



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Requests for Opinion Concerning the Conduct of GUY WELLS, STEPHEN QUINN, WILLIAM KING, NATHANIEL HODGSON, MICHAEL EFSTRATIS and KEVIN BURKE, Members, Nevada State Contractors Board, State of Nevada,	Requests for Opinion Nos. 11-09C 11-10C 11-11C 11-12C 11-13C 11-14C
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Subjects. /

STIPULATED AGREEMENT

1. **PURPOSE:** This stipulated agreement resolves Requests for Opinion Nos. 11-09C, 11-10C, 11-11C, 11-12C, 11-13C and 11-14C before the Nevada Commission on Ethics (“Commission”) concerning Guy Wells, Stephen Quinn, William King, Nathaniel Hodgson, Michael Efstratis and Kevin Burke (collectively “Subjects”), and renders an opinion as agreed.

2. **JURISDICTION:** At all material times, current members, Guy Wells, Bruce King, Stephen Quinn, Nathaniel Hodgson and Kevin Burke, and former member, Michael Efstratis, served as appointed members of the Nevada State Contractor’s Board (“Board”), making them current or former public officers pursuant to NRS 281A.160. Nevada Revised Statute (“NRS”) 281A.280 gives the Commission jurisdiction over current and former elected

and appointed public officers for alleged conduct which occurred within the immediately preceding two years. Accordingly, the Commission has jurisdiction over each of the Subjects.

3. **PROCEDURAL STATUS AND HISTORY:**

The following events are relevant to the matter:

- a. The Governor appointed the Subjects to serve on the Board pursuant to NRS 624.040.
- b. Each of the Subjects either owns or is employed by one or more companies to which the Board has granted licenses with unlimited bid limits (hereafter, “unlimited licenses”).
- c. On January 31, 2011, the Commission received six identical third-party requests for opinion (“RFOs”) from a private citizen (“Requester”) regarding the Subjects’ alleged conduct. The Requester, having filed RFOs against only those members of the Board who held unlimited licenses, generally alleged that the Subjects violated NRS 281A by holding unlimited licenses and serving as members of the Board with the authority to govern the monetary limits of all licensees. The RFOs suggested that monetary limits should not be placed on Nevada licensed contractors and that the Governor improperly appoints to the Board a disproportionate number of contractors with unlimited licenses resulting in a competitive advantage against other contractors with limited licenses or applicants for unlimited licenses. Specifically, the RFOs stated that Subjects violated NRS 281A by “[v]oting and participating on monetary limit issues and matters before the Board” because the “contractor board member is, or represents an unlimited licensed contractor and should not be voting, as he is bias & with conflict of interest.” *Sic.* (Emphasis added). The Requester also stated that

“[c]ompetition to unlimited contractors is greatly reduced by imposing monetary limits upon contractors licenses.” (Emphasis added).

d. As provided in NAC 281A.410, the Commission provided the Subjects with notice of the RFOs by mailing copies of the RFOs and their accompanying documents to the Subjects, care of the Board. The Subjects were provided an opportunity to file a written response to the RFOs. Current members, Guy Wells, Bruce King, Stephen Quinn, Nathaniel Hodgson and Kevin Burke, filed a consolidated written response to the allegations on March 4, 2011 through their attorney, Bruce Robb, Esq. Michael Efstratis, a former Board member, filed a separate response on March 4, 2011 through his attorney, Bruce Robb, Esq.

(1) The Subjects interpreted the RFOs to complain only about the status of the Subjects as unlimited licensees governing monetary limit issues before the Board and its perceived unfairness.

(2) The Subjects were aware of similar complaints filed against the Board and/or Subjects with the Nevada Attorney General and Governor with the consistent theme that the Subjects’ contemporaneous public and private roles as unlimited licensees and members of the Board created inherent conflicts of interest and unfair limitations on competition.¹

¹ The Nevada Attorney General and Governor concluded that the Legislature had established the Board and required its membership to include contractors licensed by the Board and appointed by the Governor. Accordingly, it was not appropriate for the Governor or Attorney General to interfere with a policy decision established by the Legislature to have members of the Board include private persons subject to the regulations of the Board.

- (3) Consistent with these similar complaints, the Subjects' responded to the allegations in the RFOs indicating that the Board's membership was created by the Legislature, appointed by the Governor and fell outside the jurisdiction of the Commission.
- (4) The Subjects further responded that they have never used, or attempted to use, their positions on the Board to receive any unwarranted benefit, preference or advantage for themselves or their business interests.
- e. During the course of its investigation, the Commission staff interpreted the RFOs and supporting materials as claims that the Subjects violated the Ethics in Government Law set forth in NRS 281A.
- f. At the conclusion of the Commission's investigation, the Commission's Executive Director provided a report and recommendation to an investigatory panel pursuant to NRS 281A.440. The Executive Director's recommendations concluded that:
- (1) Regarding the allegation concerning NRS 281A.400(2), the inherent conflict between holding an unlimited license and serving as a Board member to create unwarranted preferences for unlimited licensees was not supported by credible evidence to create just and sufficient cause for the panel to forward the allegations to the Commission for a hearing and opinion. Likewise, the Executive Director concluded the issue was a policy matter within the discretion of the Legislature in establishing chapter 624 of NRS governing the Board and its licensees, and not properly a matter for this Commission to consider (consistent with the views of the Subjects, Attorney General and Governor).

- (2) Regarding the allegations concerning NRS 281A.420(1) and (3) based on the Commission staff's interpretation of the RFOs, the investigation revealed credible evidence to establish just and sufficient cause for the Commission to hold a hearing and render an opinion regarding disclosure and abstention.
- g. Pursuant to NRS 281A.440, on April 14, 2011, a two-member investigatory panel of the Commission reviewed the RFOs, Subjects' responses, the staff report and recommendation and other evidence.
- h. The Panel determined that:
- (1) Just and sufficient cause did NOT exist for the Commission to conduct a public hearing and render an opinion whether the Subjects violated NRS 281A.400(2) by using their positions in government to secure or grant unwarranted preferences or advantages for themselves or their business interests. The Panel found no credible evidence that Subjects imposed any barriers to gaining unlimited contractors' licenses beyond those enumerated and authorized in statute. Consequently, the Panel suggested that any allegation that the licensing process outlined in statute is discriminatory and/or unfair was not properly before the Commission and should have been addressed to the Nevada Legislature. These allegations were accordingly **DISMISSED**.
- (2) Based on the investigation, just and sufficient cause did exist for the Commission to conduct a public hearing and render an opinion whether the Subjects violated NRS 281A.420(1) for failing to properly disclose the nature of any conflicts of interest on certain consent agenda items considered by the Board between

January 2009 and January 2011 (the period of the Commission's jurisdiction as limited by NRS 281A.280) involving various matters concerning various companies which are owned by or employ the Subjects.

(3) Based on the investigation, just and sufficient cause did exist for the Commission to conduct a public hearing and render an opinion whether Subject Guy Wells violated NRS 281A.420(1) and (3) by failing to disclose a conflict of interest and abstain from voting on a consent agenda item on July 29, 2010 to approve a single project increase in the bid limit for Patriot Contractors, LLC ("Patriot Contractors"), a company in which Wells had a pecuniary interest.

i. The Parties now enter into this stipulation acknowledging that no claims regarding disclosure and abstention concerning consent agendas were alleged in the RFOs and therefore were not properly before the Commission. Subjects acknowledge their status as unlimited licensees and their individual duties as public officers to avoid conflicts between their private interests and those of the public they serve. *See* NRS 281A.020, 281A.400 and 281A.420; *see also In re Woodbury*, RFO 99-56. Accordingly, the purpose of this stipulated agreement finding no violation of NRS 281A serves as an opportunity for the Commission to promote and clarify the goals of the Ethics in Government Law, and in particular its disclosure requirements, and for the Board and its members to serve as leaders in adopting policies and procedures consistent with NRS 281A.420.

4. **RELEVANT STATUTES:** The following excerpts from Nevada Revised Statutes are relevant to the allegations giving rise to this proposed stipulated agreement:

a. **NRS 281A.020(1)** – Public Policy / Legislative Declaration

1. It is hereby declared to be the public policy of this State that:

(a) A public office is a public trust and shall be held for the sole benefit of the people.

(b) A public officer or employee must commit himself or herself to avoid conflicts between the private interests of the public officer or employee and those of the general public whom the public officer or employee serves.

b. **NRS 281A.400(2)** – Unwarranted Preferences

2. A public officer or employee shall not use the public officer's or employee's position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public officer or employee, any business entity in which the public officer or employee has a significant pecuniary interest, or any person to whom the public officer or employee has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281A.420.

(b) "Unwarranted" means without justification or adequate reason.

c. **NRS 281A.420** – Disclosure/Abstention

(1) **NRS 281A.420(1)** - Disclosure

1. Except as otherwise provided in this section, a public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon a matter:

(a) Regarding which the public officer or employee has accepted a gift or loan;

(b) In which the public officer or employee has a pecuniary interest; or

(c) Which would reasonably be affected by the public officer's or employee's commitment in a private capacity to the interest of others,

- without disclosing sufficient information concerning the gift, loan, interest or commitment to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the public officer's or employee's pecuniary interest, or upon the persons to whom the public officer or employee has a commitment in a private capacity. Such a disclosure must be made at the time the matter is considered. If the public officer or employee is a member of a body which makes decisions, the public officer or employee shall make the disclosure in public to the chair and other members of the body. . . .

(2) NRS 281A.420(3) – Abstention

3. Except as otherwise provided in this section, in addition to the requirements of subsection 1, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in the public officer's situation would be materially affected by:

(a) The public officer's acceptance of a gift or loan;

(b) The public officer's pecuniary interest; or

(c) The public officer's commitment in a private capacity to the interests of others.

5. **FINDINGS/STIPULATIONS OF FACT:**

a. Subjects' Public Interests:

(1) The Subjects were appointed to serve as members of the Board pursuant to NRS 624.040.

(2) The Subjects hold public offices, which constitute a public trust to be held for the sole benefit of the people of the State of Nevada.

b. Subjects' Private Interests/Conduct:

At all times relevant to this matter:

- (1) Each of the Subjects either owned or was employed by one or more companies holding unlimited licenses issued and administered by the Board.
- (2) Recognizing that potential conflicts of interest could occur because members of the Board hold licenses issued and regulated by the Board, the Board implemented a practice, consistent with its regulations, whereby Board staff and Subjects would consistently identify items on consent agendas which implicated the Subjects' private interests related to the companies they owned or by which they were employed, or which involved potential interests related to requests from a person to whom a Subject had a commitment in a private capacity to the interest of that person. Subjects would identify the items by number and, if appropriate, abstain from voting on them.
- (3) Although the Subjects' practice has not included disclosures of their specific interests in each item, the Subjects have routinely identified the items which implicate their personal and pecuniary interests on the consent agendas by number of the agenda item and abstain from voting on those items. The Subjects generally have not identified the subject matter of the items from which they abstain on consent agendas due to the high number of items on each consent agenda.

- (4) While the Subjects have specifically identified the items on the consent agenda for which they abstain from voting or participating, the Subjects may not have articulated the reason for the abstention. In such instances, the Subjects may not have provided sufficient information contemplated by NRS 281A.420(1) to put the public on notice of the nature or extent of the conflict and may not have undertaken an analysis to sufficiently explain the basis for their abstentions. *See In re Woodbury*, RFO 99-56.
- (5) The Subjects engaged in the practice outlined above upon the advice of the legal counsel to the Board and in accordance with the Board's administrative regulations. Although the Board and its members have satisfied the spirit and intent of the disclosure/abstention law, their practice of disclosure and abstention described herein creates an opportunity for improvement based on clarification and education by the Commission. The disclosure and abstention requirements of NRS 281A extend to consent agenda items. Although consent agendas generally include hundreds, if not thousands, of items involving uncontested matters already determined by staff to have satisfied all legal requirements, they constitute formal action by the Board. If an applicant or licensee satisfies each and every obligation under law respecting his application or license, the staff reviews it and forwards it to the Board for formal adoption of the staff's determination that the application is complete. This streamlined process is intended to gain final Board approval without objection. However, if information is missing or a requirement is not satisfied, the staff forwards the

matter to the Board for full consideration as a regular agenda item, also known as a contested matter. Regarding contested matters, Subjects properly disclose their conflicts of interest and abstain from voting when appropriate.

(6) Subject Guy Wells has an ownership interest in Patriot Contractors, which appeared on the Board's consent agendas on June 17, 2010, July 29, 2010 and September 23, 2010. In accordance with its regular practice, Wells abstained from voting on the matters affecting Patriot Contractors on June 17, 2010 and September 23, 2010. However, Wells did not disclose or abstain from voting on the matter affecting Patriot Contractors on the July 29, 2010 consent agenda.

6. **TERMS:** Based on the foregoing, the Subjects, and each of them, and the Commission agree as follows:

- a. Each of the findings/facts enumerated in section 5 is deemed to be true and correct.
- b. The Subjects have **NOT committed any violation of the Ethics in Government Law set forth in NRS 281A.**
- c. While the Subjects recognize and appreciate the law regarding disclosure and abstention and the need to clarify their procedures regarding proper disclosures and abstentions, such matters were not part of the RFOs and were not properly brought before the Commission. However, having worked with the Commission to respond to and resolve the RFOs, the Subjects have been proactive in implementing the proper framework of disclosures and abstentions for consent agendas to prevent any future RFOs implicating concerns regarding the proper separation of public and private interests.

- d. NRS 281A.420(1) and (3), regarding disclosure and abstention are inextricably related provisions which require public officers to make a sufficient disclosure regarding a conflict of interest to put the public on notice of the nature of the interest and the extent of its conflict with the matter under consideration. The Commission has further interpreted the statutes to include a requirement for the public officer to undertake an abstention analysis on the record to ascertain whether the independence of judgment of the public officer, and a reasonable person in his position, would be materially affected by the matters before him such that abstention would be necessary. *See In re Woodbury*, RFO 99-56.
- e. While the Subjects have always generally understood and complied with their obligations to abstain from voting on consent agenda matters which affect their pecuniary interests or interests of persons to whom they have a commitment in a private capacity, they previously did not fully understand the extent to which disclosures must accompany such abstentions on consent agendas. The Subjects' must disclose their personal and pecuniary interests and undertake the abstention analysis when the Board considers certain matters affecting those interests on its consent agendas.
- f. In light of the circumstances surrounding these RFOs, the Commission clarifies that consideration of a consent agenda requires full compliance with NRS 281A.420, as does every action or vote taken by a public officer. Each matter on a consent agenda, like any other matter before the Board, requires action for final approval. Without a formal vote of the Board, the staff action does not become effective. Accordingly,

when considering items on a consent agenda, public officers are required to properly disclose any gifts or loans, pecuniary interests or commitments in a private capacity to the interests of others and undertake the statutorily directed abstention analysis on the record to determine whether abstention is appropriate.

- g. These RFOs provide further opportunity for the Commission to advise Subjects and all other public officers concerning abstentions for perceived conflicts respecting matters in which certain acquaintances appear before the public officer for action. These RFOs resulted in inquiries regarding matters before public bodies which may involve interests of persons to whom public officers may be generally acquainted. NRS 281A.420(3) and (4), as amended in 2009, clarify the public policy of the State that public officers shall represent and act upon matters affecting their constituents except in circumstances in which there is a clear conflict such that a reasonable person in the public officer's position could not act independently from his or her interests or the interests of a person to whom he or she has a commitment in a private capacity. A public officer protects his or her decision to act by disclosing the interest and undertaking the abstention analysis to provide the public with sufficient information concerning the conflict and the public officer's ability, and that of a reasonable person in the public officer's situation, to remain independent. Under NRS 281A.420(8)(a), the law clearly defines the types of relationships which create potential conflicts of interest requiring disclosure and abstention. A mere acquaintance, or friend, without evidence of a significant relationship substantially similar to that shared with a relative within the third degree of consanguinity,

household member, employer or business associate along with a commitment to the interests of that person, does not create a relationship intended to require abstention. While such relationships do not even require disclosure under the letter of the law, the Commission and the Nevada Supreme Court have interpreted such requirements to include a duty to avoid appearances of impropriety. Consequently, public officers are encouraged to continue to disclose any relationship that may create an appearance of impropriety and undertake the abstention analysis to determine whether the relationship is such that the public officer and a reasonable person in the public officer's situation are able to remain independent in his or her judgment. In addition to the terms outlined above, Subject Guy Wells' failure to disclose and abstain from voting on a consent agenda matter on July 29, 2010 concerning Patriot Contractors is not properly before the Commission as it did not involve the Requester's concern that the Subjects were in a position to and acted on matters which limited competition for unlimited licensees. Accordingly, this matter is **NOT a violation of NRS 281A.** Additionally, the record clearly reflects that Wells regularly complied with the Board's practice governing abstentions on all consent agendas and in the two meetings immediately surrounding the July 29, 2010 meeting, matters affecting Patriot Contractors appeared on the consent agendas and Wells abstained on those matters in accordance with then-identified Board practices. Based on his regular identification of matters involving his interests and abstaining on consent agendas, and his identification of Patriot Contractors in each of the two meetings directly surrounding the July meeting, Wells' failure to identify and disclose his interests in

the matter on the July 29, 2010 consent agenda and abstain from voting is deemed to have been inadvertent.

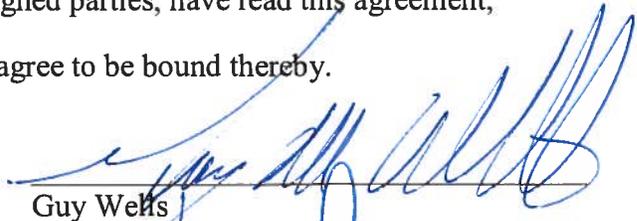
- h. This agreement applies only to the specific facts, circumstances and law related to these RFOs. Any facts or circumstances that are in addition to or differ from those contained in this agreement may create an entirely different resolution of this matter.

7. **WAIVER:**

- a. As a result of the Commission's dismissal of the RFOs, the Commission and Subjects knowingly and voluntarily waive a full hearing before the Commission on the allegations against them and of any and all rights they may be accorded pursuant to NRS Chapter 281A, the regulations of the Commission (NAC Chapter 281A), the Nevada Administrative Procedures Act (NRS Chapter 233B), and the laws of the State of Nevada.
- b. The Subjects knowingly and voluntarily waive their right to any judicial review of this matter as provided in NRS 281A, 233B or any other provision of Nevada law.

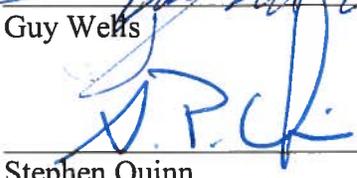
8. **ACCEPTANCE:** We, the undersigned parties, have read this agreement, understand each and every provision therein, and agree to be bound thereby.

DATED this 18 day of August, 2011.



Guy Wells

DATED this 19 day of August, 2011.



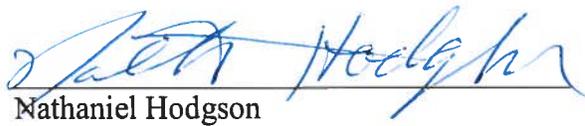
Stephen Quinn

DATED this 18 day of August, 2011.



William King

DATED this 18 day of August, 2011.



Nathaniel Hodgson

DATED this 22nd day of Aug., 2011.



Michael Efstratis

DATED this 18 day of August, 2011.



Kevin Burke

DATED this 24th day of August, 2011.



Erik Beyer, Chairman
Nevada Commission on Ethics

The above Stipulated Agreement has been reviewed and approved by:

DATED this 18th day of August, 2011.



Bruce Robb, Esq.
Counsel for Subjects

DATED this 22nd day of August, 2011.



Yvonne M. Nevarez-Goodson, Esq.
Commission Counsel