



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct of
Rodney Stewart Woodbury, Mayor,
City of Boulder City, State of Nevada,

Request for Opinion No. **16-40C**

Subject. /

STIPULATED AGREEMENT

1. **PURPOSE**: This Stipulated Agreement resolves Third-Party Request for Opinion ("RFO") No. 16-40C before the Nevada Commission on Ethics ("Commission") concerning Rodney Stewart Woodbury ("Woodbury"), Mayor for the City of Boulder City ("Boulder City"), Nevada, and serves as the final opinion in this matter.

2. **JURISDICTION**: At all material times, Woodbury previously served as a Boulder City Council Member and is currently serving as the Mayor for Boulder City. As such, Woodbury is a public officer as defined in NRS 281A.160. The Ethics in Government Law ("Ethics Law") set forth in NRS Chapter 281A establishes the Commission's jurisdiction over elected and appointed public officers and public employees whose conduct is alleged to have violated the provisions of NRS Chapter 281A. See NRS 281A.280. Accordingly, the Commission has jurisdiction over Woodbury in this matter.

3. **PROCEDURAL HISTORY BEFORE COMMISSION:**

- a. On or about March 21, 2016, the Commission received this RFO from a member of the public ("Requester"), alleging that Woodbury:
 - 1) Failed to abstain from voting on a consent agenda item at a November 12, 2014 City Council Meeting concerning a bid awarded to Urban Jungle Contractors, Ltd. ("Urban Jungle"), which was represented by Woodbury in

his private capacity as an attorney in a lawsuit filed against Urban Jungle in July 2014; and

- 2) Used nonpublic information acquired through Woodbury's public office to further significant pecuniary interests for himself or any other person or business entity, in violation of NRS 281A.400(5).
- b. On or about March 31, 2016, staff of the Commission issued a Notice to Subject under NRS 281A.440 stating that the Commission accepted jurisdiction to investigate the allegations regarding violations of NRS 281A.020(1) and NRS 281A.420(1) and (3) for failing to avoid a conflict of interest between his public duties and private interests, failing to sufficiently disclose a conflict of interest for which disclosure was required, and for acting on a matter in which abstention was required.¹ Woodbury was provided an opportunity to respond to the RFO.
- c. On or about May 17, 2016, Woodbury, through legal counsel, provided a written response to the RFO.
- d. On or about June 30, 2016, the Commission issued a Notice of Additional Issues and Facts concerning allegations implicating NRS 281A.420(1) and (3).
- e. Woodbury waived his right to a panel determination pursuant to NRS 281A.440 and acknowledges that credible evidence establishes just and sufficient cause for the Commission to render an opinion regarding the allegations implicating NRS 281A.420(1) and (3).
- f. In lieu of a panel determination and a hearing, Woodbury now enters into this Stipulated Agreement acknowledging his duty as a public officer to commit himself to protect the public trust and conform his conduct to Chapter 281A of the Nevada Revised Statutes.

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¹ The Commission did not accept jurisdiction regarding the allegation related to a violation of NRS 281A.400(5) because the allegation was not supported by sufficient evidence as required by NAC 281A.400.

4. **STIPULATED FACTS:** At all material times, the following facts were relevant to this matter:²

- a. Mayor Woodbury was first elected to public office in Boulder City in June 2011. He served as a City Council member until he was elected Mayor of Boulder City in June 2015.
- b. Boulder City is a political subdivision as defined in NRS 281A.145.
- c. Mayor Woodbury is a lawyer licensed in the State of Nevada and he is the sole shareholder, President, Secretary, Treasurer and Director of Woodbury Law, Ltd. ("Woodbury Law"), which is registered as a Domestic Professional Corporation with the Nevada Secretary of State.
- d. Jordan Peel ("Peel") is Mayor Woodbury's brother-in-law and is employed as the only Associate Attorney at Woodbury Law.
- e. David Olsen, Esq. is a lawyer licensed in the State of Nevada and serves as the appointed City Attorney for Boulder City.
- f. Urban Jungle is a civil and heavy construction contractor registered as a Domestic Limited-Liability Company in the State of Nevada, with main offices located in Boulder City.
- g. Boulder City uses a bid process for public works projects, and Urban Jungle regularly bids on these projects. Among other laws, NRS 332.065 and NRS 338.1385 govern the bid process regarding purchasing and public works contracts for public bodies and mandates that a public contract shall be awarded to the lowest responsive and responsible bidder.
- h. The City Council approves resolutions related to bid awards and projects, which are regularly listed on consent agendas that contain items that the City Manager and staff believe to be routine and without any reasonable basis for the City Council to vote against the item.
- i. On July 11, 2014, Dr. Michael Falvo filed a negligence action ("Falvo Lawsuit") in the Eighth Judicial District Court naming Boulder City and Urban

² Stipulated Facts do not constitute part of the "Investigative File" as that term is defined by NRS 281A.440(17). All statutory and common law protections afforded to the Investigative File shall remain and are not affected by this Stipulated Agreement.

Jungle as co-defendants, alleging negligence with regard to an electrical interruption that caused damage to Dr. Falvo's medical equipment.

- j. On September 3, 2014, Woodbury Law filed an answer on Urban Jungle's behalf and Peel signed the pleading for Woodbury Law.
- k. On or about October 10, 2014, Boulder City was dismissed from the Falvo Lawsuit.
- l. Mayor Woodbury was listed as the lead attorney of record for Urban Jungle in the Falvo Lawsuit until April 26, 2016, when a substitution of counsel was filed and Woodbury Law concluded its representation in the Falvo Lawsuit.
- m. The legal work performed for Urban Jungle represented less than one percent of Woodbury Law's business.

n. **November 12, 2014 Boulder City Council Meeting**

- 1) At the November 12, 2014 meeting, there were three items placed on the Consent Agenda. Consent Agenda Item number 3 involved Urban Jungle and was noted on the agenda as follows:

Resolution No. 6247 . . . approving a bid for the Backflow Prevention Device Improvements 2015-15, B.C. Project No. 14-0909-WD (Bids opened 10-16-14; 4 Bids received)

- 2) The City Council Agenda Packet included a staff report submitted by the Boulder City Director of Public Works, requesting that the City Council approve Resolution No. 6247 and award the bid to Urban Jungle Contractors with a bid of \$70,800.

- 3) The minutes reflect the following:

Council member Woodbury disclosed he had represented Urban Jungle, the company recommended for the bid award on Item No. 3, for matters not related to the agenda item. City Attorney Olsen advised Council member Woodbury disclosure was sufficient and he was allowed to vote on the matter.

(Minutes, November 12, 2014).

- 4) The Consent Agenda passed unanimously.

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o. **January 13, 2015 Boulder City Council Meeting**

- 1) At the January 13, 2015 meeting, there were seven items placed on the Consent Agenda. Consent Agenda Item numbers 3 and 4 involved Urban Jungle and were noted on the agenda as follows:

Resolution No. 6270 . . . awarding a bid for the Lake Mountain Water Laterals Replacement Project, B.C. Project No. 14-0918-WD (Bids opened 12-11-14; 4 Bids received)

Resolution No. 6271 . . . awarding a bid for the Landfill Bulk Water Dispensing Station B.C. Project No. 14-0910-LF (Bids opened 12-11-14; 3 Bids received)

- 2) The City Council Agenda Packet included staff reports submitted by the Boulder City Director of Public Works, requesting that the City Council approve Resolution Nos. 6270 and 6271 and award the bids to Urban Jungle Contractors, the statutory low bidder on each project, with bids of \$89,000 and \$38,900, respectively.
- 3) Mayor Woodbury was unaware that Resolution Nos. 6270 and 6271 involved Urban Jungle because that information was not included on the consent agenda and consequently he did not restate or reaffirm his prior disclosure regarding his relationship with Urban Jungle and voted with the entire City Council to approve the Consent Agenda unanimously.

p. **April 28, 2015 Boulder City Council Meeting**

- 1) At the April 28, 2015 meeting, there were ten items placed on the Consent Agenda. Consent Agenda Item number 3 involved Urban Jungle and was noted on the agenda as follows:

Resolution No. 6301 . . . approving final acceptance, final payment, and release of retention funds for the Backflow Prevention Device Improvements 2015-15, B.C. Project No. 14-0909-WD

- 2) The City Council Agenda Packet included a staff report submitted by the Boulder City Director of Public Works, requesting that the City Council approve Resolution No. 6301 and approve final acceptance, final

payment, and release of retention funds to Urban Jungle Contractors, the statutory low bidder on the project.

- 3) Mayor Woodbury was unaware that Resolution No. 6301 involved Urban Jungle because that information was not included on the consent agenda and consequently he did not restate or reaffirm his prior disclosure regarding his relationship with Urban Jungle and voted with the entire City Council to approve the Consent Agenda unanimously.

q. **July 14, 2015 Boulder City Council Meeting**

- 1) At the July 14, 2015 meeting, there were fifteen items placed on the Consent Agenda. Consent Agenda Item 12 involved Urban Jungle and was noted on the agenda as follows:

Resolution No. 6350 . . . approving final acceptance, final payment, and release of bonds and retention funds for the Lake Mountain Water Laterals Replacement Project, B.C. Project No. 14-0918-WD

- 2) The City Council Agenda Packet included a staff report submitted by the Boulder City Director of Public Works, requesting that the City Council approve Resolution No. 6350 and approve final acceptance, final payment, and release of bonds and retention funds to Urban Jungle Contractors, the statutory low bidder on the project.
- 3) Mayor Woodbury was unaware that Resolution No. 6350 involved Urban Jungle because that information was not included on the consent agenda and consequently he did not restate or reaffirm his prior disclosure regarding his relationship with Urban Jungle and voted with the entire City Counsel to approve the Consent Agenda, 4-1.

5. **TERMS / CONCLUSIONS OF LAW:** Based on the foregoing, Woodbury accepts the Commission's conclusions as follows:

- a. Each of the stipulated facts enumerated in Section 4 of this Stipulated Agreement is agreed to by the parties.

- b. Woodbury holds public office which constitutes a public trust to be held for the sole benefit of the people of the State of Nevada (in particular, the people of Boulder City).
- c. Woodbury had a commitment in a private capacity to the interests of Urban Jungle because an attorney-client relationship amounts to a substantial and continuing business relationship. *See In re Commissioners A and B*, Comm'n Op. Nos. 10-51A and 10-59A and (2012); NRS 281A.065(5).
- d. Woodbury did not adequately avoid the conflict of interest between his public duties as a member of the Boulder City Council and private interests by not sufficiently disclosing the nature and extent of his attorney-client relationship with Urban Jungle at the November 12, 2014 City Council meeting and not disclosing any relationship with Urban Jungle during City Council meetings on January 13, 2015, April 28, 2015 and July 14, 2015 before voting on consent agenda items that involved Urban Jungle.
- e. The disclosure and abstention requirements of NRS 281A.420 extend to consent agenda items. *See In re Tobler and Mayes*, Comm'n Op. Nos. 11-76C and 11-77C (2012). Each matter on a consent agenda requires action for final approval. Without a formal vote of the City Council, 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.
- f. Woodbury recognizes that he had the obligation to disclose sufficient information regarding his attorney-client relationship with Urban Jungle, a business with which he had a commitment in a private capacity, to inform the public of the nature and extent of his relationship. The disclosure should have occurred at every City Council meeting in which a matter involving Urban Jungle was acted on by the City Council, even though the relationship was a matter of public record by virtue of Woodbury's disclosure at the November

- 12, 2014 meeting and even though Woodbury was unaware of Urban Jungle's involvement at the January 13, April 28, and July 14, 2015 meetings.
- g. Under prior Commission precedent, public officials must vigilantly search for reasonably ascertainable potential conflicts of interest and cannot remain unaware of readily knowable facts. *In re Atkinson Gates, Williams and Malone*, Comm'n Op. Nos. 97-54, 97-59, 97-66, 97-53 and 97-52 (1997). Instead, public officials must design and implement systems to spot and respond to potential ethical conflicts. *Id.* In this case, it was reasonable for Woodbury to ascertain that resolutions related to Urban Jungle were incorporated in the consent agendas because the supporting City Council Agenda Packets contained more detailed staff reports indicating Urban Jungle's involvement.
 - h. Disclosures required by the Ethics Law must occur "at the time the matter is considered." See NRS 281A.420(1). The Ethics Law does not recognize a continuing disclosure or a disclosure by reference. The purpose of disclosure is to provide sufficient information regarding the conflict of interest to inform the public of the nature and extent of the conflict and the potential effect of the action or abstention on the public officer's private interests. Silence based on a prior disclosure at a prior city council meeting fails to inform the public of the nature and extent of the conflict at the meeting where no actual disclosure occurs. See *In re Buck*, Comm'n Op. No. 11-63C (2011).
 - i. The disclosure should have also included information regarding the potential effect of Woodbury's action or abstention on the agenda items and the effect it may have had on Urban Jungle's interests. See *In re Woodbury*, Comm'n Op. No. 99-56 (1999) and *In re Derbidge*, Comm'n Op. No. 13-05C (2013).
 - j. Abstention is required when a reasonable person's independence of judgment is "materially affected by" the public officer's significant pecuniary interest or commitment in a private capacity. NRS 281A.420 and *Woodbury*. In cases involving substantial and continuous business relationships, the interests of a business partner or client are statutorily attributed to the public

officer based on the presumption that a person lacks independent judgment toward the interests of a person with whom the public officer shares an important business relationship. *In re Public Officer*, Comm'n Op. No. 13-71A (2014). Thus, a public officer must abstain on all matters before the public body affecting the interests of his business partner or client, including interests unrelated to the business shared with the public officer. *In re Derbidge*, Comm'n Op. No. 13-05C (2013).

- k. Although Woodbury Law's representation of Urban Jungle was for matters unrelated to the resolutions approved by the City Council, Mayor Woodbury was the sole shareholder of Woodbury Law and was named as Urban Jungle's attorney of record in a contested case that was pending at the time matters related to Urban Jungle came before the City Council. Under the circumstances presented, the nature of the attorney-client relationship necessitates abstention because the interests of Urban Jungle are statutorily attributed to Mayor Woodbury and could be affected by his official actions. Therefore, notwithstanding the advice of the City Attorney to the contrary, Woodbury should have abstained from voting on the consent agenda items related to Urban Jungle at the November 12, 2014, January 13, 2014, April 28, 2015 and July 14, 2015 City Council meetings.³
- l. Mayor Woodbury's actions constitute a single course of conduct resulting in one violation of NRS 281A.020(1) and NRS 281A.420(1) and (3).
- m. Based upon the consideration and application of the statutory mitigating criteria set forth in NRS 281A.475, the Commission concludes that Woodbury's violation in this case should not be deemed a "willful violation" pursuant to NRS 281A.170, and the imposition of a civil penalty pursuant to NRS 281A.480 is not appropriate for the reasons that follow:
 - 1) The gravity of the violation is not substantial;

³ To the extent prior opinions of the Commission fail to recognize or analyze the nature of an attorney-client relationship as a continuous and substantial business relationship for purposes of establishing a commitment in a private capacity to the interests of another person under NRS 281A.065, the Commission hereby announces its position.

- 2) Woodbury believed his November 14, 2014 disclosure to be a continuing disclosure;
 - 3) Woodbury has not previously been the subject of any violation of the Ethics Law;
 - 4) Woodbury relied in good faith upon the legal advice, albeit inaccurate advice, of the City Attorney, David Olsen, Esq., regarding the requirements of NRS 281A.420(3);
 - 5) Woodbury has not received any personal financial gain as the result of his conduct in this matter; and
 - 6) Woodbury has been diligent to cooperate with and to participate in the Commission's investigation and resolution of this matter.
- n. Mayor Woodbury agrees to facilitate an Ethics in Government Law training session with the Commission's Executive Director for the Boulder City Council members and staff, to ensure that the City Council members and City staff understand the disclosure and abstention requirements, including responsibilities related to consent agenda items. See, e.g., *In re Tobler and Mayes*, Comm'n Op. Nos. 11-76C and 11-77C (2012).
 - o. This Stipulated Agreement depends on and applies only to the specific facts, circumstances and law related to this RFO and the Notice of Additional Issues and Facts now before the Commission. Any facts or circumstances that may come to light after its entry that are in addition to or differ from those contained herein may create a different resolution of this matter.
 - p. This Stipulated Agreement is intended to apply to and resolve only this specific proceeding before the Commission and is not intended to be applicable to or create any admission of liability for any other proceeding, including administrative, civil, or criminal regarding Woodbury.
6. **WAIVER:**
 - a. The Parties knowingly and voluntarily waive their right to bring this matter to an Investigatory Panel proceeding and a full hearing before the Commission on the allegations in this RFO (No. 16-40C), including the Notice of Additional

Issues and Facts, and any and all rights that may be accorded with regard to this matter pursuant to NRS Chapter 281A, the regulations of the Commission (NAC Chapter 281A), the Nevada Administrative Procedures Act (NRS Chapter 233B) and any other applicable provisions of law.

- b. The Parties knowingly and voluntarily waive their right to any judicial review of this matter as provided in NRS Chapter 281A, NRS Chapter 233B or any other applicable provisions of law.

7. **ACCEPTANCE:** We, the undersigned parties, have read this Stipulated Agreement, understand each and every provision herein, and agree to be bound thereby. The parties orally agreed to be bound by the terms of this agreement during the regular meeting of the Commission on October 19, 2016.

DATED this 27th day of October, 2016. Rodney Stewart Woodbury
Rodney Stewart Woodbury

The above Stipulated Agreement is approved by:

FOR RODNEY STEWART WOODBURY,
SUBJECT

DATED this 1st day of November, 2016. Charity F. Felts
Charity F. Felts, Esq.
Counsel for Subject

FOR YVONNE M. NEVAREZ-GOODSON
Executive Director, Commission on Ethics

DATED this 3rd day of November, 2016. Judy A. Prutzman
Judy A. Prutzman, Esq.
Associate Counsel

Approved as to form by:

FOR NEVADA COMMISSION ON ETHICS

DATED this 3rd day of November, 2016. Tracy L. Chase
Tracy L. Chase, Esq.
Commission Counsel

The above Stipulated Agreement is accepted by the Commission.⁴

DATED October 19, 2016.

By: /s/ Cheryl A. Lau
Cheryl A. Lau, Esq.
Chair

By: /s/ Brian Duffrin
Brian Duffrin
Commissioner

By: /s/ Keith A. Weaver
Keith A. Weaver, Esq.
Vice-Chair

By: /s/ Barbara Gruenewald
Barbara Gruenewald, Esq.
Commissioner

By: /s/ Magdalena Groover
Magdalena Groover
Commissioner

By: ABSTAIN
Dan Stewart
Commissioner

⁴ Subject waived his right to an Investigatory Panel pursuant to NRS 281A.440. Accordingly, this Stipulated Agreement was executed prior to a Panel hearing in this matter and no Commissioner was precluded from participating in this Stipulated Agreement pursuant to NRS 281A.220. Pursuant to NRS 281A.420, Commissioner Stewart disclosed a conflict of interest associated with a relationship to Subject Woodbury within the third-degree of consanguinity and abstained from any participation and voting on this matter.