

1 **DECLARATION OF CRAIG SMITH**

2 I, Craig Smith, declare as follows:

3 1. I am a person over the age of 18 years. I have personal knowledge of the facts
4 contained in this declaration, and could testify to these facts in a court of law if called upon to do
5 so.

6 2. I have nearly 40 years experience in the engineering and construction of large,
7 complex projects. I have served as a project engineer, project manager, construction manager, or
8 executive-in-charge on diverse projects including:

- 9 • Structural tests on offshore oil platforms in the North Sea, the California
- 10 coast, and Gulf of Mexico;
- 11 • Seismic tests of dams and other large structures
- 12 • Construction of a waste-to-energy power plant
- 13 • Construction management of large mass transit systems and several large
- 14 facilities in the Port of Los Angeles
- 15 • Design and construction of numerous laboratory and research facilities
- 16 employing advanced technologies
- 17 • Airport expansion programs
- 18 • The renovation of the Pentagon, before and after 9/11.

19 3. I was called in by Sharon Landers, Assistant City Manager and acting CEO of the
20 Orange County Great Park, to assist the Great Park Corporation staff with the review of the
21 Phase 1 contract for the Orange County Great Park and also help negotiate the Phase 2 contract. I
22 was given a six month part-time consulting contract from June 1 to December 31, 2007. I
23 resigned in early November, 2007.

24 4. The Phase 1 contract was a time and materials contract and was subject to cost
25 overruns. I felt the earned value contract (fixed prices for defined tasks) would solve this
26 problem and save the City money.

27 5. In my initial review of Gafcon's proposed earned value schedule for Phase 2 of
28 the Great Park Project, Gafcon had allocated approximately \$7 million dollars to itself for design

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1 management. The proposed \$7 million allocation was, in my professional opinion, vastly
2 overstated for the services provided.

3 6. In addition, I questioned the inclusion of Forde Mollrich in the Great Park Design
4 Studio's Phase 2 contract because it is not normal to have public relations included in a
5 schematic design contract. I felt it was more appropriate to keep the schematic design contract as
6 one contract and make the Forde Mollrich contract separate so as to exclude it from the earned
7 value schedule. My understanding from the Great Park Corporation staff was that the Irvine City
8 Council mandated the inclusion of the Forde Mollrich subcontract.

9 7. There were numerous individual line items that I disagreed with included in the
10 Phase 2 proposal. Along with the Great Park Corporation staff, I recommended many reductions
11 in the proposal costs. One item in particular remained in the final approved contract. It called for
12 final design plans for Mass Grading.. Based on my experience, it was imprudent to do final
13 designs during schematic design phase since many of the park features were not yet established.
14 In hindsight, production of these plans was a complete waste of money.

15 8. During the Phase 2 earned value contract negotiations between the City and
16 Gafcon, I was asked by Sharon Landers to review the earned value schedule. I participated in
17 the negotiations between Gafcon and the City and provided input to Sharon Landers regarding
18 what I thought the value of each measurable milestone should be.

19 9. Sam Hout from PBS&J, and Bovis Director Brian Day, were also asked to
20 provide a similar assessment.

21 10. I informed Sharon Landers that a reasonable sum total of all measureable
22 milestones for the Phase 2 earned value schedule should be around \$20 million. I based this on
23 experience that the schematic design phase of a large contract was typically 20% of the total
24 design cost, in this case estimated as \$100 million (for a construction project valued at \$1
25 billion). I saw through our negotiations that Gafcon reduced the values from their initial
26 numbers, but I still thought the amounts were excessive.

27 11. I was aware that Sharon Landers was under pressure from the City Council to get
28 the contract approved without further negotiations beyond those that had already taken place.

1 12. Had the project been mine, I would have never approved the values totaling \$25.9
2 million because I believed they were excessive and some tasks, such as final design of mass
3 grading, should not have been done.

4 13. 13. In my years of experience, it is my opinion that one of the benefits of an
5 earned value contract is to minimize the number of change orders if managed properly. The
6 Phase 2 contract between the City and the Great Park Design Studio was 90% fixed price tasks
7 and 10% time and materials tasks.

8 14. When I first began to assist Sharon, I wanted to familiarize myself with the head
9 of the Great Park Design Studio, Gafcon, since I had never heard of them before. First, I looked
10 to see if Gafcon was a member of the Construction Management Association of America
11 (CMAA) and they were not. This is one of the leading professional organizations for project and
12 construction management. I then obtained a set of qualifications, and they listed a \$1.3 billion
13 Port of Los Angeles Waterfront Development project as one of their main qualifications for the
14 Great Park work. Having done work with the Port of Los Angeles, I called Antonio Gioiello
15 who was the Chief Harbor Engineer at the Port of Los Angeles at this time to inquire about
16 Gafcon. Antonio Gioiello told me that Gafcon was part of a joint venture, the project was \$11
17 million, their contract was terminated, and they would not hire Gafcon again.. The Port of Los
18 Angeles had problems with over-billing, poor quality of work, and inability to meet deadlines.

19 15. I was surprised to hear this knowing the City had selected Gafcon as part of the
20 Great Park Design Studio. I then informed Sharon Landers of my conversation with Antonio
21 Gioiello.

22 16. I recommended that an audit be made of the Phase 1 contract, that an audit be
23 required for the schematic design contract, and that retention of 10% be included in the
24 schematic design contract. (Retention was not required in the final contract.)

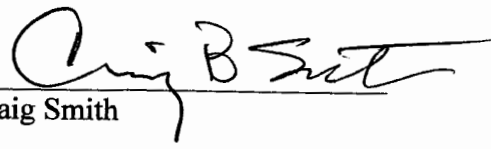
25 I declare under penalty of perjury under the laws of the State of California that the
26 foregoing is true and correct.

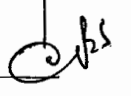
27 Executed this 17 day of December, 2013, in Irvine, California.

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Craig Smith



1 noticed that after I gave Sharon these values, Gafcon reduced the values from their initial
2 numbers, but I still thought the amounts were excessive.

3 8. The final numbers that were presented to the City Council (Exhibit 1) by Sharon
4 Landers were not within my range of reasonable values. The total contract price approved was
5 between almost \$6 and \$8 million too high.

6 9. In my years of experience, it is my opinion that one of the benefits of an earned
7 value contract is to minimize the number of change orders. Earned value contracts should only
8 be used in the following two situations:

- 9 i. A project where the scope does not change including measurable milestones.
- 10 ii. With accurate or reasonable values.

11 10. In my opinion, the phase 2 contract between the City and The Great Park Design
12 Studio was ineffective because numerous change orders to the project scope were approved.

13 11. In September 2008, I was approached by newly appointed Great Park Corporation
14 CEO Mike Elzey, and told to hire Brendan McDevitt, of MCK Associates, from San Francisco,
15 to our project management team. Bovis did not have a need for additional employees, and had
16 plenty of local resources, but Mike Elzey insisted Bovis hire him. Bovis then entered into a sub-
17 contracting agreement with Brendan McDevitt.

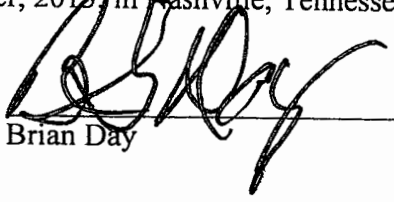
18 12. Since Brendan McDevitt was based in San Francisco, travel costs would normally
19 be incurred for Brendan to work out of Irvine on a regular basis. Travel costs were not
20 reimbursable since Bovis is a local firm. Mike told us to set his rate at \$210 an hour, and this
21 would cover his travel and his hourly cost. At this time I was charging \$210 an hour as Principal
22 in Charge, but as instructed by Mike Elzey, we billed Brendan McDevitt at \$210 an hour as a
23 Project Executive. It is my opinion that his experience did not warrant this rate.

24 13. As the job progressed, with Brendan on our team, he became more involved,
25 against my wishes, and eventually was running the program management of The Great Park
26 project. Meetings were being held that my team and I were regularly a part of before Brendan,
27 but now we were excluded and Brendan would go by himself and report directly to Mike Elzey,
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1 essentially removing Bovis from the project. Eventually Brendan had his own office at the Great
2 Park Corporations offices.

3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct.

5 Executed this 17 day of December, 2012 in Nashville, Tennessee.

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8 Brian Day

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1 7. I had worked with Brendan McDevitt, a program manager with MCK Associates
2 previously in San Francisco, and I identified him as someone who could perform the analysis of
3 construction possibilities and not be subjected to pressure from individuals taking directions
4 from elected officials.

5 8. In September 2008, to perform this project I instructed Brian Day to contract Mr.
6 McDevitt as a sub-consultant to Bovis. I suggested that Bovis bill Mr. McDevitt at an hourly
7 rate that would incorporate any necessary travel costs.

8 9. I had previously worked with WRNS Studio (herein referred to as "WRNS") in
9 San Francisco on a parking facility construction project in Golden Gate Park, and I
10 recommended WRNS to the Great Park Design Studio to assist with a structured parking
11 feasibility study.

12 10. I became increasingly dissatisfied with the performance of Gafcon for the
13 following reasons:

- 14 i. The work performed by the Great Park Design Studio did not include reality-
15 based budgeting considerations. For example, the Design Studio intended to
16 mass grade the entire park and build it all at once, even though it became clear
17 that there were inadequate funds to do so as a result of the economic downturn
18 and the postponement of Lennar's development plans.
- 19 ii. The Great Park Design Studio's invoices were not sufficiently detailed to
20 enable a review by Bovis that would result in recommendation for payment.
21 This resulted in payment delays that caused confusion with City staff
22 regarding payment processing.
- 23 iii. The Great Park Design Studio often performed work before it was approved.
24 This was one of the causes of payment delays. As the payment delay for
25 unapproved work festered, the unapproved work continued.
- 26 iv. Gafcon wielded considerable political pressure upon Great Park staff and its
27 contractors.
- 28 v. Because of these concerns, I felt it was necessary to remove Gafcon from the

1 project as we moved the Great Park project into the construction phase.

2 11. In addition, it became apparent that I needed to bring in another opinion to
3 identify construction options within a realistic budget. Contract 6152 was awarded on a sole
4 sourced basis to WRNS, and was entered into on March 23, 2009 to perform these services.

5 12. I was concerned about the long term financial viability of the Great Park, so in
6 early 2009, I directed the staff at the Great Park Corporation to perform an analysis of funding
7 necessary to maintain operations and the remaining funds available for construction.

8 13. The plan for the 500 Acre Park was an idea prepared by the Great Park Design
9 Studio and it lacked supporting calculations. There was no feasible way to build the 500 Acre
10 Park Plan with the amount of funds available for construction.

11 14. There were numerous meetings and discussions regarding the various options.
12 This included a multiple day summit with members of the Great Park Staff, the Design Studio,
13 WRNS, Fuscoe Engineering and members of the City Staff. During this meeting, construction
14 priorities and the associated estimated construction costs were discussed and established openly
15 and cooperatively. This input became the foundation for the Western Sector Park Development
16 Plan.

17 15. The Great Park Staff and I examined all options that were financially feasible, and
18 we arrived at the Western Sector Park Development Plan which was for approximately 200
19 acres.

20 16. Fuscoe Engineering had agreed to be the Engineer of Record & Design Manager
21 for the Western Sector Park Development Plan, however they chose not to at the last minute. I
22 then had to find a replacement within days and I was not able to request proposals to explore
23 many options. I contacted WRNS, and they agreed to serve as Design Manager, subject to City
24 Council approval.

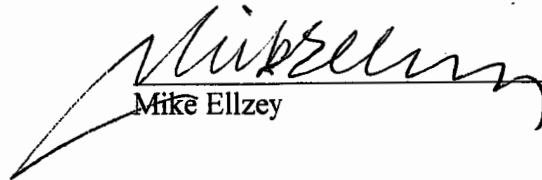
25 17. The Navy's Installation Restoration Program requirements were known by the
26 Design Studio. However, the Design Studio assumed that the Navy would modify its
27 Environmental Mitigation plans to accommodate the Design Studio's design. Cliff Wallace
28 informed the Design Studio that this was very unlikely, however the Design Studio did not

1 acknowledge this in the Schematic Design (Phase 2) or account for the required mitigation.

2 18. The Great Park requested documentation of payments made by the Great Park
3 Design Studio to the subcontractors. They declined to provide us this information.

4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct.

6 Executed this 16th day of January, 2014, in Irvine, California.

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Mike Ellzey

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DECLARATION OF COLLEEN CLARK

I, Colleen Clark, declare as follows:

1. I am a person over the age of 18 years. I have personal knowledge of the facts contained in this declaration, and could testify to these facts in a court of law if called upon to do so.

2. I started working on the Great Park in 2005 as the Deputy CEO and CFO under Wally Kreutzen. I continued in this role under Marty Bryant, Sharon Landers, and Mike Ellzey. I officially left the Great Park in September 2009.

3. During my time, the Great Park Design Studio was tasked with performing Level 1 and Level 2 Priority Program Feasibility Studies. The initial Level 1 Feasibility Studies were contracted for sixteen (16) different studies at a fixed fee value of \$25,000 per study. Each study had a deliverable that would be presented to the Great Park Board of Directors and to the Irvine City Council. At the time of presentation, the Board was to determine if they wanted to pursue the programs further. Upon the Design Studio's presentation of this deliverable and upon approval by the Great Park Board and City Council, the Design Studio could seek payment of \$25,000 for each completed deliverable.

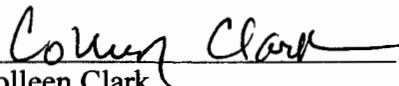
4. The first 16 Priority Program Feasibility Studies were delivered to the Clerk of the Board, Steve Larson, after the required delivery deadline (the delivery deadline is one week prior to the Great Park Board meeting). Generally, all Great Park agenda packet information was reviewed by me and then again reviewed by the CEO, Sharon Landers before it could be finalized and included in a Board Agenda package. Upon review by me, the Board Clerk, and Sharon Landers, we noted that several of the submittals had misspelled words, incomplete data, web printouts with headers and footers still attached, grammatical errors and incomplete sentences. In addition, there was little or no continuity between the formats of the reports. The Great Park Corporation staff, knowing that the City of Irvine agenda protocol required staff reports and their attachments to be correctly spelled and punctuated, and that printed web pages from others could not be submitted as original work product, would be unable to include the

1 work product in the form submitted by the Design Studio. The Design Studio was notified of
2 the deficiencies and the Manager in charge of the Design Studio Priority studies arrived at the
3 Great Park offices to make the corrections that were necessary to allow it to move forward on the
4 agenda. Mike Ellzey, Kurt Mowery, Steve Larson, Sharon Landers and I worked until 4 am to
5 edit, correct, reformat, and add missing information to the feasibility studies so that they would
6 be in a form that could be presented to the Great Park Board of Directors and ultimately the City
7 Council. At the Great Park meeting, of June 19, 2008, the additional work effort required by
8 staff was noted by both the Great Park CEO, Sharon Landers and by the Chairman of the Board,
9 Larry Agran. The Board of Directors and the Irvine City Council approved all of the Level I
10 Feasibility Studies and The Design Studio was paid \$25,000 each.

11 5. Also, during my tenure at the Great Park, Yehudi Gaffen or representatives of
12 Gafcon, would submit change order requests to the Design Studio contract. In many cases, the
13 work had already been done by the Design Studio without written authorization by the
14 authorized Great Park Manager. A change order was effectively being requested retroactively.
15 When asked by staff who instructed them to do that work, or why they proceeded with that work
16 without a change order, Yehudi Gaffen or the project director for Gafcon would say it was
17 requested by Chairman Agran.

18 6. I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct.

20 Executed this 2nd day of January, 2014 in Irvine, California.

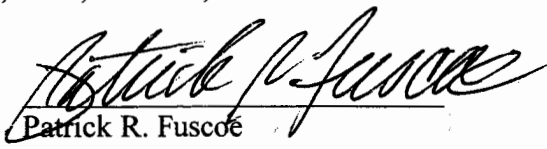
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14. I still believe the 500 Acre Plan that was approved by the Great Park Board of Directors could have been completed for the approved amount of \$61 million. My overall experience with the great park project was that it was poorly organized and poorly managed.

15. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 3 day of January, 2014, in Irvine, California.


Patrick R. Fuscoe