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August 29, 2011

Mr. Kurt Sawyer  
Interim City Manager  
City of Mesquite  
10 East Mesquite Blvd.  
Mesquite, Nevada 89027

Re: Paradise Canyon, LLC Amended Effluent Reuse Agreement

Dear Mr. Sawyer:

Your August 17, 2011 letter to Paradise Canyon, LLC (Paradise Canyon) has been forwarded to this office for response. In an attempt to get a better understanding for your reasoning in sending the subject letter, I telephonically contacted Public Works Director Bill Tanner on August 24, 2011. Inasmuch as many of my questions to Mr. Tanner were either incompletely answered or not answered altogether, I am directing this response to you.

The September 18, 2001 Amended Effluent Reuse Agreement by and between the City of Mesquite and Paradise Canyon, LLC ("Paradise Canyon Amended Effluent Reuse Agreement") is for a term of ten years. When this Agreement was drafted, City Attorney Terry Marren built in certain conditions precedent to Paradise Canyon's obligation to utilize or otherwise take surplus City effluent. A review of the Paradise Canyon Amended Effluent Reuse Agreement has revealed that the following conditions precedent to such utilization have not been fulfilled by the City.

The first condition precedent is set forth in Section 7.1 of the Effluent Reuse Agreement, specifically:

In exchange for a non-exclusive easement for the PARADISE CANYON irrigation pumping station to be located on property to be acquired by City of Mesquite from NevStar Gaming & Entertainment Corporation ("NevStar"), PARADISE CANYON will pay the CITY the sum of FIFTEEN THOUSAND DOLLARS (\$15,000.00), which PARADISE CANYON will pay to the CITY at the same time the CITY acquires the property from NevStar upon which PARADISE CANYON's irrigation pumping station will be built.

Paradise Canyon is unaware of the City's acquisition of above referenced parcel from NevStar Gaming & Entertainment Corporation. If the subject parcel was acquired, what was the date of the acquisition and why wasn't Paradise Canyon so advised? The foregoing is one of a number of reasons Paradise Canyon has not added the necessary infrastructure to allow the City to bring the subject effluent to a Paradise Canyon

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pumping station over the past decade. Another is assurance from the City that existing irrigation water easements referenced by Mr. Tanner in our earlier discussion include treated effluent.

Section 2 of the Paradise Canyon Effluent Reuse Agreement includes another condition precedent to Paradise Canyon's obligation to take delivery of effluent, specifically:

PARADISE CANYON additionally agrees that it will take no less than 1,000,000 gallons per day 365 days a year if the wastewater treatment plant requires disposal of excess effluent. PARADISE CANYON also agrees that the treatment plant will provide 1 million gallons per day to the Oasis golf course 1.5 million gallons a day to the Arroyo Heights [now Falcon Ridge Golf Course], 750,000 to the City of Mesquite, after these allocations PARADISE CANYON will receive the remaining amount of reuse effluent up to 1 million gallons per day as it becomes available from the treatment plant. [Punctuation, grammar, inconsistencies and spelling errors in original].

The first sentence of the foregoing sets forth the maximum amount of reuse effluent that City will provide and the minimum amount Paradise Canyon is obligated to accept, based on delivery 365 days per year. The second sentence in the foregoing sets forth how the reuse effluent will be distributed, with Paradise Canyon being fourth on the receiving end.

In my August 24, 2011 inquiry to Bill Tanner on the amount of reuse effluent available to Paradise Canyon, he responded that all of the City's effluent is committed and no effluent is presently available to Paradise Canyon for reuse, save and except an unspecified minimal amount in December, January and February [winter months]. In this regard, it was represented that Mr. Tanner expects the City to generate 2.4 to 2.5 million gallons per day ["mgd"] during the winter months. It was further explained that Falcon Ridge Golf Course negotiated a reduction in the amount it is willing to accept from 1.5 to 1 mgd in the winter months. Using Mr. Tanner's higher figure of 2.5 mgd, the allocation under Section 2 of Paradise Canyon's Effluent Reuse Agreement would be as follows:

2.5 mgd total reuse effluent available  
[1.0 mgd to Oasis]  
[1.0 mgd to Falcon Ridge]  
[0.75 mgd to City]  
-0.25 mgd shortage

Thus, based on the foregoing, the City does not generate enough effluent to provide the City with its full allotment and therefore there is nothing left for Paradise Canyon to


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receive. If this doesn't demonstrate sufficient deficiencies in the City's analysis of Paradise Canyon's requirements under its Amended Effluent Reuse Agreement, the City and Falcon Ridge Golf Course's agreement to modify the Arroyo Heights allocation from 1.5 mgd to 1.0 mgd has no legal bearing on Paradise Canyon under Section 2 and, instead of -0.25 mgd shortage in the above calculation, the shortage should properly be 0.75 mgd; and this doesn't even take into consideration the offset for Virgin River irrigation water being blended and delivered with effluent. Finally, and perhaps most significantly, nowhere in the Paradise Canyon Effluent Reuse Agreement does it obligate Paradise Canyon to take up to 1 mgd on a temporary basis. If this were the case why did the City Attorney include the above opening provision "PARADISE CANYON additionally agrees that it will take no less that 1,000,000 gallons per day 365 days a year if the wastewater treatment plant requires disposal of excess effluent"? This strained interpretation is not only inconsistent with the terms of the subject Agreement, it has the effect of interpreting the foregoing unequivocal statement out of the Agreement.

The foregoing is offered to illustrate that, despite your representation "that the City stands ready, willing and able to deliver its excess effluent reuse water to Paradise Canyon pursuant to the agreement", under the terms of the subject Agreement what you are offering falls short of the City's contractual obligations. Paradise Canyon does not dispute that while the City may have a relatively small amount of effluent available in the winter, under the terms of the Paradise Canyon Amended Effluent Reuse Agreement, Paradise Canyon is not obligated to take this temporary minimal amount and commence the ten year term of the subject Agreement. Paradise Canyon is nonetheless willing to have its representatives meet with those of the City to explore alternatives that might serve as interim measures.

If this is somehow not acceptable and the City is insistent on Paradise Canyon accepting its excess effluent on December 1, 2011 thereby commencing the ten year term of the underlying Agreement, Paradise Canyon will proceed to exercise its rights to have the dispute either legally resolved under Section 12 or arbitrated under Section 18 of the Paradise Canyon Amended Effluent Reuse Agreement.

Very truly yours,



George N. Benesch

GNB/b  
cc: Cory Clemetson  
Joel Villanos