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July 1, 2019

Amy Calderwood, Ombuds
Jonathan Stier, Deputy Ombuds
King County Ombuds Office
516 Third Avenue
Seattle, WA 98104

Re: Kevin Brown Ombuds Complaint

Dear Ms. Calderwood and Mr. Stier:

Thank you for allowing us an opportunity to supplement the record now that your office has completed interviewing the respondents in this case.

Kevin Brown reached a settlement with King County on May 21, 2019, withdrew his Ombuds complaint and asked the Ombuds to close the investigation.

Neither the meeting at Local 360 nor conversations with representatives of AEG/SES violated the Ethics Code or constituted Improper Governmental Action

Since 2002, King County has solicited proposals for events, activities, and concessions at Marymoor Park through a Department of Natural Resources and Parks (DNRP) process called the "Big Ideas Request for Ideas & Proposals." The process does not specify criteria to evaluate proposals. Instead, the proposer tells Parks what services or activities it wants to provide, and the terms under which the proposer would be willing to do so.

In 2003, The Lakeside Group/LiveNation, was selected through this process to produce shows for the Marymoor Concert Series. By 2009, concert revenues had dropped significantly, and in 2011 The Lakeside Group/LiveNation failed to hold the contractually mandated number of minimum concerts. What's more, The Lakeside Group/LiveNation was booking significant shows at another nearby venue, Chateau Ste. Michelle in Woodinville, which competed with Marymoor Parks for summer concert series acts, patrons and revenues.

DNRP began thinking about other vendors for the Marymoor concert series contract, and in September 2011 Parks asked AEG Live to submit a proposal through the Big Ideas process.

King County Executive Dow Constantine has long held a strong interest in Marymoor Park, which he calls "the crown jewel of County parks." The Executive believes that if people come to a concert or event at Marymoor, they are more likely to discover other

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County parks. This positive association strengthens both the public's perception of the County parks and to positively associate their experience with King County.

The Executive discussed his interest in both a prospective Marymoor summer festival and a revitalized concert series with others, including David Meinert, founder of the successful Capitol Hill Block Party. Among Meinert's businesses was a partnership with restaurateur Marcus Charles in Seattle Events Services, a food and beverage concessionaire which had a partnership with concert promoter AEG.

A meeting was arranged between AEG and DNRP leadership, so that AEG could explain directly to DNRP how from an industry perspective the Marymoor concert venue was being underutilized and how the concert series could be made more successful. The meeting took place on January 31, 2012 and included the Executive and his Chief of Staff Sung Yang, Parks Division Director Brown (in place of DNRP Director Christie True and Deputy Director Bob Burns), Alex Kochan of AEG, Meinert, and Charles, and took place at Local 360, a Belltown restaurant and Charles' place of business.

This meeting was no different than other discussions the Executive has with constituents and vendors in the ordinary course of business.

In his complaint, Brown alleged that the Executive expressed that AEG/SES should replace The Lakeside Group/LiveNation as the Marymoor concert promoter during the January 31 meeting. Brown's recollection is inconsistent with the Executive's testimony and is unsupported by documentary evidence. The Executive testified that he had no expectation that the County would contract with AEG/SES as a result of the January 31 meeting. Rather, the Executive wanted DNRP leadership to hear the ideas of Kochan, Meinert, and Charles for improving the Marymoor concert series to bring more people and revenue to Marymoor, and to understand how the The Lakeside Group/LiveNation's promotion of shows at Chateau Ste. Michelle, a nearby competing venue, could be adversely impacting the Marymoor concert series.

DNRP Deputy Director Bob Burns and DNRP Director Christie True testified that they did not receive any direction from the Executive or Yang to replace The Lakeside Group/LiveNation as the concert vendor.

The County Ethics code does not prohibit the types of discussions that occurred at Local 360 nor should it – these sorts of exchanges are essential to the proper functioning of good government. It is important for elected officials to hear from constituents about problems and ways to make county services better. The Ethics Code is not violated by contacts between constituents or county contractors and government employees/officials.

Furthermore, while Brown asserts that political contributions played a part in Parks decision to contract with AEG and SES, that assertion is without basis in fact.

The Ethics Code specifically exempts campaign contributions within the limits set by state and local law from being considered unlawful gifts. The fact that an individual has given a

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campaign contribution does not render contacts with that constituent unlawful. The Ethics Code is not violated by contacts between residents or county contractors and government employees.

The selection of AEG/SES as the Concert/Food and Beverage Concessionaire did not constitute special treatment and was not an abuse of authority

In February 2012, as a consequence of The Lakeside Group/LiveNation failing to provide the minimum number of concerts, Yang asked the King County Prosecuting Attorney's Office to determine whether the promoter was in breach of contract. The Prosecuting Attorney's Office determined that it would be risky for the County to terminate the contract, and the County took no action to terminate the contract. The Lakeside Group/LiveNation contract expired in September 2012.

In March of 2012, AEG/SES presented a new Big Ideas proposal to Parks for the Marymoor concert series and other events.

Parks staff began preliminary conversations with AEG/SES after their proposal was submitted. In late April 2012 Burns recalled Parks staff indicating they were talking to Monqui Presents, a small Portland-based concert promoter, about a concert proposal, and The Lakeside Group/LiveNation was considering whether to submit a proposal for the concert series.¹ When Brown told Burns that other vendors might make a concert series proposal, Burns and Brown talked and Burns suggested to Brown that Parks hold off talking to AEG/SES until any other proposals were received.

Burns testified that he believed Parks had never received two proposals for the same Big Idea, and he believed it was the right and fairest approach. Normally with a Big Ideas proposal the County would vet the idea to determine if it wanted to pursue it or not, and if it did would commence negotiations. In this situation, there was the possibility of more than one proposal for the same idea, which Burns believed would then entail comparison of the different proposals.

Burns and Brown met with Yang, and Brown informed Yang of potential interest from other concert vendors. Yang directed Parks to establish a due date by which any other proposals should be received in order to be considered.

Burns testified he thought the establishment of a date was reasonable and appropriate to keep the process moving, and also thought the two week deadline Yang suggested was reasonable.

After receiving proposals from AEG/SES and Monqui, Yang requested a meeting to discuss the proposals. Burns testified that Brown told him and Yang that Parks staff preferred Monqui as the concert vendor because they felt Monqui would be easier to work with and that their proposal included a higher percentage of ticket sales revenue to the County.

¹ The Lakeside Group/LiveNation did not submit a proposal in spring 2012.

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Yang encouraged Brown and his staff to consider other criteria in the vendor selection process, such as the ability to produce popular events that would bring more revenue and more people to Marymoor. Burns testified that he agreed with those points in the meeting and encouraged Brown and his staff to consider those factors in a subsequent discussion.

Burns testified that while Monqui's ticket percentage proposal was higher than AEG/SES's (10% vs 5%), AEG/SES's per ticket contribution was higher than Monqui's (King County would get \$2.50 per ticket sold by AEG compared to \$1 per ticket sold by Monqui), and also that there was a belief that as a national promoter (the second largest concert promoter nationally after LiveNation), AEG could bring more and better quality acts to the series, translating into higher ticket prices, better attendance, and more overall revenue to the County.

Burns also testified that AEG/SES's Big Ideas proposal had more options for Parks to consider: Programming and management of Clise Mansion, another underperforming Parks asset, new events at Marymoor, and more concerts each season than Monqui had suggested.

Yang's and Burns' suggestion that Parks staff focus should be the ability of the concert vendor bringing more popular concerts, attract more patrons and generate more revenue for Parks programs were appropriately the most important considerations in the concert venue selection process. That suggestion was in line with the Executive's vision to raise the profile of Marymoor Park throughout the West Coast.

Brown's feeling that Monqui would be an easier vendor to work with was far less important than which vendor would bring more visitors and concerts – and thus more revenue – to Marymoor. Generally, ease of vendor relations is not generally a criterion for County contracts.

Brown said he felt Burns and Yang pressured him to select AEG/SES because their principals were friends of the Executive. Brown's feelings were not supported by the evidence submitted.

Burns testified that he believed AEG was the more qualified concert promoter as compared to Monqui given their size and reach. Burns knew AEG was one of the largest concert promoters in the country and the AEG/SES proposal included more elements, including new events at Marymoor and Clise Mansion. AEG's chosen concessionaire, SES, had a record of running successful food and beverage operations, compared to Monqui's proposal which had no concessionaire and proposed nothing new for Clise Mansion.

AEG/SES was provided no special treatment in the selection process.

Subsequent financial performance amply validates the County's decision. In 2013, the first year of the AEG/SES partnership, concert series revenues at Marymoor increased by 92 percent, and have increased every year since.

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The fact that the terms of the contract between SES and the County were different that SES's proposal did not violate the Ethics Code and does not constitute Improper Governmental Action

After contract negotiations between AEG, SES, and County staff commenced in 2012, Burns informed Yang about the importance of allowing about a dozen previously scheduled annual events at Clise Mansion to continue, even though this was new information to SES. This limited the number of dates that SES could bring new events to Clise Mansion, thus limiting SES's revenues. Yang agreed with Burns and Parks that it was important to reserve space for nonprofits and others that had historically used Clise Mansion, and that position was reflected in the final agreement with SES.

SES was disadvantaged in this arrangement because they had fewer prime dates to produce events that would generate revenue.

Burns testified that he became involved in the contract negotiation with SES in late December 2012 or early January 2013 at Yang's request when Parks staff was at an impasse with SES over these and other key terms of the contract.

It is neither unusual nor improper for the Executive's office to direct department leadership to become more engaged in contract negotiations if a project is not progressing.

Burns learned that SES was also concerned that Parks had an existing contract with Cirque du Soleil that offered Cirque wide latitude on when they could schedule their annual event. This would make it very difficult for SES to promote other events at Marymoor.

In 2013, SES provided food and beverages at four events at Marymoor without an agreement in place (informally, they were paid costs plus \$1 total for each event), which Burns thought created liability for the County. Burns said he discussed these issues with Yang. Yang agreed with Burns that there should be no change to Parks commitments to Cirque du Soleil, and that previous events at Clise Mansion should remain, even though it would be more difficult for SES to bring additional events to Marymoor.

Burns testified that he proposed a one-year agreement to get a basic contract in place and allow more time to work out the issues related to the Cirque scheduling holds and historic events at Clise Mansion, but SES declined, indicating they spent significant resources at Parks direction getting ready to implement a 5-year agreement, and they could not recoup those investments in a year.

Burns proposed to SES a solution that he felt would be beneficial to the County: SES would be a non-exclusive concessions vendor for events at Marymoor and would pay the county 10% of gross receipts, except the Cirque du Soleil event in 2013, and SES would be a non-exclusive concessions vendor at Clise Mansion and would pay the County 10% of the gross receipts.

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This option would enable SES to produce future events, but also allow Parks to use other vendors. Burns testified that the parties promised to keep discussing Clise Mansion and Marymoor after they signed the agreement.

Burns testified about his interaction with Brown when the two discussed signing the 2013 SES contract.

After negotiating with SES on a Friday afternoon, Burns recalled talking with Brown by phone and gave him an overview of the negotiated agreement. Burns also recalls a follow up conversation the following Monday morning. Burns knew that Brown was frustrated that SES had backed away from some of their original proposals when SES learned that existing obligations at Marymoor and Clise Mansion would take precedence, limiting their options and event plans. Burns reiterated why he thought the terms were fair and appropriate given the changed circumstances. Burns did not recall Brown expressing that he was signing the SES contract under duress.

The Deputy Ombuds asked Burns whether someone other than Brown could have signed the agreement. Burns testified that it was standard protocol for a division director to sign contracts for that division. However, he acknowledged that either he or True could have signed it.

Given that Burns was unaware that Brown felt he was signing the contract under duress, it was not improper for Brown to sign the contract.

It was appropriate for Burns to agree to different terms than SES had originally proposed as part of the negotiation process. The Parks Division's Big Ideas process differs from a traditional County Request for Proposals (RFP) process managed by the County's Finance and Business Operations (FBOD) division.

In an FBOD managed RFP, the County designs the terms of the agreement it wants proposers to bid on and sets the terms of the contract in advance of a bid for the proposers to consider.

In the Big Ideas process, proposers tell Parks what services or ideas they want to provide to Parks and tell Parks the terms they would be willing to accept to provide the service. The 2012 Big Ideas Request for Ideas & Proposals specifically says, "King County may negotiate terms that differ from the terms initially submitted by proposers." That same language is also included in every Big Ideas Request for Ideas and Proposals, up to and including the 2019 Big Ideas Request for Ideas & Proposals.

Burns decision to agree to contract terms that deviated from SES's original proposal was consistent with the express terms of the Big Ideas process, and was responsive to issues that arose during negotiations, including issues driven by date restrictions desired by King County.

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The contract with SES reflected King County priorities and concerns, and did not violate the Ethics Code and is not Improper Governmental Action.

King County's conduct during the term of the 2012 Contract Did not Violate the Ethics Code or constitute Improper Governmental Action

Burns and True testified about issues that arose during the term of the 2012 AEG/SES contracts with the County:

- The County rejected SES's argument that they should pay the County 10% of net receipts rather than 10% of gross receipts;
- The County rejected SES's informal proposal to extend their five-year agreement to ten or fifteen years in exchange for funding improvements at Clise Mansion;
- The County rejected AEG/SES discussions to enlarge the Marymoor concert venue and extend the concert season;
- The County selected another concessionaire for the CHOMP! annual event despite AEG/SES complaints that they were not involved;
- After discovering that Parks was forgoing revenue due the County by misreading the terms of the SES contract, True informed Parks staff that they should have collected revenue due to the County.

Burns and True recalled discussing an extension of the AEG/SES contracts in exchange for an investment in Clise Mansion. Yang requested Parks staff to look into it. Burns testified that he and Brown had a similar negative reaction to the contract extension suggestion and that it did not make financial sense. Neither True or Burns recall any direction from the Executive office to pursue the idea. This idea was not pursued and there was no contract extension.

True testified that Yang asked Parks staff to explain why AEG/SES were not part of the CHOMP! event. True testified that she had asked either the Executive or Yang if AEG could help bring better musical talent to CHOMP! The Executive recalled thinking that would be difficult since the County likely didn't have the budget to obtain the type of talent AEG could provide. When Parks staff explained to Yang why CHOMP! food and beverage concessions were not part of the SES contract, there was no further inquiry and no direction to Parks staff to change course with respect to the event.

Brown's complaint also alleged that the County has forgone "hundreds of thousands of dollars annually" because SES failed to pay the revenue owed the County during the Cirque du Soleil contract. Both Burns and True testified that they were unaware until 2017 Parks staff had been misinterpreting the SES contract after the 2013 Cirque du Soleil event and had failed to collect revenues owed the County.

When True asked Brown about this issue, he indicated that he and his staff assumed that they were not to collect the monies owed from SES for the 2014 and 2017 Cirque du Soleil events because they had not collected that revenue in 2013, even though the contract language exempted only the 2013 event. This misinterpretation rested entirely

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with Parks staff, and when True discovered it, she informed them to that they should have collected the funds owed to the County. There was no direction from the Executive or DNRP management to forgo this revenue.

Burns and True both refute Brown's assertion that he told them "over 50 times" he was concerned the County's contracts with AEG or SES were "highly unusual and contrary to the public's interest." The documentary evidence before the Ombuds does not support his assertion.

Burns and True recalled Brown expressing some frustration that SES would go directly to the Executive's office with a contract administration issue or a new idea for Marymoor events, but recalled no instance where Brown raised ethical concerns about the contracts.

Nothing in ethics or other county codes prevent a County contractor from reaching out to the Executive's office or a Councilmember's office about contract administration issues or frustrations. To do so is common, permissible, and expected. At no time did Brown indicate to True or Burns that he had ethical concerns working with SES or AEG.

Burns testified that with respect to the 2013 Cirque du Soleil deposit, his concern was not placating SES but keeping Cirque du Soleil happy and making sure that the upcoming Cirque event, which was days away, could occur as planned. Burns does not recall who made the final decision to cover the deposit, but believes it was a group decision with Parks. There was no financial loss to the County because the deposit was timely returned to the County. Burns and True testified that no one in DNRP or the Executive's office supported accepting less revenue from SES than to which the County was contractually entitled.

The Executive's office and DNRP upheld all standards of ethical conduct during the duration of the AEG/SES contract.

Nothing in the contracting process for the 2018 concert or food and beverage concessions contracts violated the Ethics Code or constituted Improper Governmental Action

The Executive testified that he never told anyone at DNRP to award any contract to AEG or SES. True and Burns both testified that they were never told to award AEG or SES any contract, and that they never told Brown that he or his staff either had to or should award AEG or SES a contract.

True testified that she told Brown and Parks staff that the 2018 concert and food and beverage contracts would be awarded after an FBOD managed RFP process, not a Parks Big Ideas process. True felt that this would be the best way for the County to attract the best qualified vendors for the work, and provide clear criteria unlike the subjective selection process of Big Ideas.

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Contrary to his supervisor True's directive, Brown determined on his own that he and his staff should solicit Big Ideas proposals for the food and beverage concessions contract and did not utilize the RFP process.

Burns testified that he learned from Brown in the fall 2017 that Brown and his staff were close to an agreement with some food and beverage contractors. Burns had not been deeply involved in the discussion about the 2018 concert or food and beverage contracts, and took Brown's comments to be positive. However, Burns testified that this got his attention because he was not aware that an RFP had been posted as directed. Burns asked Brown if True was aware that Parks was close to an agreement with the food and beverage concessionaires and Brown said yes.

That same morning Burns and True had a regularly scheduled meeting, and Burns and True both testified that they discussed Brown's comments about being close to agreement. True testified that she was unaware that the food and beverage RFP had been posted, and asked Brown at one of their one-on-one meetings about his comments to Burns. Brown and True had a heated conversation in True's office about the fact that Brown had not followed her directive to post the food and beverage concession RFP and was instead seeking Big Ideas proposals. True tried to talk to Brown about his deviation from the plan during the meeting and Brown refused to finish the conversation and left the meeting. Though he had ignored her directive, True did not tell Brown that he would lose his job or that she would find him insubordinate.

Brown's decision to defy True's directive regarding the food and beverage RFP, however, reflects a disregard for DNRP's line of authority.

True testified, that after the November 2017 meeting, she and Brown agreed that Parks staff would work with FBOD to post the food and beverage RFP. True testified that she told Brown that she wanted to review the RFP before it was posted. Parks staff did not complete the RFP package until February of 2018 and posted it without her review, again contrary to her directive.

When True reviewed the RFP, she did not think that it was well drafted with respect to the contractor's obligations regarding Clise Mansion. True also felt that some of the criteria for selecting the successful proposer were unclear and that Parks had not allowed enough time for potential contractors to submit proposals. Because she believed the RFP was not ready for consideration, True directed that it be taken off line.

This delay in the RFP process created a need for Parks to find a concessionaire for the upcoming April 2018 Teatro Zinzanni engagement, and Brown asked True about extending the 2012 SES contract to cover concessions for that show only. True agreed that the extension made sense through April.

Soon after, Parks staff and True realized that it would be unlikely that a new vendor could complete the liquor license process in time for the 2018 summer concert season. Parks staff and True spent several days working with FBOD and attorneys from the Prosecuting

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Attorney's Office trying to figure out the best way to extend the SES contract or forgo alcohol revenue in the upcoming season.

During this time, True learned that the Parks Deputy Director had already signed a year-long extension of the SES contract.

In May 2019, after a competitive RFP process, Parks staff chose SES to be the food and beverage concessionaire for a second five-year term.

The process adhered to County policies and standards governing contracting and procurement.

Conclusions

1. The Executive's office has the authority to adopt a vision for delivering services that provides direction to the various departments within County government. The Executive wanted to improve the quality of user experience at Marymoor Park and increase the revenue generated by park activities including the Marymoor Concert series.
2. Making the quality of concerts and revenue the prime criteria for choosing among potential concert/food and beverage concessionaires was appropriate. Applying those criteria lead to the selection of AEG and SES in 2012 and again in 2018. The Marymoor Concert series under the AEG/SES contract succeeded in dramatically increasing concert attendance and revenue to Parks.
3. There is no evidence of any special favorable treatment of or consideration given to AEG/SES. AEG/SES brought several ideas or questions forward during the term of the 2012 contract that were analyzed but not implemented. A contractor asking the County to consider ideas beyond the present contract is common and does not violate the Ethics code. A contractor taking ideas or frustrations directly to Executive's office is also not unusual and does not violate the Ethics code. The contacts between AEG/SES and the Executive's office were typical of the many contacts that occur daily between County employees and County contractors.
4. Although the Big Ideas process has been approved by the County Council for use in promoting innovations in County Parks, in retrospect large competitive contracts such as for the concert series and the food and beverage concession are better awarded through a standard FBOD-managed RFP process. The County has moved to use the RFP process for those contracts and will use the RFP process going forward. Moreover, the County is reassessing how best to utilize the Big Ideas process.
5. True and Burns lead a large department with many programs and projects that regularly and rightly are the subject of interest from the Executive and Council. Although they are accustomed to this, they understand how division directors and


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employees might feel added pressure when the Executive or Council is interested in their work. Had Brown appropriately expressed to True and Burns at the time he had concerns about potential ethics issues, they are confident they could have found a way to work through those concerns.

Please do not hesitate to contact us if you have any questions. Thank you.

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cc: Executive Dow Constantine
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