

1 CITY OF IRVINE CITY COUNCIL

2 GREAT PARK AUDIT

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4

5 IN RE:)
)
 6 ORANGE COUNTY)
)
 7 GREAT PARK CORPORATION.)
) (Pages 1 - 122)
 8 _____)

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14 DEPOSITION OF PHILIP DOUGLASS KOHN, ESQ.

15 MONDAY, AUGUST 11, 2014

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24 Reported by: IRENE YAMATOKU, RPR, CLR
 CA CSR No. 9478, HI CSR No. 496
 25 NV CSR No. 893, WA CSR No. 3177

1 RIVERSIDE, CALIFORNIA
2 MONDAY, AUGUST 11, 2014
3 8:59 A.M.

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6 PHILIP DOUGLASS KOHN, ESQ.,
7 called as a deponent and sworn in by
8 the deposition officer, was examined
9 and testified as follows:

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12 DEPOSITION OFFICER: Please raise your right
13 hand.

14 Do you solemnly swear that the testimony
15 you are about to give in this matter now pending will be
16 the truth, the whole truth, and nothing but the truth, so
17 help you God?

18 THE DEPONENT: I do.

19 DEPOSITION OFFICER: Thank you.

20

21 EXAMINATION

22 BY MR. ONSTOT:

23 Q. Please state and spell your full name, please.

24 A. Philip, P-H-I-L-I-P, Douglass, D-O-U-G-L-A-S-S,
25 Kohn, K-O-H-N.

1 for parties other than the City to first sign. It would
2 then be approved by me as to form, and then I would
3 provide it to the city manager for any further executions
4 that might be necessary.

5 Q. On page 5 of the agreement, is that your
6 signature, "Approved as to Form," as attorney for the City
7 of Irvine?

8 A. Yes, it is.

9 Q. None of the signature blocks have dates of
10 execution.

11 Do you recall at least approximately when
12 you approved as to form Exhibit 13?

13 A. No, I don't.

14 Q. Do you know generally the month?

15 A. I'm sorry. The month?

16 Q. Correct.

17 A. Well, while I would assume it was sometime
18 during the month of August, I don't know that for a fact.

19 Q. Of 2010?

20 A. Yes.

21 Q. Looking at page 1 of Exhibit 13, there are four
22 recitals.

23 Do you see where I'm referring to?

24 A. Yes.

25 Q. Did you draft the recitals?

1 A. I believe they were part of an integrated
2 process. I was the scrivener, so I guess I drafted it in
3 that regard.

4 Q. Under recital A, the last sentence reads, quote:

5 "GPDS performed its obligations
6 under the Master Design Contract in a
7 manner satisfactory to the City and
8 the Corporation." Period, closed quote.

9 Do you see where I'm referring to?

10 A. Yes.

11 Q. On what basis did you include that recital in
12 Exhibit 13?

13 A. On the basis that I understood it to be an
14 accurate representation.

15 Q. Based on what? In other words, what due
16 diligence did you perform to ensure that Recital A was
17 accurate?

18 A. That was the point of the staff and the --
19 reflects the action taken by the city council and the
20 "Great Park" Board in accepting the work product that was
21 prepared under Contract 1 and authorized payment for that
22 work product. In addition, there were statements made
23 over time by most members of the city council expressing
24 their personal satisfaction with the work that had been
25 performed.

1 Q. Which council members expressed that
2 satisfaction?

3 A. At a minimum, it was Council Members Agran and
4 Krom, Mayor Kang. And there may have been others. Those
5 are the ones I can recall at the moment.

6 Q. These three individuals at a minimum, how did
7 they express their satisfaction to you? Was it in a
8 meeting? Did they send you an E-mail? Did they come
9 collect -- well, I hope they didn't come collectively to
10 you. But did they -- how did they express their
11 satisfaction with the master design contract?

12 A. During the multitude of meetings that occurred
13 since the time I was city attorney in 2006 until 2010,
14 whenever business items relating to the "Great Park"
15 were the subject, then the issue of the performance of
16 contractors would have been part of that discussion.

17 Q. Under Recital B, the last sentence is similar.
18 It reads, quote:

19 "GPDS performed its obligations
20 under the Schematic Design Contract in
21 a manner satisfactory to the City."
22 Period, closed quote.

23 What was the due diligence you performed in
24 including that scheme?

25 A. Essentially, the same as I indicated previously,

1 which is at prior action of the city council, they had
2 accepted the work product, approved the termination of
3 further services under Contract 2, and directed staff to
4 begin a reconciliation process for payment for that work;
5 that the staff report for the approval of that
6 reconciliation referenced successful completion of all
7 contractual tasks.

8 The meetings (verbatim) of that meeting
9 which you previously provided to me spoke to, among other
10 things, quote:
11 "Favorable comments about the
12 delivery of a comprehensive park
13 design and master plan on time and
14 within budget," closed quote.

15 There were similar statements made by a
16 majority of the members of the city council at other times
17 regarding their satisfaction with the work performed.
18 The fact that there was agreement to pay for the work,
19 I inferred that there necessarily would have been
20 satisfaction with that work. And neither the minutes --
21 and certainly not in the minutes of the meeting that you
22 showed me is there a reference to any expression of
23 dissatisfaction with the work performed and, indeed, the
24 proposed action passed on a unanimous vote for those
25 members of the council present and voting.