



**STATE OF NEVADA
COMMISSION ON ETHICS**
<http://ethics.nv.gov>

**MINUTES
of the meeting of the
NEVADA COMMISSION ON ETHICS**

October 19, 2016

The Commission on Ethics held a public meeting on
Wednesday, October 19, 2016, at 9:00 a.m.
at the following locations:

**Nevada Legislative Building
Room 3138
401 S. Carson Street
Carson City, NV 89701**

and via video-conference to:

**Grant Sawyer State Building
Room 4412
555 E. Washington Avenue
Las Vegas, NV 89101**

These minutes constitute a summary of the above proceedings of the Nevada Commission on Ethics. Verbatim transcripts are available for public inspection at the Commission's office located in Carson City.

1. Call to Order, Roll Call, and Pledge of Allegiance to the Flag.

Chair Cheryl A. Lau, Esq. called the meeting to order in Carson City, Nevada at 9:00 a.m. Also present in Carson City were Commissioners Brian Duffrin and Barbara Gruenewald, Esq. Present in Las Vegas, Nevada were Vice-Chair Keith A. Weaver, Esq. and Commissioners Magdalena Groover and Dan H. Stewart. Present for Commission staff in Las Vegas was Executive Director Yvonne M. Nevarez-Goodson, Esq. Present for Commission staff in Carson City was Commission Counsel Tracy L. Chase, Esq., Associate Counsel Judy A. Prutzman, Esq., and Executive Assistant Valerie M. Carter, CPM.

The pledge of allegiance was conducted.

2. Public Comment.

No public comment.

3. Approval of Minutes of the August 17, 2016 Public Hearing regarding Temporary Regulations and August 17, 2016 Commission Meeting.

Commissioner Duffrin abstained from participating in this agenda item as was not a member of the Commission at the time of the August 17, 2016 Commission meetings.

Commissioner Stewart moved to approve the Minutes of the August 17, 2016 Public Hearing regarding Temporary Regulations. Commissioner Gruenewald seconded the Motion. The Motion was put to a vote and carried unanimously.

Commissioner Gruenewald moved to approve the Minutes of the August 17, 2016 Commission Meeting. Commissioner Stewart seconded the Motion. The Motion was put to a vote and carried unanimously.

4. Discussion and approval of a Proposed Consolidated Stipulation concerning Consolidated Third-Party Requests for Opinion Nos. 16-11C and 16-20C regarding George Rapson, City Councilmember, City of Mesquite, submitted pursuant to NRS 281A.440(2).

Appearing before the Commission in this matter were Subject George Rapson, his counsel, Rebecca Bruch, Esq. of Erickson Thorpe and Swainston, and Bob Sweetin, City Attorney for the City of Mesquite. Appearing on behalf of the Executive Director was Associate Counsel Judy A. Prutzman, Esq.

Commission Counsel Chase provided a brief overview of the Request for Opinion.

Associate Counsel Prutzman provided a synopsis of the Stipulated Agreement affirming that the Subject and the Executive Director agreed to one non-willful violation of the Ethics Law, implicating the provisions of NRS 281A.020 and NRS 281A.420(3), related to Mr. Rapson's failure to abstain from voting on one item at one Mesquite City Council meeting. Specifically, Rapson acknowledged that a conflict of interest existed with respect to a matter before the City Council involving a real estate transaction and his private relationship as an independent contractor for the real estate company involved in the transaction. Associate Counsel Prutzman stated that the agreement also serves to educate public officers who are similarly situated to Mr. Rapson. (See exhibit 1, final Stipulation)

Subject Rapson, his counsel, Ms. Bruch, and Associate Counsel Prutzman accepted the terms as presented before the Commission.

Ms. Bruch thanked Associate Counsel Prutzman for her professionalism in working with her and her client to come to this resolution.

Commissioner Gruenewald moved to accept the terms of the Stipulation as provided by the parties and directed Commission Counsel to finalize the Stipulation in appropriate form provided that such form does not materially change the terms approved by this Commission. Commissioner Groover seconded the Motion. The Motion was put to a vote and carried unanimously.

5. Discussion and approval of a Proposed Stipulation concerning Third-Party Request for Opinion No. 16-40C regarding Rodney Stewart Woodbury, Mayor, Boulder City, submitted pursuant to NRS 281A.440(2).

Commissioner Stewart disclosed a familial relationship with Subject Rodney Woodbury and abstained from participating in the matter. Commission Counsel Chase confirmed that the Commission maintained a quorum to hear and vote on the agenda item.

Appearing before the Commission in this matter was Subject Mayor Rodney Woodbury and his counsel, Charity Felts, Esq. of Erickson Thorpe and Swainston. Appearing on behalf of the Executive Director was Associate Counsel Judy A. Prutzman, Esq.

Commission Counsel Tracy L. Chase provided a brief overview of the Request for Opinion.

Associate Counsel Prutzman provided a synopsis of the Stipulated Agreement affirming that the Subject and the Executive Director agreed to a finding of one non-willful violation of the Ethics Law, implicating the provisions of NRS 281A.020 and NRS 281A.420(1)(3), based on Mayor Woodbury's failure to abstain from voting on a consent agenda item at three different Boulder City Council meetings. Specifically, Mayor Woodbury acknowledged the conflict of interest regarding his attorney-client relationship with a construction contractor that was regularly bidding on public works projects with Boulder City. Associate Counsel Prutzman stated that by the terms of the Stipulated Agreement, Mayor Woodbury also agreed to facilitate an ethics training session with the Commission's Executive Director for the Boulder City Council Members and staff to ensure their understanding of the disclosure and abstention requirements under NRS 281A, especially as they apply to consent agenda items. (See exhibit 2, final Stipulation)

Subject Woodbury, his counsel, Ms. Felts, and Associate Counsel Prutzman accepted the terms as presented before the Commission.

Commissioner Gruenewald moved to accept the terms of the Stipulation as presented by the parties and directed Commission Counsel to finalize the Stipulation in appropriate form provided that such form does not materially change the terms approved by this Commission. Commissioner Groover seconded the Motion. The Motion was put to a vote and carried unanimously.

6. Discussion and approval of a Proposed Stipulation concerning Third-Party Request for Opinion No. 15-70C regarding Kelly Sweeney, Former Director of Labor Relations, Las Vegas Metropolitan Police Department, submitted pursuant to NRS 281A.440(2).

Appearing before the Commission in this matter was Subject Kelly Sweeney and her counsel Paul Williams, Esq., of Bailey Kennedy Attorneys at Law. Appearing on behalf of the Executive Director was Associate Counsel Judy A. Prutzman, Esq.

Commission Counsel Chase provided a brief overview of the Request for Opinion.

Associate Counsel Prutzman provided a synopsis of the Stipulated Agreement affirming that the Subject and the Executive Director agreed to a finding of one non-willful violation of the Ethics Law, implicating provisions of NRS 281A.410(1)(b), a cooling-off provision. Specifically, Sweeney acknowledged that the cooling-off provisions prohibited her from representing or advising her current private employer regarding two Labor Management Board cases that were under consideration when she worked at the Las Vegas Metropolitan Police Department. The

Stipulation dismissed all other allegations presented to the Commission, as they were not supported by sufficient credible evidence. (See exhibit 3, final Stipulation)

Subject Sweeney, her counsel, Mr. Williams, and Associate Counsel Prutzman accepted the terms of the Stipulated Agreement.

Commissioner Duffrin moved to approve the Stipulation as presented by the parties and directed Commission Counsel to finalize the Stipulation in appropriate form provided that such form does not materially change the terms approved by the Commission. Commissioner Groover seconded the Motion. The Motion was put to a vote and carried unanimously.

Given a scheduling conflict, the Chair moved to agenda item 8 until parties could be available for agenda item 7.

8. Report by Executive Director on agency status and operations

This agenda item was called out of order.

Executive Director Yvonne M. Nevarez-Goodson, Esq. welcomed Commissioner Brian Duffrin who was appointed by the Governor on October 1, 2016. She reported that Mr. Duffrin served as the former Chief of the Administrative Division of the Nevada Gaming Control Board, bringing his former public employment experience as well as budget and legislative experience to the Commission and the agency staff.

Director Nevarez-Goodson reported there are currently two vacancies on the Commission, both pending appointments from the Legislative Commission. She further reported that one of the current vacancies was a result of the recent resignation by Commissioner Carpenter. Director Nevarez-Goodson thanked Commissioner Carpenter for his exceptional service to the Commission and to the State of Nevada over the last several years.

With regard to Regulatory and Legislative matters, Director Nevarez-Goodson reported that the Commission's Temporary Regulations adopted during the August 17, 2016 Commission meeting were now effective, as they have been filed with the Secretary of State in accordance with State law.

Director Nevarez-Goodson further reported that she was working with LCB to draft the Commission's Bill Draft Request, and she expects that the measure will be pre-filed on or around November 16, 2016.

Director Nevarez-Goodson reported that she had submitted the Agency's formal Budget Request for the FY18-FY19 Biennium, which did not change significantly from the Commission's current biennial budget in terms of operating costs. She reminded the Commission that the enhancements which were requested early in the budget process were denied, but she submitted Compensation Plan Adjustment Request for review by the Budget Office and ultimately the Governor. She stated those requests will be decided during the Governor Recommends phase of the budget process.

Director Nevarez-Goodson provided an update regarding pending Third-Party Requests for Opinion. She was happy to report that that nearly all third-party cases will have been resolved as of today's meeting, except for anything that goes forward from a jurisdictional review or Panel hearing. Director Nevarez-Goodson reported that all first-party cases are also up-to-date and one first-party request is expected to be heard at the Commission's December meeting. She reported

that with the conclusion of several cases she can focus on the Commission's education and outreach endeavors.

Director Nevarez-Goodson reported that training requests from the North and South have picked up and she is excited to be providing a presentation to the Clark County Bar Association in January next year. Director Nevarez-Goodson invited recently appointed Commissioners to attend one of her trainings when they are in a convenient location for those members. She stated she would extend invitations as those trainings are scheduled.

Director Nevarez-Goodson discussed the proposed 2017 Commission meeting dates, stating that she hopes to continue to hold meetings every-other-month, but requested that Commissioners keep their calendars clear for every third Wednesday of the month in the event a telephonic meeting or Subcommittee meeting is necessary.

Director Nevarez-Goodson reported that she expects the next Commission meeting to be on either December 5, 2016 or December 7, 2016 depending on Commissioner's availability. She reported the meeting should last only half of the day.

Lastly, Director Nevarez-Goodson reported that after the meeting, all Commissioners will have been issued their Commission tablets. She reminded Commissioners that the tablets will be used for Ethics Commission email correspondence and to receive electronic meeting materials. She also advised that the tablets be used only for official Commission business, as they are government property.

7. Discussion and approval of a Proposed Stipulation concerning Third-Party Request for Opinion No. 15-73C regarding Donna Lopez, Quality Control Officer, Public Employees Benefits System (PEBP), submitted pursuant to NRS 281A.440(2).

Vice-Chair Weaver and Commissioner Stewart were excused from participating in this agenda item pursuant to NRS 281A.224, as they participated in the Panel Hearing in this matter.

Appearing on behalf of Subject Donna Lopez was Caren C. Jenkins, Esq. Appearing on behalf of the Commission was Associate Counsel Judy A. Prutzman., Esq.

Counsel Chase presented an overview of the Request for Opinion and the procedural history of the case. Associate Counsel Prutzman then provided a synopsis of the Stipulated Agreement, affirming that the Subject and the Executive Director agreed that Ms. Lopez' conduct, with respect to three different instances, resulted in one willful violation of the Ethics Law, implicating the provisions of NRS 281A.020(1) and 281A.400(1), and a \$1,000 civil penalty. Specifically, Lopez acknowledged she accepted gifts or favors from PEBP vendors which would tend improperly to influence a reasonable person in her position to depart from the faithful and impartial discharge of her public duties. (See exhibit 4, final Stipulation)

Counsel for Subject, Ms. Jenkins, commented on her perspective of the motivation of the requester in filing this Request for Opinion and the employment-based conflicts that were occurring within Subject Lopez's agency, however, she concluded that she understands those issues are not relevant when the Commission considers a matter. Ms. Jenkins agreed that in considering the course of conduct and the appearance of impropriety of all three actions by Subject Lopez, the Stipulated Agreement is a reasonable outcome, although she believes any one action standing alone might have resulted in a different outcome.

Counsel for the Subject, Ms. Jenkins, and Associate Counsel Prutzman accepted the terms as presented before the Commission.

Commissioner Gruenewald moved to approve the Stipulation as presented by the parties and directed Commission Counsel to finalize the Stipulation in appropriate form provided that such form does not materially change the terms approved by the Commission. Commissioners Groover and Duffrin seconded the Motion. The Motion was put to a vote and carried unanimously.

9. Commissioner Comment on matters including, without limitation, future agenda items, upcoming meeting dates and meeting procedures.

No Commissioner comments.

10. Open Session for Public Comment.

No public comment.

11. Adjournment.

Commissioners Gruenewald and Stewart moved to adjourn the meeting. Chair Lau seconded the Motion. The Motion was put to a vote and carried unanimously. The meeting adjourned at 10:12 a.m.

Minutes prepared by:

/s/ Valerie Carter

Valerie Carter, CPM
Executive Assistant

/s/ Yvonne Nevarez-Goodson

Yvonne M. Nevarez-Goodson, Esq.
Executive Director

Minutes approved December 5, 2016:

/s/ Cheryl A. Lau

Cheryl A. Lau, Esq.
Chair

/s/ Keith A. Weaver

Keith A. Weaver, Esq.
Vice-Chair

Exhibit 1



STATE OF NEVADA
BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct of
George Rapson, Member, City of
Mesquite City Council, State of
Nevada,

Request for Opinion No. **16-11C**
Request for Opinion No. **16-20C**
Consolidated

Subject. /

STIPULATED AGREEMENT

1. **PURPOSE**: This Stipulated Agreement resolves Consolidated Third-Party Requests for Opinion (“RFOs”) Nos. 16-11C and 16-20C, before the Nevada Commission on Ethics (“Commission”), concerning George Rapson (“Rapson”), a Member of the Mesquite City Council for the City of Mesquite, Nevada, and serves as the final opinion in these matters.

2. **JURISDICTION**: At all material times, Rapson served as a City Council Member for the City of Mesquite, Nevada. As such, Rapson is an elected public officer as defined in NRS 281A.160. The Ethics in Government Law (“Ethics Law”) set forth in NRS Chapter 281A gives the Commission 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 Rapson in this matter.

3. **PROCEDURAL HISTORY BEFORE COMMISSION:**

- a. On or about January 25, 2016, the Commission received RFO No. 16-11C, alleging that Rapson disclosed but failed to abstain from voting on agenda items during October 2015 City Council Meetings concerning an offer to purchase property from the City. Two prospective buyers presented offers at the meeting: 333 Eagles landing, which buyer is represented by Premier Properties, a real estate brokerage company where Rapson is a real estate agent; and Mesquite Group 118, a company represented by the Requester.

- b. On or about February 3, 2016, staff of the Commission provided Notice to Rapson of RFO No. 16-11C, stating that the Commission accepted jurisdiction to investigate the allegations regarding violations of NRS 281A.020(1), 281A.400(1), (2) and (3) and 281A.420(3).
- c. On or about February 4, 2016, the Commission received RFO No. 16-20C, alleging that Rapson:
 - 1) Used nonpublic information acquired through his official position to further his own pecuniary interests or those of another person, in violation of NRS 281A.400(1), (2), (3), (5) and (6);
 - 2) Used his official position to seek other employment or contracts by acting with the members of the Mesquite City Council to improperly fund a non-profit company related to the sale of public land, which sale involved Premier Properties, in violation of NRS 281A.400(10);
 - 3) Failed to disclose and abstain from participation on an item heard by the City Council on October 27, 2015, in violation of NRS 281A.420(1) and (3); and
 - 3) Failed to file an Acknowledgment of Ethical Standards with the Commission pursuant to NRS 281A.500.
- d. On or about March 3, 2016, staff of the Commission notified the Requester that the Commission lacked jurisdiction to investigate the alleged violations because the RFO did not include any reliable evidence to support the allegations. The Notice also provided that a review of the Commission's records confirmed that Rapson had, in fact, timely filed his Acknowledgment of Ethical Standards.
- e. The Requester appealed the jurisdictional determination in RFO No. 16-20C ("Jurisdictional Appeal") and a Notice of Jurisdictional Appeal was issued on or about March 17, 2016 to both the Requester and Rapson.
- f. On or about April 11, 2016, Rapson, by and through his attorney of record, Rebecca Bruch, Esq. of Erickson, Thorpe & Swainston, Ltd., provided a written response to the allegations contained in RFO No. 16-11C.

- g. On or about May 2, 2016, Rapson, by and through his attorney of record, Rebecca Bruch, Esq. of Erickson, Thorpe & Swainston, Ltd., provided a written response to the Jurisdictional Appeal in RFO No. 16-20C.
- h. The Commission heard the Jurisdictional Appeal at its June 15, 2016 meeting and issued its Order on Jurisdiction on or about June 21, 2016, granting in part and denying in part the Jurisdictional Appeal and ordering that:
 - 1) Jurisdiction is accepted with regard to whether Rapson complied with the provisions of NRS 281A.020 (duty to avoid conflicts) and NRS 281A.420 (disclosure and abstention) associated with the City Council meeting held on October 27, 2015;
 - 2) The other alleged violations of the Ethics Law as presented in the RFO, which relate to NRS 281A.400(1), (2), (3), (5), (6) and (10), and NRS 281A.430/530 are not supported by credible evidence as required by NAC 281A.400(3) and (6) and are therefore dismissed for lack of jurisdiction; and
 - 3) The Commission's records determined that Rapson timely filed an Acknowledgement of Ethical Standards in compliance with the requirements of NRS 281A.500 and the allegations is therefore dismissed.
- i. On or about June 23, 2016, staff of the Commission provided Notice to Subject, stating that the Commission accepted jurisdiction of RFO No. 16-20C regarding potential violations of NRS 281A.020 and NRS 281A.420 associated with the City Council meeting held on October 27, 2015 and that, accordingly, the Commission will proceed with an investigation.
- j. Rapson waived his rights to a panel determination for both RFOs 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.020 and NRS 281A.420(3).

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4. **STIPULATED FACTS:** At all material times, the following stipulated facts were relevant to these matters:¹

- a. Rapson has served as a City Councilmember for the City of Mesquite since 2011. He is a public officer as defined in NRS 281A.160.
- b. The City of Mesquite is a political subdivision as defined in NRS 281A.145.
- c. Robert Sweetin, Esq. is a lawyer licensed in Nevada and is the City Attorney for Mesquite.
- d. Rapson is a licensed real estate agent in Nevada.
- e. On October 20, 2011, Rapson entered into an Independent Contractor Agreement with Premier Properties of Mesquite Nevada, LLC ("Premier Properties").
- f. Pursuant to his Agreement with Premier Properties, Rapson receives no salary but is entitled to 80% of the commission collected by Premier Properties from real estate sales transactions closed by Rapson. Rapson does not receive any commission or other compensation for transactions made by the other real estate agents of Premier Properties.
- g. Pursuant to an agreement between Premier Properties and Legacy Homes, Rapson works full-time as a sales representative selling new homes at three Legacy Homes ("Legacy") developments in Mesquite. He is the sole real estate sales agent for Legacy in Mesquite.
- h. Rapson is permitted to list homes as a Premier Properties agent, and he has done so approximately 5 times since 2011 for Legacy homeowners who were listing their homes for resale.
- i. Rapson works out of a sales office located in a Legacy model home, utilizing office supplies provided by Legacy and an assistant who is employed by Legacy.
- j. Rapson's listings of new Legacy properties appear on the Premier Properties website, where he is identified as one of twenty agents of Premier Properties.

¹ 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.

- k. At the City Council's April 14, 2015 meeting, the Council approved a resolution finding that it was in the best interests of the City to sell certain city-owned real property consisting of approximately 104 acres in the Mesquite Technology and Commerce Center (hereafter "MTCC Property").
- l. Three entities approached the City to express interest in purchasing the MTCC Property:
 - 1) 333 Eagles Landing, LLC ("Eagles Landing");
 - 2) Mesquite Exit 118 Group, LLC; and
 - 3) Mr. Hae Un Lee.

October 13, 2015 City Council Meeting

- m. At the October 13, 2015 meeting, agenda items 15, 16 and 17 related to the sale of the MTCC Property and were noted on the agenda as follows:
 - 15. Consideration of the selection of a sales method for the sale of approximately 104 acres of city-owned land in the Mesquite Technology and Commerce Center (QPN: 002-23-411-002 and 002-23-411-001) and other matters properly related thereto.
 - 16. Consideration of Resolution 878 authorizing the sale of real property in accordance with NRS 268.062 (Public Auction) and other matters properly related thereto.
 - 17. Consideration of Resolution 879 authorizing the sale of real property in accordance with NRS 268.063 (Direct Sale for Economic Development purposes), possible sale of real property and other matters properly related thereto.
- n. Meeting materials included a Letter of Intent to purchase the MTCC Property from Eagles Landing, indicating that Premier Properties of Mesquite, NV was representing Eagles Landing and would receive a real estate brokerage fee from the seller (the City).
- o. Prior to the October 13, 2015 City Council meeting, City Attorney Sweetin advised Rapson that he would not be required to abstain from discussing or voting on agenda items 15, 16 or 17 so long as he made a proper disclosure regarding the nature of his relationship with Premier Properties.
- p. The minutes of the meeting reflect that Rapson provided the following disclosure before the City Council discussed agenda item 15:

One of the properties involved in here is listed or is represented by Premier Properties. I am a real estate agent working with my license hung at Premier Properties. I have no financial interest. I get no remuneration for this. I have no financial benefit. I have no benefit of any kind in this transaction – if either one of these transactions goes. I will not recuse, but I want to make it clear that I am a – I hang my license. I am an independent contractor. I get nothing out of any of these transactions tonight.

- q. Rapson voted with three other City Council members to approve the selection of a direct sales method for the sale of the MTCC Property.
- r. Agenda item 16 was withdrawn and not discussed by the City Council.
- s. The City Council discussed agenda item 17, but voted to move the item forward and place it on a future agenda.

October 27, 2015 City Council Meeting

- t. At the October 27, 2015 meeting, agenda item 15 related to the sale of the MTCC Property and was noted on the agenda as follows:

15. Consideration of Resolution 879 authorizing the sale of real property in accordance with NRS 268.063 (Direct Sale for Economic Development purposes), possible sale of real property and other matters properly related thereto.

- u. Prior to the October 27, 2015 City Council meeting, City Attorney Sweetin advised Rapson that he would not be required to abstain from discussing or voting on agenda item 15 so long as he made a proper disclosure regarding the nature of his relationship Premier Properties.
- v. The minutes reflect that Rapson provided the following disclosure before discussion on agenda item 15 began:

The last meeting I did not recuse, but I disclosed that I am a licensed real estate agent, and I hang my license with Premier Properties. I sit at a model, a new home model; I sell new homes. I have no pecuniary interest whatsoever in this deal. I have – well, let me just get the legalese that was put in front of me. Rapson is an employee – I'm not an employee; I'm an independent contractor. I hang my license there. And that may not be for long. Substantial pecuniary interest, I do not have. I have no interest financially in this, none whatsoever. I don't get one dime out of it if it goes to either party, it makes no difference to me. Has a commitment of private capacity, is employed by, I am not. I have a continued relationship in the sense

that I hang my license, broker salesman license there, but I have no relationship other than that. Let's see, this is a legal document that was handed – let's see here, which also I will address – it states Rapson has a commitment in a private capacity in obtaining a lucrative real estate – I don't even know where that comes from. I have no commitment in a private capacity to do anything with these people, either one. I get nothing out of their brokerage fee. I get nothing.

So I don't know whether this is coming from, but apparently somebody thinks I have a conflict. I don't believe I do. I've talked to counsel, I don't believe I do. And he does not believe I do. So I am not recusing, but I am disclosing. And then I've also heard, once again, that I'm friends with some of the parties. As I said before at the last meeting, I've known the Bowlers for 20 years that I've been here. And I've known one or two of the members in this group, not the principles, not the people who are actually doing the deal, but two of the related people in the real estate business, for the same length of time. So on that level, it's a level playing field, I know both parties, except actually I don't know these guys that well. I just met them. So thanks.

- w. Rapson voted with two other City Council members to approve Resolution 879, amending the Resolution to award the sale of city-owned property to 333 Eagles Landing and directing City staff to negotiate a Sales and Purchase Agreement which was to include a commission on the land sale to be paid by the City.

5. **TERMS / CONCLUSIONS OF LAW**: Based on the foregoing, Rapson and the Commission agree as follows:

- a. Each of the stipulated facts enumerated in Section 4 of this Stipulated Agreement is agreed to by the parties.
- b. Rapson 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 Mesquite).
- c. Rapson has a substantial and continuous business relationship with Premier Properties and each agent of Premier Properties sufficient to create private commitments to the interests of each other under NRS 281A.065(5). *In re Public Officer*, Comm'n Op. No. 13-71A (2014). Rapson's status as an

- independent contractor does not negate the business relationship shared between him and his business associates, the other agents of Premier Properties. *Id.* The Commission has determined that independent contractors have a commitment in a private capacity to those who hire them as independent contractors, and the same analogy applies to independent contractors who are partners and/or business associates in a company. *In re Public Officer*, Comm'n Op. No. 11-43A (2011).
- d. By statute, public officers have a duty to avoid conflicts of interest. See NRS 281A.020. As a public officer, the conflicts of interest provisions of the Ethics Law apply to Rapson's conduct. Specifically, Rapson must commit to avoid actual and perceived conflicts of interest, including publicly disclosing sufficient information concerning any private relationships and pecuniary interests which would reasonably affect his decision on matters before the City Council. See NRS 281A.420(1). As a public officer, Rapson is also required to abstain from voting or otherwise acting on matters in which such relationships would clearly and materially affect the independence of judgment of a reasonable person in his position. See NRS 281A.420(3).
 - e. Rapson relied upon the advice of the City Council's attorney, Sweetin, regarding his disclosure and abstention duties at the October 13, 2015 and October 27, 2015 City Council meetings.
 - f. Rapson's disclosures at the October 13, 2015 and October 27, 2015 meetings satisfied the requirements of NRS 281A.420(1) because he disclosed sufficient information to inform the public of the full nature and extent of his conflict. See *In re Woodbury*, Comm'n Op. No. 99-56 (1999) and *In re Wilson*, Comm'n Op. No. 13-81C (2014).
 - g. Rapson understands that he must disclose his substantial and continuous business relationship with Premier Properties and each agent of Premier Properties whenever a matter involving Premier Properties comes before the City Council. 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. Silence based

upon a prior disclosure at a prior meeting fails to inform the public of the nature and extent of the conflict at the meeting where no actual disclosure occurred. See *In re Buck*, Comm'n Op. No. 11-63C (2011) (holding that incorporation by reference of her prior disclosure even though based upon the advice of counsel, did not satisfy the disclosure requirements of NRS 281A.420(1). Such disclosures must also inform the public of the potential effect of his action or abstention on the interests of Premier Properties.

- h. As a public officer, Rapson is also prohibited from voting upon or advocating for or against the passage of a matter in which the independence of judgment of a reasonable person in his situation would be materially affected by his commitment to Premier Properties or an agent of Premier Properties. NRS 281A.420(3)(c). However, it is presumed that the independence of judgment of a reasonable person is not materially affected if the resulting benefits or detriments to the public officer, or the person to whom the public officer has a commitment in a private capacity, are not more or less than those accruing to any other member of the group affected by the matter. NRS 281A.420(4)(a). Accordingly, NRS 281A.420(3) did not require Rapson to abstain from voting on agenda items at the October 13, 2015 meeting related to the method of sale of the MTCC Property because there is no evidence that the matters considered at this meeting would have affected Premier Properties any more or less than any member of the group affected by the matters. In particular, Rapson's vote on the method of sale affected all potential buyers and related real estate agents equally.
- i. Rapson failed to avoid the conflict of interest between his public duties as a member of the Mesquite City Council and his private interests by failing to abstain at the October 27, 2015 meeting from discussion and vote on a resolution resulting in a decision to begin negotiations for the sale of City property to Eagles Landing, a buyer represented by a Premier Properties real estate agent.
- j. Although Rapson understood the impact of his vote regarding his lack of any pecuniary interest in a real estate transaction involving a client of Premier

Properties, he did not fully appreciate the impact of his votes on a matter involving an entity with whom he shares a substantial and continuous business relationship. Even if there was no profit sharing arrangement or pecuniary gain to Rapson, the associates of Premier Properties still have a commitment in a private capacity as business associates. See *In re Public Officer*, Comm'n Op. No. 13-71A (2014).

- k. Rapson's conduct alleged in the two RFOs constitute a single violation of the Ethics Law, implicating NRS 281A.020 and 281A.420(3).
- l. However, the allegations pertaining to NRS 281A.400(2) and (3) and NRS 281A.420(1) are not supported by sufficient, credible evidence under NRS 281A.480(9) and are therefore dismissed through this Stipulated Agreement.
- m. Based upon the consideration and application of the statutory mitigating criteria set forth in NRS 281A.475 and other mitigating circumstances presented in this matter, the Commission concludes that Rapson'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) Rapson has not previously been the subject of any violation of the Ethics Law.
 - 2) Rapson has not received any personal financial gain as the result of his conduct in this matter.
 - 3) Rapson has been diligent to cooperate with and to participate in the Commission's investigation and resolution of this matter.
 - 4) Rapson relied in good faith upon the advice of legal counsel provided before he acted or failed to act.
- n. This Stipulated Agreement depends on and applies only to the specific facts, circumstances and law related to these RFOs 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.

- o. This 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 Rapson.

6. **WAIVER:**

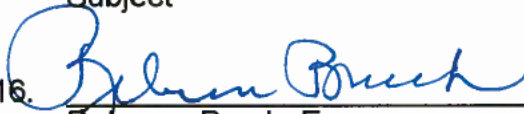
- a. Rapson knowingly and voluntarily waives his right to an Investigatory Panel proceeding and any related hearing before the full Commission on the allegations in RFOs (No. 16-11C and No. 16-20C) and of any and all rights he may be accorded with regard to this matter pursuant to NRS Chapter 281A, the regulations of the Commission (NAC Chapter 281A), the Nevada Administrative Procedures Act (NRS Chapter 233B) and any other applicable provisions of law.
- b. Rapson knowingly and voluntarily waives his 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 therein, 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 2nd day of November, 2016. 
George Rapson

The above Stipulated Agreement is approved by:

FOR GEORGE RAPSON,
Subject

DATED this 14th day of November, 2016. 
Rebecca Bruch, Esq.
Counsel for Subject

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

DATED this 16th day of November, 2016.

Judy A. Prutzman
Judy A. Prutzman, Esq.
Associate Counsel

Approved as to form:

DATED this 16th day of November, 2016.

Tracy L. Chase
Tracy L. Chase, Esq.
Commission Counsel

The above Stipulated Agreement is accepted by the Commission.²

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: /s/ Dan Stewart
Dan Stewart
Commissioner

² 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.

Exhibit 2



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.

Exhibit 3



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
For Opinion Concerning the Conduct of
Kelly Sweeney, Former Director of Labor
Relations, Las Vegas Metropolitan Police
Department, Clark County, State of
Nevada,

Request for Opinion No. **15-70C**

Subject. /

STIPULATED AGREEMENT

1. **PURPOSE**: This Stipulated Agreement resolves Third-Party Request for Opinion ("RFO") No. 15-70C before the Nevada Commission on Ethics ("Commission") concerning Kelly Sweeney ("Sweeney"), the former Director of Labor Relations at the Las Vegas Metropolitan Police Department ("Department"), and serves as the final opinion in this matter.
2. **JURISDICTION**: At all material times, Sweeney previously served as the Director of Labor Relations at the Department. As such, Sweeney is a former public employee, as defined in NRS 281A.180. The Ethics in Government Law ("Ethics Law") set forth in NRS Chapter 281A establishes the Commission's jurisdiction over the conduct of former public employees pursuant to NRS 281A.280. Accordingly, the Commission has jurisdiction over Sweeney in this matter.
3. **PROCEDURAL HISTORY BEFORE COMMISSION:**
 - a. On or about November 5, 2015, the Commission received this RFO from the Sheriff of the Department, Joseph Lombardo ("Sheriff Lombardo"), alleging that Sweeney violated Nevada's Ethics Law, specifically NRS 281A.020(1), NRS 281A.400(1), NRS 281A.400(5), and NRS 281A.410, based upon her purported conduct when she became employed by the Las Vegas Police Protective Association (the "Association") after retiring from the Department.

- b. The Commission did not accept jurisdiction of the allegations regarding potential violations of NRS 281A.020(1), NRS 281A.400(1), and NRS 281A.400(5) because the allegations were not supported by sufficient evidence as required by NAC 281A.400. As required by NAC 281A.410, the Commission provided Sweeney with proper notice of the RFO, stating that the Commission accepted jurisdiction to investigate the allegations regarding violations of NRS 281A.410. Pursuant to NRS 281A.440(3), Sweeney was provided an opportunity to respond to the RFO and did so through legal counsel on February 16, 2016.
- c. On or about June 30, 2016, the Commission issued a Notice of Additional Issues and Facts concerning additional allegations implicating NRS 281A.410(1)(b).
- d. Through counsel, Sweeney submitted a Response to the Notice of Additional Issues and Facts on August 5, 2016.
- e. Sweeney has waived her 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.410(1)(b).
- f. In lieu of a panel determination and a hearing, Sweeney now enters into this Stipulated Agreement acknowledging her duty as a former public employee to commit herself to protect the public trust and conform her conduct to NRS Chapter 281A.

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

- a. In her former public capacity, Sweeney was employed by the Department between September 2001 and July 2015 as a Senior Analyst, Labor Relations Manager, and Director of Labor Relations.
- b. The Department is a local agency, as defined in NRS 281A.119, and is responsible for all police services within the City limits of the City of Las Vegas, Nevada and unincorporated areas of Clark County, Nevada.

- c. The Association is a private employee organization recognized under the Local Government Employee-Management Relations Act (“Act”) set forth in NRS Chapter 288 and represents active and retired police and corrections officers of the Department. The Association also represents deputy city marshals and municipal court marshals in matters covered by the Act who are employed by or retired from service with the City of Las Vegas.
- d. Pursuant to the provisions of the Act, the Department recognizes the Association as the exclusive representative of eligible Department employees for the purpose of collective bargaining.
- e. During Sweeney’s last 3 years with the Department, she served as the Department’s Director of Labor Relations, supervising six employees and planning and directing the operations of the Labor Relations Section.
- f. Sweeney’s job duties as Director of Labor Relations included:
 - 1) Preparing recommendations and advising Department staff on fact-finding proceedings, disciplinary appeals, grievance/arbitration appeals, negotiation subjects and potential liability;
 - 2) Negotiating collective bargaining agreements (“CBA” or “CBAs”) with unions representing different Department employee groups, including the Association;
 - 3) Conducting training of new Department supervisors on contract administration and disciplinary policies and procedures;
 - 4) Participating in the resolution of employee grievances, including grievances involving Association members; and
 - 5) Administering all CBAs at the Department to ensure compliance with the terms of the agreements.
- g. A Disciplinary Matrix was created in 2001 and is contained in the Managing Employee Performance & Conduct Handbook. The Matrix outlines the discipline and discharge procedures that supervisors and managers at the Department follow when an internal complaint is filed against an employee. The procedures contained in the Disciplinary Matrix are negotiated between the

Association and the Department as a subject of collective bargaining pursuant to NRS Chapter 288. Revisions to the Matrix were considered and agreed upon in February 2008, January 2012 and October 2012.

- h. The Collective Bargaining Agreement between the Department and the Association (“Department/Association CBA”) that became effective as of July 1, 2014 applies to all Department employees having a regular commissioned Civil Service appointment, excluding administrative employees, supervisory employees, confidential employees, and employees in other recognized bargaining units. Although the term of the Department/Association CBA ended on June 30, 2016, the CBA by its terms remains in full force and effect during negotiations for and until a successor agreement is finalized.
- i. Negotiations between the Department and the Association for a successor Department/Association CBA began in October 2015.
- j. A grievance procedure is established by the Department/Association CBA and applies to the various types of disputes that may arise between the Department and employees. Department employees have the right to appeal grievances in accordance with the terms of the CBA. Depending upon the type of dispute involved, grievances may be resolved by a Labor Management Board selected by the Department and Association or an arbitrator.

Sweeney’s Work at the Association

- k. In August 2015, Sweeney was contacted by Mark Chaparian (“Chaparian”), Executive Director of the Association, to discuss a possible employment opportunity for Sweeney at the Association.
- l. Sweeney commenced employment with the Association on October 5, 2015 as a part-time Director of Employee Relations, reporting directly to Chaparian and assisting the Association’s General Counsel, David Roger, Esq.
- m. Sweeney’s job duties at the Association include:
 - 1) Representing City of Las Vegas Deputies and Municipal City Marshals in grievance proceedings (occupies about 30% of Sweeney’s time).

- 2) Representing Association Members in grievance proceedings, including Labor Management Board (“LMB”) hearings.
 - 3) Responding to Citizen Review Board Complaints against Association members.
 - 4) Representing Association members in Pre-Termination Board hearings.¹
 - 5) Reviewing revised policies and drafting explanatory memoranda for Association members.
- n. The Association’s General Counsel, not Sweeney, was and is responsible for handling arbitration cases and providing legal interpretation of the CBAs for the Association and its members.
 - o. Sweeney is not a member of the Association’s negotiating team.
 - p. Between October 2015 and June 2016, Sweeney represented the Association in LMB cases that involved Association members (i.e. Department employees). It is Sweeney’s position that each of these LMB cases were not under consideration during her tenure at Department as they were not filed with the LMB until after she had retired.
 - q. Sweeney attended an October 27, 2015 meeting between the Department, the Association and two other labor associations to discuss possible changes to the Disciplinary Matrix. The meeting was canceled when the Department objected to Sweeney’s involvement with the Disciplinary Matrix on behalf of the Association.
 - r. On October 28, 2015 Sheriff Lombardo sent a letter to Sweeney expressing his concern that her employment with the Association violated the Ethics in Government Laws contained in NRS Chapter 281A. Sheriff Lombardo requested that the Association implement a screening procedure to ensure Sweeney did not counsel or represent the Association on any issues that were under consideration by the Department during her period of public employment.

¹ To date, Ms. Sweeney has not represented any Association members in Pre-Termination Board hearings.

- s. Pursuant to a confidentiality agreement signed by members of the Executive Board of the Association after this RFO was filed, Board members were not allowed to discuss the Association/Department CBA negotiations with Sweeney. Board members were also not allowed to consult with Sweeney about any grievance or pre-termination cases that were pending when Sweeney was employed by the Department.
- t. On October 28, 2015, General Counsel Roger sent a letter to Sweeney, Chaparian and the members of the Association's Executive Board advising about this RFO and the Ethics allegations against Sweeney. Roger explained that the Association had been diligent in screening Sweeney from participation on any cases that may have been pending when she worked at the Department.
- u. On June 14, 2016, Sweeney was advised of additional facts regarding her participation in LMB cases which potentially implicated NRS 281A.410(1)(b). On June 16, 2016, Sweeney voluntarily ceased participating in—and was screened from—all LMB cases involving Department employees. Sweeney resumed participation on such LMB cases after the one year “cooling-off” period applicable to her employment with the Department ended, which was on July 6, 2016.

5. TERMS OF AGREEMENT / CONCLUSIONS OF LAW: Based on the foregoing, Sweeney and the Commission agree as follows:

- a. Each of the stipulated facts enumerated in this Stipulated Agreement are agreed to by the parties.² For purposes of the Conclusions of Law, the Commission accepts each of the stipulated facts as true and correct.
- b. Sweeney served as a public employee, which constituted a public trust to be held for the sole benefit of the people of the State of Nevada.
- c. To promote integrity in public service, the Commission is concerned with situations involving former public officers and employees that create the

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.

appearance of impropriety and conflicts of interest, as well as situations involving actual impropriety and conflicts. See *In re Maltman*, Comm'n Op. No. 12-66A (2012).

- d. The "cooling-off" provisions of the Ethics Law are intended to discourage former public officers and employees from using opportunities, information, relationships, or experience gathered from their former public service to benefit them in their private capacity. *In re Zingre*, Comm'n Op. No. 14-66A (2014). Therefore, if a former public officer or employee accepts employment with a private person or business, that employee may not share the information that was accessible to or acquired by him during his service with a public agency on any issues which were under consideration by that agency during the period of public service. See *In re Public Officer*, Comm'n Op. No. 87-04 (1987) (interpreting former NRS 281A.410(1)).
- e. Although Sweeney's employment with the Association was not prohibited by the Ethics Law because the Association was not a business or industry regulated by the Department, she was nevertheless prohibited, for one year following her employment with the Department, from representing or counseling the Association or any other private person upon any issues that were under consideration by the Department during her tenure pursuant to NRS 281A.410(1)(b). See *In re Former Public Employee*, Comm'n Op. No. 13-29A (2013); *In re Public Employee*, Comm'n Op. No. 11-96A (2012).
- f. NRS 281A.410(1)(b) provides that an "issue" includes a case, proceeding, application, contract or determination, but does not include the proposal or consideration of legislative measures or administrative regulations.
- g. The Ethics Law seeks to prohibit and protect against the possibility that the Association and any other private entity could benefit in labor relations matters involving the Department by hiring Sweeney, who formerly oversaw the labor relations function at the Department. See, e.g., *In re Former Public Officer*, Comm'n Op. No. 13-29A (2013). Sweeney's former employment with the

Department provides potential benefits to the Association and its members, particularly in the area of labor relations.

- h. Despite Sweeney's good faith effort to avoid working on any issues on behalf of the Association that were under consideration by the Department during her public employment, the preponderance of evidence supports a finding that Sweeney was representing or advising the Association regarding two LMB cases that were under consideration when she worked at the Department. Under the circumstances presented in this RFO, these two LMB cases constituted issues "under consideration" because either (1) the underlying facts at issue in the disciplinary matter occurred during Sweeney's period of employment with the Department; or (2) prior disciplinary matters occurred during her period of employment with the Department that are relevant to the current disciplinary matter (e.g., prior discipline).³
- i. Sweeney's actions are deemed to be a single course of conduct resulting in one violation of NRS 281A.410(1)(b).
- j. Based upon the consideration and application of the statutory mitigating criteria set forth in NRS 281A.475, the Commission concludes that Sweeney's violation in this case should not be deemed a "willful violation" as defined by NRS 281A.170, and the imposition of a civil penalty pursuant to NRS 281A.480 is not appropriate for the reasons that follow:
 - 1) Sweeney has not previously been the subject of any violation of the Ethics Law;
 - 2) Sweeney was not aware that her representation of Association members in LMB cases might implicate the Ethics Law, and she took steps in good faith to mitigate violations when she was notified that her work at the Association may implicate NRS 281A.410. The Commission is satisfied that Sweeney did not intend to violate NRS 281A.410(1)(b).

³ The Commission has not previously had the opportunity to apply the provisions of NRS 281A.410(1)(b) to a similar fact pattern, but now expresses that a disciplinary matter, under the presented circumstances, constitutes an "issue under consideration" for application of the statute.

- 3) Sweeney has been diligent to cooperate with and participate in the Commission's investigation of this matter, as well as the resolution process and has been proactive in her attempt to comply with NRS 281A.410.
- k. Allegations related to other conduct by Sweeney are not supported by sufficient, credible evidence to support a violation of NRS 281A.410 by a preponderance of evidence as required by NRS 281A.480(9), and they are therefore dismissed through this Stipulated Agreement.
- l. 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.
- m. 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 Sweeney.

6. WAIVER:

- a. Sweeney knowingly and voluntarily waives her right to an Investigatory Panel proceeding and a full hearing before the Commission on the allegations in this RFO and the Notice of Additional Issues and Facts (No. 15-70C) and of any and all rights she 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 any other applicable provisions of law.
- b. Sweeney knowingly and voluntarily waives her right to any judicial review of this matter as provided in NRS 281A, NRS 233B, or any other applicable provisions of law.

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

DATED this 20 day of October, 2016.


Kelly Sweeney

The above Stipulated Agreement is approved by:

DATED this 24TH day of October, 2016.

FOR KELLY SWEENEY, Subject

Dennis L. Kennedy, Esq.
Counsel for Subject

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

DATED this 24TH day of October, 2016.


Judy A. Prutzman, Esq.
Associate Counsel

Approved as to form by:

DATED this 24TH day of OCTOBER, 2016.


Tracy L. Chase, Esq.
Commission Counsel

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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/ Magdalena Groover
Magdalena Groover
Commissioner

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

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

By: /s/ Brian Duffrin
Brian Duffrin
Commissioner

By: /s/ Dan Stewart
Dan Stewart
Commissioner

⁴ Sweeney waived her 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.

Exhibit 4



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct of
Donna Lopez, Quality Control Officer,
Public Employees' Benefits Program,
State of Nevada,

Request for Opinion No. **15-73C**

Subject. /

STIPULATED AGREEMENT

1. **PURPOSE**: This Stipulated Agreement resolves Third-Party Request for Opinion ("RFO") No. 15-73C before the Nevada Commission on Ethics ("Commission") concerning Donna Lopez ("Lopez"), Quality Control Officer for the Public Employees' Benefits Program ("PEBP"), and serves as the final opinion in this matter.

2. **JURISDICTION**: At all material times, Lopez was employed as a Quality Control Officer at PEBP, a public employee as defined in NRS 281A.150. The Ethics in Government Law ("Ethics Law") set forth in NRS Chapter 281A provides the Commission 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 Lopez in this matter.

3. **PROCEDURAL HISTORY BEFORE COMMISSION:**

a. On or about December 3, 2015, the Commission received this RFO from a private citizen, alleging that Lopez:

- 1) Failed to avoid conflicts of interest between her public and private interests by designating a longtime personal friend as a PEBP consultant (NRS 281A.020(1));
- 2) Accepted gifts which would tend improperly to influence a reasonable person in her position to depart from the faithful and impartial discharge of her public duties (NRS 281A.400(1));

- 3) Used her position as Quality Control Officer to gain an unwarranted advantage for a friend (NRS 281A.400(2));
 - 4) Failed to disclose a conflict of interest (NRS 281A.420(1)); and
 - 5) Failed to abstain from acting on a matter in which abstention is required (NRS 281A.420(3)).
- b. As required by NAC 281A.410, the Commission provided Lopez with notice of the RFO by mail on December 16, 2015. Lopez was provided an opportunity to respond to the RFO and requested an extension of time to submit a response through her legal counsel, Mark Mausert, Esq. An extension was granted and the response was due on February 29, 2016. A response was not submitted and no additional extensions of time were requested.
 - c. Pursuant to NRS 281A.440, on March 16, 2016, a two-member Investigatory Panel of the Commission reviewed the RFO, the Executive Director's recommendation and other evidence.
 - d. A Panel Determination issued on March 23, 2016 concluded that:
 - 1) Credible evidence supports just and sufficient cause for the Commission to conduct a public hearing and render an opinion regarding whether Lopez violated NRS 281A.020(1) and 281A.400(1) with regard to acceptance of gifts; and
 - 2) The facts do not establish credible evidence to substantiate just and sufficient cause for the Commission to conduct a public hearing and render an opinion regarding the alleged violations of NRS 281A.400(2) and NRS 281A.420(1) and (3). Accordingly, these allegations were dismissed.
 - e. The Commission notified Lopez of the time and place set for a Commission hearing in this matter. In lieu of a full hearing, Lopez now enters into this Stipulated Agreement acknowledging her duty as a public employee to commit herself to protect the public trust and conform her conduct to Chapter 281A of the Nevada Revised Statutes.

4. **STIPULATED FACTS:** This Stipulated Agreement is premised upon the record before the Commission which includes, without limitation, the following stipulated facts:¹

Overview

- a. Donna Lopez was the Quality Control Officer for PEBP, and therefore is a public employee pursuant to NRS 281A.150.
- b. PEBP is a state agency as defined in NRS 281A.145.
- c. PEBP is the state agency that manages the group health insurance program for State and certain other public employees. PEBP currently administers various insurance plans, including: health; life; accidental death and dismemberment; long-term disability; and other voluntary insurance coverages.
- d. PEBP operates under the direction and oversight of the Public Employees' Benefits Program Board ("PEBP Board"), a ten-member board appointed by the Governor. NRS 287.041. The PEBP Board appoints an Executive Officer who oversees the day-to-day operation and management of the agency. NRS 287.0424.
- e. PEBP is comprised of the following sections: Operations, Quality Control, Public Information, Accounting and Information Technology.
- f. The Quality Control Section of PEBP coordinates the contracting process for all contracts PEBP enters into, including managing the Request for Proposal ("RFP") process, contract negotiations, contract maintenance and contract extensions. The Quality Control Officer is therefore responsible for managing many aspects of PEBP's contracting needs. The position also assists the Executive Officer with overseeing the administration of PEBP benefits by providing regular vendor performance reports and coordinating vendor audits to ensure vendors are complying with their contract requirements.
- g. PEBP contracts for a variety of services including actuarial, PPO networks, HMO, management of large claims cases, utilization review, and audit

¹ 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.

services. In addition, PEBP contracts with a third-party administrator to pay medical and dental claims, and a pharmacy benefits manager to access drug discounts and to pay claims.

- h. Hometown Health and HealthSCOPE Benefits ("HealthSCOPE") are two of PEBP's largest vendors.

Involved Parties and Policies

- i. One of the vendors at issue in this matter is the Chief Medical Officer of Hometown Health (hereafter referred to as "Hometown Health representative"), which operates the Medical Utilization Management & Case Management Services for PEBP's Consumer Driven High Deductible Plan ("CDHDP"), administers the statewide PPO Network for the CDHDP and operates PEBP's Northern Nevada Health Maintenance Organization ("HMO").
- j. Another vendor at issue in this matter is the President of HealthSCOPE (hereafter referred to as "HealthSCOPE representative"), the claims administrator/third-party administrator for PEBP's CDHDP, PPO Dental Plan, Health Savings Account, PPO-Health Reimbursement Arrangement and Flexible Spending Accounts.
- k. PEBP's policies outline prohibited conduct, permissible gifts, and progressive discipline procedures associated with certain acts of misconduct by PEBP employees, including the acceptance of gifts, particularly "from any individual, firm, or organization doing business with PEBP or the State when the employee is responsible for making any recommendations or decisions affecting their business activities without approval of the Executive Officer."

Gift: The Purse

- l. In or around September 2014, a Hometown Health representative gave Lopez a Coach-brand woman's purse that she had purchased for herself and no longer wanted.
- m. Lopez accepted the Coach purse and re-gifted it to her assistant in September of 2014, approximately one week after Lopez accepted the purse from the Hometown Health representative.

- n. A PEBP employee who reported directly to Lopez at the time recalls that Lopez told her she had received a Coach purse from a Hometown Health representative sometime in late fall or early winter of 2014.
- o. The Hometown Health representative does not remember the exact purchase price of the Coach purse, which she purchased at a Coach outlet store. She recalls that it cost no more than \$100.
- p. On eBay, Coach purses of a similar color and with the same serial number as the purse Lopez received from the Hometown Health representative were recently priced at about \$130.

Gift: Free Lunches

- q. Between April and September of 2015, Lopez met with a HealthSCOPE representative for lunch at least three times. These lunches typically occurred in Carson City, Nevada the day before or the day of PEBP Board meetings.
- r. The HealthSCOPE representative paid for the three lunches. Cumulatively, these lunches totaled approximately \$45.00.
- s. The days after Lopez accepted free meals from the HealthSCOPE representative in May and September, respectively, that same representative appeared before the PEBP Board on behalf of HealthSCOPE to provide a response to first and second quarter audit reports of HealthSCOPE being reviewed by the Board.
- t. Lopez's job responsibilities included coordinating quarterly audits of HealthSCOPE with PEBP's auditor.

Favor: The Suitcase

- u. PEBP's RFP for Statewide/Regional HMO Services ("HMO RFP") was released to vendors on September 8, 2015.
- v. Lopez, in her capacity as Quality Control Officer, is responsible for implementing, monitoring and coordinating the RFP process for PEBP contracts, which includes her participation in contract RFP response evaluations.

- w. On October 7, 2015, a Hometown Health representative purchased a child's suitcase for \$107.35 as a favor for Lopez during a PEBP tour of the Renown Medical Center.
- x. Hometown Health was one of four vendors to submit a proposal to the HMO RFP, which was open at the time this representative purchased the suitcase.
- y. At a closed session at the November 19, 2015 PEBP Board meeting, Lopez explained the circumstances regarding the Hometown Health representative's purchase of the suitcase on October 7, 2015 as follows:

A vendor purchased the luggage that I was getting for my granddaughter because I was running late to a meeting. I didn't have my check book with me and told her I would pay her back later. Because of what was going on at PEBP, I completely forgot, but always planned on reimbursing the vendor.

- z. Lopez wrote a check reimbursing the Hometown Health representative for the suitcase on November 20, 2015.

5. **TERMS OF AGREEMENT / CONCLUSIONS OF LAW:** Based on the foregoing, Lopez and the Commission agree as follows:

- a. Each of the stipulated facts enumerated in section 4 of this Stipulated Agreement is deemed to be true and correct.
- b. At all relevant times, Lopez was a public employee of PEBP, which is a state agency.
- c. As a public employee, the Ethics Law applies to Lopez's conduct and Lopez must commit herself to avoid both actual and perceived conflicts between her private interests and those of the public she serves. *See In re Public Employee*, Comm'n Op. No. 10-73A (2011). Specifically, Lopez must not seek or accept any gift, service or favor which would tend improperly to influence a reasonable person in her position to depart from the faithful and impartial discharge of her public duties. NRS 281A.400(1).
- d. The prohibitions of NRS 281A.400(1) are in addition to established policies of a government agency and serve the public's interest in objective, impartial and effective government by preventing a public officer or employee from violating

- the public trust by taking official action in exchange for a personal benefit (i.e., a *quid pro quo*). See *In re Kenny*, Comm'n Op. No. 00-54A (2001).
- e. Lopez's acceptance of a Coach purse from a Hometown Health representative violated NRS 281A.020 and NRS 281A.400(1) because it was a gift of material value of the type that would tend improperly to influence a reasonable person in Lopez's position. See *In re Public Employee*, Comm'n Op. No. 11-62A (2010). The purse was accepted by Lopez as a personal gift, as there was no "state benefit" associated with receipt of the gift, and the purse, with a value of approximately \$100, cannot be considered a trinket or nominal gift. The representative's reasons for giving the purse to Lopez are irrelevant because a violation of NRS 281A.400(1) does not require a finding of improper motive or intent to influence a public employee or public officer.
 - f. Lopez's acceptance of multiple free lunches from a HealthSCOPE representative violated NRS 281A.020 and NRS 281A.400(1) because a reasonable person in Lopez's position would be improperly influenced by the acceptance of repeated free meals from a vendor when PEBP, and specifically, Lopez in her capacity as Quality Control Officer, provide oversight of the performance and quality of services being delivered by that vendor. The Ethics Law prohibits this type of conduct because it creates a perception of impropriety or favoritism for a contracted state vendor and erodes the public's trust in state government.
 - g. Lopez's acceptance of the child's' suitcase purchased by a representative of Hometown Health constitutes acceptance of a favor, not a gift, because Lopez later provided reimbursement for the suitcase. This favor, as it occurred in this case with the intention for immediate reimbursement, would not be the type of favor that would tend improperly to influence a reasonable person in Lopez's position, in violation of the Ethics Law. However, the favor was offered to Lopez during a work-related event while PEBP's HMO RFP was open for bidding, Hometown Health was one of the vendors actively bidding on the RFP and Lopez, as the Quality Control Officer, helped draft the HMO RFP. Under these circumstances, a public employee's acceptance of any personal favor from a

contracted state vendor representative can create the appearance of impropriety and be construed as creating a *quid pro quo* expectation of preferential treatment or competitive advantage. Public employees who work in a highly competitive business environment involving multi-million dollar contracts must be diligent in avoiding such situations.

- h. Lopez now understands that she should not have accepted the Coach purse and lunches from representatives of contracted PEBP vendors and she should have been more circumspect in her acceptance of a favor from a contracted vendor that was either bidding on an open PEBP RFP or defending audit findings. The preponderance of evidence establishes that acceptance of the purse and lunches are the type of gifts that would tend improperly to influence a public employee in Lopez's position to depart from the faithful and impartial discharge of the public employee's public duties because of the value of the gifts, the identity of the donors and/or the timing of the gifts. See *In re Public Employee*, Comm'n Opinion No. 11-62A (2010) (citing *In re Wood*, Comm'n Op. No. 95-51 (1997)). Lopez's acceptance of gifts from vendors under the circumstances identified herein creates a perception of *quid pro quo* between vendors and the state agency responsible for ensuring the public trust associated with contracts that involve expenditure of public funds.
- i. Under the specific circumstances of this matter, Lopez's conduct constitutes a single course of conduct resulting in a single violation of the Ethics Law, implicating NRS 281A.020(1) and 281A.400(1).
- j. Based upon the consideration and application of the statutory criteria set forth in NRS 281A.475, the Commission concludes that Lopez's violation should be deemed "willful" pursuant to NRS 281A.170 and there are no mitigating factors to justify a non-willful violation.
- k. Although Lopez may not have intended to violate the Ethics Law, her violation of NRS Chapter 281A was willful because she acted intentionally and knowingly, as those terms are defined in NRS 281A.105 and 281A.115, respectively.

- l. For an act to be intentional, NRS 281A.105 requires that Lopez acted voluntarily or deliberately. The definition further states that proof of bad faith, ill will, evil or malice is not required. Lopez's acceptance of gifts and/or favors was not accidental or inadvertent.
- m. NRS 281A.115 defines "knowingly" as "import[ing] a knowledge that the facts exist which constitute the act or omission." NRS Chapter 281A does not require that Lopez had actual knowledge that her conduct violated the Ethics Law, but it does impose constructive knowledge when other facts are present that should put an ordinarily prudent person upon inquiry. See *In re Stark*, Comm'n Op. No. 10-48C (2010).
- n. For the willful violation, Lopez will pay a civil penalty of \$1,000.00, pursuant to NRS 281A.480, not later than 90 days after her receipt of the fully executed Stipulated Agreement in this matter. Lopez may pay the penalty in one lump sum payment or in monthly installment payments as negotiated with the Commission's Executive Director.
- o. This Stipulated Agreement applies only to the specific facts, circumstances and law related to this RFO 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 applies only to these matters 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 Lopez.

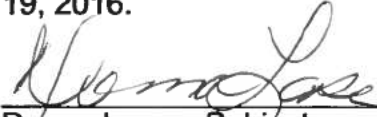
6. **WAIVER:**

- a. Lopez knowingly and voluntarily waives her right to a full hearing before the Commission on the allegations in this RFO (No. 15-73C) and any and all rights she may be accorded pursuant to NRS Chapter 281A, the regulations of the Commission (NAC Chapter 281A), the Nevada Administrative Procedure Act (NRS Chapter 233B) and any other applicable provisions of law.

b. Lopez knowingly and voluntarily waives her right to any judicial review of this matter as provided in NRS Chapter 281A, NRS Chapter 233B or any other provision of Nevada law.

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

DATED this 2 day of November, 2016.


Donna Lopez, Subject

The above Stipulated Agreement is approved by:

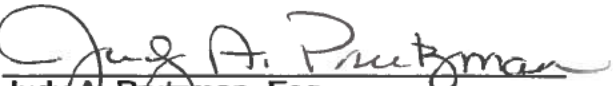
FOR DONNA LOPEZ, Subject

DATED this 7 day of Nov., 2016.


Caren C. Jenkins, Esq.

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

DATED this 7th day of November, 2016.


Judy A. Prutzman, Esq.
Associate Counsel

Approved as to form by:

FOR NEVADA COMMISSION ON ETHICS

DATED this 14TH day of November, 2016.


Tracy L. Chase, Esq.
Commission Counsel

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The above Stipulated Agreement is accepted by the Commission.²

DATED October 19, 2016.

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

By: /s/ Magdalena Groover
Magdalena Groover
Commissioner

By: /s/ Brian Duffrin
Brian Duffrin
Commissioner

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

² Vice-Chair Weaver and Commissioner Stewart participated in the Panel hearing and are therefore precluded from participating in this Stipulated Agreement pursuant to NRS 281A.220(4).