



TO: Honorable Mayor and Members of the Irvine City Council

FROM: David J. Aleshire, Special Audit Counsel, Aleshire & Wynder LLP
Anthony R. Taylor, Special Audit Counsel, Aleshire & Wynder LLP

DATE: October 14, 2014

RE: Great Park Audit: Status Update

I. INTRODUCTION AND SUMMARY OF RELEVANT FACTS

Aleshire & Wynder LLP (“A&W” or the “Firm”) was retained in June 2014 by the City to work with HSNO in investigating and auditing the prior expenditures relating to the Great Park (the “Great Park”). Particularly, A&W was retained to investigate and audit management of public funds, contracting procedures, whether applicable law and Irvine regulations were properly followed, whether there was any illegality in the Great Park, and any other issue that may arise (the “Audit”). A&W’s recent experience included audits and investigations involving the reform efforts arising from the corruption scandal in the City of Bell.

To that end, A&W has vigorously pursued its investigations into the Great Park. To date, A&W has conducted 17 depositions and recorded statements of relevant parties, including senior management of Forde & Mollrich, Gafcon, and Ken Smith Landscape Architect. Approximately two to three more depositions are planned. Each transcript has been, or is in the process of being made, public via the City’s website in connection with the Public Records Act. This conforms with the established goal of transparency for the Audit, so this method has provided full and fair access and transparency to all interested parties.

The goal of transparency to the public is a longstanding goal for the Great Park. For example, in the beginning of the design efforts for the Great Park, the City stated a goal to “promote effective government” by providing “timely and accurate information to our countywide constituency . . .” (FY 2006-07 Budget, at p. 227)

When we last appeared before the City Council, various Councilmembers requested to be kept abreast of developments. Due to unanticipated legal disputes over obtaining documents from various witnesses, the completion of the Audit has been further delayed. This Memorandum discusses the original projected goal of completing all depositions and preparing a final report by September 1, 2014. Due to many unforeseen and unanticipated events out of A&W’s control, in addition to discovery of new information due to delayed production, it is now estimated that an additional 30-60 days will be needed to complete the final Audit Report.

Accordingly, we wish to give you an overview of circumstances leading to the Audit, discuss the reasons for delay, and summarize some of the new information discovered thus far and areas of additional inquiry, including the following:

1. Project Management Was Left In The Hands Of Consultants Lacking Any Technical Expertise, And Forde & Mollrich, A Political Consulting Firm, Acted As De Facto Project Manager.
2. When The City Decided The Great Park Design Needed To Be Scaled Back, A “Close Out Agreement” Was Negotiated With The Design Studio Where Ultimately They Were Paid Approximately \$1.4 Million And The Parties Released Each Other. The Agreement Could Block Any Legal Action Against The Design Studio But May Not Be Valid Because The Final Agreement Was Never Approved On A Council Agenda.
3. Forde & Mollrich Invoices May Have Been Modified To Make It Appear That \$100,000 Worth Of Monthly Services Were Performed.
4. Forde & Mollrich Were Apparently Clients Of The City Attorney Firm, Rutan & Tucker, Without A Written Disclosure To City, As Far As We Can Determine.
5. An Employee Of Forde & Mollrich Was A Councilmember Of Another City And Participated In Hiring Gafcon In The Other Jurisdiction.
6. The Design Studio Made Political Contributions And We Are Seeking To Determine If These Were Reimbursed By The City.
7. While It Has Been Argued That It Is The Recession And The Loss Of \$1.4 Billion In Redevelopment Funding Which Killed The Design Studio’s Master Plan, Serious Questions Have Come To Light About The Validity Of That Argument.

II. BACKGROUND

The Great Park was incorporated on July 7, 2003. The following January the City annexed the 3700-acre El Toro Marine Corps Air Station (“MCAS”) to gain full jurisdiction over the land to carry out the Great Park project which was envisioned on the scale of New York’s Central Park to be a central cultural and recreational gathering place for Orange County. By the end of 2003, then City Manager Allison Hart wrote an article in a City newsletter to inform the public that the Great Park would cost a projected \$353 Million to build.

Initially the City’s plan was to fund the project (design, construction and operation costs) though developer contributions, assessments on the land through a community facilities district, and an estimated \$1.4 Billion in tax increment redevelopment funding¹. The redevelopment funding was authorized by ordinance on March 8, 2005. Soon thereafter, on July 12, 2005, Lennar Corporation

¹ Although redevelopment funding was always contingent on significant private development around the Park.

(“Lennar”) purchased MCAS for \$649.5 Million and contributed 1347 acres to the City (36% of the base property) for the Great Park and also paid \$200 Million in development fees. Lennar was to contribute another \$201 Million for joint infrastructure and facilities. This created a \$401M base budget for the Park.

In 2005 through early 2006, a design competition was held and towards the end of that design competition members of the Great Park Corporation Board and City Council met the proposed architect, Ken Smith, at his home and place of business in New York City. Mr. Smith later was selected as the project architect under the Design Studio.

Following this trip, Councilmember Larry Agran reported to the Great Park Board publicly on January 23, 2006 that: “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.”²

On March 6, 2006 the Great Park Corporation entered a contract with the Design Studio to develop the Great Park Master Plan. Ultimately, the City paid the Design Studio \$46.9 Million³ (\$11 Million for the Master Plan and \$36 Million for the Schematic Design). Other contracts were entered into for a variety of services from project management to public relations, with the largest contracts (those over \$5 Million) being WRNS Studio (\$16 Million), Los Angeles Engineering (\$14 Million), Belaire West Landscaping (\$9.4 Million), Bovis Lend Lease (\$9.3 Million), PBS&J (\$5.5 Million) and DMC Engineering (\$5.3 Million).⁴ Forde & Molrich were paid \$7.2 Million for public relations services during the relevant time period,⁵ which does not include any work outside of the design of the Great Park. Significant funds were spent prior to this time relating to, for example, opposition of the airport in Irvine.

² See recorded video of January 23, 2006 meeting, at 3 hour 4 minute mark: <http://www.irvinequickrecords.com/SIREPUB/mtgviewer.aspx?meetid=506&doctype=AGENDA>.)

³ Based on a payment register provided by Gafcon in discovery conducted in connection with this audit, between January 2004 and July of 2014, approximately \$13.45M was paid to Gafcon, \$8.9M to Fuscoe Engineering, and \$7.87M to Ken Smith Landscape Architect, PC. The \$46.9M also includes many other payments to other subcontractors.

⁴ These entities provided the following services: WRNS Studios – contract management following Gafcon; Los Angeles Engineering – construction services; Belaire West Landscaping – existing site enhancements, construction of Balloon Park; Bovis Lend Lease – program management; PBS&J – program management; DMC Engineering – engineering consulting and construction management services.

⁵ Source: HSNO Report, Pg. 39.

By 2008, the program manager for the City, Bovis Lend Lease, estimated that the costs for horizontal construction alone for the Great Park under the Master Plan as proposed at that time by Design Studio was over \$1.6 Billion.

The Master Plan was completed in 2007. In February of 2008, the decision was made to proceed with Schematic Design to ultimately develop construction documents for the improvements. A “Preview Park” was developed on an 27.5 acre portion of the park in Summer of 2007 so there could be some immediate public use of the park; this included the Orange Balloon Ride. The cost of the Preview Park was budgeted for \$13.9 Million.

In 2009, the Chief Executive Officer of the Park, Mr. Mike Ellzey, became concerned with the mounting costs and ordered development of a 10-year operations plan. Through this process, it was determined that based on current known revenues, only \$65.5 Million (as of August 2009) of park capital improvements could be operated and maintained. Accordingly, the grading and development of the whole site which had been planned to be carried out as one continuous project, could not proceed. An area of about 200 acres known as the Western Sector was then planned to be developed at a budgeted cost of approximately \$65.5 Million. This area was adjacent to the Preview Park and a portion was opened in July 2011. The remainder opened in September 2013.

It is important to note that the scaling back of the Great Park design had begun before the dissolution of redevelopment which did not occur until June of 2011 by way of (AB 26 X1) and was caused by the exhaustion of the funding provided by Lennar and the development of the 10-year plan showing that operational costs were not sustainable. Moreover, it has been learned through our inquiries that there were internal estimates that building the Master Plan as designed could cost \$3 Billion to \$4 Billion (including horizontal features and buildings), or double to triple the expected redevelopment funding.

Thus, while staff became aware of the financial problems by 2009, and took steps including negotiating a “Close-Out Agreement” in 2010 to terminate the Design Studio’s services, by then the City had paid Design Studio \$46M for a Master Plan which was estimated to cost perhaps four times Chairman Agran’s estimate in 2006, and several times more than the estimated redevelopment funding. Thus, the Master Plan was not financially feasible. An earlier anticipation of these financial realities might have led to an earlier scaling back of the Master Plan before the Lennar funding was so nearly exhausted. This could have led to designing a more affordable Great Park, and a feasible plan for constructing the Great Park in phases as recommended by Richard Sim, among others. (Sim Statement, at p. 13.)

On June 17, 2013, Hagen, Streiff, Newton & Oshiro Accountants, PC (“HSNO”) were retained to perform an audit of the planning, development and construction of the Great Park. Their review was to include the period of July 1, 2005 through December 31, 2012. Their initial report was delivered on January 9, 2014 at a budget of \$240,000. Their 49-page report presented a number of important findings. However, overall, they reported that a lack of cooperation by various vendors employed by the Great Park prevented their reaching conclusions on a number of issues. Moreover, they recommended additional areas for investigation. Accordingly, on January 28, 2014, the City

Council authorized a second phase of the audit at a cost of \$400,000 and with a presumed delivery date of September 1, 2014.

Various vendors continued to resist complying with HSNO's efforts to obtain information. Aleshire & Wynder was added to the audit team about four months ago in June 2014 in order to use its attorneys to compel witness cooperation in being deposed under oath with regard to the carrying out of the Great Park Project. An additional budget of \$330,000 was approved by the City Council in July 2014 for the Audit.

In sum, at this point, approximately \$263 Million has been spent on the Great Park. Of this amount, approximately \$130 Million was spent on design, engineering, and construction costs and the rest on programs, events, operations and related expenses. Of the 227.5 acres which have been developed, the majority is agriculture land developed by OC Produce outside of the Great Park budget. The \$130M spent on the Great Park development produced less than 100 acres of parkland development (100 acres of 1347 is 7% of the total area)

The foregoing is a simplification of the huge amount of information HSNO and our firm has gathered. In fact, not all of the depositions are complete, and so while some general conclusions can be drawn, we prefer to complete all the depositions and prepare a comprehensive report. The comprehensive report will provide a detailed explanation of where the project went off track and what could be done to prevent such occurrences in the future. Although Irvine has historically been one of the best run cities in the State, few could dispute that there are lessons to be learned here.

In the remainder of this status report, we wish to explain the reasons for the delay in completing the final report and some of the new information recovered. While we continue to make new discoveries, we are conscious that an investigation of the expenditure of over \$260 Million could be a never ending exercise, and, we do intend to bring this to a rapid conclusion.

In our four months, we were given a budget of \$285,000. To this point, we have billed the City \$114,488.56 and an additional invoice is in process for approximately \$100,000.

III. ANALYSIS

A. Causes for Delay.

1. Scheduling Depositions. Depositions were authorized by the City Council on January 28, 2014 through legislative subpoenas after HSNO encountered resistance from numerous witnesses in coming forward with necessary information for the Audit. Despite diligent efforts, the scheduling and conducting of the 20 depositions estimated as of June 2014 took more time than anticipated.

The deposition of Sam Allevato was completed on Friday, October 10th. The deposition of Bovis is scheduled for October 22nd. Additional depositions may be required.

When we first came on board, only two depositions had been completed before June 2014. In A&W's time on the Audit since June 2014, seventeen depositions and interviews were conducted

in approximately fifteen weeks. Arranging the schedules of witnesses and attorneys can be difficult and time consuming and that has been an issue in the Audit. After completing the depositions, additional time is required to analyze the testimony and to write the final Audit Report.

2. Forde & Mollrich Resistance. HSNO experienced a lack of cooperation from Forde & Mollrich (“F&M”) in producing documents, which continued through the second phase of the Audit. The City deposed Mr. Mollrich on July 30, 2014, during which Mr. Mollrich stated that all requested records had either been produced, or did not exist. Counsel for Mr. Mollrich specifically stated “But – but all the production records were turned over and all the financial records and all of the reports.” (Mollrich Transcript, pg. 244, lines 10-12.) 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.

In order to attempt to get these documents and records, we met and conferred with F&M on several occasions throughout the first several weeks of August. Eventually, on August 20, 2014, we had to seek Council approval of obtaining a court order compelling F&M to comply with the document requests and requests for further deposition testimony from Mr. Mollrich.

Immediately following the Council action on August 20th, F&M did come forward with additional documents not previously disclosed that were included in 30 boxes of records provided after the Council’s 5-0 vote to compel further records from F&M. We refrained from seeking a court order then as HSNO and our firm reviewed the new documents. However, F&M has continued to produce additional documents as recently as September 26, 2014, including documents never before produced to the City.

As such, we were forced to spend significant efforts in obtaining these records, which are each relevant to the final report, due to F&M’s lack of cooperation and apparent withholding of documents. This has not only delayed the development of the analysis of the Audit, it has greatly increased the cost. In fact, we have incurred almost \$50,000 in fees and costs dealing with F&M’s efforts to resist providing us with records, and another \$9,000 in fees and costs related to F&M’s Public Records Act Request.

We are currently exploring the option of seeking a court order for attorney’s fees against F&M. Additionally, F&M has conducted a public media campaign against the Audit which has caused additional delay and expense.

F&M’s contract with the City requires their cooperation in providing records requested by the City. Specifically, F&M agreed to “maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all invoiced amounts.” (Id., at Section M, “Access to Records” [October 3, 2007 contract].) That provision also allows the City per its contract with Design Studio with the “right to review and audit the books and financial records” of F&M.

F&M's noncooperation is a breach of their contractual responsibilities which is why recovering attorneys' fees may be in order. F&M has spent a year claiming to have produced all documents only to now provide them when court action is threatened.

As a public relations firm, they have chosen to address this by attacking HSNO, our firm and the Audit itself in the media rather than honoring their contractual obligations to the City.

The public deserves transparency and F&M's lack of cooperation during the Audit, after they were paid \$7.2 Million in public funds during the relevant time period, shows a lack of transparency in their practices.

B. New Development: District Attorney.

The District Attorney's Office has announced that it is conducting a review of the underlying matters that are now being disclosed to the public through the Great Park Audit. The District Attorney has asked for documents and sought to interview us in connection with their review. Their letter dated August 26, 2014, states that the District Attorneys' Office is reviewing a "wide range of allegations of misuse of public funds have been made with respect to the planning and development of the Great Park."

We welcome the involvement of the District Attorney in this matter. However, additional time and resources have been required of us to ensure that the District Attorney receives the information requested. While not involving significant attorney time thus far, it is an open question whether the Council wishes that the Audit be completed now or await the District Attorney's review.

C. Areas of Additional Inquiry.

By obtaining additional documents from F&M, and completing the depositions and obtaining other information from additional parties, additional lines of inquiry have developed since HSNO's preliminary audit report in January 2014. Many of these areas have caused us great concern, and we are continuing to examine them in greater detail.

1. Project Management Was Left In The Hands Of Consultants Lacking Any Technical Expertise, And Forde & Mollrich, A Political Consulting Firm, Acted As De Facto Project Manager.

The Great Park was a massive undertaking, with many significant technical challenges and lofty goals. However, testimony from multiple depositions reveals that there was no technical project management at a senior level. 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.*** (Ellzey Deposition, at pg. 61 [emphasis added].)

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."

(Joyce Depo, at pg. 126.) Mr. Fuscoe also testified that while Forde & Mollich 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.” (Fuscoe Deposition, at pg. 120.)

This is 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. Individuals with no technical project management skills oversaw a budget increase from \$400 Million to \$1.6 Billion. We are continuing to examine the impacts that this de facto management structure had on development of the Great Park.

2. When The City Decided The Great Park Design Needed To Be Scaled Back, A “Close Out Agreement” Was Negotiated With The Design Studio Where Ultimately They Were Paid Approximately \$1.4 Million And The Parties Arguably Released Each Other. The Agreement Could Block Any Legal Action Against The Design Studio But May Not Be Valid Because The Final Agreement Was Never Approved On A Council Agenda.

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, a settlement agreement (the “Close Out Agreement”) was negotiated with Design Studio in 2010 to get them out of the project and settle accounts. However, while the settlement was originally discussed at a public meeting in June 2010, the Close Out Agreement itself was not finalized until later and not included in the agenda package when the item was discussed at a joint meeting between the Corporation Board and City Council.

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.

The Close Out Agreement, which was drafted after the Council approval described above, included terms and conditions of payment, recitals that described that the City was fully satisfied with Design Studio’s work and the Close Out Agreement included other specific representations that were never part of the motion approved by the Council. Moreover, the Close Out Agreement was for a total of nearly \$1.4 Million including additional invoices amounting to \$833,000 in administrative approvals which were not included in the June 2010 action.

Since the Close Out Agreement was not part of the agenda package and discussion by the Corporation Board and City Council, there is concern over (i) the lack of public transparency and lack of public review of the Close Out Agreement (ii) the validity of the action, and (iii) whether the City could pursue claims it may have against Design Studio.

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 \$1.4 Million made 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.

The Close Out Agreement contained recitals stating that the Design Studio “performed its obligations under the Master Design Contract in a manner satisfactory to the City and Corporation”. (Recital A) Recital B provides that Design Studio “performed its obligations under the Schematic Design Contract in a manner satisfactory to the City”. We have determined that the City Council, Corporation Board and the public did not have the opportunity to review and evaluate these statements before the Close Out Agreement was executed.

In fact, there may be some claims arising from the audit concerning the services rendered. For example, former Great Park Corporation Board Member William Kogerman, who made the motion to approve the \$554,585 payment to Design Studio to close out their work, testified that he would have never voted in favor of the Close Out Agreement as drafted, particularly due to the above-referenced recitals.

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.” (Kogerman Deposition, at p. 56.)

Additionally, there were a number of deliverables due to the 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” (Ellzey Deposition, at p. 75-76), and were so “poorly written” that they required extensive work from staff of the Great Park Corporation to fix these studies. (Landers Deposition, at pg. 127-129.) Ms. Landers testified that it was “unacceptable that [Design Studio] provided [the Great Park Corporation] with material that was not in a final form.” (Landers Deposition, at pg. 129.)

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.” (Ellzey Statement, at pg. 6.) Review by Great Park staff and Bovis Lend Lease necessitated significant commenting – over 3000 comments – and was ultimately rejected by Bovis.

A final example is a project management plan, which, according to Mr. McDevitt, was an “early deliverable” that was required of the Design Studio by the Great Park Corporation. (McDevitt Deposition, at pg. 130.) According to Mr. McDevitt, this deliverable 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 at time.” (McDevitt Deposition, at pg. 130.)

Numerous additional examples exist with respect to the Design Studio and deliverables that were not provided as required. Each of these examples which have come to light in the Audit could be the basis of future claims. However, the Close Out Agreement contained language accepting

performance as “satisfactory” and arguably releasing claims which, if enforceable, would prevent the City from pursuing claims against the Design Studio. In the case of the City of Bell, we successfully invalidated “ordinances” and “agreements” where there was no record of approval by the legislative body at a public meeting, but the issues are complex. We will need to finalize our analysis of these issues as part of finalizing the Audit.

3. Forde & Mollrich Invoices May Have Been Modified To Make It Appear That \$100,000 Worth Of Monthly Services Were Performed.

F&M was paid approximately \$7.2 Million for work related to the relevant time period for the Great Park. This does not include work done prior to the design of the Great Park, including significant amounts spent in connection with opposing the airport.

New information provided by F&M that had not previously been produced appears to show that at least some of F&M’s monthly invoices appear to have been modified after their work was performed because less than \$100,000 worth of services were provided.

For example, there is an e-mail conversation between F&M and Gafcon, on April 13, 2009, where there is a discussion of how F&M is “struggling here . . . to get January and February straightened out”. At that time, the January and February 2009 invoices (during the time when F&M was charging \$100,000 per month) were not \$100,000 per month (or \$200,000 total for two months). Instead, unknown to the public, the information provided by F&M to Gafcon as of April 2009 supported a total value of only \$174,255, not \$200,000.

We are continuing to evaluate this matter further and determining if there are other examples of months where F&M did not incur \$100,000 per month in charges.

4. Forde & Mollrich Were Apparently Clients Of The City Attorney Firm, Rutan & Tucker, Without A Written Disclosure To City, As Far As We Can Determine.

During the deposition of Stu Mollrich, we learned new information indicating that the City Attorney, Rutan & Tucker, had a long-standing attorney-client relationship with Stu Mollrich and may have provided services to F&M, or entities associated with it, in various election matters in other jurisdictions. (Mollrich Depo, at pp. 204-207.)

This presents potential issues of non-disclosure and conflict of interest. We are currently analyzing the application of Rule 3-310 of the California Rules of Professional Conduct for lawyers concerning the informed written consent required when representing clients with adverse interests, even if the attorney represents the clients on separate matters.

We have been reviewing whether this relationship was disclosed to the City and whether there was a written waiver of an actual or potential conflicting relationship. City staff do not recall such a disclosure being made.

We are continuing to evaluate this matter.

5. An Employee Of Forde & Mollrich Was A Councilmember Of Another City And Participated In Hiring Gafcon In The Other Jurisdiction.

Sam Allevato was an employee of F&M and he is a councilmember of the City of San Juan Capistrano. As a councilmember and redevelopment agency board member for the City of San Juan Capistrano, Mr. Allevato participated in the decision to hire Gafcon as a consultant for the redevelopment agency in San Juan Capistrano in February 2008. This vote was taken apparently during the same time when F&M was a subcontractor of Design Studio, which included Gafcon as a principal. Pursuant to Article 4, Section D of the Subconsultant Agreement, dated as of August 27, 2007, by and between the Design Studio and F&M, the Design Studio, of which Gafcon served as a principal, managed F&M as the subconsultant including F&M's "scope and fee." As such, Gafcon, which Mr. Allevato was a client of in San Juan Capistrano, was tasked with managing F&M as a subconsultant, of which Mr. Allevato was an employee.

Moreover, Section S of Article 3 of the Subconsultant Agreement prohibited the appearance of potential conflicts of interest on the part of F&M, "including [F&M's] representatives." Specifically, the Subconsultant Agreement provided that F&M or its representatives, which would include Mr. Allevato, "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 [F&M's] professional judgment with respect to the [Great Park]." As such, the relationship Mr. Allevato had with Gafcon in San Juan Capistrano would seem to breach Section S of the Subconsultant Agreement.

F&M has refused to provide us with any salary information concerning Mr. Allevato. According to public records we have reviewed such as Mr. Allevato's Statement of Economic Interests (Form 700) for the time period of January 1, 2010 to December 31, 2010, Mr. Allevato was paid between \$10,001 and \$100,000 by Forde & Mollrich.

Based on internal estimates we have discovered from F&M through the documents they have provided since August 2014 in response to the Council's directive that F&M comply with our Audit demands, Mr. Allevato was assigned a billing rate of \$150 per hour by F&M and was expected to generate \$312,000 for F&M in revenue for his work on the Great Park compared to a salary of no more than \$100,000.

By comparison, Gafcon paid a communications consultant, George Urch, \$80 per hour. At that rate, Mr. Allevato would have only been charged out to the Great Park at \$166,400. This would have resulted in a savings to the Great Park of \$145,600 annually.

This analysis is complicated by the fact that F&M switched to a flat fee billing rate of \$100,000 per month starting in January 2009, as described above.

We are seeking to determine whether a breach of Design Studio's and F&M's contractual obligations existed with Sam Allevato's dual role as an employee for F&M under the Design Studio,

which included Gafcon, given that Mr. Allevato voted as a redevelopment agency board member in the City of San Juan Capistrano to approve a former redevelopment agency contract for Gafcon in February 2008.

We conducted the deposition of Sam Allevato on Friday, October 10th. Mr. Allevato testified consistent with the facts set forth above, although he claims to not know what hourly rate F&M billed him at for his services. He refused to provide his salary at F&M, except to say that it was within the \$10,000-\$100,000 range set forth in his Form 700. Although he has no formal training in community/media relations, Mr. Allevato did testify that he served as the City of Irvine Police Department's Public Information Officer for many years. He first met Stu Mollrich in 2004 in connection with his campaign for City Council, and it was Mr. Mollrich who called him in 2007 and asked if he wanted the Public Information Officer position for F&M. At that time he learned that Design Studio was F&M's client and that Gafcon was the project manager for Design Studio.

Significantly, Mr. Allevato testified that while at F&M he did not have a budget, participated in no budget meetings and did nothing to keep track of his time or the tasks he worked on. He did state that he was full time at F&M,, did the majority of F&M's work on the Great Park in 2008 and worked on no other projects other than Great Park. As to the contract issue, Mr. Allevato stated that Yehudi Gaffen told him in person that Gafcon would submit a proposal to work on a project for the City of San Juan Capistrano, that Gafcon did submit a proposal, and that Mr. Allevato voted to accept Gafcon's proposal. Prior to such vote, however, Mr. Allevato discussed his relationship with F&M and Gafcon with his council colleagues and the city attorney, telling them "I do not want any special favors for Gafcon." In the autumn of 2012 F&M's funding was reduced to \$50,000 per month, so Mr. Allevato worked part time for two months until he resigned.⁶

6. The Design Studio Made Political Contributions And We Are Seeking To Determine If These Were Reimbursed By The City.

Questions have been asked during the depositions for the Audit whether the Design Studio made political contributions and sought reimbursement from the City for the same.

This issue came to our attention after HSNO reported to us a finding that there was a difference of approximately \$1 Million between the amount that the City paid Design Studio and the amount that Design Studio paid its subcontractors. We brought that issue to the attention of the attorney for Gafcon in late July 2014.

⁶ Counsel for Mr. Allevato sent a letter on October 13, 2014 regarding Mr. Allevato's testimony, which is attached hereto as Exhibit B. That letter does not address the contract terms described above. Those contract terms are broader than what is a potential conflict of interest under applicable law.

Gafcon's attorney responded to this issue by sending us an e-mail on August 1, 2014 with two spreadsheets, which were described by Gafcon's attorney as "materials to assist in understanding invoices paid to vendors and subcontractors."

Included within various charges listed in the above-referenced spreadsheets that listed overhead expenses were matters such as a political contribution to the Democratic Party of Orange County. From subsequent communications with Gafcon's attorney, they are now claiming that the spreadsheets merely show that Design Studio incurred numerous overhead expenses, besides the amounts they paid subcontractors. Gafcon has disputed that this political contribution was paid for with City funds. They claim the contribution was made with other funds, not the City monies, although they supplied the original record. This matter continues to be evaluated in the Audit.

7. While It Has Been Argued That It Is The Recession And The Loss Of \$1.4 Billion In Redevelopment Funding Which Killed The Design Studio's Master Plan, Serious Questions Have Come To Light About The Validity Of That Argument.

Arguments have been made that the recession and the elimination of redevelopment led to a loss of \$1.4 Billion in redevelopment funding and killed the City's ability to build a world class Great Park. Based on the evidence reviewed during the Audit to date, serious questions have come to light about the validity of that argument. First, the Master Plan evolved to where the estimated cost to develop it would have greatly exceeded the \$1.4 Billion and Gafcon's internal estimates ultimately were in the \$3-4 Billion range. Secondly, Mr. Ellzey began to scale the design back in 2009, as described above, the Close Out Agreement occurred in 2010, and redevelopment was not eliminated until Governor Brown signed the Dissolution Statute (ABX1 26) on June 29, 2011.

The public was informed in 2003 through 2006 that the Great Park could be designed and constructed for between \$353 Million to \$400 Million. By 2008, estimates to construct the Great Park were between \$1.3 Billion to \$1.6 Billion, on the basis that such funding was thought available from redevelopment. Some thought that the Great Park could be mass graded and built all at once. There were other views. For example, former Irvine Company CEO Dick Sims argued to maximize actual construction especially given that the \$200 Million provided at the beginning for the Great Park. (Sims' Statement, at p.13) An earlier anticipation of these financial realities might have led to an earlier scaling back of the Master Plan before the Lennar funding of \$200 Million was exhausted.

Conflicting budget estimates for construction of the Great Park emerge from the deposition testimony in the Audit. For example, in deposing Yehudi Gaffen of Gafcon, Mr. Gaffen revealed that Gafcon's internal estimate of the cost of developing the Great Park under the Master Plan was actually \$3 Billion to \$4 Billion (including the construction of buildings) and Bovis estimated that the costs were considerably in excess of \$1.3 Billion for horizontal construction costs alone by 2008 (without all of the buildings per the above Gafcon estimate).

Mr. Kogerman testified that his estimates were that the Great Park would have cost up to \$3.5 Billion. (Kogerman Deposition, pg. 122.)

Mr. McDevitt testified that the Great Park would have cost \$2 Billion. (McDevitt Deposition, pg. 47.)

These estimates exclude ongoing operation costs which are an additional factor to consider in assessing whether the Great Park as designed in the Master Plan was economically viable.

All of this led Mr. Ellzey to begin investigating scrapping the Master Plan and trying to use remaining funds to get some physical improvements built, ultimately building the Western Sector of less than 100 acres (7%) of the Great Park.

Given that the Master Plan was well beyond the capacity of the City, even with redevelopment, it would seem that an earlier recognition of these numbers might have led to a policy discussion of what was feasible, and of a phasing plan, which could have gotten far more of the Great Park developed.

IV. CONCLUSION

The Audit is bringing new information to the attention of the public. The Audit is raising serious concerns that the stated goals for the Great Park of transparency were not previously met. Information that should have been presented early on for public review and scrutiny was not presented to the public at critical times when decisions were being made.

We appreciate the Council's patience while the Audit work is being completed. All depositions need to be completed before the final audit report can be issued. Meanwhile, all information compiled during the Audit will be verified before a final audit report is issued. As stated above, this status report is not intended to be a final determination of the facts learned in the Audit, which continue to be assessed and will be presented in the final audit report. We expect this can be done within 30-60 days.

EXHIBIT A: Letter from District Attorney, dated August 26, 2014

EXHIBIT B: Letter from Mr. Elson, counsel for Mr. Allevato, dated October 13, 2014

EXHIBIT A



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA
TONY RACKAUCKAS, DISTRICT ATTORNEY

JIM TANIZAKI
SENIOR ASSISTANT D.A.
VERTICAL PROSECUTIONS/
VIOLENT CRIMES

JOSEPH D'AGOSTINO
SENIOR ASSISTANT D.A.
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LISA BOHAN - JOHNSTON
DIRECTOR
ADMINISTRATIVE SERVICES

SUSAN KANG SCHROEDER
CHIEF OF STAFF

August 26, 2014

Anthony Taylor
Aleshire & Wynder, LLP
18881 Von Karman Ave., Suite 1700
Irvine, CA 92612

RE: **Irvine Great Park**

Dear Mr. Taylor:

I am a Senior Assistant District Attorney in the Orange County District Attorney's Office. You are being contacted because you have been identified as the lead person investigating the "Great Park" on behalf of the City of Irvine.

A wide range of allegations of misuse of public funds have been made with respect to the planning and development of the "Great Park." It is my understanding there is currently an ongoing fiscal audit involving the park. As part of our review process, we are requesting copies of interviews, depositions and any supporting documentation that is associated with the audit, including the final report. Additionally, as you continue to review the matter, please contact us if you uncover any possible criminal conduct or suspicious conduct related to your investigation.

Our intent in reaching out to you and asking you for the final report and the raw data is in no way, shape or form intended to interfere with your process, and/or with any activity you are planning on doing in connection with your audit or with the release of information relating to your findings.

If you have any questions or concerns, please do not hesitate to contact me. We are looking forward to hearing from you and to reviewing the final report and the raw data.

Sincerely,

Michael Lubinski

REPLY TO: ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

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EXHIBIT B

October 13, 2014

Client-Matter: 47989-030

BY EMAIL

Anthony R. Taylor, Esq.
Aleshire & Wynder LLP
18881 Von Karman Avenue, Suite 1700
Irvine, CA 92612

Re: Forde & Mollrich

Dear Mr. Taylor:

At Sam Allevato's deposition on Friday, October 10, the following exchange occurred:

“Q Are you aware that Forde & Mollrich billed Gafcon for approximately 312,000 dollars for your services in calendar year 2010 for the Great Park project?

A No.

Q Did anybody at any time ever tell you that Gafcon would accept your being billed at an inflated rate for your work at Forde & Mollrich during the time that Gafcon would submit a proposal to the city of San Juan Capistrano for a master plan.

MR. ELSON: I'll object the use of the term inflated rate.

BY MR. ONSTOT:

Q A rate above normal an customary rates for public information officers?

MR. ELSON: I'll object again assumes facts not in evidence.

MR. ONSTOT: You can answer.

MR. ELSON: You can answer.

THE WITNESS: No.”

The basis for the questions apparently was the third page of what was marked as Exhibit 7 to Mr. Allevato's deposition. The first two pages of Exhibit 7 include an April 9, 2009 exchange of emails between Santiago Perez of Gafcon and Mitzi Dudley of Forde & Mollrich.

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Anthony Taylor
October 13, 2014
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Because the three pages included in Exhibit 7 are not Bates numbered, we are uncertain as to its source. It also is unclear whether the undated third page of Exhibit 7 is related to the email exchange included in the first two pages of Exhibit 7.

The reference in Mr. Onstot's question to Gafcon being billed \$312,000 for Mr. Allevato's services in calendar year 2010 presumably is based upon an inference that Mr. Onstot drew from the third page of Exhibit 7. That inference is not true. Forde & Mollrich did not bill Gafcon \$312,000 for Mr. Allevato's services in calendar year 2010, or in any other year. As you are aware, in calendar year 2010 Forde & Mollrich billed the Design Studio a fixed fee of \$100,000 per month for all of Forde & Mollrich's services. Forde & Mollrich did not separately bill for Mr. Allevato's -- or anyone else's -- services in calendar year 2010, or in any other year that Forde & Mollrich was billing pursuant to its fixed fee contracts.¹ It would be materially misleading for you or your firm, or HSNO, to make any statement to the effect that Forde & Mollrich billed \$312,000 for Mr. Allevato's services -- or for anyone else's services -- in calendar year 2010, or in any other year. If you or HSNO is aware of any document(s) that you believe reflects that Forde & Mollrich billed \$312,000 for Mr. Allevato's services in calendar year 2010, or any other year, please forward such document(s) to me to review with my clients.

During Mr. Allevato's deposition, Mr. Allevato also was asked a series of questions about Exhibits 5, 6 and 8 to his deposition, which relate to the City of San Juan Capistrano Community Redevelopment Agency's award of a consulting contract to Gafcon, and the Redevelopment Agency's later dealings with Home Depot. Mr. Allevato answered that series of questions, including in his answers the steps he took to disclose to members of the San Juan Capistrano City Council his employment with Forde & Mollrich and Forde & Mollrich's role as a sub-contractor to the Design Studio, in which Gafcon was involved, including the fact that Mr. Allevato discussed that matter with the City of San Juan Capistrano's City Attorney. Mr. Allevato had no financial interest in Gafcon's consulting contract with the City of San Juan Capistrano. It would be materially misleading -- and defamatory -- for you, your firm, or HSNO to imply that Mr. Allevato had a conflict of interest, or acted in any way inappropriately, with respect to the San Juan Capistrano Redevelopment Agency's consulting contract with Gafcon.

Mr. Onstot's second question seems to imply that the *quid pro quo* for Mr. Allevato voting on the consent calendar in favor of Gafcon's contract was that Gafcon would accept the supposed -- and non-existent -- "inflated" \$312,000 billed in calendar year 2010 for Mr. Allevato's services. There is no basis whatsoever for that defamatory inference, and it would be materially misleading for you or your firm, or for HSNO, to suggest that there is any

¹ Mr. Allevato testified that much later, after he was no longer employed by Forde & Mollrich, he served as an "as needed" consultant for something like two months.

Anthony Taylor
October 13, 2014
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basis for such a statement. If you have any documents or other evidence that supports that inference, please provide it to me.

Very truly yours,

A handwritten signature in black ink, appearing to read "David Elson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

David Elson