarks of members of the Board of Directors and the City Council, are informative and materially responsive to several other questions that were asked at my deposition. For that reason, I caused a transcription of the entirety of the June 17, 2010 agenda item to be prepared. I have attached hereto the transcript to be marked and included as Exhibit 15 to my deposition transcript.

Page 92, line 1: Change “integrated” to “iterative”

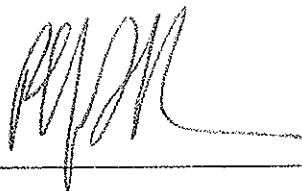
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Page 94, line 8: Change "meetings" to "minutes"

Page 94, line 24: Change "for" to "of"

I, Philip D. Kohn, do hereby certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Costa Mesa, California on August 29, 2014.



Philip D. Kohn

Attachment: Exhibit 15 (transcription of June 17, 2010 joint meeting of Great Park Corporation Board of Directors and Irvine City Council relating to Agenda Item No. 8)

**ORANGE COUNTY GREAT PARK
 BOARD OF DIRECTORS
 REGULAR MEETING**
AND
**ADJOURNED REGULAR JOINT MEETING WITH
 THE IRVINE CITY COUNCIL**
June 17, 2010 [ITEM NO. 8 ONLY]

Speaker	Comment
Chair Larry Agran:	With that I will turn to our Clerk to introduce by title and subject Item 8.
Clerk of the Board Marie Dickens:	Schematic Design Contract Close-Out.
Chair Agran:	Thank you. With that I'll recognize our Chief Executive Officer, Mr. Mike Ellzey, who will, with the help of other staff, make the presentation.
Chief Executive Officer Mike Ellzey:	Thank you very much Mr. Chair and Members of the Board. I'm going to go ahead and provide a couple of introductory remarks, and then I'm going to turn it over to the finance team to speak to some specifics, and then I'll close out the item, and then we'll make reference to the recommended actions, and then we can go through a Q and A process. But, Mr. Chair, this has been a wonderful meeting today because we are clearly marching forward in the development of the Great Park, both fundamentally as it relates to the planning effort, as it relates to rehabilitation of existing facilities, and as it relates to programmatic partnerships, and so this represents another, in my view, historic moment where we are actually before you to secure your recommended approval for the closeout of the Schematic Design Contract. This has been a very important effort over the last several years in partnership with the Great Park Design Studio and the Great Park Corporation and the City. And with that partnership and out of that partnership and out of the scope and effort of the Schematic Design Contract came an award-winning design. And our presentation is going to begin with a recognition and I know that I have spoken to this, but I'm extremely proud of the achievement and the notoriety secured through the efforts of the Corporation and the Design Studio. But, Mr. Chair, I would point you to the visual, APA, the American Planning Association, National Planning Trade Association and body has recognized the Great Park Corporation's Master Plan for a number of awards, including an Orange County Chapter Award, a California Chapter Award, and the National Chapter Award in term to a focused planning issue for the Master Plan. The American Society of Landscape Architects, as you know we have in Ken Smith an outstanding landscape architect, Mia Lehrer as well, an

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outstanding landscape architect on our team. Mia represented by Michelle, I believe, yes, Michelle Sullivan is here. And the American Society of Landscape Architects has also recognized the Master Plan effort through a National Honor Award, the Professional Honor Award in 2009, and the Professional Honor Award for Research Restoration Ecology also in 2009, and for that we're extremely proud as well. Then we move into another area of this plan that has been very important to our achievement and that's with the American Institute of Architects and the Master Plan has been recognized and this effort has been recognized by the AIA as well, and through its California Council for the 2008 Honor Award in Regional and Urban Design and for its National Chapter the 2009 Honor Award in Regional and Urban Design. Finally, as a matter of representation of awards and examples, the California Society of Ecological Restoration recognized the work done in 2007 with a Members Award with an emphasis on restoration and scientific educational opportunities and I thought that was particularly interesting because of the program recently advanced early in the agenda for the Nature Education Garden as emblematic of moving that very programming concept forward. I'm going to turn it now over to the finance team, to Kurt Mowery and Debbie Gunderson, to speak a little bit to the mechanics of the contract and how the contract is structure – was structured. It will then be turned over, back to me after we go through that mechanical and structural explanation to what we're here to discuss today as it relates to the close-out effort.

Chair Agran:

Thank you.

Chief Financial Officer,
Kurt Mowery:

Thank you, CEO Ellzey. At this point I'd like to introduce our Finance Administrator, Debbie Gunderson, who will take us through the contract overview.

Finance Administrator,
Deborah Gunderson:

Thank you, Mr. Mayor and Mr. Chairman. I'd like to turn now to some of the details of the contract. The Schematic Design Contract was approved by the City Council on July 24, 2007. The contract totaled \$29.9 million and was broken down into \$25.9 million for the scope of work, \$1.4 million for reimbursables which included such things as travel expenses and reprographic printing expenses. The contract also included a \$2.6 million contingency fund which Council authorized to be used at the discretion of the CEO. The scope of the contract consisted of schematic design of the Great Park, construction documents for mass grading the upper portion of the wildlife corridor and Agua Chinon projects which were considered to be priorities at the time the Contract was approved. The scope also included costs estimates for the Great Park and public information and community and stakeholder relations work efforts.

49 Change Orders were issued to the contract funded in large part by

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three Board and City Council actions. The first of the three was the Level Two Priority Program Feasibility Studies in the amount of \$1,817,000. The Level Two Priority Program Feasibility Studies included Agriculture and Food, Art and Culture Exhibition Space, Aviation Museum, Cultural Terrace, Fire Museum, Sports Park and Visitor Center studies.

Additional Change Orders were funded by the Project Implementation Work Program in the amount of \$1,720,000. The Project Implementation Work Program covered nine tasks that leveraged the work effort of the Design Studio and maximized the opportunity for the Design Studio and City to fully inform and coordinate the completed schematic design.

The largest funding allocation for change orders came with the \$3.5 million initiation of the Western Park – I’m sorry, Western Sector Park Development Plan, approved by the Board on May 21, 2009, and City Council on June 9, 2009. This approval funded the advance work needed to develop the project plan and included site plan preparation, identification of infrastructure needs and existing infrastructure resources, design development for the agricultural district, development plan for the sports district, and water and storm water quality plans.

I’d like to turn it over to Mike now for contract close-out.

CEO Ellzey:

Thank you, Debbie. I think if we – as we advance into this next piece of this particular agenda item, it is important to recognize that the Comprehensive Park Design has formed the basis for the Western Sector Park Development Plan and through the course of the last, I would say 18 months or so, we have been working very closely with the Design Studio through the process of auditing each of the provision of services to the extent that we were able to work closely to coordinate how those proceeded to either closure or how we recognize the circumstances of the day, which in many cases through those audit efforts recognize that we would not be prepared to construct those items at the conclusion of design so let’s take those items up to anywhere from a 70% to 75% level to a 97% level and then only when we’re prepared to construct, which was the decision made by the Council, to organize this project to intensify the effort with the Western Sector Park Development Plan were we able to grab some of those components and pull those outside of the schematic design and move those forward to complete a design and to construction. So, in addition to some of the work that was done under this program described by Debbie, we were able to conclude a reconciliation effort over the last 18 months. That reconciliation effort brings us to a moment where we are prepared now to recommend a close-out effort, Mr. Mayor and Mr. Chair, and that close-out effort took us through to

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an exercise where we did as much as we could in working very closely with the Design Studio, the Corporation staff and the City staff, the City Finance and Administration staff, in administering to the invoicing process, the review process, the audit process, the effort that it took to measure up to the City policy for approving payment on invoices, and for comparing invoices against services rendered. And so we went through and came to a conclusion at the – about the 99 percentile effort that we could administratively process no further. Those items that we are now looking at today for your consideration represent items in the amount of \$500,000 plus. Those items are items that fall outside of the administrative opportunity or entitlement of staff to approve. It's those items that then we begin discussing in the close-out and reconciliation effort, we begin to discuss with our City Attorney, we begin to discuss with our Finance Administration Director, how do we proceed from here. The contract clearly anticipates in a section identified for you up on the screen what might happen in the circumstances where we find ourselves in a position where staff cannot administratively process invoices, and where we might need to seek what we call a change in circumstances that would then qualify for potentially an adjustment in compensation. And so in working very closely with the City Attorney, we were able to take and review those facts of those half-a-dozen or so items that are described for you in here, we were able to work with the City Attorney to see whether or not those facts applied or the provisions of the agreement would apply to those facts, and we're prepared to in this staff recommendation to recommend that the Council and the Board consider these items and whether or not in fact in the Council and the Board's determination, the facts of these items can be applied to the provisions of Section 1.3.3.3 of the contract. And I'd just like for the record to read that, and then I'd like to turn it over to City Attorney Kohn to assist me a little bit in how we went ahead and proceeded with the exercise of reviewing the facts and applying those facts to the entitlement under the contract for changed circumstances which lead to our recommendation for the Council and the Board to consider the application of that provision. The section which we refer to as Changed Condition provides that quote "if certain circumstances not reasonably within the scope of the agreement result in an increase in the scope of the Design Studio's services that materially increases the Design Studio's level of effort or result in unavoidable schedule delay that cannot reasonably be avoided, then the Design Studio shall be entitled to a reasonable and appropriate adjustment in schedule and/or compensation."

Before I turn it over to City Attorney Kohn, I'd like to use just one example and it's one example of the number that are provided here. With our Priority Program Feasibility Studies, we entered into agreements in the form of change orders with the Design Studio that

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provided for an earned value form of compensation to the Design Studio. And that would mean that through the course of time presumably all scopes of work identified in that change order would be completed at 100% which would call for complete compensation for that particular change order. The Priority Program Feasibility Studies were generally divided up into 4, 5 or 6, or even 7 or more scopes of work. It served the interest of the Corporation at some time during the PPFs that are described here to stop the work from going any further until we were ready to move those studies forward. We then went through the effort of auditing the deliverable that was produced under those PPFs and we were able to assign a percentage against each of the scopes as to how much, I guess 100%, would be compensatable. And so we did that effort, we added those all up in the aggregate for each one of the PPFs that are under consideration here, that amounted to a certain amount of money payable to the Design Studio. The Design Studio countered with the argument that wait a minute, this is change in circumstances, the fact that the work was stopped, even though the stop order served the interest of the City that does affect compensation to us, and the reason being is that they may have very well as they do claim frontloaded their effort against the accomplishment of those studies and perhaps with the intention that ultimately through the course of the completion of those studies the frontload would have caught up with the deliverables and at the end of which there would be a matching of deliverability and of time and materials. And so that as an example was brought to the City Attorney so that we could evaluate whether or not such a fact situation could be appropriately set up against Section 1.3, and the end result of that is there were a number of those, several of which were the subject of stop work orders for studies that we would begin to do later but that had an impact on a difference between the invoiced amount and the amount that was paid. And so our recommendation to the Council and to the Board today is that the Council and Board consider whether or not that in fact in its estimation is a change in circumstances as it applies here. We feel very comfortable in working with the City Attorney that it is appropriate and necessary in order to get to a close-out situation that we advance this for your consideration and that these do in fact arguably represent a fit with that section. I'd like to ask City Attorney Kohn to perhaps further describe or help me out a little bit more with the process that we've been working through to get us to this point today, and I'm pleased to introduce City Attorney Kohn.

City Attorney Phil
Kohn:

Thank you – [coughing] excuse me – thank you, Mr. Ellzey. Actually I don't think Mr. Ellzey requires much more help because I think he did an excellent job in summarizing or at least illustrating one of the primary examples of the basis of the request before you today. I would observe at the onset as was pointed out in the staff report that at issue is approximately 1.3% of the total amount of the contract. That

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then should suggest to you that the vast majority of the change order, change order request and invoice issues have been resolved in the ordinary administrative course and it's just a very, very small portion of the close-out that is being presented to you for your consideration. A second observation I would make is to take a big picture approach to what is before you today and that is a close-out in a total, final, comprehensive manner of the tasks that were envisioned under Contract 2. After today's proceedings, other than perhaps historical references, you will not hear or speak of this again. That the project will move forward as it's intended to do into its next phases and as this door closes, another one will open and we will pass through that. The reason why it's here before you today and the question that I would expect many of you to ask if you haven't already asked of me, is why have these issues been elevated to the Board and to the City Council. And in some part, and perhaps large part, it's because of me. And if you don't care for the matter being before you today, I'm the one that you can point to and blame. And let me explain to you the thought processes I went through in convincing the staff that procedurally this is the manner in which they should proceed. The contract as Mr. Ellzey indicated and his remarks contemplates that there may be circumstances that the parties did not foresee or anticipate that materially changed the work effort that was expected, the time within that work effort was to be completed, and the costs associated with the completion of that work effort. And in such instances the contract contemplated that the Design Studio would be entitled to, in the words of the contract are, "a reasonable and appropriate adjustment in that compensation." Reasonable and appropriate much like the word fair has an element of subjectivity to it. The staff in its administration of the contract was constrained to follow both the letter and the spirit of the contract as far as how work effort was to be compensated. For the PPS components that Mr. Ellzey described, they were to be compensated on an earned value basis where the tasks was broken down into a series of deliverables and the compensation to be paid for each of those deliverables was specified in the contract. The dilemma occurred when the City and the Corporation unilaterally directed that the work effort stop, and I would say stop for good reason. How does the work completed though not finished for that deliverable get measured for compensation purposes? Staff looked at the contract, understood the basis for compensation to be earned value, and took the position that compensation should be based on the percentage of work completed towards that deliverable on the earned value basis and that yielded a certain number. The Design Studio took the position that that was not a fair, reasonable or appropriate measure of the compensation and instead the approach taken should be one based on time and materials for which appropriate invoices and timesheets were submitted to document the actual time, effort and material costs

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associated with the completion of the tasks. Their reasoning being that in a number of instances the work being performed to complete the deliverable was front-ended, if you will, where a number of the costs were disproportionately large off the front-end of the tasks but yet the percentage of deliverable complete was correspondingly low and in order for the compensation to be measured reasonably and appropriately a time and materials approach should be utilized. My counsel was sought initially to answer the question of whether the terms of the contract itself provided a means for the Board and the Council to approve an adjustment in compensation. My answer back was yes, identifying the section that Mr. Ellzey has described for you. I was asked further as to what facts and circumstances would need to be demonstrated in order to invoke and justify the invocation of that particular provision of the contract and did so to which the information of that, for example, the PFFS work stoppages, were identified. I would also point out what was also identified and is described in the staff report are the stops, stoppages, revisions, revisiting, restarts, restopping, restarting, etc. that not only staff but our consultants had to encounter simply because of the effects on what was happening in the marketplace on Heritage Fields, our partner in this venture. The uncertainty and the need to revisit and change the business plans as they went along. That certainly was not a fact or circumstance reasonably contemplated at the time we entered into the agreement yet it occurred and that information was provided to the staff as well. If I were to be asked if the documentation and justification presented by the Design Studio falls within what is described in the contract, my answer to you would be yes. Does that mean, however, that staff could unilaterally approve those adjustments in compensation? And that's where the bad City Attorney stepped in and suggested that because of the unique and special nature of those facts and circumstances, and because of the heightened scrutiny that justifiably has and should continue to be given to the review of all costs and expenses associated with the undertaking of this task, that it really ought to be elevated to the Board and the Council as a policy matter. And that, not-so-brief perhaps, description is an explanation as to the reasons why the matter is presented to you today with the recommendation that has been advanced. I'd be happy to either elaborate or respond to any questions that members of the Board or Council may have further.

Chair Agran:

Thank you. Mr. Ellzey, are we done with the presentation, in which case we can entertain questions or comments from the Board and as it turns out the Council at this time, or did you have more to present?

CEO Ellzey:

I just wanted to close by suggesting that as City Attorney Kohn said this is the -- represents the beginning of an effort. The close-out of the contract represents our opportunity to begin the effort of building the

Speaker	Comment
City Attorney Kohn:	park and moving from the design, the schematic design effort, and will also enable us to begin the process of developing the RFP for the contract compliance review and will in essence thereby establish the close-out of the – the close-out process of the Schematic Design Contract and, with that Mr. Chair, we have resources available to entertain questions.
Chair Agran:	Mr. Chair?
City Attorney Kohn:	Yes.
Chair Agran:	With your permission I'd just like to add one further comment. I mentioned at the beginning of my remarks about looking at this in a big picture context and it being comprehensive in its intent and nature and that underscores what Mr. Ellzey has just said that should the request be approved and the Contract close-out executed, that will result in a complete resolution of all claims for compensation related to Contract 2. What has not been mentioned is that there were a number of requests for compensation that have not been approved. They were rejected by staff and they are not being advanced to this body for reconsideration. And there is an agreement that there is not going to be any efforts to resuscitate or revive those claims nor make any other claims for compensation beyond those that are presented to you today. So, again, this would represent a complete tying up of every conceivable loose end associated with Contract 2.
CEO Ellzey:	Thank you. Is that it, Mr. Ellzey?
Chair Agran:	Yes, sir.
Director Christina Shea:	Very well. Why don't we just open it up to a round of questions and comments. The actual procedure for the adoption of motions requires a little bit of guidance and coordination so I would say at this point let's not put a motion in front of us and let's just open it up to questions and comments for one round and then we can move beyond that. Anybody wish to be heard first? Yes, Director Shea.
Director Christina Shea:	Yes, thank you, Mr. Chairman, I appreciate it. I do appreciate our staff lending themselves to, sounds like many months of critical review of these contracts and the close-out of the contracts, you know, as we all were aware that the first audit that came back was very negative and talked about an inability to really define a lot of the, you know, the invoices and what they were for, and it seems like we've spent a lot of months now with staff, a lot of intense staff time trying to close this out. I would have liked to have seen it closed out before we moved to the next contract, but obviously it's taken months and months to resolve this. I'm sorry that we're at an impasse in regard to the \$554,000. I would say that just based on what I'm hearing and the complex nature of the close-out of this contract it's probably in our

Speaker	Comment
	<p>best interest to settle this and just move on. I say that from a prudent standpoint. I know one of our staff members says this is really more of a business decision. I believe that's probably true. I'm just, you know, very pleased about the design we've received but I have been very, very concerned about how the management component of the Design Studio, the oversight of expenses, invoices, etc. was to me run in a very bad manner. I'm glad to see that we're getting past it, we've moving forward. There's no point in spending a lot of time going over, you know, past problems. I just hope that the present problems have been reso – the past problems have been resolved, our Contract with WRNS, we're not going to be seeing any of these past issues that have really spent – just caused our staff to spend way, way too many hours and time on a project that should have, you know, really been addressed in a much more professional manner. So, I'm going to support today the recommendation. I think that, you know, we could go to impasse, we could, you know, sit down with the mediators but I think it costs us a lot of money and I think we – we're moving in a positive direction now and I think we need to stay that course.</p>
Chair Agran:	Thank you, Director Shea. Director Kogerman?
Director William Kogerman:	<p>I don't concur that it was run in a bad manner. I do think we've done some things that we've changed our mind on. With respect to the frontloading of contracts that kind of puts the onus on the Corporation to consider the documents and the efforts of the contractor in reaching a fair and appropriate compensation. I have been assured that that is the case. I want to publicly inquire whether all the contractors are in fact on board with the conclusion summarized by the recommended actions and were not approved by subcontractors. Is the Corporation indemnified in any way against future claims. And next, I want to thank publicly Brandon, you were just magnificent in this whole operation, you've been at it for a long time and I would like the staff to consider the possibility in the future that we get a fiscal prudence award or something that allows for staff action like what is evident here to trim costs, to very closely monitor contracts, to oversee those contracts in a most fiscally prudent manner, that there may well be an opportunity here to financially award people who are involved in that and I'd like that to go on. Thank you, sir.</p>
Chair Agran:	Thank you, Director Kogerman. Director Kang?
Director Sukhee Kang:	<p>Thank you Mr. Chair. First of all, I'd like to give my gratitude to all the members of the staff starting with the City Attorney, Phil Kohn, CEO Mike Ellzey, and everybody that's associated in trying to bring it to the closure. When I talked to the City Manager and then also the CEO of the Corporation, my first and the most important question I asked was: "What was the base of this closing recommendation? Was it based on our normal standard operating procedure that City</p>

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institutes on a daily basis?” And the answer was absolutely yes. My second question was, you know, obviously this process, even though it took a long time, it took a lot of painstaking efforts to come to a conclusion like today, is everybody who has been associated in closing out this contract, are you fully committed, are you fully satisfied, are you fully confident about the recommendation? And the answer was absolutely yes. So with that confidence, I certainly do support – I respect, and when City Attorney Phil Kohn mentioned about applying the reasonable and fair in compensating, I agree with that. I go along with the concept, the basis and the principle that we applied. As a result, this contract brought us \$5.4 million of savings. Great bottom line savings that will be beneficial in applying every \$5.4 million into the new project that we – well we are just about to launch. So all in all this was a great effort shown by everyone and including all the members of the Great Park Corporation Board and the City staff. So I just want to thank you for this great work and we move on with the next step. Thank you.

Chair Agran: Thank you, Director Kang. Director Pinto?

Director Michael Pinto: I support the motion. Of course I thank staff, I thank Phil, the others who have been involved with this, but I want everybody to remember that the Design Studio and Ken Smith leading as the Chief Designer had been chosen unanimously and that they worked for us for years, spent a lot of money, a lot of learning took place, and I certainly don't want to end our relationship with them with any kind of idea that this has been an adversarial relationship and that, you know, the gloves were taken off and we had to come to some kind of a compromise over a half million dollars. We spent, what \$40 million? A lot of money. As Phil said, 1.3% is what that \$500,000 represents. It's almost – as much money as it is in the larger scope of things, it's a small amount of money and I think it's important for us to recognize and applaud the good work that the Design Studio has done and that this compromise is fair and reasonable.

Chair Agran: Thank you, Director Pinto. Director Krom?

Director Beth Krom: I would just say that I'm prepared to support this. I think that a number of comments have been made by my colleagues that I agree with. I do want to thank our staff. It is – closure is a good thing and closure without litigation is an even better thing. But I agree with Director Pinto that there is a big picture here and the big picture is what we have accomplished over this period of time. The truth is that we took actions which necessitated a change of course. It's always hard to calculate exactly what the economics of the skid marks that get created when we reverse our direction are to those that have prepared themselves to move forward. And so I think that this looks like it is a reasonable accommodation and share Director Shea's perspective that

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it's time for us to get resolution on this with the recommendation of our staff and then proceed. Thank you.

Chair Agran: Thank you, Director Krom. Let me just add a few comments and then I think we're very close to being ready to entertain motions and vote. I find myself concurring with virtually all of the comments that have been made so far. I do want to give a little more emphasis, however, to the absolutely remarkable, even Herculean effort, that was undertaken here to deliver through Contract 1 and then through Contract 2, which was of course substantially larger, a comprehensive Master Design and Master Plan that is truly extraordinary, award-winning, not awards bestowed on Ken Smith and the Great Park Design Studio by us, but by peers in landscape architecture, planning, design, virtually every major award that could have been won, was won, was earned through this effort. And really what we had was a contract with deliverables that were indeed delivered on time and within budget. Indeed the \$5.4 million represents well within budget. And award-winning, world class award-winning. We move on from here. The Great Park Design Studio stays with us in part, WRNS has been brought in. We move to the next stage and beyond that the next and the next. We will build this park as fast as we can with the resources that are available to us, and at a standard that will indeed be world class and award-winning. I think it's a huge achievement and I'm going to underscore too that when you take a look at it the 98.7% that was resolved in the normal course of business leaving the 1.3% to be brought to us under a changed circumstances provision that was in the Contract. We were smart enough, although nobody foresaw the kind of real estate crash and the effects on our partner as well as others that were coming, that provision allowed for us to recognize that the design work was going forward, even as economic circumstances were changing in a very, very dramatic fashion that somewhat disabled our partner Heritage Fields from being able to respond in a timely way. That in turn raised the question: How do you compensate people under those circumstances? I'm very pleased the leadership shown by our staff and certainly by legal counsel to bring this to us in a tidy way that makes it now audit ready. Presumably we're going to move from here to a contract compliance review and audit that will I think confirm that Contract 2 is a vast improvement over Contract 1. Everyone is getting better as we undertake this enterprise. I have – I have nothing further to add to what has been said by others. I would, unless staff has something further, I would like to turn to legal counsel, get a little guidance on the joint consideration here by the City Council as well as the – as well as the Great Park Board of a motion.

City Attorney Kohn: I'd be happy to do so, Mr. Chair. Before doing so, I just wanted to respond to the question posed by Director Kogerman . . .

Speaker	Comment
Chair Agran:	Please.
City Attorney Kohn:	. . . in his remarks and I would respond by saying that it was not only the understanding of the staff but the representation by the Design Studio that the proposal being put forward would encompass resolution of all requests for compensation, not only by themselves but all of their subcontractors. And it would be certainly my intention in documenting the close-out, which will take place if the action is approved today, to provide a recital of that warranty and representation by the Design Studio as well as an acknowledgment and agreement on their part to indemnify and hold harmless the City and the Corporation as to any claims that may hereafter be made by subcontractors, material suppliers, or any other persons pursuant to the terms of Contract 2. As far as the procedure, I would let Ms. Brady describe the action before the Board, but essentially it's broken down into two parts. There are three action items before the Board, although Action Item 1 was just to recommend that the Council consider which should stay as is, and then there are three similar recommended City Council actions, the first of which you may wish to modify given the remarks that have been made to read approval of requests made, and then Items 2 and 3 can remain as is. And I believe if those motions are made concurrently for both Board and Council they could be dealt with by a single vote.
Chair Agran:	Alright, if I'm hearing you correctly, are you suggesting that the – you suggested a word change there of some kind.
City Attorney Kohn:	Yes, the suggested word change is in the recommendations for City Council action as to Item 1. It currently reads "consider approval of requests . . ." The recommended action based on comments that have been made would be "approve requests made by Design Studio, etc."
Chair Agran:	Very well. Alright, and then I would be the one – I would be the one to call for the vote at the Board – two separate votes are we looking at here?
City Attorney Kohn:	Perhaps just now having thought about it for a second and . . .
Chair Agran:	I gave you a chance.
City Attorney Kohn:	. . . after speaking, yeah, you may want to break it down to two items where there's the action first for the Board and then following that a motion and appropriate action by the Members of the City Council.
Director Kogerman:	Well then, I'll tell you what, I'll entertain a motion to approve of Board recommendations 1, 2 and 3 – staff recommendations 1, 2, and 3.
Director Pinto:	Second.

Speaker	Comment
Chair Agran:	Very well. Moved by Director Kogerman. Seconded by Director Pinto. This will be a vote of the entire Board. Are there any further comments or questions? Very well, please – please vote.
Clerk Dickens:	Motion carries 6-0.
Chair Agran:	Thank you. And now to be procedurally correct, I think I should call on Mayor Kang to similarly call for a motion and vote on the City’s side, is that correct?
Mayor Sukhee Kang:	Thank you, Mr. Chair. So with that I’d like to entertain a motion for the City – City Council action 1 and 2 and 3. Any motion?
Councilmember Shea:	At this time I’ll make the motion to adopt the recommended Council action with the change in language in Item 1 to say: “Approve request made by Design Studio for payment of Invoices,” and that would include the 1, 2 and 3 recommendations.
Mayor Kang:	Okay, any second?
Mayor Pro Tem Agran:	I’ll second the motion.
Mayor Kang:	Okay, we have a motion made by Councilmember Shea and seconded by Mayor Pro Tem Agran. At this time we are prepared to vote, please vote.
Clerk Dickens:	Motion carries 4-0.
Chair Agran:	Excellent.
Mayor Kang:	Thank you.
END OF TRANSCRIPT	