

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

SAN DIEGO METROPOLITAN TRANSIT)
SYSTEM,)
)
Plaintiffs,)
)
vs.) Case No.: 37-2014-00044014
) CU-OR-CTL
GRAND CENTRAL WEST, LLC, and DOES 1)
through 20, inclusive,)
)
Defendants.)
_____)
AND ALL RELATED CROSS-ACTIONS.)
_____)

DEPOSITION OF PAUL JABLONSKI
San Diego, California
May 25, 2017

REPORTED BY: LYNETTE MARIE NELSON, CSR NO. 11585, RPR
CRR, CCRR, REALTIME SYSTEMS ADMINISTRATOR

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 2 IN AND FOR THE COUNTY OF SAN DIEGO
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 4 SAN DIEGO METROPOLITAN TRANSIT)
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 5 Plaintiff)
 6 vs.) Case No.: 37-2014-00044014
 7) CU-OR-CTL
 8 GRAND CENTRAL WEST, LLC, and DOES 1)
 through 20, inclusive,)
 9 Defendants.)
 10 AND ALL RELATED CROSS-ACTIONS.)
 11 _____)
 12 _____)
 13
 14 DEPOSITION OF PAUL JABLONSKI,
 15 taken by the Defendant, commencing at the hour of
 16 9:00 a.m. on Thursday, May 25, 2017, at
 17 1255 Imperial Avenue, Suite 1000, San Diego, California,
 18 before Lynette Marie Nelson, Certified Shorthand
 19 Reporter in and for the State of California.
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 25

1 I N D E X
 2
 3 WITNESS: PAUL JABLONSKI PAGE
 4 EXAMINATION
 5 BY MR. MOOT 6
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 7 PREVIOUSLY MARKED EXHIBITS
 8 INCLUDED IN THIS RECORD: 2, 4, 4.1, 5, 10, 13, 16, 17,
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 16 MARKED FOR IDENTIFICATION PAGE
 17 291 "Subject area behind McDonald's 93
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 18 292 City of San Diego project 246
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 19 293 Complaint, SDMTS v Grand 248
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 20 294 Diagram "Path 1" 253
 21 295 Diagram "Path 4" 253
 22 296 Diagram "Path 2" 253
 23 297 Email from Karen Landers to Tim 316
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1 APPEARANCES:
 2 For the Plaintiff:
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 9
 Also present: Miguel Aguirre
 10
 11
 12
 13
 14
 15
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 17
 18
 19
 20
 21
 22
 23
 24
 25

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1 SAN DIEGO, CALIFORNIA; THURSDAY, MAY 25, 2017, 9:39 A.M.
 2 -000-
 3
 4 PAUL JABLONSKI,
 5 having been first duly sworn, testified as follows:
 6
 7 EXAMINATION
 8 **BY MR. MOOT:**
 9 **Q. Why don't you go ahead and state and spell your**
 10 **last name for the court reporter.**
 11 A. J-A-B-L-O-N-S-K-I.
 12 **Q. And your first name for the record?**
 13 A. Paul.
 14 **Q. Mr. Jablonski, have you ever had your**
 15 **deposition taken before?**
 16 A. Yes.
 17 **Q. And on how many occasions?**
 18 A. Twice, I believe.
 19 **Q. What was the general subject matter of those**
 20 **depositions?**
 21 A. One was a construction contract and the other
 22 one was a vehicle liability case.
 23 **Q. And did they both involve MTS as a party?**
 24 A. No. The construction one, yes. Yes.
 25 **Q. And you recall who the plaintiff was in that**

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1 **But basically, the deposition is an opportunity**
 2 **for the parties to get testimony under oath from either**
 3 **witnesses, the opposing party. It's an informal setting**
 4 **like this, but the oath is the same as you would be**
 5 **given in a courtroom. Have you ever testified in court**
 6 **before?**
 7 A. Yes.
 8 **Q. Just like you would be in court, same oath,**
 9 **same meaning, same significance.**
 10 **Do you understand that?**
 11 A. Yes.
 12 **Q. And there's also a court reporter that's taking**
 13 **down everything, so we have to be careful not to speak**
 14 **over each other. So I will try to wait and let you**
 15 **finish your answer. You try to wait and let me finish**
 16 **my question and try not to anticipate and begin your**
 17 **answer early.**
 18 **Do you understand that?**
 19 A. Yes, I do.
 20 **Q. You're doing a really good job.**
 21 **The court reporter can't interpret a nod of the**
 22 **head or "uh-huh" or "huh-uh." So a "yes" or "no,"**
 23 **whatever explanation makes us -- makes the court**
 24 **reporter's job easier and we get a better record.**
 25 **Do you understand that?**

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1 **lawsuit or was MTS the plaintiff?**
 2 A. No. Balfour Beatty Ortiz was the plaintiff.
 3 **Q. And it was a suit against MTS involving some**
 4 **construction issues?**
 5 A. Construction.
 6 **Q. And then you said there was another deposition.**
 7 **Did that involve MTS?**
 8 A. No.
 9 **Q. What was generally that about?**
 10 A. It was about a vehicle accident if I remember
 11 correctly.
 12 **Q. All right. You were in it or you witnessed it?**
 13 A. No, no. It was with the company that I was
 14 running.
 15 **Q. Before you got to MTS?**
 16 A. Oh, yeah.
 17 **Q. Now, your lawyer has probably got a chance to**
 18 **go over the basic ground rules of a deposition, I would**
 19 **assume?**
 20 **MR. LIEDLE: Well, he's not going to talk about**
 21 **that. If you want to give him the admonitions, that**
 22 **would be fine, Counsel.**
 23 **BY MR. MOOT:**
 24 **Q. I can shorten it if you're already familiar**
 25 **with them.**

7

1 A. Yes, I do.
 2 **Q. And during the deposition, your lawyer may**
 3 **interpose objections. Unless he instructs you not to**
 4 **answer a question after the objection, you should go**
 5 **ahead and answer the question. Sometimes the objections**
 6 **make you forget or, you know, you don't really follow**
 7 **the question after a series of objections. If so, the**
 8 **court reporter can read back the question that was asked**
 9 **before the objection so you understand the question**
 10 **before you have to answer it. Okay?**
 11 A. Yes.
 12 **Q. So that's really all you need to know about a**
 13 **deposition.**
 14 **And so you are the CEO of MTS; is that correct?**
 15 A. Correct.
 16 **Q. And how long have you been the CEO?**
 17 A. Since January of 2004.
 18 **Q. And what is your current salary?**
 19 A. I believe it is 371,000.
 20 **Q. And have you been getting yearly merit raises**
 21 **since you started January 2004?**
 22 A. Yes, I have.
 23 **Q. And what are your general duties and**
 24 **responsibilities as the CEO?**
 25 A. I'm basically to run the operations of MTS,

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1 which is the trolley and its bus systems, both
 2 internally operated as well as contracted.
 3 Also to look over our freight obligation, our
 4 taxi obligation with the city, to provide counsel to the
 5 board in terms of matters of policy. But generally, to
 6 provide fiscal management and operations of the system.
 7 **Q. And what is the role of the MTS board of**
 8 **directors vis-a-vis you as CEO?**
 9 **MR. LIEDLE: Well, overbroad.**
 10 **BY MR. MOOT:**
 11 **Q. What do they do that's different than what you**
 12 **do?**
 13 **MR. LIEDLE: Objection. Overbroad.**
 14 **Can you answer that question?**
 15 **THE WITNESS: Well, all I can say is that I**
 16 **would -- I would characterize them as a policy board.**
 17 **They also have duties for approval of contracts over**
 18 **specified amounts of money too. So they have approvals.**
 19 **But they also dictate policy.**
 20 **BY MR. MOOT:**
 21 **Q. And their policy function vis-a-vis you, could**
 22 **you maybe sketch that out a little bit?**
 23 **Do you give them recommendations and then they**
 24 **set the policy or do they set the policy and you**
 25 **implement it?**

10

1 some kind of process at each respective council that
 2 identifies the board member to be -- to attend our
 3 meetings.
 4 **Q. So, for example, they're not on the board by**
 5 **direct vote of the users of the transit system?**
 6 A. Correct. Correct.
 7 **Q. So what was your employment just prior to**
 8 **becoming the CEO in January of 2004?**
 9 A. I was the CEO of the Southwest Ohio Regional
 10 Transit Authority, which is in Cincinnati.
 11 **Q. And how long did you hold that position?**
 12 A. Since 1993.
 13 **Q. So '93 to 2004?**
 14 A. 2004. Yeah.
 15 **Q. And prior to that?**
 16 A. I was the CEO of the Merrimack Valley -- or I
 17 was the general manager of the Merrimack Valley
 18 Transportation Authority in Massachusetts.
 19 **Q. And prior to that?**
 20 A. Prior to that, I was in my own business. I
 21 owned a travel agency.
 22 **Q. And how long -- how long were you at Merrimack,**
 23 **what were the years?**
 24 A. '89 to '93.
 25 **Q. Prior to that, you owned a travel agency?**

12

1 **MR. LIEDLE: Well, objection. Overbroad.**
 2 **BY MR. MOOT:**
 3 **Q. Or a combination of both?**
 4 **MR. LIEDLE: If you can answer the question.**
 5 **THE WITNESS: Issues of policy typically arise**
 6 **and we present to the board what the issue is. And it**
 7 **could be a recommendation or it could be alternatives**
 8 **for them to consider. For example, fare policy or**
 9 **service levels, things like that.**
 10 **BY MR. MOOT:**
 11 **Q. Now, your board consists of elected**
 12 **representatives except for the chairman; that's my**
 13 **understanding?**
 14 A. That's correct.
 15 **Q. And do you know how those elected**
 16 **representatives get appointed to the board?**
 17 **MR. LIEDLE: For each one?**
 18 **BY MR. MOOT:**
 19 **Q. As a general rule, how are they chosen?**
 20 A. Generally, they're chosen by some process of
 21 their respective city councils. It may be put before a
 22 council, let's say, on a recommendation from the mayor.
 23 I recommend so-and-so be appointed to the board and then
 24 council votes for it. It could be a collaboration
 25 between the council president and the mayor. But it's

11

1 A. Yes.
 2 **Q. How long did you own the travel agency?**
 3 A. '87 to '93.
 4 **Q. Out of curiosity, how did you go from a travel**
 5 **agency to the GM of Merrimack? It's a bit of a switch.**
 6 A. Well, I was in the transit industry before all
 7 that too.
 8 **Q. Okay.**
 9 A. I mean, I've been in the transit industry in
 10 some respects since 1971.
 11 **Q. And do you have any -- I assume you got a**
 12 **college degree?**
 13 A. Yes.
 14 **Q. And where did you get that?**
 15 A. University of Massachusetts.
 16 **Q. And do you have any postgraduate degrees?**
 17 A. Postgraduate work at Rensselaer Polytechnic
 18 Institute in New York.
 19 **Q. No actual degree?**
 20 A. That's correct.
 21 **Q. Prior to joining MTS, did you have any trolley**
 22 **or light-rail management experience?**
 23 A. No.
 24 **Q. So this would have been the first --**
 25 A. Other than planning for it.

13

1 **Q. So at your prior jobs, they were all bus**
 2 **systems?**
 3 A. Correct.
 4 **Q. And this was the first system that you took**
 5 **over that involved an actual light-rail trolley or**
 6 **subway; is that correct?**
 7 A. Correct.
 8 **Q. Now, when you started work at MTS, which of the**
 9 **trolley lines had the most passenger uses based on**
 10 **either daily or weekly trips?**
 11 A. The Blue Line.
 12 **Q. And compared to the other trolley lines, how**
 13 **did the number of passengers based on weekly or daily**
 14 **trips compare?**
 15 **MR. LIEDLE: You're asking when he first**
 16 **started?**
 17 **MR. MOOT: Correct.**
 18 **MR. LIEDLE: If -- overbroad, calls for**
 19 **speculation.**
 20 **THE WITNESS: Yeah, I mean, it's hard to**
 21 **remember 13 years ago what the statistics were. I mean,**
 22 **the Blue Line has always been the highest ridership of**
 23 **the three lines.**
 24 **BY MR. MOOT:**
 25 **Q. And it was that way when you started?**

14

1 people that walk across the border end up coming on to
 2 public transportation, either the trolley or our buses
 3 there.
 4 **Q. And is the trolley line at the border then the**
 5 **largest terminal of all of the terminals in the system?**
 6 **MR. LIEDLE: When you say "largest" --**
 7 **BY MR. MOOT:**
 8 **Q. In terms of ridership --**
 9 **MR. LIEDLE: Ridership.**
 10 **BY MR. MOOT:**
 11 **Q. -- people getting on and off?**
 12 A. At San Ysidro, yes, yeah.
 13 **Q. Do you know how it compares to the second**
 14 **largest?**
 15 A. The second largest is right here at Imperial
 16 where we have all three lines come in, the Green Line,
 17 the Orange Line, and the Blue Line. And since we made
 18 that change, this is a major station also.
 19 **Q. And do you know how many people on a daily**
 20 **basis either use the San Ysidro terminal to either exit**
 21 **or get on the trolley?**
 22 **MR. LIEDLE: Currently?**
 23 **MR. MOOT: Currently.**
 24 **MR. LIEDLE: If you know.**
 25 **THE WITNESS: Yeah, I mean, I have those**

16

1 A. Correct.
 2 **Q. And it was that -- it's that way today?**
 3 A. Correct.
 4 **Q. Do you recall whether, for example, today its**
 5 **ridership is double that of any other line or --**
 6 A. I would have to refresh my numbers. But it's
 7 pretty substantially bigger.
 8 **Q. And now is the Blue Line then the largest**
 9 **generator of revenue for the trolley system?**
 10 A. That would be correct.
 11 **Q. And is it the only line that actually supports**
 12 **itself, its revenue generation?**
 13 A. No, it does not support itself.
 14 **Q. Does it come the closest to supporting itself?**
 15 A. It probably comes the closest.
 16 **Q. Now, had there been any studies that you are**
 17 **aware of how many people use the Blue Line to get to and**
 18 **from the U.S. border with Mexico?**
 19 A. I'm sure that -- well, there are certainly
 20 numbers that we have that show how many passengers get
 21 on at San Ysidro. Now I'm not sure that that exactly
 22 correlates with how many people cross the border.
 23 **Q. Okay.**
 24 A. But it's -- I mean, the vast majority -- I
 25 shouldn't say the vast majority. Quite a lot of the

15

1 **numbers. I don't commit them to memory. But my guess**
 2 **is that we carry at least between 15- and 20,000**
 3 **boardings, not lightings but just boardings.**
 4 **BY MR. MOOT:**
 5 **Q. How did that compare when you started in**
 6 **January of 2004?**
 7 **MR. LIEDLE: Calls for speculation.**
 8 **BY MR. MOOT:**
 9 **Q. Just as a general, obviously, I'm not holding**
 10 **you to your memory.**
 11 A. I think riderships probably increased somewhat
 12 on there. But I hesitate in saying that because over
 13 the last, you know, decade or so, a lot has happened in
 14 Mexico. I mean, in terms of tourism.
 15 When I first got here, a lot of people were
 16 going for -- you know, as tourists down there. And
 17 since that, over the last decade or so, that's kind of
 18 been -- it's changed. I think there's less people going
 19 down to go across the border as tourists.
 20 **Q. So the actual usage of the San Ysidro terminal**
 21 **may have been larger when you started than it is today?**
 22 A. Yeah. It's -- I would be speculating.
 23 **Q. Well --**
 24 A. I can certainly get all of those numbers, but,
 25 you know --

17

1 **Q. Okay.**
 2 A. -- to say them off the top of my head would
 3 be -- you know.
 4 **Q. We don't want you to speculate.**
 5 A. Yeah.
 6 **Q. When you arrived in San Diego, when was the**
 7 **first time you went down to the port of entry to observe**
 8 **the trolley operations at San Ysidro?**
 9 A. Probably pretty soon after I started. Because
 10 the San Ysidro station, or transit center as they called
 11 it, had newly been reconstructed.
 12 **Q. When was the first time that you yourself**
 13 **actually crossed the border?**
 14 A. Probably sometime in 2004, I think. Probably
 15 in the --
 16 **Q. Did you go by car?**
 17 A. No, I walked across.
 18 **Q. And how many times have you actually walked**
 19 **through the pedestrian port of entry in San Ysidro and**
 20 **observed how that all works and fits together with the**
 21 **ridership?**
 22 A. Twice.
 23 **Q. And the first time would have been in 2004**
 24 **shortly after you came aboard? That would be correct?**
 25 A. That's correct.

18

1 **Q. Now was -- when you started as CEO, was the**
 2 **San Ysidro port of entry one of the largest border**
 3 **crossings in the United States?**
 4 A. I believe it was, and I believe it still is.
 5 **Q. And of the six port of entries along**
 6 **California/Mexican border, does San Ysidro accommodate**
 7 **half of the total vehicles and pedestrian crossings?**
 8 A. I don't know that statistic.
 9 **Q. Are you familiar with the statistics of how**
 10 **many bus passengers and pedestrians use the San Ysidro**
 11 **port of entry as a -- for example, 2003?**
 12 **MR. LIEDLE: Like annually? Monthly?**
 13 **BY MR. MOOT:**
 14 **Q. Yeah, yearly.**
 15 A. No. Not off -- not specifically.
 16 **Q. Okay.**
 17 A. I'm sure we have that data.
 18 **Q. Yes, I think -- you're familiar with the 2014**
 19 **San Ysidro Intermodal Transit Center study that was done**
 20 **by SANDAG in conjunction with MTS?**
 21 A. Generally familiar.
 22 **Q. Why don't you open up to Exhibit 275 in your**
 23 **notebook.**
 24 **If my paralegal did her job correctly, 275**
 25 **should be the 2014 study. So far so good.**

19

1 Always a bit of a panic to make sure the
 2 notebook is done correctly.
 3 And on page 2, there's some statistics. Well,
 4 first of all, I take it that as the CEO of MTS, you were
 5 given a copy of this final report, the 2014 SYIT study?
 6 **MR. LIEDLE: He's asking you if you've ever**
 7 **seen it before.**
 8 **THE WITNESS: You know, a copy of this report**
 9 **may have been given to me, but I don't -- I don't recall**
 10 **reading it in detail at all.**
 11 **BY MR. MOOT:**
 12 **Q. Is this the type of report that maybe a staff**
 13 **person would have briefed you on or given you an**
 14 **executive summary of?**
 15 **MR. LIEDLE: Calls for speculation.**
 16 **BY MR. MOOT:**
 17 **Q. Under your normal practices, if you didn't read**
 18 **the whole report yourself, I could certainly understand**
 19 **being busy that you might not have actually read the**
 20 **whole report, but is this the type of report that you**
 21 **would have been briefed on or someone on your staff**
 22 **would have given you a summary of the important points?**
 23 A. Potentially. Depending on the -- depending on
 24 the study and the report.
 25 **Q. Well, do you recall the 2014 SYIT study, why it**

20

1 was done, its purpose?
 2 **MR. LIEDLE: So you're asking him does he know**
 3 **why the study was done?**
 4 **MR. MOOT: Correct.**
 5 **MR. LIEDLE: Okay.**
 6 **THE WITNESS: I mean, it was a SANDAG-initiated**
 7 **study that studied options for expanding the**
 8 **intermodal -- an intermodal facility at the border. I**
 9 **mean, it's no -- it's no secret that being the largest**
 10 **border crossing in the world, it is very constrained in**
 11 **terms of vehicular access, pedestrian access, transit**
 12 **access, intercity bus access. I mean, there's a lot**
 13 **going on in a very, very constrained area. And I**
 14 **presume that you've been down there a number of times.**
 15 **BY MR. MOOT:**
 16 **Q. Yes, I have.**
 17 **So was it your understanding that this report**
 18 **was done as a conceptual study as to how the SYITC might**
 19 **be reconfigured to better handle these mobility issues**
 20 **and conflicts?**
 21 A. Generally speaking, I think that's true.
 22 **Q. And on page 2 of the study, it goes through**
 23 **some statistics. And one of those indicates that in**
 24 **2013, there were approximately a million bus passengers**
 25 **and 16 million pedestrians using the San Ysidro port of**

21

1 entry complex on both sides of the border. Do those
2 statistics sound correct to you?

3 MR. LIEDLE: Calls for speculation.

4 THE WITNESS: I wouldn't doubt them.

5 BY MR. MOOT:

6 Q. SANDAG is pretty good at collecting its
7 statistics and getting them accurate.

8 MR. LIEDLE: Calls for speculation.

9 BY MR. MOOT:

10 Q. Except for the -- except for balance
11 statements.

12 A. I have no reason to believe that they're not
13 true.

14 MR. LIEDLE: But you have no independent
15 knowledge to say otherwise is what you're saying,
16 Mr. Jablonski?

17 THE WITNESS: Yeah, I'm -- you know, I mean,
18 generally when I read something in a SANDAG study, you
19 know, it's been pretty well vetted. My -- John, I know
20 this is somewhat speculative, but, you know, when it
21 comes to the number of bus riders that they're quoting
22 statistics on, since we were involved in the study that
23 our planners helped to validate that information.
24 That's what I would assume.
25

22

1 Q. And what did you think of that concept?

2 MR. LIEDLE: Well, vague.

3 THE WITNESS: I don't know how to answer that
4 question.

5 BY MR. MOOT:

6 Q. Was it -- did you like it? Did it seem to have
7 merit to you?

8 A. Well, you know -- I mean, a lot of things have
9 merit. It depends on the detail of them. I mean, as
10 time went on, when I better understood it, I was opposed
11 to the concept in that the transportation facility
12 itself would have been located some half mile from the
13 border crossing itself. And I don't know if a half
14 mile, a third of a mile, as opposed to the trolley today
15 being, I don't know, 50 feet from when you come out of
16 the border.

17 In my -- in my professional feeling that when
18 you have a port of entry like this, that it facilitates
19 people coming across the border and then facilitates
20 their movement out to wherever they're going. And I
21 thought having an intermodal facility so far away from
22 the actual border crossing was not the best.

23 Q. Did you have any opinion as to whether
24 elevating the trolley tracks to be above grade was a
25 good idea or not?

24

1 BY MR. MOOT:

2 Q. So you would have pretty good faith that the
3 million bus passengers would be an accurate number?

4 A. Correct.

5 Q. Because MTS keeps track of those type of
6 statistics?

7 A. That's correct.

8 Q. Does the 16 million pedestrian crossings sound
9 about right to you as well?

10 MR. LIEDLE: Vague, calls for speculation.

11 THE WITNESS: I can't validate that number. I
12 may have heard numbers throughout the last, you know, 12
13 or 13 years in how many -- I mean, the one that sticks
14 in my mind is that it's the largest border crossing, you
15 know, in the world. And we carry a lot of people out of
16 there on the trolley and the bus every day.

17 BY MR. MOOT:

18 Q. Now, did you yourself attend any of the
19 community meetings that were conducted as part of the
20 2014 study?

21 A. The meeting that I recall, it was at SANDAG
22 when Mr. Aguirre gave a presentation of his concept of
23 the intermodal facility.

24 Q. You attended that meeting?

25 A. Yes.

23

1 MR. LIEDLE: Calls for speculation, vague as to
2 "good idea or not."

3 BY MR. MOOT:

4 Q. Or did you have no opinion?

5 A. Yeah, I didn't have any opinion, other than
6 it's costly to do that.

7 Q. Now, the executive summary on page 2 states,
8 "It's difficult to overstate the economic, social,
9 cultural importance of the San Ysidro port of entry to
10 the San Diego/Tijuana mega-region and the local,
11 regional, and national economies of both sides of the
12 border."

13 Do you agree with that statement in the
14 executive summary, that it's difficult to overstate the
15 importance?

16 MR. LIEDLE: Vague.

17 THE WITNESS: My job is to provide public
18 transportation, okay? Rarely do I get into regional
19 economic development issues. That's an issue, to some
20 extent, with SANDAG, but also in the chamber of commerce
21 and others.

22 I mean, I've heard that statement. I believe
23 that there is a huge amount of economic activity that
24 goes back and forth across the border and both sides are
25 somewhat dependent on each other, but it's not my field

25

1 of responsibility. So --
 2 BY MR. MOOT:
 3 Q. Right.
 4 A. -- you know, if you're asking me to, you know,
 5 in some professional way to validate that, I don't think
 6 that I'm qualified to do that.
 7 Q. But you do understand that certain planners
 8 felt that it was difficult to overstate the economic,
 9 social, and cultural importance, and that you had the
 10 transportation system right in the middle of this area
 11 they felt was extremely important?
 12 MR. LIEDLE: Document speaks for itself, calls
 13 for speculation.
 14 THE WITNESS: I'm not sure there was a question
 15 there.
 16 BY MR. MOOT:
 17 Q. Yes. Did you understand that you had a transit
 18 hub in an area that regional planners felt was of
 19 economic, social, and cultural importance to the entire
 20 region?
 21 A. Yes.
 22 Q. And the study also indicates on page 2 that
 23 it's difficult to understate the critical need for
 24 improved mobility and access at the port of entry.
 25 Did you agree with that statement in the

26

1 executive summary?
 2 A. Yes, I do.
 3 Q. The report on page 3 also indicates that after
 4 comparing how many people use the San Ysidro port of
 5 entry with the San Diego national airport or the
 6 Los Angeles international airport, that these statistics
 7 reveal the importance of the San Ysidro Intermodal
 8 Transit Center not only for the community of San Diego
 9 but for the City of San Diego as a whole.
 10 Do you agree because of the number of people
 11 that use the San Ysidro port of entry that it has an
 12 importance to not just San Ysidro but the community of
 13 San Diego as well?
 14 MR. LIEDLE: Vague, overbroad, document speaks
 15 for itself.
 16 THE WITNESS: I mean, I'm reading what you're
 17 reading here, and I have no reason to disagree. I have
 18 no facts to disagree with what's stated.
 19 BY MR. MOOT:
 20 Q. So again, you were aware, based on the activity
 21 in this area where the SYITC was, it was felt to be a
 22 very vital area not only for San Ysidro, but for the
 23 entire San Diego region?
 24 MR. LIEDLE: Vague, overbroad.
 25 THE WITNESS: Yeah, I mean, I believe that's

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1 true.
 2 BY MR. MOOT:
 3 Q. Now, there were some recommendations on page 56
 4 of 57 of the study. Under "Project Perspective," see
 5 about halfway down, there's -- it's a recommendation of
 6 implementation steps.
 7 Are you aware of any action that has been taken
 8 by MTS in conjunction with SANDAG to move forward on any
 9 of the recommendation implementation steps?
 10 A. Not that I'm aware of. I think money is the
 11 big issue.
 12 Q. One of the implementation steps was, "Evaluate
 13 strategies for involving current landowners as partners
 14 in a P3 venture, for example, through an equity
 15 partnership for long-term ground leases or for offering
 16 current businesses the opportunity to carry out
 17 operations in the new facility."
 18 Are you aware of any actions that have been
 19 taken to implement this recommendation?
 20 MR. LIEDLE: By MTS?
 21 BY MR. MOOT:
 22 Q. By MTS in conjunction with SANDAG?
 23 A. By MTS in conjunction with SANDAG, no.
 24 Q. How about MTS separate from SANDAG?
 25 MR. LIEDLE: As a part of this report in

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1 response to this?
 2 MR. MOOT: Well, yeah, there were some
 3 recommendations I'm just wondering whether MTS has
 4 followed up, for example, on these recommendations about
 5 public private partnerships.
 6 THE WITNESS: No.
 7 BY MR. MOOT:
 8 Q. No? You were aware, were you not, that under
 9 the preferred option of this plan, business owners like
 10 Mr. Aguirre's property would be taken by eminent domain
 11 in order to facilitate the plan?
 12 MR. LIEDLE: Assumes facts, calls for
 13 speculation.
 14 I believe he said he really had not read the
 15 report or didn't remember it.
 16 THE WITNESS: Until -- I wouldn't necessarily
 17 draw that conclusion. Until a project has been clearly
 18 identified and scoped and located, I don't know whether
 19 the taking of Mr. Aguirre's property would be required
 20 or not.
 21 BY MR. MOOT:
 22 Q. Under the preferred plan, and we went over this
 23 with Ms. Kennedy, it showed the expanded third rail of
 24 the trolley right over Mr. Aguirre's property. Were you
 25 aware of that?

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1 A. No.
 2 **Q. So under the preferred option, you're not aware**
 3 **that several of the private property owners in this**
 4 **area, if they didn't voluntarily sell, and they wanted**
 5 **to build a preferred option, would be subject to eminent**
 6 **domain?**
 7 **MR. LIEDLE: Calls for speculation, technically**
 8 **as phrased, it's argumentative.**
 9 **I think he's already answered that he wasn't**
 10 **aware of the third rail.**
 11 **BY MR. MOOT:**
 12 **Q. I just want to confirm whether anybody briefed**
 13 **you on the preferred option and the effect that would**
 14 **have on the property owners in the area?**
 15 A. No.
 16 **MR. LIEDLE: So -- okay.**
 17 **THE WITNESS: No.**
 18 **BY MR. MOOT:**
 19 **Q. No one did?**
 20 A. No.
 21 **Q. As far as you know, no one's approached these**
 22 **private property owners like Mr. Aguirre to begin**
 23 **exploring partnerships and equity interest in a new**
 24 **reconfiguration of the SYITC?**
 25 **MR. LIEDLE: Overbroad.**

30

1 **Are you talking about MTS whether anybody from**
 2 **MTS --**
 3 **MR. MOOT: Yes.**
 4 **MR. LIEDLE: -- has approached --**
 5 **THE WITNESS: Nobody from MTS has approached**
 6 **any of the property owners.**
 7 **MR. LIEDLE: Did you get that?**
 8 **BY MR. MOOT:**
 9 **Q. Your recommendations also talked about some**
 10 **low-cost demonstration projects to improve the ITC ahead**
 11 **of the larger project. A couple of those options are**
 12 **discussed on page 57.**
 13 **One of them is that the SYITC could include**
 14 **signage and way-find that would better guide the**
 15 **pedestrians in connecting modes as well as the border**
 16 **village area.**
 17 **Has MTS undertaken any efforts along the lines**
 18 **of this recommendation to improve signage to better**
 19 **guide pedestrians to their connecting modes?**
 20 **MR. LIEDLE: These were ideas? Are you talking**
 21 **about the "Ideas" section?**
 22 **MR. MOOT: Yeah, the recommendation for**
 23 **demonstration projects.**
 24 **BY MR. MOOT:**
 25 **Q. Any of these ideas been implemented?**

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1 **MR. LIEDLE: May call for speculation.**
 2 **BY MR. MOOT:**
 3 **Q. That you're aware of.**
 4 A. We -- we did the trolley renewal project over
 5 the last few years which we did a lot of work on the
 6 Blue Line all the way down. And the signage and
 7 way-finding was certainly a part of that. What
 8 specifically got done at San Ysidro, I don't know.
 9 **Q. You don't know whether there's been any signage**
 10 **program to better direct people, for example, who want**
 11 **to get to local buses to the trolley or the intercity**
 12 **bus terminal, any new signage to improve that aspect of**
 13 **the SYITC?**
 14 **MR. LIEDLE: So just to be clear, is that as a**
 15 **result of what's in this report? In other words, MTS**
 16 **decided we see this report, we're going to take some**
 17 **action and enhance our signage or separate from the**
 18 **report just as a matter of improving the area without**
 19 **having looked at the report.**
 20 **MR. MOOT: I think that's a good question,**
 21 **Mr. Liedle.**
 22 **BY MR. MOOT:**
 23 **Q. Yes, this is a report that I understand**
 24 **hundreds of thousands of dollars were spent on and it**
 25 **made a specific recommendation as interim project to**

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1 **improve the signing to better guide pedestrians to their**
 2 **connecting modes. I was wondering if MTS, in response**
 3 **to this recommendation for demonstration projects,**
 4 **implemented this specific one?**
 5 **MR. LIEDLE: The document speaks for itself, it**
 6 **says some ideas collude. So if you can answer that,**
 7 **Mr. Jablonski.**
 8 **THE WITNESS: I would say, to the best of my**
 9 **knowledge, any signage that we have put down at**
 10 **San Ysidro has been at our initiative based on our**
 11 **interaction with our customers and border crossers, not**
 12 **as a result of this study.**
 13 **BY MR. MOOT:**
 14 **Q. So this particular idea has not been**
 15 **implemented by MTS as a result of the study; is that**
 16 **correct?**
 17 **MR. LIEDLE: Calls for speculation when you**
 18 **said "this particular idea."**
 19 **MR. MOOT: The signage one we just read.**
 20 **MR. LIEDLE: As a result of this?**
 21 **THE WITNESS: As a result of this study, no.**
 22 **BY MR. MOOT:**
 23 **Q. Also --**
 24 A. That's not to say that we haven't put signage
 25 down there to better regulate flow of pedestrians. But

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1 it wasn't as a result of this study.
2 **Q. And one of the other recommendations that the**
3 **new SYITC area could have a facelift to overhaul --**
4 **over -- to the overall look and feel of the area.**
5 **Do you know what this recommendation of a**
6 **facelift was for?**
7 **MR. LIEDLE: Well, this study speaks for**
8 **itself, vague as to "facelift."**
9 **THE WITNESS: Yeah, I mean, I'm not sure it**
10 **was -- well, I'm just not sure it was relative to MTS**
11 **because back in 2002-2003, I mean, we rebuilt that**
12 **station down there so that's all relatively new. And**
13 **the pedestrian plaza and the land we own around the**
14 **station, the shelters, all of that was done relatively**
15 **new. So I don't know exactly what they were talking**
16 **about in terms of what required a facelift.**
17 **BY MR. MOOT:**
18 **Q. Do you recall the San Ysidro community groups**
19 **complaining about these kiosks that MTS was putting in**
20 **the middle of the pedestrian plaza?**
21 **MR. LIEDLE: Vague, overbroad.**
22 **THE WITNESS: Not specifically.**
23 **BY MR. MOOT:**
24 **Q. Do you recall, for example, your chairman,**
25 **Harry Mathis, receiving a letter in 2016 after this**

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1 report from Casa Familiar complaining about the kiosks
2 that MTS had been putting in the middle of this
3 pedestrian plaza?
4 **MR. LIEDLE: Are you asking if he has seen the**
5 **letter?**
6 **BY MR. MOOT:**
7 **Q. Do you recall the letter to Mr. Mathis?**
8 **A. I believe I recall the letter.**
9 **Q. Do you know whether that is in response to the**
10 **community wanting to see a facelift to the overall look**
11 **and feel of the border area?**
12 **MR. LIEDLE: Vague, calls for speculation.**
13 **THE WITNESS: Not that I recall, Mr. Moot.**
14 **BY MR. MOOT:**
15 **Q. Now, you indicated that when you came aboard,**
16 **2004, the San Ysidro Intermodal Transit Center was under**
17 **the process of being constructed?**
18 **A. It was pretty much done. We -- rail service**
19 **was being operated into the new station, and there were**
20 **buses in what I call the banjo or the circle already**
21 **operating also.**
22 **Q. And were you aware that that reconfiguration in**
23 **2004 was the result of a comprehensive community**
24 **planning process with the San Ysidro community?**
25 **A. No.**

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1 **Q. When you came aboard as CEO, did you look into**
2 **how the configuration was arrived at for what was being**
3 **nearly completed when you were hired?**
4 **A. No.**
5 **Q. What, if anything, did you do to familiarize**
6 **yourself with the intermodal transit center that was**
7 **about to be finished and why it came about to be**
8 **designed the way it was?**
9 **MR. LIEDLE: Overbroad.**
10 **THE WITNESS: I mean, the first thing I did**
11 **when I went down there is I toured our property. So I**
12 **toured the rail station. I looked at what was operating**
13 **in -- in the circle. I knew that there were jitneys,**
14 **there was private buses in there, and there was MTS. I**
15 **believe there was also a taxi stand in there.**
16 **I don't recall specifically what was going on**
17 **behind the McDonald's building up in the -- the current**
18 **intercity bus. I really don't recall what I saw there**
19 **at that time. Obviously, it wasn't much.**
20 **I also walked back to where Greyhound was**
21 **operating at that time because that was our property**
22 **also. So it was generally a visit to see what had been**
23 **done and what our property was there.**
24 **BY MR. MOOT:**
25 **Q. Did you receive any briefing on the history of**

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1 the 2003-2004 SYITC project and the process in which it
2 went through to get the final design?
3 **MR. LIEDLE: Vague as to "briefing."**
4 **THE WITNESS: Well, the answer is no.**
5 **BY MR. MOOT:**
6 **Q. Did you learn anything about the process that**
7 **resulted in the construction of the SYITC in its current**
8 **form?**
9 **MR. LIEDLE: At what time? At this time when**
10 **he first came on, Counsel?**
11 **BY MR. MOOT:**
12 **Q. Yes, in your first year, for example, as CEO,**
13 **did --**
14 **A. No.**
15 **Q. -- you learn anything about the process about**
16 **how the design was arrived at?**
17 **A. No. No. And the only -- I mean, I don't think**
18 **construction was 100 percent complete so there were**
19 **still issues with respect to finalizing the project,**
20 **small -- pretty much small cleanup issues. But it was**
21 **functioning, and it was there, and we were utilizing it**
22 **as it was intended.**
23 **Q. Okay.**
24 **A. And that's all I needed to concern myself with.**
25 **Q. Was there a staff person that was assigned to**

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1 **this project that you were aware of when you started?**
2 A. There was -- I presume -- well, the MTDB at the
3 time, MTS engineering staff, it was an MTS project or an
4 MTDB project, that's one and the same.
5 **Q. Sure.**
6 A. It was -- it was our project and our
7 engineering staff, I presume, was the project manager.
8 If I remember correctly, it probably was Pete D'Ablaing.
9 **Q. And do you remember Kimley Horne being hired as**
10 **the consultant for the design?**
11 A. No.
12 **Q. Did Mr. D'Ablaing or anybody give you any kind**
13 **of summary or briefing as to how the final design that**
14 **was being constructed was arrived at?**
15 A. No. Most -- most of my involvement with that
16 project following 2004 when I got there, was the issues
17 surrounding the Gateway Motel takings.
18 **Q. The lawsuit.**
19 A. And the resulting court case; correct.
20 **Q. Yeah, I'm familiar with that.**
21 **Maybe to just probe this area just a little bit**
22 **longer before I move on, if you could take a look at**
23 **Exhibit 146.**
24 A. Is that a tab?
25 **Q. Yes. All of the exhibits have numbers.**

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1 **MR. LIEDLE: These were previously marked in**
2 **other depositions, Mr. Jablonski.**
3 **THE WITNESS: Okay.**
4 **MR. LIEDLE: Are you going to ask him if he has**
5 **ever seen this before?**
6 **MR. MOOT: Yes.**
7 **MR. LIEDLE: You want to take a look at it and**
8 **see if you recognize it.**
9 **THE WITNESS: I recognize it as a fact sheet**
10 **that we put out -- in the past, we had put out on a**
11 **number of things, whether it was the trolley or the**
12 **intermodal center or whatever.**
13 **BY MR. MOOT:**
14 **Q. Now if we look at the "Project Status"**
15 **paragraph --**
16 **MR. LIEDLE: And you're showing him this to see**
17 **if it --**
18 **MR. MOOT: Exhibit 146.**
19 **MR. LIEDLE: -- to see if it refreshes his**
20 **recollection about any understanding he has?**
21 **MR. MOOT: Yeah, any understanding about the**
22 **process by which the -- the SYITC in 2003-2004 was**
23 **designed and built.**
24 **MR. LIEDLE: Do you understand?**
25 **THE WITNESS: Yeah.**

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1 **MR. LIEDLE: Okay.**
2 **THE WITNESS: I understand it.**
3 **MR. LIEDLE: And is there a question, then,**
4 **Counsel?**
5 **BY MR. MOOT:**
6 **Q. Yes. Again, does that refresh your**
7 **recollection as to whether anybody briefed you about,**
8 **for example, how it was determined there would be a**
9 **large pedestrian plaza with separate bus jitney and**
10 **intercity bus bays?**
11 A. It wasn't a briefing. I mean, when I visited
12 San Ysidro, all of those things were pointed out to me.
13 **Q. Okay.**
14 **MR. LIEDLE: All of these design features, is**
15 **that what you mean?**
16 **THE WITNESS: Yeah, for different areas that**
17 **was talked about.**
18 **MR. LIEDLE: Okay.**
19 **THE WITNESS: The pedestrian plaza, the bus**
20 **area, jitney -- jitney area, intercity bus bays,**
21 **Rail Court, retaining wall behind Rail Court, new**
22 **drainage. That's always been an issue there.**
23 **BY MR. MOOT:**
24 **Q. But no one explained to you the history and the**
25 **community planning that went into arriving at the**

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1 **particular configuration?**
2 A. No.
3 **MR. LIEDLE: Asked and answered.**
4 **BY MR. MOOT:**
5 **Q. If you could look at Exhibit 147, then,**
6 **quickly.**
7 **MR. LIEDLE: And you want to ask him if he has**
8 **ever seen this before?**
9 **BY MR. MOOT:**
10 **Q. No, I want to ask you about whether anybody**
11 **made you familiar with the representation on page 2 and**
12 **Section 1.1 that the project that was being completed**
13 **when you took over was designed to correct existing**
14 **deficiency in the circulation and appearance of the**
15 **border area and to respond to needs identified in the**
16 **San Ysidro community plan?**
17 A. That's never -- let me see how to answer that.
18 I would answer that in a way that I believe the project
19 cost close to \$20 million. I presume that that money
20 was spent because there was a need to improve things
21 down there.
22 **Q. Yeah, that would be a basic assumption,**
23 **wouldn't it?**
24 A. Okay.
25 **Q. I guess my question was --**

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1 A. Other than that --
 2 **Q. -- did anybody tell you that the actual design**
 3 **that was arrived at that was being built was the result**
 4 **of needs identified by -- in the San Ysidro community**
 5 **plan; did anybody ever tell you that?**
 6 A. No.
 7 **MR. LIEDLE: Overbroad, vague.**
 8 **THE WITNESS: I don't recall that anybody ever**
 9 **did. Somebody may have said that to me, but I don't**
 10 **specifically recall it.**
 11 **BY MR. MOOT:**
 12 **Q. So no one brought it to your attention that**
 13 **maybe you ought to go look at this community plan to see**
 14 **whether this is being implemented --**
 15 **MR. LIEDLE: Counsel.**
 16 **BY MR. MOOT:**
 17 **Q. -- pursuant to the community plan?**
 18 **MR. LIEDLE: Argumentative as to form.**
 19 **BY MR. MOOT:**
 20 **Q. I don't want to argue with you.**
 21 **I just wanted to ask you, I mean, as CEO who**
 22 **worked in other agencies in other parts of the country,**
 23 **were you generally aware that projects of the SYITC type**
 24 **usually went through community review processes before**
 25 **they were finalized and approved?**

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1 **of this study the board approved in 1994 which served as**
 2 **the basis for how it was constructed?**
 3 **MR. LIEDLE: Calls for speculation.**
 4 **Are you asking him if he is aware of the study?**
 5 **MR. MOOT: Yeah.**
 6 **MR. LIEDLE: Okay.**
 7 **BY MR. MOOT:**
 8 **Q. Did anybody make you aware of the study in that**
 9 **the design that you were inheriting was a result of a**
 10 **study that went back to 1994?**
 11 **MR. LIEDLE: Study speaks for itself.**
 12 **THE WITNESS: I mean, you're asking me to**
 13 **comment on a conversation that may have happened**
 14 **13 years ago. I mean, I can't say that definitively no,**
 15 **that nobody ever told me as we were discussing and we**
 16 **were down there and we were discussing the center that**
 17 **somebody didn't say, yeah, we've been studying this**
 18 **since 1994 and, you know, this is what we did and here**
 19 **it is. So they may have, you know, briefed me to that**
 20 **extent. But a detailed briefing about the 1994 study,**
 21 **to best of my knowledge, I never received that.**
 22 **BY MR. MOOT:**
 23 **Q. So were you aware, then, that the main**
 24 **objective of the ITC was to consolidate modes of travel**
 25 **by consolidating three separate terminals for local**

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1 **MR. LIEDLE: Calls for speculation, overbroad.**
 2 **BY MR. MOOT:**
 3 **Q. Or is that just a California phenomenon?**
 4 A. Depending on what time in history. I have been
 5 in the industry for 45 years, and certainly community
 6 involvement has taken on a new level of involvement in
 7 the latter half of my career.
 8 But understand that there's really no -- there
 9 would have been no need for me to go back into history.
 10 I was -- I was here to operate a transit system. This
 11 project had been done. It was essentially 99 percent
 12 done. We had a new station there. We had a new place
 13 for buses. And all of the other activity that was going
 14 on at the border, and it was for me to now manage and --
 15 and have that as part of the system.
 16 There's really no need for me to look back into
 17 history about it. It was already done.
 18 **Q. Fair enough.**
 19 **At the very bottom of Exhibit 147, the same**
 20 **page, it says, "The initial design concept was**
 21 **identified in the San Ysidro intermodal transportation**
 22 **feasibility study completed in June of 1994 and approved**
 23 **by the San Diego Metropolitan Development board of**
 24 **directors."**
 25 **I take it, then, that you were also not aware**

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1 **trolley, long-haul transportation, and then local**
 2 **services?**
 3 **MR. LIEDLE: Did he ever become aware of that?**
 4 **BY MR. MOOT:**
 5 **Q. Were you aware that was the main objective of**
 6 **the redesigned SYITC?**
 7 A. Other than I presumed it was when I saw the
 8 facility.
 9 **Q. Okay.**
 10 A. Because there are three distinct areas.
 11 **Q. Was it your understanding, then, that the**
 12 **purpose of consolidating the terminals by modes of**
 13 **transportation was to reduce traffic circulation impacts**
 14 **and improve traveler safety?**
 15 **MR. LIEDLE: You're asking for his**
 16 **understanding at that time?**
 17 **MR. MOOT: Yes.**
 18 **MR. LIEDLE: I would just say overbroad, vague,**
 19 **calls for speculation.**
 20 **THE WITNESS: Yeah, I mean, I -- how do I want**
 21 **to answer this?**
 22 **I don't recall a specific conversation in that**
 23 **way. But being a transportation professional, looking**
 24 **at the area and seeing a definitive trolley platform and**
 25 **pedestrian area, a separate bus area where there was**

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1 private sector, taxi, public sector, and then up behind
 2 the building, the intercity, it was clear to me that
 3 they were separate. And they were done that way to try
 4 to bring some order to that area.
 5 **BY MR. MOOT:**
 6 **Q.** And were you familiar when you started with the
 7 term -- well, the fact that wildcatting was an issue
 8 down here at this border area?
 9 A. Yes.
 10 **Q.** And what was your understanding of the issue
 11 with wildcatting as it related to these transportation
 12 services at the border?
 13 **MR. LIEDLE:** So you're talking about initially
 14 when he went down there what his understanding was at
 15 that time?
 16 **BY MR. MOOT:**
 17 **Q.** Yes, when you started in 2004, what was your
 18 understanding of what the issue with wildcatting was
 19 down at this border area?
 20 A. I'm not sure that the wildcatting issue was
 21 brought up to me initially when I first went down there,
 22 but at some point in time after I started here, the
 23 wildcatting issue was certainly brought to my attention.
 24 **Q.** And was it brought to your attention that the
 25 consolidation of the SYITC by modes of travel? In other

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1 turnabout, the lower banjo circle was where the MTS
 2 buses would be, the regulated taxis and the local
 3 shuttles and jitneys?
 4 **MR. LIEDLE:** Are you asking him at the time
 5 when he went down there?
 6 **MR. MOOT:** Correct.
 7 **MR. LIEDLE:** Okay.
 8 **THE WITNESS:** Yeah, they were there when I was
 9 there. Yeah.
 10 **BY MR. MOOT:**
 11 **Q.** Were you aware that that was by specific design
 12 that that would be the area for the local?
 13 A. Well, yeah, when I looked at the banjo and I
 14 saw all of those in there and we talked about it, they
 15 said here is the MTS bus stops, here's the taxis. The
 16 taxis wait on the bridge. They're called down or they
 17 can see when there is open and they would come in.
 18 That's their stop.
 19 And then we have some jitneys and bus carriers.
 20 MexiCoach, I think, if I remember seeing, they had -- I
 21 believe they had red buses. I mean, that was --
 22 **Q.** They were sort of a local jitney carrier?
 23 A. They operated big buses that ran back and forth
 24 across the border. The jitneys operate somewhat
 25 under -- pretty much under our jurisdiction, operate

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1 words, separating the local buses, jitneys, and taxis
 2 from the trolley from the intercity bus was in part to
 3 deal with this problem of wildcatting?
 4 **MR. LIEDLE:** Did he learn that at some point?
 5 **MR. MOOT:** Yes.
 6 **MR. LIEDLE:** As a part of the separation?
 7 **THE WITNESS:** I don't ever recall hearing that
 8 that design was done so as to prevent wildcatting.
 9 It -- and in retrospect, it didn't stop it.
 10 **BY MR. MOOT:**
 11 **Q.** Were you aware the design was in part to try to
 12 improve the issue of wildcatting by having designated
 13 areas where passengers who needed the particular service
 14 knew that there would be the correct regulated carrier
 15 in the specific location?
 16 A. Not specifically, but I can see how that could
 17 be an objective.
 18 **Q.** And, in fact, when you -- when you looked at
 19 the actual design of the center, which is on the back of
 20 146, did you discern from that that this objective of
 21 separating local transportation from light-rail
 22 transportation from private intercity bus transportation
 23 was part of the design of the center?
 24 A. No.
 25 **Q.** Were you aware that the -- for example, the

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1 local shuttle routes in San Ysidro.
 2 **Q.** Did Mex- -- MexiCoach then operate the local
 3 travel between Tijuana and San Ysidro?
 4 A. I believe they did. Yeah.
 5 **Q.** So all of the intercity long-haul bus carriers
 6 were then separated to the upper terminal?
 7 A. Yes.
 8 **Q.** Did anybody --
 9 A. Except -- except for Greyhound. Greyhound had
 10 its own facility more south of where the current
 11 intercity area is behind Mr. Aguirre's building.
 12 **Q.** But other than Greyhound, who, at the time, had
 13 their own site, the long-haul intercity bus operators
 14 were to be using the upper terminal; is that correct?
 15 A. Generally, yes. But with respect to the
 16 wildcatting, their vehicles could be anywhere.
 17 **Q.** Yes.
 18 A. I mean, generally the way wildcatting works,
 19 it's just the person who shows up in that area and tries
 20 to convince people to ride with them and their vehicle
 21 is parked someplace else.
 22 **Q.** Right. And so the wildcatters try to intercept
 23 people who, for example, may be looking for an intercity
 24 bus carrier who then are down at the lower area and then
 25 a wildcatter will grab them and say I can take you to

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1 where you want to go?
 2 A. That's a fair characterization.
 3 Q. And were you aware that part of the design was
 4 to avoid this confusion so that pedestrian passengers
 5 knew if you wanted to get an intercity bus, you have to
 6 go to the upper terminal, but if you wanted local, you
 7 went to the lower terminal; were you aware that was the
 8 concept of the design?
 9 MR. LIEDLE: At or about the time that he
 10 started?
 11 BY MR. MOOT:
 12 Q. At or about the time it was constructed.
 13 A. When I saw it, I could see that.
 14 Q. So they didn't have to explain it to you. You
 15 could actually see how it was working?
 16 A. Yeah, I could see that. And I mean, the
 17 problem about -- if we're still talking about
 18 wildcatting, you know -- you know, unless you have a
 19 closed facility with barriers that you have to show some
 20 kind of ID to get into and then it accesses it, those
 21 designs itself wouldn't prevent wildcatting as we know
 22 they existed after that.
 23 Q. All it could do is try to alleviate the
 24 problem.
 25 MR. LIEDLE: Is that a question?

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1 BY MR. MOOT:
 2 Q. Is that right?
 3 Designs could try to alleviate the problem, but
 4 they're not going to get rid of it entirely?
 5 A. I guess, yeah. Frankly, I'm not really sure at
 6 how much alleviating the wildcatting problem was part of
 7 the design criteria. And I have no knowledge of that.
 8 Q. So again, if it was raised in this community
 9 process and the San Ysidro community plan, you just
 10 simply did not have knowledge of that?
 11 A. Correct.
 12 Q. Now, were you aware that the study and the plan
 13 for what was being built changed the location of the
 14 trolley line termination area in San Ysidro?
 15 A. No.
 16 Q. Did you know, for example, that the trolley
 17 tracks were moved so that the termination point of the
 18 trolley then would be what was before San Ysidro
 19 Boulevard?
 20 A. I know trolley tracks were moved. That's what
 21 resulted in all of the issues with the Gateway Motel,
 22 et cetera.
 23 Q. So -- but were you aware that the termination
 24 point, then, was put in what used to be San Ysidro
 25 Boulevard so it's then stopped directly in front of the

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1 McDonald building?
 2 MR. LIEDLE: Do you understand that? Did you
 3 know that as a result of the --
 4 THE WITNESS: No, I don't.
 5 BY MR. MOOT:
 6 Q. Okay.
 7 A. Yeah. Once again, all I saw was the end
 8 result.
 9 Q. Yes, no, I appreciate it. And I just want to
 10 try to explore a little bit, for example, whether you
 11 knew what the purpose of then the Rail Court road was?
 12 MR. LIEDLE: As a part of the study or
 13 independent?
 14 MR. MOOT: As a part of the final design.
 15 MR. LIEDLE: Calls for speculation.
 16 THE WITNESS: Yeah. In -- Rail Court road went
 17 behind two sets of buildings back in 2004. Because
 18 that's the way Greyhound used to come in behind the
 19 McDonald's building and then behind the other building
 20 to where it -- it terminated.
 21 BY MR. MOOT:
 22 Q. So were you aware, then, that this new
 23 Rail Court road was built to have a specific function
 24 because the trolley was now going to terminate in what
 25 used to be a street and stop then essentially in the

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1 street that no longer existed?
 2 MR. LIEDLE: So are you asking him if that was
 3 part of what he understood from the design or is that
 4 what he understood just observing as a transportation
 5 professional?
 6 BY MR. MOOT:
 7 Q. That you understood that Rail Court road was
 8 built as a result of the trolley now stopping in the
 9 middle of San Ysidro Boulevard and thereby preventing
 10 access to the businesses south and east?
 11 A. I don't believe I was made aware of that. I
 12 always thought that that -- you're talking about the
 13 road --
 14 Q. Correct.
 15 A. -- just so we are clear about this, you're
 16 talking about the road behind the McDonald's building up
 17 to the retaining wall?
 18 Q. Correct. So for example --
 19 A. Okay.
 20 Q. -- if you look at Exhibit 147, there's a pretty
 21 good illustration --
 22 A. What page?
 23 Q. -- of the existing conditions.
 24 That would be Figure 1 after page 6. So that
 25 was the conditions before the SYITC was redesigned. And

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1 then the plan that was built is the next Figure 4 that
 2 shows the Rail Court road now behind the McDonald's and
 3 Wells Fargo building in the parking lot?
 4 MR. LIEDLE: And are you asking if he was aware
 5 of the conditions that existed in Figure 1, Counsel? I
 6 don't know what your question is.
 7 BY MR. MOOT:
 8 Q. What I want to ask you is were you aware of the
 9 purpose or function of Rail Court road as a result of
 10 the trolley now stopping and terminating in what used to
 11 be San Ysidro Boulevard?
 12 MR. LIEDLE: Calls for speculation; vague.
 13 THE WITNESS: I may have been told that at some
 14 point. But I don't specifically recall a conversation.
 15 BY MR. MOOT:
 16 Q. Okay.
 17 A. By the way, the next page that you referred to,
 18 it is not the way it was constructed.
 19 Q. Correct. But it was -- it did show the
 20 relationship to where the trolley stopped and the new
 21 Rail Court road?
 22 MR. LIEDLE: That document speaks for itself.
 23 THE WITNESS: That's true.
 24 BY MR. MOOT:
 25 Q. Now, if you look at the next page, page 11,

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1 the east of the trolley line. Mr. Aguirre, the
 2 McDonald's building, and then there was one building
 3 south of that.
 4 And the only way to get any kind of vehicular
 5 access to it -- well, especially to the second building
 6 was to go behind it like Greyhound did. But there was
 7 still a road in front of it also because the bus looped
 8 around it. So to the extent -- and there was parking
 9 back there --
 10 Q. Right.
 11 A. -- et cetera, that was being used.
 12 So . . .
 13 Q. So --
 14 A. Frankly, you know, I don't recall when I went
 15 down there understanding that that road had never
 16 existed back there before --
 17 Q. You don't --
 18 A. -- this project.
 19 Q. -- for example, you don't recall that the
 20 environmental assessment for the 2003-2004 configuration
 21 was to provide a loop road to provide access to the
 22 businesses south and east?
 23 MR. LIEDLE: You're asking him if he's ever
 24 reviewed this environmental assessment report?
 25

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1 there's a statement regarding how access was going to be
 2 preserved south and east of the station. And I will
 3 just read it to you.
 4 MR. LIEDLE: Are you on a number or paragraph?
 5 MR. MOOT: Paragraph 11 in the first paragraph
 6 about halfway down.
 7 MR. LIEDLE: Okay.
 8 MR. MOOT: It says, "Access to the businesses
 9 south and east of the station would be from a new road
 10 that would be located east of the businesses with the
 11 street entry occurring between Jack In The Box and the
 12 Wells Fargo building."
 13 BY MR. MOOT:
 14 Q. Now, were you aware that the function, then, of
 15 this new Rail Court road was to preserve access to the
 16 business south and east of where the station was going
 17 to terminate?
 18 MR. LIEDLE: Vague, calls for speculation,
 19 document speaks for itself.
 20 THE WITNESS: Not specifically.
 21 BY MR. MOOT:
 22 Q. So again --
 23 A. I did know that when you -- when you look at
 24 the facility that was built there, there was no street
 25 access to the fronts of both buildings that existed to

55

1 BY MR. MOOT:
 2 Q. Were you aware that the environmental
 3 assessment --
 4 A. No, I'm not.
 5 Q. -- called out for that road to preserve the
 6 access --
 7 A. No.
 8 Q. -- to the businesses south and east?
 9 A. No, I'm not.
 10 Q. Now, do you know how the property required to
 11 build this Rail Court road in the intercity bus terminal
 12 behind the McDonald's building was acquired?
 13 A. I don't recall that specifically.
 14 Q. Do you recall that it was acquired by eminent
 15 domain?
 16 A. No, I don't. Well, I do know that there was
 17 eminent domain issues because that's why we had the
 18 Gateway Motel issue.
 19 Q. Well, do you know, for example, specifically
 20 the property where the ITC platform was and the new
 21 Rail Court road was acquired by eminent domain?
 22 A. The ITC platform?
 23 Q. Behind the McDonald building.
 24 A. What's the ITC platform?
 25 Q. Intercity Transit Center bus platform. In

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1 other words, I'm trying to -- maybe the lingo is too
 2 inside baseball so maybe I ought to --
 3 MR. LIEDLE: It's the SYPS property where the
 4 buses are.
 5 THE WITNESS: Okay. Yeah.
 6 BY MR. MOOT:
 7 Q. Most people call that the Intercity Transit
 8 Center to distinguish it from the loop road and the
 9 trolley.
 10 A. Yeah.
 11 Q. So --
 12 A. Okay. I understand.
 13 Q. Too much inside baseball language for you.
 14 A. It's okay.
 15 Q. When I say "the ITC," I'm talking about the bus
 16 platform --
 17 A. Okay.
 18 Q. -- where the intercity long-haul buses operate.
 19 MR. LIEDLE: The question is?
 20 BY MR. MOOT:
 21 Q. Were you aware this new loop road, Rail Court,
 22 and the area where the ITC platform is was acquired by
 23 eminent domain?
 24 MR. LIEDLE: At any time.
 25 THE WITNESS: I don't specifically recall that.

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1 reading this specific paragraph.
 2 BY MR. MOOT:
 3 Q. So no one, when you came aboard as CEO in 2004,
 4 told you that the actual property behind the McDonald
 5 building was in private hands before this resolution of
 6 necessity?
 7 MR. LIEDLE: Overbroad.
 8 THE WITNESS: I don't recall --
 9 MR. LIEDLE: Vague.
 10 THE WITNESS: -- a conversation to that extent.
 11 BY MR. MOOT:
 12 Q. For example, I will show you, if you look at
 13 Exhibit 150 and 153, these are some before and after
 14 pictures.
 15 MR. LIEDLE: And you're representing that's
 16 what 150 is?
 17 BY MR. MOOT:
 18 Q. Yeah, for example, Exhibit 150 is an aerial
 19 photo 8/3/2001 consistent with that existing condition
 20 figure we looked at before.
 21 A. Can I --
 22 Q. Did anybody tell you that, in fact -- well, do
 23 you see where the McDonald building is on this aerial
 24 photo?
 25 A. I believe it's this one here.

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1 BY MR. MOOT:
 2 Q. Maybe you could flip quickly to Exhibit 163.
 3 MR. LIEDLE: Just for the record, this is
 4 Resolution of Necessity No. 1-54. What's the date on
 5 this, Counsel?
 6 MR. MOOT: Passed and adopted 18th of October,
 7 2001.
 8 MR. LIEDLE: Okay.
 9 MR. MOOT: On page 3.
 10 MR. LIEDLE: That should help the witness then.
 11 BY MR. MOOT:
 12 Q. If you look at the third whereas, does this
 13 either refresh your recollection or remind you that the
 14 property to build the Rail Court road and the ITC
 15 platform and McDonald building was actually in private
 16 hands and then acquired by eminent domain?
 17 MR. LIEDLE: He's asking if this refresh your
 18 recollection, Mr. Jablonski.
 19 THE WITNESS: I have not seen this document
 20 before, but the paragraph you pointed out does not
 21 specifically mention Rail Court. It says MTDB -- well,
 22 I don't have to read it.
 23 Rail Court is not specifically mentioned in
 24 that paragraph. So it's hard for me to understand
 25 exactly what was being taken by eminent domain by

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1 Q. Where the "X" is?
 2 A. There's an "X"?
 3 Q. Oh, it's on my copy. How about this?
 4 MR. MOOT: Sorry. I thought the witness put
 5 the --
 6 BY MR. MOOT:
 7 Q. Yes.
 8 A. Okay.
 9 Q. So did anybody tell you that, in fact, that
 10 land behind the McDonald's building where the ITC
 11 platform and Rail Court is now was, in fact, a part of a
 12 large private parking lot?
 13 MR. LIEDLE: Asked and answered.
 14 THE WITNESS: No.
 15 BY MR. MOOT:
 16 Q. So no one informed you of that?
 17 A. No. The pictures that you just showed me were
 18 the parking back there the first time I've seen that.
 19 Q. So Mr. D'Ablaing, or whoever was in charge of
 20 this project, never informed you of this?
 21 MR. LIEDLE: Well, argumentative as phrased.
 22 I said -- he said he couldn't recall and he
 23 doesn't remember as he sits here today, Counsel.
 24 BY MR. MOOT:
 25 Q. So again, I think you said you came aboard.

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1 You were to implement what was already approved and no
2 one told you that, in fact, that land behind the
3 McDonald's building used to be in private hands and was
4 acquired by eminent domain?

5 MR. LIEDLE: Did anyone tell you that?

6 THE WITNESS: You know, I know that there was
7 pieces of property that were acquired by eminent domain.
8 I know that because of the Gateway Hotel issue. What
9 specifically was taken as a result of the rest of the
10 project, I don't recall having a conversation of that.

11 And once again, that project was done, all of
12 that work was done even if you see these documents from
13 the MTDB was 2001. It was three years before I arrived.

14 So once again, you know, I come there --

15 BY MR. MOOT:

16 Q. You can't know what someone doesn't tell you;
17 right?

18 A. -- it's done.

19 Q. Right.

20 A. So I deal with it being done and we operate it.

21 I mean, understand that this is one station out
22 of -- out of 55 miles of rail.

23 Q. Sure.

24 A. You know, 55, 54 stations.

25 Q. In other words, you can only know what someone

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1 community process where they got input from stakeholders
2 and community groups and the like; no one told you that
3 either?

4 A. Not specifically.

5 Q. Now, were you aware that when MTDB acquired the
6 property in -- by eminent domain in October 2001 that
7 the actual design was 97 -- 95 percent complete?

8 MR. LIEDLE: Counsel, he said he didn't know
9 that the property was obtained by eminent domain. You
10 might want to rephrase the question.

11 BY MR. MOOT:

12 Q. Do you know, for example, when the design was
13 completed in relationship to the taking?

14 A. No.

15 Q. There's a document, Exhibit 149, and in the
16 first paragraph, that document indicates because of its
17 date February 2nd, 2001, that the actual design of the
18 project was 95 percent complete before the date of the
19 resolution of necessity.

20 MR. LIEDLE: Are you asking him if he's ever
21 seen this before?

22 BY MR. MOOT:

23 Q. Were you ever made aware of --

24 MR. LIEDLE: Okay.
25

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1 tells you about what happened before you got there?

2 A. Correct.

3 Q. And if no one told you that this property was
4 acquired by eminent domain for a public use and a public
5 purpose, it was simply information you were unaware of?

6 A. There was really no need to understand the
7 history.

8 Q. All right. Let's talk a little bit about that
9 history and how that may play into this particular case.

10 So you didn't know that the ITC platform at
11 Rail Court was acquired for public use and in the public
12 interest, you were simply never informed of that?

13 MR. LIEDLE: Assumes facts, calls for
14 speculation.

15 BY MR. MOOT:

16 Q. Is that true?

17 A. It's true.

18 MR. LIEDLE: Asked and answered.

19 BY MR. MOOT:

20 Q. And you were unaware that -- because no one
21 told you that the design concept was actually initiated
22 in 1994?

23 A. That's true. Nobody ever told me that.

24 Q. And nobody told you that the plan, concept plan
25 after 1994 then went through a extensive review in the

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1 BY MR. MOOT:

2 Q. -- the taking was based on a 95 percent
3 completed design?

4 A. No. But generally -- generally, you define
5 what you need to take once you have designed a project.

6 Q. Right. And what you take is to implement the
7 project as designed?

8 A. Correct.

9 Q. Because you're doing it for a public interest
10 and a public purpose?

11 A. Correct.

12 Q. Now, the letter to Mr. Burns from Mr. D'Ablaing
13 in the second paragraph talks about the plaza that was
14 part of the design. It says, "The plaza will enable
15 transit patrons to conveniently walk to and from the
16 trolley station bus bays and border and the surrounding
17 business areas."

18 Did anybody inform you that that was the
19 purpose of this plaza as part of the original design?

20 A. I think that fact is obvious when you look at
21 it.

22 Q. For example, when you were putting these kiosks
23 in this plaza, nobody informed you that that was
24 inconsistent with the original design to have this plaza
25 for convenient walking to and from the bus modes?

65

1 MR. LIEDLE: Assumes facts, calls for
 2 speculation, vague.
 3 THE WITNESS: I don't construe it as being
 4 inconsistent.
 5 BY MR. MOOT:
 6 Q. Okay.
 7 A. But nobody ever pointed that out.
 8 Q. Right. So you -- unfortunately, no one ever
 9 pointed out to you what the function of this new plaza
 10 was supposed to be?
 11 MR. LIEDLE: Well, argumentative as phrased,
 12 Counsel.
 13 I think he has already said what he saw, and he
 14 has very little knowledge regarding the original design.
 15 I don't know how far you want to go with this I guess is
 16 what I'm saying.
 17 BY MR. MOOT:
 18 Q. Now did you ever become aware that Mr. Aguirre
 19 was actively involved in the initial designing and
 20 community process of what was built in 2004?
 21 A. Not that I recall.
 22 Q. So, for example, did anybody make you aware
 23 that a property that Mr. Aguirre managed was actually --
 24 a portion was actually taken in an eminent domain
 25 proceeding to build Rail Court road?

66

1 BY MR. MOOT:
 2 Q. Sure, yeah, before this lawsuit started.
 3 MR. LIEDLE: Okay.
 4 BY MR. MOOT:
 5 Q. Because obviously your conversations with your
 6 attorney are privileged, we don't want to get into that,
 7 but prior to that, were you aware that, in fact, MTDB,
 8 the MTDB board approved of negotiations with
 9 McDonald's Corporation to actually incorporate their
 10 building into the SYITC project?
 11 A. No.
 12 Q. Were you aware -- did anybody tell you that
 13 those discussions included putting an elevator into the
 14 McDonald's building so that there could be ADA access
 15 from the new termination point in front of the
 16 McDonald's building up to the upper platform?
 17 MR. LIEDLE: We are still focused on the time
 18 period before the lawsuit was filed.
 19 THE WITNESS: No.
 20 BY MR. MOOT:
 21 Q. If you could open up to Exhibit 115.
 22 MR. LIEDLE: How are you doing? Are you okay?
 23 MR. MOOT: Want to take a quick break?
 24 THE COURT REPORTER: Off the record then?
 25 MR. MOOT: Yes.

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1 A. No.
 2 Q. You were, I take it, then, unaware that it was
 3 Mr. Aguirre's father that initially proposed to
 4 Estrada Land Planning this loop road that would preserve
 5 access to the businesses south and east?
 6 A. No. I mean, to be clear, I don't think that I
 7 met Mr. Aguirre -- even met Mr. Aguirre until sometime
 8 after 2010/2011 time frame.
 9 Q. So you were unaware of his history and
 10 involvement with the original design?
 11 A. Yes.
 12 Q. Now, were you aware of the involvement of the
 13 McDonald's Corporation and its building in the original
 14 design?
 15 MR. LIEDLE: Assumes facts, calls for
 16 speculation.
 17 THE WITNESS: The answer's no.
 18 BY MR. MOOT:
 19 Q. Did anybody make you aware at any time while
 20 you were CEO that MTDB had been in a two-year discussion
 21 process with McDonald's to incorporate their building
 22 into the design of the project you inherited?
 23 MR. LIEDLE: If you phrase the question that
 24 before this lawsuit started, Counsel --
 25

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1 (10:56 a.m.)
 2 (A recess was taken.)
 3 (11:02 a.m.)
 4 BY MR. MOOT:
 5 Q. Before we go to 113 and 115, this may help your
 6 recollection a little bit. I don't know.
 7 Exhibit 5, if you could take a look at
 8 Exhibit 5, quickly. And we've had some testimony that
 9 Exhibit 5 was the PowerPoint presentation that was done
 10 for the October 18, 2012, meeting.
 11 MR. LIEDLE: Board meeting.
 12 BY MR. MOOT:
 13 Q. Board meeting.
 14 MR. LIEDLE: Do you want him to take a look at
 15 it to make sure that's his understanding?
 16 BY MR. MOOT:
 17 Q. Yes, if you look at Exhibit -- Item 31.
 18 MR. LIEDLE: Exhibit 5 identified as Item 31,
 19 which is the PowerPoint; right?
 20 MR. MOOT: Right.
 21 MR. LIEDLE: Okay.
 22 BY MR. MOOT:
 23 Q. If you need to connect that back up, the agenda
 24 item is 4.1.
 25 MR. LIEDLE: How did that end up 4.1?

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1 MR. MOOT: Because you insisted on me having a
 2 signed version and I kept using the unsigned one.
 3 MR. LIEDLE: It's always good to have a signed.
 4 MR. MOOT: Because you lectured me so
 5 consistently, we went back and marked 4.1 as the signed
 6 one.
 7 MR. LIEDLE: Awesome, thank you.
 8 THE WITNESS: This one is not signed.
 9 MR. LIEDLE: But 4.1 is.
 10 THE WITNESS: That's the next one.
 11 MR. LIEDLE: Yeah, that's the next one.
 12 BY MR. MOOT:
 13 Q. You've got a good lawyer here, he is like
 14 making me use signed documents.
 15 A. Well, but those are the only ones that are, in
 16 fact, valid. Unsigned ones are not worth more than --
 17 MR. LIEDLE: The paper they're printed on.
 18 THE WITNESS: The paper they're printed on.
 19 MR. LIEDLE: So --
 20 BY MR. MOOT:
 21 Q. Does Exhibit 4.1 refresh your recollection of
 22 what Item 31 was on October 18, 2012?
 23 A. Yes.
 24 Q. Now if you then go back and look quickly at
 25 Exhibit 5, was that one of the PowerPoint presentations

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1 that was presented at the meeting?
 2 MR. LIEDLE: If you recall.
 3 THE WITNESS: It looks like a PowerPoint that's
 4 prepared with the MTS logos and all of that. Can I say
 5 that that is, in fact, the one that was presented?
 6 BY MR. MOOT:
 7 Q. Well, there is a Slide No. 2 that -- that is
 8 labeled "History of Rail Court Bus Terminal."
 9 A. Okay. Yeah.
 10 Q. And then there is a slide after that as the
 11 pre-2003 configuration.
 12 A. Okay.
 13 Q. And then the slide after that is the 2003
 14 project completed and what it did.
 15 A. Right.
 16 Q. Did someone at MTS, that you recall, prepare
 17 this presentation for your review before it was
 18 presented to the board?
 19 A. Yes. If this is, in fact, the one that was
 20 presented.
 21 Q. All I can do is rely on MTS producing it.
 22 A. Somebody presented it, somebody produced this.
 23 Q. Does this, in fact, jog your mind that at some
 24 point you learned the property behind the completed
 25 terminal was actually a private property parking lot?

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1 MR. LIEDLE: Are you referring --
 2 BY MR. MOOT:
 3 Q. Owned by JMI?
 4 A. Where does it say that?
 5 Q. Well, if you look at the Slide 3, it shows the
 6 pre-2000 configuration.
 7 A. Yes.
 8 Q. And it says "JMI Property."
 9 A. Where?
 10 Q. Right where the two arrows are, "Future
 11 Rail Court," right above that.
 12 MR. LIEDLE: Well, the document speaks for
 13 itself. It's right above "Rail Court," the word "Rail."
 14 And the question is does this refresh --
 15 BY MR. MOOT:
 16 Q. Whoever made this slide brief you at all about
 17 what the pre-2003 configuration was and what was there
 18 before?
 19 A. To the best of my knowledge, no. But they may
 20 have. But you're going back a few years.
 21 Q. Okay.
 22 A. My eyesight is not good enough to see that.
 23 Q. But your best testimony here today is that you
 24 don't recall the property behind the McDonald's
 25 building?

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1 A. Was taken specifically.
 2 Q. Was taken by eminent domain; is that correct?
 3 A. Correct.
 4 Q. Now --
 5 MR. LIEDLE: Can I point something out, the two
 6 of you need to have a break in between your questions
 7 and answer. I have a court reporter going like, now
 8 what do I take down.
 9 MR. MOOT: We will try to be a little bit
 10 better about that.
 11 THE WITNESS: I understand.
 12 MR. LIEDLE: I will play referee on that. You
 13 want a better record.
 14 BY MR. MOOT:
 15 Q. So I want to go back to a little of the history
 16 of the McDonald's building and how much of it you were
 17 ever made aware of. We will start with Exhibit 115.
 18 And Exhibit 115, I'm going to get a chance to talk to
 19 Ms. Elliot about it --
 20 MR. LIEDLE: And --
 21 BY MR. MOOT:
 22 Q. -- briefly.
 23 MR. LIEDLE: -- when you're saying the
 24 McDonald's building, you're saying that in relation to
 25 what?

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1 Just so he has a focus, Counsel.
 2 MR. MOOT: That's a good point.
 3 BY MR. MOOT:
 4 Q. You are aware that Grand Central West owns
 5 what's called the McDonald's trolley building and the
 6 McDonald's building?
 7 A. Yeah, McDonald's doesn't own it.
 8 Q. Right, you're aware that they own it now?
 9 A. Grand Central West.
 10 Q. But it used to be -- were you aware it used to
 11 be owned by McDonald's and Grand Central West bought it
 12 from them?
 13 A. I am aware of that.
 14 Q. Going to Exhibit 115, Exhibit 115 is a letter
 15 written by then-deputy general counsel Mario Elliot,
 16 now-city attorney Mario Elliot to Lori Nunez, the
 17 property manager at McDonald's, about an MOU between
 18 MTDB and the McDonald's Corporation for improvements of
 19 the San Ysidro Intermodal Transit Center.
 20 Were you aware of the history of the McDonald's
 21 building intended to be incorporated into the SYITC
 22 project is the actual bus depot building?
 23 A. No.
 24 MR. LIEDLE: Assumes -- okay. Assumes facts
 25 but -- okay.

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1 letter.
 2 MR. LIEDLE: Okay.
 3 THE WITNESS: You refer to this, but this is
 4 not -- this is not an MOU in the fact that it has not
 5 been signed.
 6 BY MR. MOOT:
 7 Q. Correct. I'm just talking about the history of
 8 the project --
 9 A. Okay. Okay.
 10 Q. -- and what you knew about the history of the
 11 project.
 12 A. Okay.
 13 Q. Yeah, no, I think we're both well aware that
 14 ultimately, McDonald's didn't --
 15 A. Sign it.
 16 Q. -- didn't sign it and the property got sold to
 17 Grand Central West.
 18 A. Okay.
 19 Q. But just were you aware of the history, for
 20 example, that in the design phase and prior to the
 21 eminent domain taking, the plan was that as reflected in
 22 the third whereas that McDonald's had offered the second
 23 floor of their building for public use as an intercity
 24 bus facility?
 25 MR. LIEDLE: This is before the lawsuit was

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1 BY MR. MOOT:
 2 Q. If you look at Exhibit 113 and then we'll come
 3 back to Exhibit 115 quickly.
 4 Mr. Willett testified to Exhibit 115, and this
 5 is a letter to his partner, Ms. Wiggans.
 6 MR. LIEDLE: February 18, 2000; right?
 7 BY MR. MOOT:
 8 Q. Who was the right-of-way manager.
 9 In the third paragraph, it references that two
 10 elevators would connect the ground floor with the second
 11 floor and the second floor would be altered to provide
 12 access out of the rear of the building, the bus station
 13 that would be constructed on the lot adjacent to the
 14 east.
 15 Did anybody make you aware of this history of
 16 the second floor of the McDonald's building actually
 17 having a door on the back to connect to the bus
 18 terminal?
 19 A. No.
 20 Q. Going back to Exhibit 115, the third whereas
 21 on -- in the actual MOU, let me know when you get to it,
 22 Exhibit 115.
 23 MR. LIEDLE: What page?
 24 BY MR. MOOT:
 25 Q. The actual MOU, the second page after the

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1 filed, Counsel?
 2 BY MR. MOOT:
 3 Q. This is before the lawsuit was filed. Were you
 4 aware of this history?
 5 A. No. No.
 6 Q. If you go to Paragraph 12 on the page that's
 7 got --
 8 A. Of this document.
 9 Q. This document, it has a number at the bottom,
 10 1983.
 11 A. Yeah.
 12 Q. Paragraph 12.
 13 Did anybody make you aware that -- that the
 14 McDonald's building was going to provide the
 15 ADA-accessible path and the public restrooms for the
 16 facility?
 17 A. No.
 18 Q. And if you look at Paragraph 2, did anybody
 19 make you aware before the lawsuit that the
 20 ADA-accessible path between the planned new trolley
 21 termination and the intercity bus bays would be through
 22 an elevator and doors leading out to the bus bays?
 23 A. No.
 24 Q. Now, did you know or did anybody brief you that
 25 the MTD board and staff in March of 2002 had stated that

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1 they were very interested in developing the second floor
 2 of the McDonald's building for the use as the intercity
 3 bus facility?
 4 A. No.
 5 Q. For example, if you open up to Exhibit 112,
 6 Exhibit 112 is a letter from the right-of-way manager
 7 retained by MTDB to Lisa Johansen at
 8 McDonald's Corporation.
 9 It indicates in the very first paragraph,
 10 "Thank you very much for meeting with the
 11 Metropolitan Transit Development Board staff in March."
 12 It says, "As you know, MTDB is very interested in
 13 developing the second floor of the McDonald building
 14 located at 723 East San Ysidro Boulevard for use as the
 15 intercity bus facility."
 16 At any time after you came aboard and before
 17 the lawsuit was filed, were you advised that MTDB, in
 18 fact, was the party interested in developing the second
 19 floor of the McDonald building to be part of the
 20 intercity bus facility?
 21 A. No.
 22 MR. LIEDLE: While McDonald's owned the
 23 building?
 24 THE WITNESS: No.
 25

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1 being incorporated in the project?
 2 MR. LIEDLE: Calls for speculation.
 3 THE WITNESS: I have no recollection of that.
 4 BY MR. MOOT:
 5 Q. Did anybody inform you that MTDB, before you
 6 became CEO, felt that incorporating the McDonald
 7 building into the project was so important that they
 8 actually hand delivered a letter from the mayor of
 9 San Diego at a meeting in July 2002 to McDonald's
 10 corporate?
 11 MR. LIEDLE: Calls for speculation.
 12 THE WITNESS: No.
 13 BY MR. MOOT:
 14 Q. Do you -- did you have any recollection of how
 15 and when the negotiations with McDonald's ended?
 16 MR. LIEDLE: Calls for speculation.
 17 THE WITNESS: The answer's no.
 18 BY MR. MOOT:
 19 Q. So then you were unaware that as late as
 20 November of 2002, Mr. D'Ablaing was still trying to
 21 convince McDonald's to even consider less expensive
 22 renovations to the second floor so that it could be
 23 included as part of the intercity bus terminal project?
 24 A. No, I'm not aware of any of those
 25 conversations.

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1 BY MR. MOOT:
 2 Q. And there's a reference in the third paragraph,
 3 again, this letter dated June 5, 2002, it says, "Much of
 4 the language in the draft memorandum of understanding
 5 between MTDB and McDonald's would still apply."
 6 A. I'm sorry? What --
 7 MR. LIEDLE: Where are you?
 8 BY MR. MOOT:
 9 Q. The one, two -- fourth paragraph down in
 10 Exhibit 112.
 11 A. One, two -- right here.
 12 MR. LIEDLE: Mm-hmm. And the question is was
 13 he aware of what?
 14 BY MR. MOOT:
 15 Q. Were you aware that -- that MTDB in June of
 16 2002 was still advising McDonald that the -- much of the
 17 language, the MOU would still apply?
 18 A. No.
 19 Q. Now, at any point before the lawsuit was filed,
 20 were you aware of the fact that your predecessor felt
 21 that McDonald's building was so important to the project
 22 that he actually sent a team of MTDB staff right-of-way
 23 agents and the deputy general counsel to a meeting in
 24 L.A. in which they arranged a call from the mayor's and
 25 councilperson's aide to discuss the McDonald building

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1 Q. Now, after you came aboard, were you aware or
 2 did someone make you aware of the fact that when
 3 McDonald's did not want to do the revisions to the
 4 second floor to make it part of the SYITC that a group
 5 including Mr. Aguirre actually bought the building for
 6 that very purpose?
 7 MR. LIEDLE: You're asking him if he ever had
 8 that understanding before?
 9 BY MR. MOOT:
 10 Q. Did anybody tell you that the people who bought
 11 the McDonald's building did it because they were
 12 interested in actually building out the second floor
 13 like MTDB planned?
 14 A. No.
 15 Q. If you look at Exhibit 122, it's an email from
 16 Mr. D'Ablaing to Mr. Allison.
 17 MR. LIEDLE: Dated January 22.
 18 BY MR. MOOT:
 19 Q. January 22nd, 2003.
 20 Did Mr. D'Ablaing ever inform you that the
 21 group that was going to be buying the McDonald's
 22 building wanted to meet and that they were interested in
 23 capitalizing on the prospect of making the second floor
 24 part of the bus terminal operations?
 25 A. No, he did not.

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1 Q. Now, did Mr. Allison or Mr. D'Ablaing advise
2 you that after the McDonald's group backed out of the
3 MOU, that there was then a need to provide temporary
4 shelter and benches and porta-potties?
5 MR. LIEDLE: Calls for speculation.
6 This is before the lawsuit's filed.
7 THE WITNESS: Not to the best of my
8 recollection.
9 BY MR. MOOT:
10 Q. So, for example, if you look at Exhibit 121,
11 it's an email from your project manager, Mr. D'Ablaing,
12 copied to Mr. Allison and Mr. Willett.
13 And it starts in the first paragraph, "Since
14 McDonald's Corporation is no longer interested in
15 developing their building for use with the intercity bus
16 terminal, it appears MTDB needs to proceed in creating
17 the intercity terminal without the use of the McDonald's
18 building."
19 Then the last paragraph, it references a need
20 to provide temporary shelter and benches and
21 porta-potties to provide relief to patrons who would be
22 using the intercity buses.
23 Did anybody make you aware when you came aboard
24 and inherited the build-out that the project manager
25 felt there was a need for temporary bathrooms and

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1 shelters?
2 MR. LIEDLE: Calls for speculation.
3 THE WITNESS: The person that I probably would
4 have talked to would have been Tim Allison and, no, he
5 did not relay that to me.
6 BY MR. MOOT:
7 Q. So he didn't relay to you that when McDonald's
8 was no longer interested, that at least your project
9 manager felt it was time to think about hiring an
10 architect to design permanent shelters and restrooms?
11 MR. LIEDLE: Well, argumentative as phrased.
12 Are you asking him if Allison ever informed
13 him?
14 BY MR. MOOT:
15 Q. Yeah, did Allison ever inform you that when
16 McDonald's was no longer interested, there was now a
17 need for shelter and restrooms and why that need arose?
18 A. No.
19 Q. So when you inherited this project, new on the
20 job, no one told you about the original design was going
21 to have this shelter and the restrooms in the McDonald's
22 building?
23 A. No. No.
24 Q. Now -- now at some point before the lawsuit was
25 filed, did you learn that a group, an investor with

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1 Mr. Aguirre was actually going to buy the McDonald's
2 building?
3 A. No.
4 Q. So, for example, during the RFP process that
5 you were involved in, you did not learn that one of the
6 proposals in that RFP process was the group that bought
7 the McDonald's building and was willing to actually
8 build out the second floor?
9 MR. LIEDLE: Well, vague as to what RFP process
10 you're --
11 BY MR. MOOT:
12 Q. You recall signing the request for proposals
13 for the management agreement for the intercity bus
14 facility that -- adjacent to the McDonald's building?
15 MR. LIEDLE: Do you understand the question?
16 THE WITNESS: No.
17 BY MR. MOOT:
18 Q. You don't remember signing the RFP to solicit
19 proposals for managers of this new ITC -- excuse me,
20 SYITC project that you inherited?
21 MR. LIEDLE: Counsel, he sees thousands of
22 documents every year and this is a while ago. I think I
23 know to what you're referring. Do you have the document
24 so we can take a look at?
25 MR. MOOT: Sure.

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1 BY MR. MOOT:
2 Q. Without refreshing your recollection, you don't
3 actually recall the RFP process?
4 A. Well, we -- we did solicit proposals for --
5 what resulted in us hiring Ace Parking.
6 MR. LIEDLE: Is that what you're referring to?
7 BY MR. MOOT:
8 Q. That's what I'm talking about.
9 A. Yeah. All right.
10 Q. Are you aware that one of the parties that
11 responded to the RFP was this group that consisted of
12 Mr. Aguirre who expressed to your project manager a
13 willing to do the build-out of the second floor that
14 were under discussions with McDonald's?
15 A. No. All I recall was that the other bidder was
16 the BTC. The Border Transportation Council.
17 Q. So, for example, if you open up to Exhibit 123
18 and look at the bottom email. This is from your project
19 manager, Mr. D'Ablaing, to Jim Linthicum. I believe he
20 indicates he's MTDB staff.
21 A. Once again, this is prior to my --
22 Q. Right.
23 A. -- taking over.
24 Q. About six months before you came aboard.
25 A. Yep.

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1 **Q. Did Mr. D'Ablaing -- Mr. D'Ablaing reported to**
2 **Mr. Allison; is that correct?**
3 A. Mr. D'Ablaing is a -- is an engineer, a project
4 manager. Tim Allison is currently in real estate.
5 Now, at the time in 2003, I'm not sure what the
6 reporting relationship was. They were -- they're both
7 engineers. Now Mr. Allison is in charge of real estate
8 with us. But all of these engineers have been
9 transferred to SANDAG.
10 **Q. Right. Except Mr. Allison stayed, though.**
11 A. Correct.
12 **Q. And were you aware that Mr. D'Ablaing reported**
13 **to Mr. Allison? At least that's what he told us?**
14 **MR. LIEDLE: In 2003.**
15 **MR. MOOT: Correct.**
16 **BY MR. MOOT:**
17 **Q. Shortly before you came aboard, were you aware**
18 **that it was Mr. Allison's project and Mr. D'Ablaing was**
19 **reporting to him?**
20 A. No, I don't recall that.
21 **Q. The email from Mr. D'Ablaing dated June 4,**
22 **2003, states that he had discussion with George Wong and**
23 **Mr. Aguirre concerning the McDonald's building, and it**
24 **states in the last sentence, "My understanding is if**
25 **they are successful in purchasing the building, they**

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1 **MR. LIEDLE: Assumes -- assumes facts, calls**
2 **for speculation.**
3 **THE WITNESS: I have no criticism.**
4 **MR. LIEDLE: Vague.**
5 **BY MR. MOOT:**
6 **Q. Was it something that you thought maybe someone**
7 **should've told you --**
8 **MR. LIEDLE: Vague, calls for speculation.**
9 **BY MR. MOOT:**
10 **Q. -- what the policy was six months before you**
11 **arrived?**
12 **MR. LIEDLE: Vague. Calls for speculation,**
13 **assumes facts too.**
14 **THE WITNESS: Yeah, I -- I don't know how to**
15 **answer that question.**
16 **BY MR. MOOT:**
17 **Q. No, I appreciate it. You're in a tough spot.**
18 **You've just come aboard as CEO, there's the history of**
19 **this project and no one is telling you about it.**
20 A. Well --
21 **MR. LIEDLE: Don't -- there's no question.**
22 **THE WITNESS: That's true.**
23 **MR. LIEDLE: There's no question pending.**
24 **BY MR. MOOT:**
25 **Q. That's true; right? So in some sense, your**

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1 **will likely utilize the second floor for the intercity**
2 **bus office's operations."**
3 **Did Mr. Allison or Mr. D'Ablaing ever inform**
4 **you that the new purchaser was willing to do essentially**
5 **what the negotiations with McDonald's --**
6 A. No.
7 **Q. -- were trying to accomplish?**
8 A. No.
9 **Q. Were you aware in June of 2003 that, by policy,**
10 **MTDB had always hoped the McDonald's building would be**
11 **part of the intercity bus facility operations?**
12 **MR. LIEDLE: Calls for speculation.**
13 **THE WITNESS: Well, the answer is no, that was**
14 **never relayed to me.**
15 **BY MR. MOOT:**
16 **Q. You weren't aware that six months before you**
17 **took over as CEO that the MTDB policy was that they**
18 **still hoped the McDonald's building would be part of the**
19 **intercity bus facility?**
20 **MR. LIEDLE: Argumentative as phrased.**
21 **THE WITNESS: I -- I believe the answer to that**
22 **question is yes, that I did not know.**
23 **BY MR. MOOT:**
24 **Q. Do you have any criticism of Mr. Allison for**
25 **not informing you of that fact?**

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1 **hands are sort of tied by what you don't know.**
2 **MR. LIEDLE: Overbroad, vague.**
3 **BY MR. MOOT:**
4 **Q. Correct?**
5 **MR. LIEDLE: Overbroad, vague. Why don't you**
6 **rephrase?**
7 **MR. MOOT: Okay.**
8 **MR. LIEDLE: And ask a specific question.**
9 **Let's get back on track, so to speak. No pun intended.**
10 **BY MR. MOOT:**
11 **Q. Would you have wanted to know that six months**
12 **before you came aboard that the MTDB policy was that**
13 **they hoped the McDonald's building would be part of the**
14 **SYITC?**
15 **MR. LIEDLE: Assumes facts, calls for**
16 **speculation, vague.**
17 **THE WITNESS: I may have been interested in**
18 **that -- in that fact. But by saying that, I'm not**
19 **saying that I would have supported anything beyond that.**
20 **BY MR. MOOT:**
21 **Q. But you would have followed the direction of**
22 **the MTD board?**
23 **MR. LIEDLE: Well, vague, calls for**
24 **speculation.**
25 **What direction?**

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1 THE WITNESS: I'm not aware it was ever a
 2 direction to management to do this --
 3 BY MR. MOOT:
 4 Q. Okay.
 5 A. -- from the MTS board because the MTS board
 6 never relayed that to me.
 7 Q. So you were unaware that by policy, the MTDB
 8 board had approved this project with the concept that
 9 the McDonald's building and second floor would be part
 10 of it?
 11 MR. LIEDLE: Vague, calls for speculation,
 12 vague as to "by policy."
 13 THE WITNESS: Yeah, the --
 14 BY MR. MOOT:
 15 Q. The MTDB board sets policy; correct?
 16 A. Well, it sets policy. It approves projects.
 17 It approves procurements. I mean, it does a number of
 18 things.
 19 Q. The MTDB board would have had to approve both
 20 the taking of the property and the project itself;
 21 correct?
 22 A. That's correct.
 23 MR. LIEDLE: Well -- okay.
 24 BY MR. MOOT:
 25 Q. And as of six months before you got on the job,

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1 MR. LIEDLE: Vague as to "completely open,"
 2 overbroad.
 3 THE WITNESS: I knew that it was -- I was
 4 informed that it was an area for intercity buses to
 5 stage.
 6 BY MR. MOOT:
 7 Q. All right. And did you, based on your own
 8 observation, observe that the places where the intercity
 9 bus passengers picked up and dropped off passengers was
 10 open to the sky and not in an enclosed building?
 11 A. Yes, I could see that.
 12 Q. And could you also see that there was no gates
 13 or walls that blocked entry either in or out of the
 14 facility?
 15 MR. LIEDLE: Well, there's a huge building
 16 that's right there on the -- on the western edge. I
 17 don't know what you're talking about, Counsel.
 18 MR. MOOT: Okay.
 19 THE WITNESS: I mean, you --
 20 BY MR. MOOT:
 21 Q. Maybe the easiest way is just to look at the
 22 picture.
 23 A. I recall the way it looked in 2003 or 2004.
 24 MR. MOOT: We start with Exhibit 291, that's
 25 the next one.

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1 the policy as to the incorporation of the McDonald's
 2 building had not changed insofar as anybody made you
 3 aware?
 4 MR. LIEDLE: Calls for speculation.
 5 THE WITNESS: There's so many ways to answer
 6 that. I mean -- no.
 7 BY MR. MOOT:
 8 Q. Okay.
 9 A. Yeah.
 10 MR. LIEDLE: Are we going to get contemporary
 11 now, are we going to get more timely, like move into
 12 2010 or 2012?
 13 MR. MOOT: You must be -- did you take my
 14 notes? What's with this guy?
 15 THE WITNESS: He must know you.
 16 MR. MOOT: He must know me because that's
 17 exactly where we're going.
 18 MR. LIEDLE: I had the feeling.
 19 BY MR. MOOT:
 20 Q. After you became CEO, you indicated that you
 21 actually did go down and observe the completed project?
 22 A. Yes. Yes.
 23 Q. And was it your observation that the area where
 24 the intercity bus terminals picked up and dropped off
 25 passengers was a completely open facility?

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1 (Exhibit No. 291 marked for identification.)
 2 THE WITNESS: 291.
 3 BY MR. MOOT:
 4 Q. It's not in the book. We actually got to a new
 5 exhibit at the prompting of your lawyer.
 6 Do you recognize this photograph as how the
 7 facility where the intercity buses dropped and picked up
 8 passengers looked after it was constructed and before
 9 the reconfigurations by SYPS?
 10 A. I presume so.
 11 MR. LIEDLE: You can't say for sure?
 12 THE WITNESS: No, I -- I mean, I'm just looking
 13 at this area here. There's a retaining wall here now.
 14 MR. LIEDLE: Here, you're pointing to "here,"
 15 the court reporter needs --
 16 THE WITNESS: Over on the left side of the
 17 picture that doesn't seem to be here. And my
 18 recollection is that it was there.
 19 BY MR. MOOT:
 20 Q. Could be blocked by the grass in the
 21 foreground?
 22 A. Maybe -- I mean, I realize looking at this
 23 picture there is no longer parking as it was -- as you
 24 showed me in some of the earlier pictures. And it does
 25 look like there's pull-in bus bays.

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1 **Q. Do you recognize the --**
 2 A. I think it's a fair representation, okay.
 3 **Q. You recognize the palm trees that were then**
 4 **taken out by SYPS?**
 5 A. Yes.
 6 **Q. So in looking at this picture, it would be**
 7 **accurate to say that the actual bus terminal was not**
 8 **behind any locked gate or structures?**
 9 **MR. LIEDLE: Well --**
 10 **BY MR. MOOT:**
 11 **Q. As built.**
 12 **MR. LIEDLE: Picture speaks for itself. Vague.**
 13 **THE WITNESS: That's -- I believe that's true.**
 14 **Yes.**
 15 **BY MR. MOOT:**
 16 **Q. There were no walls --**
 17 A. Anybody -- anybody could drive up there.
 18 **Q. And anybody could walk in there.**
 19 A. Yeah. Well, it wasn't being managed.
 20 **Q. Well, I understand. But as built and**
 21 **constructed, anybody could walk in and out of this**
 22 **facility or through it 24 hours a day, seven days a**
 23 **week?**
 24 A. And that's exactly part of the reason and why
 25 we wanted the area up there managed.

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1 **Q. You were aware, then, that the sidewalk on the**
 2 **north went into the facility and out the south end?**
 3 **MR. LIEDLE: Vague, calls for speculation. And**
 4 **are you talking about a dedicated public sidewalk that**
 5 **transitioned?**
 6 **MR. MOOT: I'm talking about -- we will use the**
 7 **word "walkway."**
 8 **MR. LIEDLE: Walkway.**
 9 **MR. MOOT: To avoid the term "sidewalk."**
 10 **BY MR. MOOT:**
 11 **Q. You were aware that there was a walkway, then,**
 12 **that pedestrians could --**
 13 A. Access the bus terminal.
 14 **Q. -- walk into the north end and out the south**
 15 **end?**
 16 **MR. LIEDLE: Well --**
 17 **THE WITNESS: Well, this is a picture of the**
 18 **access into the bus terminal from -- from the north**
 19 **side.**
 20 **BY MR. MOOT:**
 21 **Q. Look at Exhibit 35. Is this a picture, then,**
 22 **of the access out the south side?**
 23 A. This is a picture of the access -- the egress
 24 or the access from the south side of the bus terminal.
 25 **Q. So you were aware after this facility was**

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1 **Q. Right. But as designed --**
 2 A. As designed, there was no control -- access
 3 control as part of the design or the construction.
 4 **Q. So now if you look at the pictures, 32, 33, and**
 5 **34, in your book.**
 6 A. Okay. 32.
 7 **Q. Do you recognize 32 as showing the same area as**
 8 **291 only now with the restrooms built?**
 9 **MR. LIEDLE: It's a pretty poor picture.**
 10 **MR. MOOT: She should have put colors. You**
 11 **don't have the color ones in the back there?**
 12 **MR. LIEDLE: It's a splash of blue but mainly**
 13 **black and white.**
 14 **Are you asking him does this Exhibit 32 depict**
 15 **what he understands to be the current condition?**
 16 **MR. MOOT: Yeah. The same area of 291 after**
 17 **SYPS put in the bathrooms.**
 18 **THE WITNESS: Looks so. I think 34 or 33 is**
 19 **better.**
 20 **BY MR. MOOT:**
 21 **Q. And then do you recognize 34 as the entrance**
 22 **into the IBT?**
 23 **Mr. Aguirre corrected me, it's the IBT,**
 24 **intercity bus terminal. That's why I was confusing you.**
 25 A. This seems to be a pedestrian access.

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1 **constructed that pedestrians could walk completely**
 2 **through and out the other end of this facility?**
 3 **MR. LIEDLE: Vague. Calls for speculation,**
 4 **assumes facts.**
 5 **THE WITNESS: I think the pedestrian areas that**
 6 **you're referring to provide access either to or from the**
 7 **facility.**
 8 **BY MR. MOOT:**
 9 **Q. And they also provide access through the**
 10 **facility; correct?**
 11 A. Well, they might technically do that, but the
 12 purpose of the access is to get to the bus facility so
 13 that people can get on intercity buses to go someplace
 14 or if they're -- they -- depart from there, to then go
 15 someplace else.
 16 **Q. So why don't you look at --**
 17 A. Go back across the border or --
 18 **MR. LIEDLE: Keep going, did you finish your**
 19 **response?**
 20 **BY MR. MOOT:**
 21 **Q. Look at Exhibit 34.**
 22 **THE WITNESS: Yes.**
 23 **MR. LIEDLE: Thank you.**
 24 **THE WITNESS: I'm sorry?**
 25

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1 **BY MR. MOOT:**
2 **Q. Exhibit 34.**
3 A. Okay.
4 **Q. Were you aware that a sign was actually**
5 **installed that directed pedestrians that they could walk**
6 **completely through this walkway to the entry of the**
7 **border in Mexico?**
8 A. Yeah, I don't recall seeing that sign.
9 **Q. Were you ever informed by the Ace manager of**
10 **the site that people regularly walked entirely through**
11 **this walkway to get to and from Mexico?**
12 A. No.
13 **Q. Were you ever made aware that at no time was**
14 **Ace management ever instructed or told to stop people**
15 **from using it as a walkway to get to and from Mexico?**
16 A. To the best of my knowledge, no.
17 **Q. Do you know how long people have been using**
18 **this walkway to go around the back of the McDonald's**
19 **building from north to south?**
20 **MR. LIEDLE: Vague.**
21 **THE WITNESS: No, I do not.**
22 **BY MR. MOOT:**
23 **Q. Were you aware of the fact that there was no**
24 **sidewalk constructed on the east side of Rail Court?**
25 A. Are you talking about in front of the

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1 A. Yes.
2 **Q. And -- but you were unaware that the purpose of**
3 **the new Rail Court was to provide access to the**
4 **businesses south and east of where the trolley stopped**
5 **in the middle of San Ysidro Boulevard?**
6 **MR. LIEDLE: Vague, calls for speculation,**
7 **asked and answered.**
8 **THE WITNESS: No, I'm not aware that that was**
9 **the purpose of that. Plus --**
10 **BY MR. MOOT:**
11 **Q. That's because --**
12 **MR. LIEDLE: Let him finish. Let him finish.**
13 **Go ahead.**
14 **THE WITNESS: I said it seems like a long way**
15 **around, that if -- if somebody was -- was coming from**
16 **San Ysidro Boulevard at Jack In The Box or someplace**
17 **like that, and they wanted to access those buildings,**
18 **that they would just walk along the trolley platform**
19 **because that is a pedestrian area also to get into the**
20 **McDonald's building or into the building south of that.**
21 **Why would they go up around the backside?**
22 **BY MR. MOOT:**
23 **Q. Maybe you could look at Exhibit 153.**
24 A. 153?
25 **Q. 153. It could help us answer to that question.**

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1 McDonald's building?
2 **Q. If you take a look, for example, at Exhibit 33.**
3 **MR. LIEDLE: When you say "sidewalk," are you**
4 **talking about now a dedicated public sidewalk so we can**
5 **stay with the term?**
6 **MR. MOOT: Maybe it would be easier to look as**
7 **the as-built plans, Exhibit 155 and 155.1.**
8 **MR. LIEDLE: Okay.**
9 **BY MR. MOOT:**
10 **Q. 155.1 --**
11 **MR. LIEDLE: Question is have you ever seen**
12 **these before, Mr. Jablonski?**
13 **THE WITNESS: I don't recall seeing these.**
14 **BY MR. MOOT:**
15 **Q. Were you aware that as part of the building of**
16 **the new Rail Court street, there was no sidewalk called**
17 **out for on the east side which would be the top of this**
18 **picture?**
19 **MR. LIEDLE: Well, the plans speak for**
20 **themselves.**
21 **THE WITNESS: It's just a roadway.**
22 **BY MR. MOOT:**
23 **Q. Do you recall actually observing being down**
24 **there that there was no sidewalk on the east side of**
25 **Rail Court?**

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1 **MR. LIEDLE: 153, which is the photograph?**
2 **MR. MOOT: 2004 photograph.**
3 **THE WITNESS: Okay.**
4 **MR. LIEDLE: Is there something you want to**
5 **show him, Counsel?**
6 **MR. MOOT: Yes.**
7 **BY MR. MOOT:**
8 **Q. Does Exhibit 153 refresh your recollection that**
9 **there remained a large parking lot behind the motel and**
10 **the Jack In The Box after the construction?**
11 A. I'm aware that there was a parking lot. You're
12 talking about further north from the area --
13 **Q. Correct.**
14 A. -- we've been discussing?
15 **Q. In other words, the entirety of the JMA parking**
16 **lot that we see in Exhibit 150 was not taken by eminent**
17 **domain?**
18 **MR. LIEDLE: If you know. Don't speculate.**
19 **THE WITNESS: Well, I know we don't own that.**
20 **MR. LIEDLE: "That" being the parking lot**
21 **that's behind the hotel; right?**
22 **THE WITNESS: Right.**
23 **MR. LIEDLE: Okay.**
24 **BY MR. MOOT:**
25 **Q. Those are the people in the lawsuit; right?**

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1 A. Right.
2 Q. So you were aware that they kept a large
3 parking lot behind their hotel and that people parked
4 there who wanted to get to and from the Mexican border?
5 MR. LIEDLE: Calls for speculation, assumes
6 facts.
7 THE WITNESS: I have no reason to disagree with
8 that.
9 BY MR. MOOT:
10 Q. So you -- were you ever made aware that, in
11 fact, the people who parked at this parking lot would
12 then use the walkway to the ITC to walk to and from --
13 A. No.
14 Q. -- their parking lot in Mexico?
15 A. No.
16 MR. LIEDLE: Calls for speculation, assumes
17 facts.
18 BY MR. MOOT:
19 Q. You weren't aware of that?
20 A. No.
21 Q. Were you aware that people were using the
22 cul-de-sac as a pickup and dropoff area for pedestrians
23 crossing the border?
24 MR. LIEDLE: At any time, Counsel?
25 MR. MOOT: Yeah, after it was built.

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1 THE WITNESS: Yes. There was automobile
2 traffic that was dropping people off at the end of the
3 cul-de-sac.
4 BY MR. MOOT:
5 Q. So you were aware of the pedestrian use of the
6 circle and dropoff area?
7 MR. LIEDLE: Well, vague, overbroad. When you
8 say "pedestrian use."
9 THE WITNESS: But generally, people who were
10 dropped off there would have walked between the
11 buildings to get to the border, assuming that that's
12 where they were going to.
13 BY MR. MOOT:
14 Q. I'm going to show you an exhibit that the civil
15 engineer, Mr. Landaal, testified to. If you open up to
16 Exhibit 161.
17 MR. LIEDLE: The question is have you ever seen
18 this before, Mr. Jablonski?
19 THE WITNESS: No.
20 MR. LIEDLE: Okay.
21 BY MR. MOOT:
22 Q. Wasn't this exhibit included in a presentation
23 that SYPS gave to you?
24 MR. LIEDLE: Well, calls for speculation.
25

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1 BY MR. MOOT:
2 Q. Do you recall it being in a slide presentation
3 that SYPS presented to you in a meeting?
4 A. It may have been. I don't have a specific
5 recollection.
6 Q. This diagram shows the primary pedestrian flow
7 in, out, and through the IBT area.
8 Were you aware that the project designer had it
9 built this way so that it could accommodate this
10 pedestrian flow?
11 MR. LIEDLE: Vague, document speaks for itself,
12 assumes facts.
13 THE WITNESS: I don't know.
14 BY MR. MOOT:
15 Q. Were you aware that even SYPS recognized that
16 this was the primary pedestrian flow, in other words,
17 in, out, and through the center?
18 A. I don't ever recall having a conversation
19 specifically about pedestrian flow through the bus
20 terminal.
21 Q. And you have no independent recollection of
22 this being on a PowerPoint presentation made by SYPS?
23 MR. LIEDLE: "This" being 161?
24 MR. MOOT: Correct.
25 THE WITNESS: No. It may have been, but --

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1 MR. LIEDLE: You don't recall today?
2 BY MR. MOOT:
3 Q. You don't recall today?
4 A. I don't recall today.
5 MR. LIEDLE: Thank you.
6 BY MR. MOOT:
7 Q. Now, you were the CEO when the RFP process
8 which resulted in the award to Ace Parking was
9 initiated?
10 A. I believe I was. I know I was here when we
11 awarded it.
12 Q. Just to refresh your recollection, why don't
13 you open up to Exhibit 110. And if you go to page 4.
14 A. Yeah.
15 Q. That would be your signature?
16 A. Yes, it would.
17 Q. Does this then refresh your recollection that
18 you actually signed the letter to the prospective
19 proposals for an RFP to manage the bus bay parking that
20 was behind the McDonald's building?
21 A. Yes.
22 Q. And were you familiar with the RFP process when
23 you came aboard as CEO? Was that something your other
24 jurisdictions utilized?
25 A. Yes.

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1 **Q. Do you know who actually drafted the RFP**
 2 **proposal that you signed?**
 3 A. No, I do not. I can only see that it says
 4 Chip Willett, general right-of-way consultant.
 5 **Q. Mr. Willett testified that he didn't prepare**
 6 **that for proposal. Was there someone on staff that**
 7 **prepared these type of documents for your signature?**
 8 **MR. LIEDLE: At that time?**
 9 **THE WITNESS: Well, yes, there would have been.**
 10 **BY MR. MOOT:**
 11 **Q. So you wouldn't have --**
 12 A. I didn't draft it.
 13 **Q. Yeah, you didn't draft it. I didn't think so,**
 14 **but someone on your staff, either a staff attorney or**
 15 **someone in contracts would have actually prepared it?**
 16 A. Yeah, I mean, I'm just -- I'm just looking at
 17 underneath my signature here, I mean Chip Willett,
 18 RFPbusbay.ChipWillett, I mean he -- I don't know what
 19 his involvement was, but his name is there. But then
 20 also you have LTorio. That's Louise Torio.
 21 **Q. That's who he thought may have prepared it. Do**
 22 **you know who Louise is?**
 23 A. Yeah, I know her.
 24 **Q. And she was in contracts?**
 25 A. She was in contracts; that's correct.

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1 **speculation, overbroad.**
 2 **THE WITNESS: Not necessarily.**
 3 **BY MR. MOOT:**
 4 **Q. But --**
 5 A. I mean, generally, construction has a different
 6 set of rules.
 7 **Q. Were you aware as CEO that the public utilities**
 8 **code had certain rules with respect to when competitive**
 9 **procurement processes were required?**
 10 **MR. LIEDLE: Are you asking him in general if**
 11 **he was aware?**
 12 **MR. MOOT: Right.**
 13 **THE WITNESS: At what time?**
 14 **BY MR. MOOT:**
 15 **Q. After you became CEO. I realize you came from**
 16 **a state other than California. So I don't want to have**
 17 **you guessing about --**
 18 A. At this time, probably not.
 19 **Q. At some point, you --**
 20 A. But that's why we have legal staff and
 21 procurement staff and contracts people --
 22 **Q. Sure.**
 23 A. -- to verify those things.
 24 **Q. But I take it at some point after you had some**
 25 **experience in California, you were aware that the**

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1 **Q. That's who he thought maybe had prepared it.**
 2 A. That could be that -- that -- yeah. At the
 3 time, those people were still at MTDB, but they were in
 4 the process of being transferred out.
 5 **Q. Now, what is your understanding of the purpose**
 6 **and function of an RFP?**
 7 **MR. LIEDLE: Overbroad, vague.**
 8 **THE WITNESS: Well, it's to receive proposals.**
 9 **BY MR. MOOT:**
 10 **Q. And is it part of --**
 11 **MR. LIEDLE: Did you finish your answer?**
 12 **THE WITNESS: I was going to say hence the**
 13 **name, request for proposals.**
 14 **BY MR. MOOT:**
 15 **Q. Was it your understanding it was part of a**
 16 **competitive procurement process?**
 17 **MR. LIEDLE: Vague as to "competitive**
 18 **procurement."**
 19 **THE WITNESS: Generally speaking, RFPs are part**
 20 **of a procurement process.**
 21 **BY MR. MOOT:**
 22 **Q. So, for example, if the -- well, if a public**
 23 **works project requires a competitive bid process, RFP**
 24 **would generally comport with that requirement?**
 25 **MR. LIEDLE: Incomplete hypothetical, calls for**

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1 **Public Utilities Code governed much of MTS' or MTDB's**
 2 **operations?**
 3 **MR. LIEDLE: Vague, calls for speculation,**
 4 **overbroad.**
 5 **THE WITNESS: I -- I would have to see what**
 6 **does. Because after that, we revised our enabling**
 7 **legislation and it was focused specifically on**
 8 **procurement that gave us the ability to procure by**
 9 **whatever method anybody else in the State of California**
 10 **was allowing to be done.**
 11 **BY MR. MOOT:**
 12 **Q. Okay.**
 13 A. So it got to be a very -- less restrictive.
 14 **Q. Was that done by State statute?**
 15 A. Yes.
 16 **Q. And do you recall what that State statute was?**
 17 A. No.
 18 **Q. Was it the Public Utilities Code?**
 19 **MR. LIEDLE: If you know.**
 20 **THE WITNESS: I don't know that. Our lawyer**
 21 **handled that.**
 22 **BY MR. MOOT:**
 23 **Q. Now, do you know what the purpose of a**
 24 **competitive bidding process is?**
 25 **MR. LIEDLE: Overbroad, vague.**

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1 **BY MR. MOOT:**
2 **Q. What functions it's designed to address?**
3 **MR. LIEDLE: Overbroad, vague, calls for**
4 **speculation.**
5 **Can you be more specific in relation to what?**
6 **BY MR. MOOT:**
7 **Q. Well, is the competitive bidding process**
8 **designed to ensure that the government gets the best**
9 **deal on its contracts?**
10 **MR. LIEDLE: Vague as to "best deal."**
11 **Overbroad, vague.**
12 **THE WITNESS: That's -- I mean, there's a lot**
13 **of definitions. The best deal, best value, best deal,**
14 **best price. Lowest price doesn't always mean best**
15 **value.**
16 **I mean, I understand generally what your**
17 **question is, and I think, yes, procurement regulations**
18 **are typically designed to give the procuring agency the**
19 **best outcome.**
20 **BY MR. MOOT:**
21 **Q. And also to protect against favoritism in the**
22 **award of government contracts?**
23 **MR. LIEDLE: Vague, calls for speculation,**
24 **overbroad, assumes facts.**
25 **Can you answer the question?**

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1 **THE WITNESS: Okay.**
2 **MR. LIEDLE: Yeah.**
3 **BY MR. MOOT:**
4 **Q. Now, does Exhibit B reflect the work that was**
5 **being solicited in the request for proposal?**
6 **MR. LIEDLE: Do you want him to review that to**
7 **confirm that, Counsel?**
8 **MR. MOOT: Yes. Maybe I will restate the**
9 **question.**
10 **BY MR. MOOT:**
11 **Q. Exhibit B reflects the scope of work for which**
12 **you were soliciting these competitive proposals?**
13 **A. To the extent it says "Scope of Work," and it's**
14 **an attachment to the three pages, then the answer is**
15 **yes.**
16 **Q. And so the work that you were soliciting**
17 **included an analysis of capital improvements needed at**
18 **the facility?**
19 **MR. LIEDLE: Document speaks for itself.**
20 **BY MR. MOOT:**
21 **Q. Such as restrooms, ticket booths, shelter, and**
22 **benches.**
23 **A. Where are you seeing that?**
24 **Q. Paragraph 1.**
25 **A. Okay.**

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1 **THE WITNESS: Yeah, I mean, I'm not sure how to**
2 **answer. I mean -- yeah, I don't believe that anybody**
3 **passes a law that promotes favoritism.**
4 **BY MR. MOOT:**
5 **Q. Right.**
6 **A. Okay?**
7 **Q. So competitive bidding is, in part, exists to**
8 **protect against sole-source contracts that may not be in**
9 **the best interest of the public?**
10 **MR. LIEDLE: Overbroad, vague, calls for**
11 **speculation.**
12 **THE WITNESS: Sole source is a whole different**
13 **area.**
14 **BY MR. MOOT:**
15 **Q. So sole-source contract is one that's done**
16 **without competitive bidding?**
17 **A. Yes. But that's generally because competitive**
18 **bidding would not produce a result.**
19 **Q. Now, if you look at Exhibit B -- I apologize,**
20 **these pages don't appear to be marked. It's about --**
21 **A. Exhibit B where? We have a tab?**
22 **Q. 110.**
23 **A. 110. 110. Okay.**
24 **Q. It's about 11 pages in.**
25 **MR. LIEDLE: Says "Scope of Work" at the top.**

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1 **MR. LIEDLE: And again, document speaks for**
2 **itself.**
3 **THE WITNESS: Okay. It asks for analysis, but**
4 **it also stipulates that none of that may be possible**
5 **because we don't have the money.**
6 **BY MR. MOOT:**
7 **Q. It says that MTS may have available funds in**
8 **their budget for capital improvements but the amount**
9 **available of such funds should not be relied upon by the**
10 **proposal?**
11 **A. Correct.**
12 **Q. So one of the things -- one of the areas in the**
13 **scope of work and the RFP you signed was to include**
14 **analysis of capital improvements needed at the facility;**
15 **is that correct?**
16 **A. Yes.**
17 **MR. LIEDLE: Document speaks for itself.**
18 **BY MR. MOOT:**
19 **Q. And was another area of work being solicited in**
20 **the RFP a staffing plan for the facility including the**
21 **numbers and duties of employees?**
22 **A. Yes.**
23 **Q. And was another thing being requested in the**
24 **RFP an operating plan that would show how the use of the**
25 **facilities would be licensed and how they would be**

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1 treated equitably?
 2 **MR. LIEDLE: Document speaks for itself.**
 3 **THE WITNESS: If it says that in here, then**
 4 **yes.**
 5 **BY MR. MOOT:**
 6 **Q. Well, this was an RFP that you signed and now**
 7 **were in charge of as the CEO?**
 8 A. Mm-hmm.
 9 **Q. So you were aware that the scope of work being**
 10 **solicited included an operating plan about how the use**
 11 **of the facility would be licensed, treated equitably?**
 12 A. Sure, yes.
 13 **Q. How wildcatting would be prevented?**
 14 A. The whole idea here was to get a contractor in
 15 that would manage the facility that we would charge for
 16 the use of the bays, and that the revenue derived from
 17 that would pay for the management services.
 18 **Q. And so part of the services that you were**
 19 **requesting was a management plan that would include**
 20 **reviewing proposing improvements at the facility?**
 21 **MR. LIEDLE: Well, document speaks for itself.**
 22 **MR. MOOT: I understand that. We need a**
 23 **witness to testify to it. I can't put the document on**
 24 **the witness stand and ask it to talk. That wouldn't**
 25 **work too well.**

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1 **MR. LIEDLE: Same objections as previously**
 2 **stated.**
 3 **BY MR. MOOT:**
 4 **Q. If they weren't, how were they stated?**
 5 **MR. LIEDLE: Same objections. You're asking**
 6 **for an analysis. You have to do a side-by-side**
 7 **comparison of documents, Counsel.**
 8 **BY MR. MOOT:**
 9 **Q. Well, do you have any recollection?**
 10 A. Well, I think the basic -- the basic problem
 11 with that statement is that we didn't solicit SYPS.
 12 They came to us.
 13 **Q. They solicited you?**
 14 A. Right.
 15 **Q. But the services that they were soliciting --**
 16 **well, excuse me.**
 17 **The services they were offering to provide to**
 18 **you was essentially the same services that were being**
 19 **the subject of the original RFP to Ace?**
 20 **MR. LIEDLE: Vague, overbroad, calls for**
 21 **speculation, mischaracterizes the -- the --**
 22 **THE WITNESS: Yeah.**
 23 **BY MR. MOOT:**
 24 **Q. If you know.**
 25 **MR. LIEDLE: Mischaracterizes the relationship.**

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1 **MR. LIEDLE: I think he's already authenticated**
 2 **the document, Counsel.**
 3 **BY MR. MOOT:**
 4 **Q. I'm just asking you whether the services that**
 5 **you were soliciting included a management plan.**
 6 A. Yeah.
 7 **Q. And --**
 8 A. We wanted to know whoever was proposing how
 9 they were going to manage it.
 10 **Q. Right. And how they were going to handle, for**
 11 **example, the licensing of the various users?**
 12 A. Right.
 13 **Q. And that they were also to be providing**
 14 **accounting and auditing procedures.**
 15 A. Correct.
 16 **Q. Now, can you tell me how this scope of work in**
 17 **this RFP was materially different than the scope of work**
 18 **that SYPS was asked to perform under their agreement?**
 19 **MR. LIEDLE: Calls for speculation, assumes**
 20 **facts, overbroad.**
 21 **THE WITNESS: Could you be more specific?**
 22 **BY MR. MOOT:**
 23 **Q. Well, was the services being requested in this**
 24 **RFP essentially the same services that was being**
 25 **solicited in the SYPS agreement?**

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1 **BY MR. MOOT:**
 2 **Q. Just if you know.**
 3 A. Well, I mean, I'm familiar. But they were --
 4 it's like apples and oranges. When we did this back in
 5 2004, this was to hire a manager to come in, generate
 6 revenue, pay for themselves, and that was about it.
 7 The proposal by SYPS to us was significantly
 8 different.
 9 **Q. And how?**
 10 A. Well, you have to look at the recent history.
 11 GSA, as part of the border reconstruction project, took
 12 lands, they took our property on the southern edge.
 13 That displaced Greyhound. Greyhound, I believe, was and
 14 still is the largest carrier in that area. And they
 15 needed someplace to go.
 16 The logical place to go was our facility. They
 17 came to us with a proposal that said, you know, we would
 18 like to be part of your facility here, but even more
 19 than that, what we are proposing is to manage it and use
 20 the money that we got from the GSA to make improvements
 21 to the facility. And, you know, we had a number of
 22 discussions and generally, we thought that that was --
 23 it was a very good idea. It was a very good idea to the
 24 extent that it was allowing a private sector that is
 25 involved in the business, a private sector company that

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1 has extraordinary experience in intercity bus terminal
2 operation to do that. They were bringing money to the
3 table that they were willing to invest and manage that.
4 And I mean, that was the start of the discussion. It
5 was a very solid, very positive basis in which they came
6 to us.

7 **Q. All right. But in terms of they're physically
8 going to do, managing the center, it was the same as
9 what Ace was physically doing?**

10 A. To the extent that they were going to set fees
11 and -- and control who stopped and who had access and
12 permits to use the facility, both up top and down below,
13 yes.

14 **Q. And just like Ace, they were to provide a
15 staffing plan for the facility; correct?**

16 **MR. LIEDLE: Calls for speculation.**

17 **THE WITNESS: It wasn't the -- yeah. I mean,
18 we didn't ask for this in a -- in an RFP process. So
19 there wasn't a deliverable per se as part of the
20 process. They told us how they were going to manage it
21 because they had staff there that was managing their
22 operations now. Currently, I shouldn't say now.
23 Currently at the time.**

24 **BY MR. MOOT:**

25 **Q. Was SYPS in their proposal also making an**

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1 **subsidiary employee, agent, or" --**

2 **MR. LIEDLE: Hold on. We're getting there.**

3 **THE WITNESS: Under "Proposal Evaluation"?**

4 **BY MR. MOOT:**

5 **Q. No, under "Minimum Qualifications."**

6 **MR. LIEDLE: Okay.**

7 **THE WITNESS: Okay.**

8 **MR. MOOT: Paragraph Roman Numeral IV.**

9 **THE WITNESS: Okay. Looks like Roman Numeral**

10 **III. Oh, sub-Roman Numeral IV. Okay. I gotcha.**

11 **BY MR. MOOT:**

12 **Q. Right. A-IV?**

13 A. Yes.

14 **Q. I'm going to read. It says, "Proposer
15 including subsidiary employee, agent, or assignee of the
16 proposal shall not be a provider of intercity or
17 intracity bus services in the community of San Ysidro or
18 Mexico in the time period before, during, or after the
19 award of the contract (conflict of interest). MTS
20 reserves the right to cancel the award or executed
21 contract if it discovers that the successful proposer
22 and/or contractor has a conflict of interest."**

23 **Do you know why this conflict-of-interest
24 provision was included in the RFP that you sent out?**

25 A. Specifically, no, I do not.

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1 **analysis of capital improvements needed at the facility?**

2 **MR. LIEDLE: May call for speculation.**

3 **THE WITNESS: The answer is yes. Yes, they
4 thought that the facility could be reconfigured for more
5 optimal use.**

6 **BY MR. MOOT:**

7 **Q. And were -- was this Greyhound group aware that
8 the property they were seeking to manage was formerly
9 private property that was acquired by MTDB for a public
10 use and a public purpose?**

11 **MR. LIEDLE: Calls for speculation.**

12 **THE WITNESS: I don't know if they knew that.
13 Maybe they did.**

14 **BY MR. MOOT:**

15 **Q. Did you know that at the time of the RFP?**

16 A. No. I think I testified to that already.

17 **Q. Now, if you look at Attachment A, page 4, under
18 the section "Minimum Qualifications."**

19 A. Oh, back.

20 **MR. LIEDLE: Yeah.**

21 **BY MR. MOOT:**

22 **Q. Page 4 of Attachment A.**

23 A. Yes.

24 **Q. Attachment A under "Minimum Qualifications"
25 under Paragraph 4, states, "The proposer, including a**

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1 **Q. Were you --**

2 A. You mean other than the fact that conflict of
3 interest is a bad thing?

4 **Q. Right.**

5 A. I mean --

6 **Q. Well, under this provision, if Greyhound was
7 part of a group of proposals, they could not be awarded
8 it because under this provision they would have had a
9 conflict of interest; correct?**

10 **MR. LIEDLE: Calls for --**

11 **THE WITNESS: Under this one?**

12 **BY MR. MOOT:**

13 **Q. Yes.**

14 A. Yes.

15 **Q. So Greyhound could not have been part of a
16 group that could have been awarded the RFP for the
17 initial award of the management; is that correct?**

18 A. As I -- that's the way I read Roman Numeral IV,
19 that would be true.

20 **Q. Now, were you aware of whether the BTC made a
21 proposal and was advised because their members included
22 intercity bus carriers that they would have a conflict
23 of interest in being awarded the RFP?**

24 A. I know that the BTC was a -- was a bidder. I
25 don't know specifically whether they were told that

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1 their bid was not accepted because of this paragraph.
2 **Q. Now, do you recall how many responders there**
3 **were to the RFP?**
4 A. To the best of my recollection, there was two.
5 But maybe there were more.
6 **Q. Well, I have a document that may refresh your**
7 **recollection. We will see if you look at Exhibit 13.**
8 **MR. LIEDLE: This is entitled "Real Estate**
9 **Executive."**
10 **MR. MOOT: This is an email from Louise Torio**
11 **to Chip Willett and Tim Allison, Exhibit 13.**
12 **THE WITNESS: Real estate contract executive**
13 **summary.**
14 **MR. MOOT: Exhibit 13?**
15 **MR. LIEDLE: Yeah, that's what we have for 13,**
16 **Counsel.**
17 **MR. MOOT: Our first mistake.**
18 **MR. LIEDLE: There's an email -- yeah, no,**
19 **there is not an email that's included in this. This**
20 **looks like we have the real estate contract executive**
21 **summary.**
22 **MR. MOOT: Can I see your book?**
23 **MR. LIEDLE: Yeah.**
24 **MR. MOOT: This is what inevitably happens. No**
25 **Exhibit 13 -- you're looking at C13. Let's just look at**

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1 **Q. Did no one on the RFP team advise you that this**
2 **group included the persons who acquired the McDonald's**
3 **building?**
4 A. No.
5 **Q. So I take it, then, you didn't know of**
6 **Mr. Aguirre's professional background in San Ysidro at**
7 **the time his experience with managing bus parking?**
8 **MR. LIEDLE: At the time of the RFP?**
9 **MR. MOOT: Correct.**
10 **THE WITNESS: No.**
11 **BY MR. MOOT:**
12 **Q. And you were not aware that he had actually had**
13 **and was managing bus tenants in the Greyhound building**
14 **as of the time or before the time of the RFP?**
15 A. No.
16 **Q. You did not know that, in fact, Crucero and**
17 **McDonald's at one point had been tenants in the building**
18 **Mr. Aguirre was managing?**
19 **MR. LIEDLE: At or about the time the RFP was**
20 **made, Counsel?**
21 **MR. MOOT: Correct, yes.**
22 **MR. LIEDLE: Okay.**
23 **THE WITNESS: I knew where Greyhound was**
24 **staging their buses, where they were parking. And I**
25 **knew that they were renting a portion of a building just**

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1 **13-13.**
2 **MR. LIEDLE: Got it.**
3 **MR. MOOT: Sorry about that, guys.**
4 **MR. LIEDLE: I'm over 60. I get confused**
5 **easily.**
6 **MR. MOOT: That's all right.**
7 **MR. LIEDLE: Okay.**
8 **THE WITNESS: C13?**
9 **MR. LIEDLE: C13. So I think you have to go**
10 **THE WITNESS: This is beyond 13. Oh, I see,**
11 **right here.**
12 **MR. LIEDLE: Yes, you've got it. That's it.**
13 **Okay. We're on it now.**
14 **MR. MOOT: My paralegal is relieved.**
15 **BY MR. MOOT:**
16 **Q. Does this refresh your recollection that there**
17 **were three responders to the RFP?**
18 A. I guess to the extent that this was an email
19 from Louise to Chip, I was not copied on this. So --
20 **Q. Were you aware that a group including**
21 **Mr. Aguirre was one of the responders?**
22 A. No, I'm not.
23 **Q. You didn't know that he was involved in**
24 **MetroPort?**
25 A. No.

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1 **to the north of that parking area. Who owned and**
2 **managed that building, I had no knowledge of.**
3 **BY MR. MOOT:**
4 **Q. Did you know whether Greyhound had ever**
5 **actually been a tenant in the McDonald's building,**
6 **Greyhound or Crucero?**
7 A. In the McDonald's building?
8 **Q. Correct.**
9 A. No, I'm not aware of that.
10 **Q. Were you aware in 2010 that Greyhound had a**
11 **fully prepared lease ready to sign to occupy space in**
12 **the McDonald's building?**
13 A. To the best of my recollection, no.
14 **Q. And no one on the RFP review board advised you**
15 **of the qualifications of MetroPort, and specifically**
16 **Mr. Aguirre's experience as a broker in the San Ysidro**
17 **area?**
18 A. No.
19 **Q. And no one on the RFP management team advised**
20 **you of the relationship between Mr. Aguirre's group and**
21 **its copresenter, Sunset Parking?**
22 A. No.
23 **Q. Did you know that Sunset Parking was the**
24 **largest parking lot operator in San Ysidro at the time**
25 **of the RFP?**

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1 A. No.
 2 **Q. Were you made aware in 2004 Ace Parking had no**
 3 **parking management history in San Ysidro?**
 4 A. No.
 5 **Q. Did you know that Ace's proposal anticipated**
 6 **losses in every year of its management operations?**
 7 A. I think generally, we knew that breaking even
 8 was going to be difficult. With reasonable fees for the
 9 intercity carriers.
 10 **Q. If you take a look at Exhibit 129, were you**
 11 **ever informed that Ace anticipated losses in every year**
 12 **of operation and that they appeared to not understand**
 13 **the revenue situation clearly as both MetroPort and BTC**
 14 **felt the project could break even at least?**
 15 A. As you can see by the emails on this, I wasn't
 16 copied on this. This was done between counsel, the real
 17 estate and the engineering people that were, I presume,
 18 evaluating the proposals.
 19 **Q. No one kept you abreast of their evaluation and**
 20 **the issues with Ace's proposal?**
 21 A. No.
 22 **Q. No one made you aware that Ace didn't appear to**
 23 **understand the revenue situation?**
 24 A. No.
 25 **Q. Were you aware that the right-of-way manager**

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1 excessive?
 2 A. I don't recall any conversation to that extent.
 3 But I think it was clear that we were not going to
 4 provide any subsidies to this.
 5 **Q. Now, were you aware that, in fact, your**
 6 **right-of-way manager advised your staff, including**
 7 **Mr. Allison, that his recommendation was to begin**
 8 **negotiations with Mr. Aguirre's group, MetroPort?**
 9 **MR. LIEDLE: Asked and answered, calls for**
 10 **speculation.**
 11 **BY MR. MOOT:**
 12 **Q. If you look at Exhibit 130. The last line for**
 13 **Mr. Willett to Tiffany Lorenz with a copy to Mr. Allison**
 14 **was "My recommendation would be to begin negotiations**
 15 **with MetroPort."**
 16 **Were you ever advised of this recommendation by**
 17 **the right-of-way manager in charge of the RFP?**
 18 **MR. LIEDLE: At or about this time in August of**
 19 **2004?**
 20 **MR. MOOT: Right.**
 21 **THE WITNESS: No.**
 22 **MR. LIEDLE: Okay.**
 23 **THE WITNESS: Not that I recall.**
 24 **BY MR. MOOT:**
 25 **Q. Do you know with all of these problems with the**

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1 **felt that negotiations should begin with the MetroPort**
 2 **group that included Mr. Aguirre?**
 3 A. No. And negotiations can occur with any number
 4 of proposals or proposers. Doesn't necessarily have to
 5 be the successful one.
 6 **Q. Correct. But you, as the CEO, wasn't made**
 7 **aware that at least your right-of-way manager thought**
 8 **they should begin negotiations with MetroPort?**
 9 A. No. Not that I recall. I mean, this is --
 10 this is now 13 years ago.
 11 **Q. Sure. Do you recall them advising you that**
 12 **Ace's pro forma would require an operational subsidy?**
 13 A. No.
 14 **Q. Open up to Exhibit 128.**
 15 **I take it they also didn't advise you that they**
 16 **felt Ace's proposed management fee was excessive?**
 17 **MR. LIEDLE: It's an email dated June 29, 2004.**
 18 **Are you asking him if he's ever seen this email?**
 19 **BY MR. MOOT:**
 20 **Q. Did your team here, Mr. Willett, Hurwitz and**
 21 **Meenes and Allison, ever advise you that the MTS**
 22 **pro forma required operation subsidy and had a**
 23 **management fee --**
 24 A. Well, I think --
 25 **Q. -- in addition to overhead that they felt was**

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1 Ace agreement why you went forward or you were asked to
 2 sign an agreement with Ace?
 3 **MR. LIEDLE: Vague, calls for speculation.**
 4 **THE WITNESS: And I also don't know whether**
 5 **this is protected by attorney-client privilege.**
 6 **Tiffany Lorenz was general counsel.**
 7 **MR. LIEDLE: I can talk to you about that**
 8 **later, okay?**
 9 **THE WITNESS: Okay.**
 10 **MR. LIEDLE: All right.**
 11 **THE WITNESS: But the email is not to me. It's**
 12 **between him and counsel. So I don't even know, I**
 13 **mean --**
 14 **MR. LIEDLE: Why don't we step outside for a**
 15 **second. We shouldn't do this. Let's step outside.**
 16 **MR. MOOT: It's not on privilege log, so --**
 17 **(12:18 p.m.)**
 18 **(A recess was taken.)**
 19 **(12:19 p.m.)**
 20 **BY MR. MOOT:**
 21 **Q. Take a look at Exhibit 132.**
 22 **You eventually authorized the agreement with**
 23 **Ace Parking to manage the facility.**
 24 A. Correct.
 25 **Q. And were you ever informed after -- excuse**

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1 me -- were you ever informed of the problems with the
 2 Ace proposal and why you were being asked to sign an
 3 agreement to go forward with it?
 4 MR. LIEDLE: Vague. Assumes facts, calls for
 5 speculation.
 6 THE WITNESS: Yeah, I agree, it calls for
 7 speculation.
 8 My presumption is that if it was presented to
 9 me, that the issues had been worked out between the
 10 bidder and us. And staff was recommending that we award
 11 to them for this contract.
 12 BY MR. MOOT:
 13 Q. Do you know whether MTA had any prior
 14 agreements or relationships with Ace?
 15 MR. LIEDLE: MTS, you mean?
 16 MR. MOOT: MTS.
 17 MR. LIEDLE: Before this 2004 time period?
 18 MR. MOOT: Right.
 19 THE WITNESS: Not -- not to my recollection.
 20 BY MR. MOOT:
 21 Q. And whatever problems existed with their
 22 proposal, you were not informed of them?
 23 MR. LIEDLE: Vague, calls for speculation,
 24 assumes facts.
 25 THE WITNESS: I can only presume that the

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1 issues that staff had were worked out with them or
 2 resolved during the RFP process.
 3 BY MR. MOOT:
 4 Q. Now --
 5 A. Rectified.
 6 Q. -- under the Ace proposal, were they going to
 7 be providing bathroom facilities for the intercity bus
 8 passengers?
 9 MR. LIEDLE: Calls for speculation.
 10 BY MR. MOOT:
 11 Q. That you can recall?
 12 A. Where does it say that? Does it say that?
 13 Q. Well, they were asked to evaluate.
 14 A. They were asked to evaluate. It didn't say
 15 they were required to build them.
 16 Q. So as CEO, did you approve their proposal
 17 without any restroom facilities for the intercity bus
 18 passengers?
 19 MR. LIEDLE: Vague, argumentative.
 20 THE WITNESS: I approved this proposal as a
 21 result of a procurement and staff recommendation after
 22 analysis of the bids that this was the best for MTS.
 23 BY MR. MOOT:
 24 Q. And staff never advised you, then, that under
 25 their proposal there would be no provisions for

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1 bathrooms for the intercity bus passengers?
 2 MR. LIEDLE: Vague, calls for speculation, also
 3 assumes facts.
 4 THE WITNESS: No.
 5 BY MR. MOOT:
 6 Q. And they never advised you that under the Ace
 7 proposal they presented to you for signature that they
 8 were not providing any shelter from the weather?
 9 MR. LIEDLE: Calls for speculation.
 10 THE WITNESS: I believe that's true.
 11 BY MR. MOOT:
 12 Q. And I take it, then, they didn't advise you
 13 that the MetroPort proposals could provide both shelters
 14 and bathrooms in the facility that their group had
 15 purchased?
 16 MR. LIEDLE: It meaning the McDonald's
 17 building --
 18 MR. MOOT: Right.
 19 MR. LIEDLE: -- correct?
 20 THE WITNESS: I'm not aware of the MetroPort
 21 proposal.
 22 BY MR. MOOT:
 23 Q. So, again, no one on your staff, then, told you
 24 that one of the proposals -- proposals had the ability
 25 to provide bathrooms and shelters in the building they

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1 owned directly adjacent to it?
 2 A. That's true.
 3 MR. LIEDLE: Are we done?
 4 MR. MOOT: Yeah, break for lunch.
 5 MR. LIEDLE: Yes.
 6 (12:23 p.m.)
 7 (A lunch recess was taken.)
 8 (1:03 p.m.)
 9 BY MR. MOOT:
 10 Q. I just wanted to quickly follow up on an answer
 11 you gave earlier about this statute that you indicated
 12 allowed you to sole source this contract to SYPS.
 13 A. No, I didn't say that.
 14 MR. LIEDLE: He didn't say that.
 15 BY MR. MOOT:
 16 Q. Tell me about this statute that you think
 17 exists that did not require you to go through an RFP
 18 process.
 19 A. No, that's not true. What I said was that
 20 sometime in 2005, we had our enabling legislation
 21 changed to allow for more procurement options in our
 22 procurement.
 23 Q. Was that then something that went through the
 24 State legislature?
 25 A. Yes.

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1 Q. Do you know what section of the code it was put
 2 in?
 3 A. No.
 4 Q. Do you know who carried the bill?
 5 A. Offhand, I do not.
 6 Q. Do you know whether it was an amendment to the
 7 Public Utilities Code?
 8 MR. LIEDLE: Don't guess.
 9 THE WITNESS: Yeah, I'm not going to guess.
 10 BY MR. MOOT:
 11 Q. The only statute we have received from your
 12 lawyer in verified answers are Public Utility Code
 13 sections.
 14 A. Well, if that's the current one, then that's
 15 what you would have gotten.
 16 Q. We have a letter outstanding to your attorney
 17 to try to get that answer in a verified response. See
 18 if we can figure this out.
 19 MR. MOOT: I think Ali sent Valerie an email
 20 about this.
 21 MR. LIEDLE: We shouldn't take up his time with
 22 this. I will talk to you about this later. It's on my
 23 desk to be done.
 24 MR. MOOT: Okay.
 25

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1 MR. LIEDLE: You need to let him finish,
 2 Counsel.
 3 MR. MOOT: Okay.
 4 MR. LIEDLE: That's the problem.
 5 THE WITNESS: Are you trying to make a
 6 connection between procurement method and the Greyhound
 7 deal?
 8 BY MR. MOOT:
 9 Q. Yes.
 10 A. Okay.
 11 Q. Yes, that's one of the allegations of the
 12 complaint that the contract is illegal and violates the
 13 Public Utilities Code.
 14 A. Well, that was a lease where we leased the
 15 property to an entity.
 16 Q. Right. I understand, but your attorney --
 17 MR. LIEDLE: Hold it. Let him finish.
 18 THE WITNESS: It wasn't like a procurement of
 19 an RFP or bidding process or anything like that. It was
 20 the lease, through our -- through BriceHouse who is our
 21 concession manager.
 22 BY MR. MOOT:
 23 Q. Okay.
 24 A. It's what they do for us.
 25 Q. Right. I understand it.

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1 BY MR. MOOT:
 2 Q. Is it your understanding that this new
 3 legislation then allows you to award sole-source
 4 contracts?
 5 MR. LIEDLE: Vague, calls for speculation, also
 6 calls for a legal conclusion.
 7 BY MR. MOOT:
 8 Q. Just your understanding. I understand you're
 9 not a lawyer. I'm just trying to figure out where I can
 10 find the statute.
 11 A. Well --
 12 MR. LIEDLE: Calls for speculation, legal
 13 conclusion.
 14 THE WITNESS: Yeah, I guess it's in the law
 15 books.
 16 MR. LIEDLE: Yeah, right.
 17 THE WITNESS: I mean, the issue with sole
 18 source is an entirely different thing. You have to go
 19 through a justification process to do sole source.
 20 BY MR. MOOT:
 21 Q. What's that justifi- --
 22 A. I don't know what you're driving at. Are you
 23 trying to make a connection between --
 24 Q. Well, you realize there's an allegation in this
 25 case.

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1 A. And that was competitively procured by RFP.
 2 Q. I understand your attorney, who was produced
 3 the person most knowledgeable, asserted the
 4 attorney-client privilege as to why it was a lease or
 5 the basis of it being a lease. And the reasons it
 6 didn't violate the statute.
 7 Are you willing to waive that attorney-client
 8 privilege and give us the answer to these questions?
 9 MR. LIEDLE: No, you just need to read the
 10 statutes. I don't know why -- why we are spending so
 11 much time on this.
 12 MR. MOOT: Matt, I read the statute. They do
 13 not say this.
 14 MR. LIEDLE: That's what we then argue to the
 15 Court. You have your position, we have ours. It's
 16 really a paper argument. There's really not any
 17 testimony.
 18 MR. MOOT: He seems to be talking about a
 19 different statute than that ones you gave me.
 20 MR. LIEDLE: I don't know what he's talking
 21 about, Counsel, okay?
 22 MR. MOOT: All right.
 23 BY MR. MOOT:
 24 Q. As the CEO, were you the person who recommended
 25 to the MTS board that you be authorized to enter into a

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1 lease and management agreement with an entity that
 2 included Greyhound, one of the largest users of the
 3 facility?
 4 A. Yes.
 5 Q. And as CEO, did you make the decision to waive
 6 any conflict-of-interest requirement that was part of
 7 the original award of the management of the facility?
 8 MR. LIEDLE: Vague, calls for speculation.
 9 THE WITNESS: There was nothing to waive. It
 10 was not the same process as was conducted in 2004.
 11 BY MR. MOOT:
 12 Q. Well, were you the person who made the decision
 13 that someone who had a conflict of interest could,
 14 nonetheless, manage its competitors?
 15 MR. LIEDLE: Assumes facts, calls for
 16 speculation.
 17 Are you talking about Greyhound?
 18 MR. MOOT: Yes.
 19 BY MR. MOOT:
 20 Q. We established under the previous RFP that
 21 Greyhound would have had a conflict of interest.
 22 MR. LIEDLE: Okay.
 23 BY MR. MOOT:
 24 Q. My question is, were you the person who made
 25 the decision that that conflict of interest was not

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1 I'm asking you as -- you as the CEO, was it your
 2 decision to recommend to the board to award a management
 3 contract to someone who had a conflict of interest?
 4 MR. LIEDLE: Assumes facts. Also calls for a
 5 legal conclusion.
 6 THE WITNESS: Yeah, I -- I don't know how to
 7 answer that question.
 8 BY MR. MOOT:
 9 Q. Give it your best effort.
 10 MR. LIEDLE: He just did. He doesn't know how
 11 to answer it.
 12 BY MR. MOOT:
 13 Q. Well, you knew that Greyhound --
 14 MR. LIEDLE: Now you're arguing.
 15 MR. MOOT: Excuse me.
 16 MR. LIEDLE: Thank you.
 17 BY MR. MOOT:
 18 Q. You knew in the agreement that you awarded that
 19 Greyhound was going to be in the position of managing
 20 its competitors; correct?
 21 A. Correct.
 22 Q. And you knew that under the previous RFP that
 23 was considered a conflict of interest.
 24 A. That's correct.
 25 Q. So why, in this case, did you agree to waive

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1 going to apply to the SYPS agreement?
 2 MR. LIEDLE: That the term was not going to be
 3 included?
 4 BY MR. MOOT:
 5 Q. Right, that you could award this agreement to
 6 someone who had a conflict of interest?
 7 MR. LIEDLE: Well, that may call for privileged
 8 information, Counsel. I mean, I don't know what his
 9 discussions were with counsel.
 10 MR. MOOT: How is that privileged?
 11 MR. LIEDLE: I'm saying I don't know if it does
 12 or not. I don't know if he's had discussions with
 13 Landers regarding this or whatever. So I --
 14 BY MR. MOOT:
 15 Q. Do you understand the question or do you want
 16 me to rephrase it?
 17 A. I think I understand the question. And I'm
 18 trying to determine whether the majority of these
 19 discussions I had were with counsel or not with counsel.
 20 Q. Well, counsel is not the CEO; right?
 21 A. Doesn't make any difference. My conversations
 22 with her are protected.
 23 MR. LIEDLE: Correct.
 24 BY MR. MOOT:
 25 Q. I understand your conversations with her, but

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1 any conflict of interest that Greyhound may have had as
 2 a user managing its competitors?
 3 MR. LIEDLE: Well, apples and oranges again, as
 4 was previously discussed. There are two different
 5 arrangements going on here, Counsel. The documents
 6 speak for themselves. Each agreement speaks for itself.
 7 The lease versus the actual contract that Ace entered
 8 into and the request for proposal.
 9 MR. MOOT: You want to read back the question.
 10 He's not instructing you not to answer, he's
 11 just making the lengthy objections.
 12 Why don't you read back the question.
 13 (The record was read.)
 14 THE WITNESS: I will answer the question in
 15 this way: We certainly discussed with the
 16 representatives from Greyhound that we were discussing
 17 this deal on of the absolute necessity for them to be
 18 impartial in the setting of fees, et cetera, in the
 19 management of this facility. And they concurred that
 20 that was something that they would absolutely adhere to.
 21 BY MR. MOOT:
 22 Q. And how does that cure the conflict of
 23 interest?
 24 MR. LIEDLE: That assumes facts.
 25

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1 **BY MR. MOOT:**
2 **Q. How would that have cured the conflict of**
3 **interest?**
4 **MR. LIEDLE: I think he answered that.**
5 **THE WITNESS: Yeah, I gave you my answer.**
6 **MR. LIEDLE: Okay.**
7 **BY MR. MOOT:**
8 **Q. Let me see if I understand this.**
9 **Your answer is because they promise to be fair**
10 **that that cured any conflict of interest?**
11 **MR. LIEDLE: Well, that was not his testimony.**
12 **MR. MOOT: Well, that's what I'm trying to**
13 **understand, your logic.**
14 **BY MR. MOOT:**
15 **Q. Was your logic, since they promised to be fair,**
16 **that that then cured any conflict of interest they had?**
17 **A. It wasn't a matter of promising to be fair. We**
18 **have people that manage that contract and look over it,**
19 **and certainly we would be -- have been attentive to any**
20 **complaints by any of the other carriers of impartiality.**
21 **And we would have acted on it.**
22 **Q. Were you aware that when they set rates, they**
23 **increased rates for their competitors?**
24 **A. Yes, I was. Yes, I was.**
25 **Q. At levels that they weren't increasing their**

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1 **own rates, were you aware of that?**
2 **A. The percentages were different, but Greyhound**
3 **was still paying much larger sums than anybody else.**
4 **Q. So --**
5 **A. And the other reason -- the other thing that I**
6 **will say is that things went very smoothly there because**
7 **Juan Antonio was ultimately elected as chair of the BTC,**
8 **a group that was comprised of the people that you were**
9 **considered -- your questions are concerned about them**
10 **being biased again or have a conflict with. So the**
11 **relationship was managed extremely well in my opinion.**
12 **Q. So you believe because a Greyhound employee was**
13 **president of the BTC that that would cure any conflict**
14 **of interest --**
15 **A. No.**
16 **Q. -- Greyhound would have --**
17 **A. No, I didn't say that.**
18 **Q. -- in entering the agreement?**
19 **MR. LIEDLE: That's not what he said.**
20 **Misstates testimony and argumentative as phrased.**
21 **THE WITNESS: Yeah, I didn't say that.**
22 **I said as some proof that no bias or prejudice**
23 **existed among those people, he was elected as chair. I**
24 **think that speaks to their impartiality.**
25

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1 **BY MR. MOOT:**
2 **Q. Despite their professed impartiality, were they**
3 **still not in the position of managing their competitors?**
4 **MR. LIEDLE: Who's -- you need to be more**
5 **specific.**
6 **BY MR. MOOT:**
7 **Q. Greyhound.**
8 **MR. LIEDLE: Vague, calls for speculation.**
9 **THE WITNESS: Yeah, I -- I don't know how to**
10 **answer that. I mean, they set fees. We approved the**
11 **fees. We had discussions about the fees. They were**
12 **implemented. I don't recall that there was substantial**
13 **argument about the fees.**
14 **We didn't implement everything that we expected**
15 **to. We didn't implement passenger fees, passenger**
16 **ticket fees. And, you know, some people left and some**
17 **people stayed, and it continues to go today.**
18 **BY MR. MOOT:**
19 **Q. So, in fact, the fees that were recommended and**
20 **the board approved, persons objected to, and they were**
21 **taken out?**
22 **MR. LIEDLE: Which ones are you talking about?**
23 **MR. MOOT: Well --**
24 **MR. LIEDLE: It's overbroad, Counsel. It's**
25 **overbroad.**

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1 **BY MR. MOOT:**
2 **Q. When they submitted their agreement that you**
3 **took to the board, it had in it passenger fees that the**
4 **carriers objected to; correct?**
5 **A. I'm not sure that they objected to them.**
6 **Q. Well, they were taken out.**
7 **A. What were taken out?**
8 **Q. The passenger fees.**
9 **MR. LIEDLE: Taken out of what?**
10 **THE WITNESS: No, I never implemented them.**
11 **BY MR. MOOT:**
12 **Q. Correct, but they were in the proposal --**
13 **A. Yes, they were.**
14 **Q. -- that you asked the board to approve.**
15 **A. Yes, they were.**
16 **Q. And, in fact, that was the largest revenue**
17 **source that was going to produce an income stream to**
18 **MTS?**
19 **A. That's true.**
20 **Q. So the fees that Greyhound were proposing, in**
21 **fact, were objected to by its competitors?**
22 **A. No. No. No, that's not true at all.**
23 **Q. Then why were they taken out?**
24 **A. Because I didn't want to impose the fees on the**
25 **people.**

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1 **Q. And why didn't you want to impose the fees on**
2 **the people?**

3 A. Just because at the time when we were talking
4 about this, we were still in a recession. The vast
5 majority of people that come across the border to use
6 these services are not very wealthy. And I wanted to
7 see how the van and slip fees would materialize to pay
8 for this contract rather than posing a ticket fee on all
9 of the people that went there.

10 **Q. And -- that --**

11 A. That was my decision.

12 **Q. So it was your decision to go with Greyhound's**
13 **proposal unless and until the other carriers objected?**

14 **MR. LIEDLE: Vague, overbroad.**

15 **THE WITNESS: No. Your -- the carriers -- I**
16 **don't know what the carriers thought about the passenger**
17 **fees.**

18 **BY MR. MOOT:**

19 **Q. Was Juan Antonio --**

20 A. Do you need to confer?

21 **Q. No, no, no. He likes to show me notes.**

22 **Was Juan Antonio elected president of the BTC**
23 **before the award of the SYPS agreement?**

24 A. No, it was afterwards.

25 **Q. Was it your decision as the CEO to award the**

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1 **BY MR. MOOT:**

2 **Q. Says, "Subject lease and management agreement**
3 **with SYPS." It says, "The board authorized the chief**
4 **executive officer to enter into agreement with SYPS for**
5 **the lease and management of the San Ysidro interbus**
6 **terminal facility."**

7 **Have I correctly read the subject?**

8 A. Yes, you have.

9 **Q. And the recommendation?**

10 A. Yes, you have.

11 **Q. Was it your decision as CEO to award the lease**
12 **and management agreement to SYPS without going through**
13 **any type of competitive procurement process?**

14 **MR. LIEDLE: Assumes -- assumes it was --**
15 **assumes -- question assumes that the process was**
16 **necessary.**

17 **BY MR. MOOT:**

18 **Q. I'm not assuming anything. I'm just saying,**
19 **was it your decision to award it as a sole-source**
20 **agreement and not an agreement that went through any**
21 **type of competitive procurement process?**

22 A. It was a -- it was an unsolicited proposal from
23 them that we have the ability to review and bring to the
24 board for approval.

25 **Q. Okay.**

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1 **management agreement for the SYITC without going through**
2 **an RFP process?**

3 A. You keep referring to it as a management
4 agreement. That was not the nature of it. We leased --
5 we leased the transit center to them for development and
6 operation.

7 **Q. Well --**

8 A. There's a difference there. I'm not sure that
9 you understand the nuance. But there's a difference.

10 We -- we leased them the facility, okay? We
11 had a comprehensive deal to lease them the facility.
12 They would go in. They would use their money. They
13 would make their improvements. They would try to get
14 concessioners to come in and pay rents as part of that
15 facility. And they would manage it. And they would
16 manage taking in, giving permits to van and bus users,
17 managing the flow, managing the traffic, both up top and
18 down below on the banjo. That was part of their --
19 that's what the lease involved.

20 **Q. If you will open up to Exhibit 4.1.**

21 **MR. LIEDLE: So it's past the yellow sheet. Go**
22 **to Exhibit 4. Just give you guidance, it's past that**
23 **yellow sheet. There it is.**

24 **THE WITNESS: Okay, yes.**

25

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1 A. Yes.

2 **Q. My question is slightly different.**

3 **So you made the decision to award the agreement**
4 **to SYPS the lease and management agreement without**
5 **requiring any type of competitive procurement process?**

6 **MR. LIEDLE: Calls for -- calls for a legal**
7 **conclusion, also may call for privileged information. I**
8 **don't know what his conversations --**

9 **MR. MOOT: I'm not asking for legal conclusion.**

10 **MR. LIEDLE: Yes, you are indirectly. And I**
11 **don't know what, if any, conversations occurred between**
12 **Mr. Jablonski and MTS as legal counsel at that time**
13 **regarding the process.**

14 **THE WITNESS: Well, there was a lot of**
15 **conversations that went on. But to the extent that my**
16 **name is on this recommendation to the board, the answer**
17 **is yes.**

18 **BY MR. MOOT:**

19 **Q. So as CEO, it was your decision, you could have**
20 **asked to go through an RFP process or you could have not**
21 **asked to go through that RFP process. And you made the**
22 **decision not to go through the RFP process; is that**
23 **correct?**

24 **MR. LIEDLE: Vague, calls for speculation,**
25 **lacks foundation, assumes facts as well.**

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1 His -- his signature is on here.
 2 MR. MOOT: Counsel, this is coming out of your
 3 time. So --
 4 MR. LIEDLE: No, it's not.
 5 MR. MOOT: If you want to give these speaking
 6 objections, it's coming out of your time. The question
 7 was straightforward.
 8 You want to read back the question before we
 9 got all of the objections.
 10 THE WITNESS: Was it my decision; right?
 11 MR. MOOT: Read back the question.
 12 The objections are on the record. You can just
 13 have it -- the question read to you and then answer it.
 14 (The record was read.)
 15 MR. LIEDLE: Same objections as previously
 16 stated.
 17 THE WITNESS: Yeah, the way that I will answer
 18 that is to say it never was a situation of whether we
 19 should go through an RFP process or not. It was a
 20 proposal. It was an unsolicited proposal that we
 21 evaluated and believed it was in the best interest of
 22 MTS to go forward with accepting it.
 23 BY MR. MOOT:
 24 Q. And did you believe it was in the best
 25 interests of MTS to award that agreement without

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1 source the agreement to SYPS.
 2 MR. LIEDLE: Calls for a legal conclusion based
 3 on the term "sole source," and are you talking about
 4 before October 18, 2012? This board meeting.
 5 MR. MOOT: Are these objections or questions or
 6 what?
 7 MR. LIEDLE: Well, vague as to time, overbroad
 8 then.
 9 MR. MOOT: Want to read back the question and
 10 let him answer.
 11 (The record was read.)
 12 MR. LIEDLE: Same objections.
 13 THE WITNESS: The only thing that I would
 14 recall about that time is when we had the board meeting
 15 that Mr. Aguirre came and spoke to it.
 16 BY MR. MOOT:
 17 Q. So Mr. Allison also didn't tell you about the
 18 proposal received in December of 2010 that he solicited
 19 from Mr. --
 20 A. That was two years before this.
 21 Q. I understand that.
 22 Did Mr. Allison tell you that he received a
 23 proposal to manage the SYITC from Mr. Aguirre December
 24 of 2010?
 25 A. I don't -- I don't recall that. He may have,

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1 considering any other competitive proposals?
 2 MR. LIEDLE: Assumes facts, assumes it was
 3 necessary.
 4 THE WITNESS: Well, obviously, that -- that was
 5 the case because we didn't solicit any other proposals.
 6 BY MR. MOOT:
 7 Q. And so it was your decision to accept their
 8 proposal without asking for any other competitive
 9 proposals?
 10 MR. LIEDLE: Argumentative as phrased, asked
 11 and answered.
 12 THE WITNESS: Well, only to the extent that
 13 Mr. Aguirre himself, when I went down to visit him, said
 14 that he wanted to give me a proposal. And I asked him
 15 and he said that he would give me one within two weeks.
 16 But never got one.
 17 BY MR. MOOT:
 18 Q. In fact, in 2010, you got a proposal demand
 19 from Mr. Aguirre.
 20 A. I'm talking about in 2012.
 21 Q. Well, you were aware that other parties were
 22 interested in making a proposal to manage the SYITC?
 23 MR. LIEDLE: At what time, Counsel?
 24 BY MR. MOOT:
 25 Q. In 2012, when you made the decision to sole

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1 but I don't recall.
 2 Q. And as far as you knew, before you agreed to
 3 award the contract to SYPS, were there any other persons
 4 who also wanted to submit a proposal?
 5 MR. LIEDLE: Calls for speculation.
 6 THE WITNESS: Not that I'm aware of.
 7 BY MR. MOOT:
 8 Q. And did you believe it was in the best interest
 9 of the MTS organization to award the agreement to SYPS
 10 without considering other competitive proposals?
 11 A. Yes.
 12 Q. And why did you think it was in the best
 13 interest of MTS not to receive other competitive
 14 proposals?
 15 MR. LIEDLE: Calls for speculation and assumes
 16 facts.
 17 THE WITNESS: Once again, I think I answered
 18 this. We received an unsolicited proposal. The
 19 proposal, after discussing it with the proposers in
 20 terms of what they were prepared to do, the money they
 21 were prepared to invest, their plan, their expertise in
 22 managing bus terminals was one that we felt especially
 23 when it was going to be, hopefully, a revenue-producing
 24 contract for us -- you have to understand that it's not
 25 our direction to spend our money on private sector

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1 companies to -- you know, on their behalf.
 2 I mean, we own this property. We know it's for
 3 intercity bus carriers. But we're not going to spend
 4 public dollars on doing that. And this was an
 5 opportunity not to spend public dollars on doing that,
 6 that the private sector was going to bring their money
 7 to the table and create a situation where it produced
 8 revenue and paid for it all.
 9 BY MR. MOOT:
 10 Q. Has the agreement produced any revenue for the
 11 public sector?
 12 A. No, because I believe they're still paying off
 13 the construction.
 14 Q. So this sole-sourced agreement --
 15 A. And the construction was more expensive than
 16 was originally anticipated.
 17 Q. So this agreement you awarded without obtaining
 18 any competitive proposals since it was awarded in 2013
 19 has produced no money for the public agency?
 20 MR. LIEDLE: Mischaracterization in the way
 21 that the question is asked.
 22 THE WITNESS: Well, I think -- yeah, you could
 23 say that, but I think the better way to say it is it is
 24 not cost the public agency a penny.
 25

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1 Q. Okay.
 2 A. Through this deposition.
 3 Q. So you know that the public and the public
 4 interest put a substantial financial investment in the
 5 property where these bus bays were?
 6 A. Okay.
 7 Q. Are you aware of that?
 8 MR. LIEDLE: Well --
 9 THE WITNESS: I'm aware that public funds were
 10 used based on this -- what I have learned here at this
 11 deposition to acquire that property.
 12 BY MR. MOOT:
 13 Q. And build the platform?
 14 MR. LIEDLE: Calls for speculation.
 15 THE WITNESS: And construct the bays.
 16 BY MR. MOOT:
 17 Q. So you are aware public --
 18 A. The bays -- the bays were constructed as part
 19 of that project.
 20 Q. Right. And with public money?
 21 A. Correct.
 22 Q. And you felt it then was appropriate to turn
 23 over this publicly -- property acquired with public
 24 funds to a private entity without -- without soliciting
 25 a competitive proposal?

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1 BY MR. MOOT:
 2 Q. Well, it cost public agency a pretty penny to
 3 acquire the land from a private owner and build it,
 4 didn't it?
 5 MR. LIEDLE: Well, it's argumentative, Counsel.
 6 THE WITNESS: I presume so. I'm not aware of
 7 that deal.
 8 BY MR. MOOT:
 9 Q. Do you know how much money was spent to acquire
 10 the property?
 11 A. No.
 12 Q. Do you know that it was over \$2 million?
 13 A. Wow. You made out.
 14 Q. Do you know that that's what was paid for
 15 Mr. Lim's property where the ITC is?
 16 A. No.
 17 Q. So it was costing the public money to acquire
 18 and build it; is that correct?
 19 MR. LIEDLE: Argumentative as phrased. Acquire
 20 and build what, Counsel?
 21 BY MR. MOOT:
 22 Q. You were aware that that property wasn't MTS'
 23 property originally.
 24 A. Yes, I've been made aware of that through this
 25 process.

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1 MR. LIEDLE: Calls for speculation. Lacks
 2 foundation, argumentative as phrased as well.
 3 THE WITNESS: Well, your question is -- is one,
 4 and I know you're asserting this, that it was somehow
 5 inappropriate. What I'm saying is that receiving
 6 unsolicited proposals for leases is not inappropriate at
 7 all under the law. And that's what we did.
 8 BY MR. MOOT:
 9 Q. But your lawyer won't answer why.
 10 A. Well, you have to talk to her.
 11 Q. Are you going to hide behind the
 12 attorney-client privilege?
 13 A. You will have to talk to her. She's the
 14 lawyer.
 15 Q. Did you instruct her to hide behind the
 16 attorney-client privilege?
 17 A. I'm not going to answer that question.
 18 MR. LIEDLE: Counsel, please, he's not going to
 19 answer that question.
 20 BY MR. MOOT:
 21 Q. Putting aside the legal question, did you feel
 22 it was appropriate having --
 23 A. That's why I --
 24 Q. With the property having been acquired with
 25 public money for a public interest and a public purpose

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1 to turn it over to a private entity without getting any
2 competitive proposals?
3 MR. LIEDLE: Vague, calls for speculation.
4 What do you mean by "feel"?
5 BY MR. MOOT:
6 Q. As CEO, did you feel it was appropriate to turn
7 over property acquired with public knowledge with a
8 public interest to a private party without soliciting a
9 competitive proposal?
10 MR. LIEDLE: Calls for speculation, lacks
11 foundation and vague.
12 THE WITNESS: Once again, it was a proposal by
13 a Greyhound entity to take over the property to manage
14 the flow of intercity bus carriers and vans, to produce
15 revenue that hopefully we would share in and bring a
16 return to the public -- to us, the public entity, on
17 that investment.
18 BY MR. MOOT:
19 Q. I understand that. Did you think it was
20 appropriate to do that?
21 A. Yes, I thought it was appropriate.
22 Q. Now, you have indicated that to date, this
23 contract that you authorized without any competitive
24 proposals produced no money to the public agency; is
25 that correct?

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1 that is all our property.
2 Q. Well --
3 A. So the public did get a substantial benefit
4 from that.
5 Q. So you think the public benefited by outdoor
6 bathrooms as opposed to bathrooms inside the McDonald's
7 building?
8 MR. LIEDLE: So argumentative, Counsel.
9 I think we can -- why don't we move on off this
10 topic. I think you've beat it up enough.
11 MR. MOOT: No, I don't think so, Counsel.
12 THE WITNESS: Go ahead.
13 BY MR. MOOT:
14 Q. So my question is, do you think the benefit --
15 the public benefited by having outdoor bathrooms as
16 opposed to bathrooms inside the McDonald's building?
17 A. Yes, I do. I think the public benefited from
18 it. They then had a choice. They could go to the
19 bathroom in the McDonald's building or they could go to
20 the bathroom near the platform. It's up to them.
21 Q. So you felt that the bathrooms that you could
22 see into the bottom of was better for the users of the
23 facilities than bathrooms inside an enclosed building?
24 MR. LIEDLE: Calls for speculation.
25 THE WITNESS: That's up to the person using

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1 MR. LIEDLE: You mean has SYPS paid any money?
2 BY MR. MOOT:
3 Q. Have they paid you any rent --
4 MR. LIEDLE: Oh, okay.
5 BY MR. MOOT:
6 Q. -- for the use and management of this facility?
7 A. We have not -- we have not shared in any net
8 revenue.
9 Q. So they haven't paid you anything despite the
10 contract being started in 2013?
11 MR. LIEDLE: So when you say "paid you
12 anything," you're excluding the physical improvements
13 that were made to the property?
14 MR. MOOT: That's correct.
15 MR. LIEDLE: Okay.
16 BY MR. MOOT:
17 Q. They haven't paid this public entity that paid
18 public dollars to acquire and build the facility any
19 money under this contract; is that correct?
20 A. Well, I would think that the public -- the
21 public entity, MTS, got a benefit, over half a million
22 dollars, by that private entity.
23 Q. I'm just asking what --
24 A. Because they invested over a half million
25 dollars in the reconstruction of that location. And

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1 'em.
2 BY MR. MOOT:
3 Q. Well, were you the person who made the decision
4 to award the contract to SYPS without going out to the
5 community and soliciting any of their input?
6 MR. LIEDLE: Assumes facts. And are you saying
7 other than what SYPS and Greyhound knew already? Are
8 you talking about community? It's vague. That's what
9 I'm saying, Counsel. As it's phrased, it's vague.
10 MR. MOOT: I don't think so.
11 Why don't you read back the question.
12 (The record was read.)
13 MR. LIEDLE: Still vague.
14 THE WITNESS: Yeah, I don't know who I was
15 supposed to go out to the community and talk to them
16 about it.
17 MR. MOOT: I think the question is slightly
18 different. You want to read it back?
19 (The record was read.)
20 MR. LIEDLE: Assumes facts, calls for
21 speculation and vague.
22 THE WITNESS: I mean, I don't know how to
23 answer that. It was never a requirement that I go out
24 and speak to anybody over a deal between MTS and its
25 property.

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1 MR. MOOT: Why don't you read back the question
 2 a third time.
 3 MR. LIEDLE: He's asked and answered it. He
 4 just answered it now.
 5 MR. MOOT: He answered whether there was a
 6 requirement. I don't think that was part of the
 7 question.
 8 Why don't you read it back one more time.
 9 (The record was read.)
 10 MR. LIEDLE: Vague and misleading, vague as to
 11 time.
 12 THE WITNESS: The only way I will answer it
 13 differently is saying that that was never a decision
 14 before me.
 15 BY MR. MOOT:
 16 Q. Is it your testimony that you did not have the
 17 option of going to the BTC in advance of the award to
 18 SYPS and asking what they thought about these fees and
 19 what they thought about the agreement?
 20 MR. LIEDLE: Vague.
 21 THE WITNESS: I saw no need to.
 22 BY MR. MOOT:
 23 Q. Why did you see no reason to solicit the users
 24 of the facility to get their input before the agreement
 25 was awarded?

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1 award that contract to SYPS without soliciting the
 2 opinions of the actual users of SYITC?
 3 MR. LIEDLE: Vague.
 4 THE WITNESS: I will answer and just say yes.
 5 BY MR. MOOT:
 6 Q. And were you aware that the SYITC study had
 7 already started by the time of this contract, 2014
 8 study?
 9 A. You mean with SANDAG?
 10 Q. Correct.
 11 A. I guess.
 12 Q. And were you aware that SANDAG, for purposes of
 13 a new and reconfigured SYITC, was submitting -- was
 14 soliciting community input?
 15 A. Yes.
 16 Q. And so why did you feel that if SANDAG was
 17 soliciting community input before reconfigured SYITC
 18 that you, as MTS, did not?
 19 MR. LIEDLE: Argumentative as phrased.
 20 THE WITNESS: It's a totally different
 21 scenario. SANDAG was doing a study about the future
 22 development of an intermodal transportation center in
 23 San Ysidro of much bigger caliber, scope, and scale than
 24 we were doing. So entirely different project.
 25

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1 A. It's our property. It's not -- it's not
 2 anybody else's property. It was MTS' property.
 3 Q. Well, it used to be Mr. Lim's property and you
 4 took it from him; right?
 5 A. We bought it. We bought it.
 6 Q. Against his will.
 7 MR. LIEDLE: Now we're moving into the land of
 8 argument again, Counsel. So I encourage you to back off
 9 and stop the argument.
 10 BY MR. MOOT:
 11 Q. Did you believe that getting input from the BTC
 12 before you award the contract was a good idea?
 13 MR. LIEDLE: Vague.
 14 THE WITNESS: Yeah, and I wasn't here to make
 15 those decisions. So --
 16 BY MR. MOOT:
 17 Q. What do you mean? You were there in 2012.
 18 A. Give us the \$2 million back and I'll let you
 19 have the property.
 20 MR. LIEDLE: He is talking about 2012,
 21 Mr. Jablonski.
 22 BY MR. MOOT:
 23 Q. I'm talking about 2012.
 24 A. Okay. What was the question?
 25 Q. The question was, did you make the decision to

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1 BY MR. MOOT:
 2 Q. So you didn't feel that the reconfiguration and
 3 changes that SYPS was proposing needed to be reviewed
 4 with the committee -- excuse me, with the community
 5 before they awarded the contract?
 6 A. No. No. I don't feel that obligation. I felt
 7 my obligation to my board of directors.
 8 Q. Did you ever inform the board of directors that
 9 the previous agreement had gone out through an RFP?
 10 MR. LIEDLE: Vague as to time.
 11 THE WITNESS: Wasn't relevant.
 12 BY MR. MOOT:
 13 Q. Well, my question is did you?
 14 A. No.
 15 Q. You were the one who determined that it was
 16 irrelevant and that it would not be informed that the
 17 previous agreement went out through an RFP?
 18 A. It was not a relevant topic to disclose. The
 19 board, in 2004, made that decision to approve that
 20 agreement. And in 2012, made -- made a decision to
 21 approve that agreement.
 22 Q. Did you make the decision not to include in the
 23 staff report the fact that the previous agreement to
 24 manage it had a conflict of interest?
 25 A. There was no conscious decision to exclude

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1 that.
 2 **MR. LIEDLE:** Assumes facts.
 3 **BY MR. MOOT:**
 4 **Q.** Why wasn't that in the report?
 5 A. Why wasn't anything in the report? I don't --
 6 **MR. LIEDLE:** Calls for speculation.
 7 **THE WITNESS:** I don't know why.
 8 **MR. LIEDLE:** Assumes facts.
 9 **BY MR. MOOT:**
 10 **Q.** You approved the agenda items.
 11 A. Wasn't relevant. Wasn't relevant.
 12 **Q.** I'm sorry, I didn't mean to overspeak.
 13 A. It wasn't relevant in my opinion.
 14 **Q.** So you made the decision, then, to determine
 15 that it wasn't relevant to tell the board that the
 16 previous agreement had a conflict-of-interest provision?
 17 **MR. LIEDLE:** Assumes facts.
 18 **THE WITNESS:** I don't prepare the
 19 presentations. Staff who is responsible for bringing
 20 that in this case would have been real estate in
 21 conjunction with legal counsel prepared the
 22 presentation.
 23 **BY MR. MOOT:**
 24 **Q.** So you designated to staff to make the
 25 determination as to whether to tell the board that the

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1 **THE WITNESS:** Did the proposal given to the
 2 board include it? Then it wasn't included. And there
 3 was no conscious decision to leave it off.
 4 **BY MR. MOOT:**
 5 **Q.** But you were aware since you signed the
 6 previous RFP that there was one in the prior one?
 7 A. There was one what in the prior one?
 8 **Q.** Conflict-of-interest provision in the prior
 9 agreement that you authorized.
 10 A. As was pointed out to me today. I didn't
 11 recall that, but it was pointed out to me today.
 12 **Q.** So you didn't remember in 2012 that you had --
 13 A. No, that would have been 2004.
 14 **Q.** So you weren't aware in 2012 what you did in
 15 2004 with respect to the conflict-of-interest provision?
 16 A. But it was a totally different method of
 17 getting to the management of the bus terminal. One was
 18 an RFP process. The other one was accepting an
 19 unsolicited proposal to lease a property to someone.
 20 **Q.** And in 2012, you were unaware of the fact that
 21 the prior agreement to build the SYITC had actually been
 22 reviewed and considered with community input?
 23 **MR. LIEDLE:** The original plan? Is that what
 24 you're talking about?
 25 **MR. MOOT:** Correct.

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1 previous agreement had a conflict-of-interest provision?
 2 **MR. LIEDLE:** Assumes facts. Assumes that it's
 3 required to be disclosed. I mean, he's already said he
 4 believed it wasn't relevant.
 5 **MR. MOOT:** I understand that, Counsel, but
 6 that's not a defense.
 7 **MR. LIEDLE:** But you're -- you're not --
 8 **MR. MOOT:** You can object all you want, but the
 9 buck stops with the CEO.
 10 **THE WITNESS:** Well, but I don't think it
 11 requires a defense.
 12 **MR. LIEDLE:** It's like when we were in court
 13 and Judge Bacal told you that you don't like the
 14 responses that you're getting doesn't mean --
 15 **MR. MOOT:** Don't lecture me, Matt, I don't need
 16 a lecture.
 17 **MR. LIEDLE:** I'm telling you you're wasting
 18 time.
 19 **MR. MOOT:** No, I'm not wasting time.
 20 **MR. LIEDLE:** All right.
 21 **BY MR. MOOT:**
 22 **Q.** As the CEO, did you determine it wasn't
 23 relevant to tell the board that the prior management
 24 agreement had a conflict-of-interest provision in it?
 25 **MR. LIEDLE:** Assumes facts.

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1 **THE WITNESS:** I wasn't here then.
 2 **BY MR. MOOT:**
 3 **Q.** You were not aware in 2012 of the fact that the
 4 prior design had been approved with public input?
 5 **MR. LIEDLE:** Calls for speculation.
 6 **THE WITNESS:** Yeah, I never reviewed any public
 7 opinion or input into the San Ysidro redesign that
 8 occurred in the early part of 2000 before I was CEO. So
 9 I don't know what input was put in. I also don't know
 10 what input directly related to any design changes.
 11 As far as -- as far as I know, none of the
 12 public input was taken into account. Or a lot of it had
 13 been. I have no knowledge of it.
 14 **BY MR. MOOT:**
 15 **Q.** So you didn't ask staff to get you any history
 16 as to whether community input was solicited for the
 17 initial design that you award the RFP for in 2004?
 18 **MR. LIEDLE:** Assumes facts, calls for
 19 speculation. At what time?
 20 **MR. MOOT:** Read the question back.
 21 (The record was read.)
 22 **MR. LIEDLE:** Same objections.
 23 **THE WITNESS:** I guess the answer would be no.
 24 **BY MR. MOOT:**
 25 **Q.** Now, after the award was disseminated that the

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1 MTS board had voted to award a new management agreement
 2 to an entity that included Greyhound, how many letters
 3 did you receive objecting to it based on Greyhound
 4 having a conflict of interest in managing the center?
 5 MR. LIEDLE: Mischaracterization. It's a lease
 6 and management agreement, Counsel.
 7 Do you have the question in mind with that
 8 clarification, Mr. Jablonski?
 9 THE WITNESS: The answer is I don't recall.
 10 BY MR. MOOT:
 11 Q. Do you recall receiving more than one letter
 12 objecting to the conflict of interest in Greyhound
 13 managing the center?
 14 A. No, I do not.
 15 Q. Why don't you take a look at Exhibit 16.
 16 A. Okay.
 17 Q. Is this one of the letters that you received
 18 objecting to the award because the proposed project
 19 established a conflict of interest in having Greyhound
 20 involved in the management of the center?
 21 A. Exhibit 16 is not a letter to me.
 22 MR. LIEDLE: It's an email, might be the wrong
 23 thing again. This is something that is 2010. No, don't
 24 have that. BTC. This is what we have.
 25 THE WITNESS: Me too.

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1 Q. So with respect to Exhibit 16 and 19, these
 2 were letters that were sent to you after the award of
 3 the contract to SYPS without any competitive other
 4 proposals?
 5 A. Based on the dates, et cetera, yes.
 6 Q. And did Mr. Aguirre also --
 7 A. I guess in the last seven years it's shown that
 8 none of these concerns were true.
 9 Q. You don't think that there's carriers out there
 10 who are objecting?
 11 A. No. I mean, they always have the ability not
 12 to go there. No one is forcing them to be there.
 13 Q. So as the CEO, you felt that, hey, if they
 14 didn't like Greyhound management, they could go
 15 someplace else?
 16 MR. LIEDLE: Argumentative.
 17 THE WITNESS: Sure.
 18 MR. LIEDLE: Okay.
 19 BY MR. MOOT:
 20 Q. You think that is an appropriate position to
 21 take with respect to a property that the public invested
 22 substantial funds in acquiring and building?
 23 MR. LIEDLE: Argumentative as phrased.
 24 You don't have to answer that. He's arguing
 25 with you again.

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1 MR. LIEDLE: Here's another 16. Okay. So it's
 2 16, not 16C.
 3 MR. MOOT: Should be marked 16. I don't know
 4 why they are putting C's on that, but 16.
 5 MR. LIEDLE: Got it.
 6 Okay. We are looking at the December 13, 2012,
 7 BTC letter from Richard Gomez.
 8 BY MR. MOOT:
 9 Q. Is this one of the letters you received
 10 objecting to the award based on Greyhound having a
 11 conflict of interest?
 12 A. I do recall this.
 13 Q. And do you recall receiving another letter from
 14 the San Ysidro Smart Border Coalition also objecting to
 15 the possibility of having a conflict of interest in
 16 having Greyhound lines in the management of the center?
 17 A. I don't recall.
 18 Q. Why don't you open up to Exhibit 19. Hopefully
 19 there's not a 19C.
 20 MR. LIEDLE: 12/20/2012 letter from
 21 Smart Border Coalition.
 22 THE WITNESS: Okay.
 23 BY MR. MOOT:
 24 Q. Was this a second letter you received?
 25 A. It looks that way.

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1 THE WITNESS: Okay.
 2 BY MR. MOOT:
 3 Q. No, you can answer the question.
 4 MR. LIEDLE: It's argumentative, Counsel.
 5 MR. MOOT: That doesn't mean he doesn't have to
 6 answer the question, Counsel. Are you instructing him
 7 not to answer? If so, state the privilege.
 8 MR. LIEDLE: I'm telling him that it's
 9 argumentative. If you want to rephrase the question so
 10 it's not.
 11 MR. MOOT: I don't want to rephrase the
 12 question and you haven't instructed him not to answer
 13 and there is no privilege.
 14 So read back the question and let him answer
 15 it.
 16 THE WITNESS: I believe that the agreement that
 17 was entered into has worked very well.
 18 BY MR. MOOT:
 19 Q. And do you believe that it's appropriate
 20 position for a public agency to take that if the people
 21 didn't like being managed by their competitor, they
 22 could go somewhere else?
 23 MR. LIEDLE: Vague.
 24 THE WITNESS: I mean, people always have the
 25 ability to go someplace else.

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1 **BY MR. MOOT:**
2 **Q. Yeah, but you're a public agency; right?**
3 **MR. LIEDLE: That's argumentative.**
4 **BY MR. MOOT:**
5 **Q. You think that's an appropriate position for a**
6 **public agency to take?**
7 **MR. LIEDLE: That's argumentative.**
8 **THE WITNESS: Depends on the circumstances.**
9 **BY MR. MOOT:**
10 **Q. Well, do you think these circumstances**
11 **warranted telling people?**
12 A. I think history has shown that that was -- was
13 an unfounded concern.
14 **Q. My question is, did you feel that it was an**
15 **appropriate position for the public agency to take that**
16 **if a bus carrier didn't want to be managed by its**
17 **competitor that they could go somewhere else?**
18 **MR. LIEDLE: Vague, calls for speculation.**
19 **THE WITNESS: I don't know how to answer that**
20 **question. Everybody has that ability. And if there**
21 **were -- if there were concerns of bias with respect to**
22 **that, they could, over the last five years, been voiced**
23 **and I've never received one complaint from any carrier**
24 **down there that suggested that; that there was bias in**
25 **terms of the management.**

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1 **And, in fact, what I said was that the fact**
2 **that -- that a Greyhound employee was elected as chair**
3 **of the BTC showed me that, in fact, they had built the**
4 **appropriate relationships with all of the other carriers**
5 **down there, and there was -- there was general -- what,**
6 **happiness with the arrangement.**
7 **BY MR. MOOT:**
8 **Q. So you're unaware that other carriers have sent**
9 **letters to the board complaining about the conflict of**
10 **interest in Greyhound managing it?**
11 **MR. LIEDLE: Vague as to time.**
12 **THE WITNESS: This was at the time of approval?**
13 **BY MR. MOOT:**
14 **Q. This was since approval.**
15 A. Since approval. Yeah, I have not seen those.
16 Not that I recall.
17 **Q. Now with respect to Exhibit 16 --**
18 A. Mm-hmm.
19 **Q. -- was the Border Transportation Council the**
20 **largest user of the facility in December 13, 2012?**
21 A. The Border Transportation Council does not use
22 the facility. And it's an association. Its members do.
23 **Q. The letter says it's the largest end user of**
24 **the MTS parking facility, we were not notified or taken**
25 **into consideration there were ongoing negotiations with**

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1 **SYPS and MTS.**
2 **Why didn't you notify the largest end user of**
3 **the negotiations that were ongoing with SYPS?**
4 A. Well, the BTC is not an end user. The BTC is
5 an association. It is not an end user. The BTC does
6 not have any permits to park any buses there. The BTC
7 does not own any buses.
8 **Q. Is that why you didn't take into consideration**
9 **their views or input?**
10 **MR. LIEDLE: Assumes facts, vague as to time.**
11 **BY MR. MOOT:**
12 **Q. Is that why?**
13 A. They're not a user.
14 **Q. That's my question. Is the reason you didn't**
15 **take into consideration their viewpoint was because they**
16 **were not a user and they only represented users?**
17 A. No.
18 **Q. Why didn't you advise them of the ongoing**
19 **negotiations and allow them to have input?**
20 **MR. LIEDLE: Assumes facts. Calls for**
21 **speculation.**
22 **THE WITNESS: Once again, I think it was our**
23 **responsibility to evaluate the proposal that was put**
24 **before us and determine if it was in the best interest**
25 **of MTS to do that. We did make that decision, and I**

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1 **think the last five years have shown that that was a**
2 **pretty good decision.**
3 **BY MR. MOOT:**
4 **Q. So the five-year track record of producing no**
5 **revenue made it a good decision?**
6 **MR. LIEDLE: That's argumentative as phrased.**
7 **THE WITNESS: We could produce -- we could**
8 **produce revenue overnight in that if we started to**
9 **charge passengers fees. Or if we increase the slip fees**
10 **to all of the, you know, bus companies.**
11 **BY MR. MOOT:**
12 **Q. And why haven't you done that?**
13 A. Because, like I said before, we have this
14 asset. It was set up for this purpose. It's being
15 managed well. Everybody seems to be happy, and we are
16 not charging poor people fees. And in this regard,
17 that's fine. That's fine.
18 **Q. Did you respond to the BTC letter that was sent**
19 **to you on December 13, 2012?**
20 **MR. LIEDLE: Him personally?**
21 **MR. MOOT: Yes.**
22 **MR. LIEDLE: Okay.**
23 **THE WITNESS: I don't recall that I did.**
24 **BY MR. MOOT:**
25 **Q. Did you instruct anybody on staff to respond to**

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1 the letter?
 2 A. I'm not sure. I don't recall.
 3 **Q. Did you ever advise the BTC --**
 4 A. I met with Mr. Gomez.
 5 **Q. Did you ever advise the BTC that they were**
 6 **wrong; that Greyhound didn't have a conflict of**
 7 **interest?**
 8 **MR. LIEDLE: Vague.**
 9 **THE WITNESS: No, but I met with Mr. Gomez in**
 10 **Mr. Aguirre's building.**
 11 **BY MR. MOOT:**
 12 **Q. So you never contested the assertion by the BTC**
 13 **that Greyhound had a conflict of interest?**
 14 **MR. LIEDLE: Assumes facts.**
 15 **THE WITNESS: Never had to.**
 16 **BY MR. MOOT:**
 17 **Q. Now, did you respond to Exhibit 19, the letter**
 18 **from Mr. Wells to you dated December 20 and their**
 19 **assertion about a possibility of conflict of interest?**
 20 A. I don't believe so.
 21 **Q. Why not?**
 22 A. Didn't feel the need to.
 23 **Q. So you didn't need to contest that Greyhound**
 24 **had a conflict of interest?**
 25 A. No.

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1 **MR. LIEDLE: Objection. Argumentative as**
 2 **phrased.**
 3 **BY MR. MOOT:**
 4 **Q. And did you feel that, in fact, Mr. Wells was**
 5 **wrong, there was no conflict of interest?**
 6 **MR. LIEDLE: Vague, calls for speculation.**
 7 **BY THE WITNESS:**
 8 **Q. Did you feel that way?**
 9 A. I didn't feel there was a need to respond to
 10 him.
 11 **Q. Why did you feel there was no need to respond**
 12 **to the letter raising that the agreement shouldn't have**
 13 **been awarded because of the possibility of a conflict of**
 14 **interest?**
 15 A. Because I thought in the negotiations and the
 16 discussions with the people that we were entering into
 17 this to that there would be no conflict with people that
 18 they were managing and it was going to be done fair and
 19 above the board, and I think history has shown that that
 20 is, in fact, the case.
 21 **Q. Did you believe there was an appearance of a**
 22 **conflict of interest?**
 23 **MR. LIEDLE: Vague, calls for speculation.**
 24 **THE WITNESS: There certainly was concern, and**
 25 **that's why it was addressed.**

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1 **BY THE WITNESS:**
 2 **Q. And how did you address the concern?**
 3 A. By having discussions with the Greyhound
 4 people.
 5 **Q. And how did that alleviate the community's**
 6 **concern that there was no conflict of interest?**
 7 A. Well, in the first place, BriceHouse was the
 8 entity that was partnering with them. BriceHouse is our
 9 concessioner and, to a certain extent, our
 10 representative in this and they were a partner in that.
 11 And they were going to be intimately involved in the
 12 management of it. In fact, the BriceHouse employee is,
 13 in fact, the manager down there. So to a certain
 14 extent, there's a little bit of an arm's length
 15 relationship there. Because BriceHouse is our
 16 concessioner.
 17 **Q. Is BriceHouse the minority partner in the LLC?**
 18 **MR. LIEDLE: Calls for speculation.**
 19 **THE WITNESS: I don't know if there is any**
 20 **minority/majority designation.**
 21 **BY THE WITNESS:**
 22 **Q. Did you review the SYPS agreement before making**
 23 **determination there was no conflict of interest?**
 24 A. Did I -- did I review the lease agreement?
 25 **Q. The SYPS agreement to determine that there was**

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1 **no conflict of interest in awarding --**
 2 A. SYPS agreement with --
 3 **MR. LIEDLE: The LLC agreement?**
 4 **MR. MOOT: Correct.**
 5 **MR. LIEDLE: Oh. Did you ever review the LLC**
 6 **agreement?**
 7 **THE WITNESS: No.**
 8 **BY MR. MOOT:**
 9 **Q. So you were unaware, in fact, Greyhound had the**
 10 **majority interest in the LLC?**
 11 A. They may have the majority interest, but it was
 12 Brad Saunders and his representative that was doing the
 13 day-to-day management.
 14 **Q. Were you relying on MTS' -- excuse me,**
 15 **Greyhound's expertise to manage the center?**
 16 **MR. LIEDLE: Vague, overbroad.**
 17 **THE WITNESS: Well, they certainly have the**
 18 **credentials and the experience that would help them to**
 19 **do that, yes.**
 20 **BY MR. MOOT:**
 21 **Q. Was it your understanding, then, that it was**
 22 **Greyhound that had the credentials and experience to**
 23 **manage the center?**
 24 **MR. LIEDLE: Argumentative as phrased. Versus**
 25 **what? Is there something else? Vague.**

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1 **BY MR. MOOT:**
2 **Q. Were you relying on Greyhound's management**
3 **experience to manage the center?**
4 A. Yeah, yes.
5 **Q. Not on Brad Saunders?**
6 A. Well, no. But his -- it was his employee that
7 was working with them in that partnership to do so.
8 **Q. But Brad Saunders had no experience managing**
9 **bus centers.**
10 A. No.
11 **Q. Now, how many letters did you receive after the**
12 **award objecting to it being done without a request for**
13 **proposal?**
14 **MR. LIEDLE: How many total letters did he**
15 **specifically --**
16 **BY MR. MOOT:**
17 **Q. How many letters were received?**
18 A. I'm not sure I ever received a letter
19 specifically complaining about that we didn't go through
20 a request for proposals process.
21 **Q. Why don't you look at Exhibit 19.**
22 **MR. LIEDLE: Is there a certain section you**
23 **want him to look at?**
24 **MR. MOOT: The last paragraph.**
25 **THE WITNESS: Okay.**

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1 **agreement went through an RFP process, were they?**
2 **MR. LIEDLE: Vague, calls for speculation.**
3 **THE WITNESS: But as I said before, that's**
4 **irrelevant.**
5 **BY MR. MOOT:**
6 **Q. Did you also receive a letter from the BTC**
7 **stating that MTS should reconsider its position and**
8 **issue an RFP?**
9 **MR. LIEDLE: Calls for speculation.**
10 **THE WITNESS: I don't recall.**
11 **BY MR. MOOT:**
12 **Q. Why don't you look at Exhibit 16, the last**
13 **paragraph.**
14 A. Which 16? First 16?
15 **MR. LIEDLE: Yes, first 16. Not 16C.**
16 **THE WITNESS: Sounds like they were in sync.**
17 **BY MR. MOOT:**
18 **Q. Did you receive the letter from the BTC that**
19 **also requested that this should be reconsidered and**
20 **issued through an RFP?**
21 A. You just showed me that.
22 **Q. So you've got two letters?**
23 A. Two letters. One from the Smart Border
24 Coalition, one from BTC, both with a closing paragraph
25 that requests that we go through an RFP.

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1 **BY MR. MOOT:**
2 **Q. Did you receive this letter dated**
3 **December 20th, 2012, from the Smart Border Coalition**
4 **stating that MTS should reconsider its position and**
5 **issue an RFP?**
6 A. This was almost two months after the board
7 awarded it.
8 **Q. Did you receive this letter asking that the**
9 **position be reconsidered and it be issued through an**
10 **RFP?**
11 A. I assume that I did but the agreement was
12 already signed, sealed, and delivered at that point.
13 The lease agreement, I believe, is dated December 18th.
14 And I don't know when I would have received this.
15 **Q. I think it says it was dated December 30th.**
16 **MR. LIEDLE: The operative date, I believe,**
17 **Counsel, is December 18th. But we can look at it later**
18 **if you want.**
19 **BY MR. MOOT:**
20 **Q. Did you respond to Mr. Wells in his request**
21 **that it be reconsidered and go through an RFP process?**
22 A. No.
23 **Q. Why not?**
24 A. Because the board had already voted on it.
25 **Q. The board was not aware that the first**

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1 **Q. Did you respond to either of these letters?**
2 A. No, I did not.
3 **Q. Did you also receive a letter from the**
4 **San Diego city councilman whose jurisdiction was**
5 **San Ysidro also asking that the proposal go through an**
6 **RFP process?**
7 A. If you are referring to Councilman Alvarez,
8 yes. But my answer to all of this is that the board had
9 already voted. The board had already -- already voted
10 on this in October.
11 **Q. What they voted on is for -- to authorize you**
12 **to enter into agreement; correct?**
13 A. Right.
14 **Q. So you still could take back to the board and**
15 **say I've gotten a number of objections that we should go**
16 **through an RFP process, and I'm not signing the**
17 **agreement because of that?**
18 **MR. LIEDLE: Calls for --**
19 **THE WITNESS: But I didn't.**
20 **MR. LIEDLE: Calls for speculation.**
21 **BY MR. MOOT:**
22 **Q. But you didn't do that.**
23 A. But I didn't do that.
24 **Q. But you could have.**
25 **MR. LIEDLE: Calls for speculation.**

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1 THE WITNESS: Conceivably.
 2 BY MR. MOOT:
 3 Q. Why didn't you go back to the board and say
 4 I've received three letters from an agency -- from an
 5 entity that represents the users and the San Diego city
 6 councilman and a community group asking to go back for
 7 an RFP; why didn't you, at that point, then go back to
 8 the board and ask them what their pleasure was?
 9 MR. LIEDLE: Assumes facts.
 10 BY MR. MOOT:
 11 Q. Whether they wanted to go back through an RFP
 12 or go through with the existing contract?
 13 MR. LIEDLE: Assumes facts.
 14 THE WITNESS: Only because the board had
 15 already voted on it and it was thoroughly vetted, the
 16 proposal was vetted. They knew it was an unsolicited
 17 proposal. They voted to proceed with that and
 18 authorized me to do it and I saw no need to reverse
 19 that.
 20 BY MR. MOOT:
 21 Q. And did you advise the board of these three
 22 letters that you had received?
 23 A. I think maybe. I don't know, were they copied
 24 to the board?
 25 Q. No. I'm asking whether you provided copies of

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1 remember -- recall a letter from them.
 2 BY MR. MOOT:
 3 Q. Should be under Exhibit 170.
 4 MR. LIEDLE: Just so he has the question in
 5 mind, what was the question again?
 6 You can have it read back if you want.
 7 BY MR. MOOT:
 8 Q. Question was, how many letters did you receive
 9 objecting to the award of SYPS without seeking any
 10 community input?
 11 MR. LIEDLE: I don't think I have a 170.
 12 THE WITNESS: I don't have a 170.
 13 MR. MOOT: Try 213. It has two numbers. I
 14 have it put under 213.
 15 MR. LIEDLE: This is the letter addressed to
 16 Chairman Mathis?
 17 MR. MOOT: Right.
 18 BY MR. MOOT:
 19 Q. Mr. Mathis give you a copy of this letter you
 20 received?
 21 A. I guess I was copied on it.
 22 Q. So how many letters in total did you receive
 23 objecting to awarding this agreement without going
 24 through any type of community input process?
 25 A. I have answered that question. We didn't feel

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1 the letters to the board.
 2 A. I don't recall if we did or not. We may have
 3 at some point in time.
 4 Q. As CEO, did you have the discretion to go back
 5 to the board, advise them of the letters that you had
 6 received and ask them whether they wanted, in fact, to
 7 go back out through an RFP?
 8 MR. LIEDLE: Vague, calls for speculation,
 9 assumes facts.
 10 THE WITNESS: Conceivably, yes.
 11 BY MR. MOOT:
 12 Q. And you chose not to exercise that discretion?
 13 A. That's correct. Obviously.
 14 Q. How many letters did you receive complaining
 15 about the fact that you did not seek any community input
 16 before awarding the agreement to SYPS?
 17 A. I don't recall.
 18 Q. Do you recall that both the letter from the
 19 San Ysidro Smart Border Coalition, Exhibit 19, the
 20 letter from the BTC, and then another letter from
 21 Casa Familiar all objected to the award without going
 22 through any kind of community input process?
 23 MR. LIEDLE: Do you want to show him the
 24 Casa Familiar letter, Counsel?
 25 THE WITNESS: Where is that letter? I vaguely

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1 the need to go through a community input process to do
 2 this.
 3 Q. And --
 4 A. We didn't go through a community input process
 5 when we did the 2004 agreement to Ace Parking.
 6 Q. Well, didn't -- you went through a community
 7 process to design it --
 8 A. Well, but that's --
 9 Q. -- the project to begin with.
 10 A. -- that's two different elements.
 11 One was to design and construct and the other
 12 one was to manage. And we didn't go through a community
 13 input process the first time and you haven't raised any
 14 concerns to me in why we haven't done that. I don't
 15 know what the concern is now.
 16 Q. Well, the 2004 process went through an RFP
 17 process where you actually solicited proposals from the
 18 public; correct?
 19 A. Yeah.
 20 MR. LIEDLE: Asked and answered.
 21 THE WITNESS: That's right.
 22 BY MR. MOOT:
 23 Q. So why did you not go back to the board after
 24 receiving three letters including one from one of the
 25 council members to determine whether you should have

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1 gotten community put before awarding the agreement?
 2 MR. LIEDLE: Asked and answered, vague, assumes
 3 facts.
 4 THE WITNESS: I mean the city councilman was
 5 present for the discussion on this. He was attending
 6 all of the meetings.
 7 BY MR. MOOT:
 8 Q. And he felt that the process needed to be
 9 started through a RFP process; correct?
 10 A. That's a -- you know, one member of the board
 11 does not dictate what the board does. If he felt that
 12 way, he could have come to a board meeting and -- and
 13 raised that issue and put it before the board for a
 14 vote.
 15 Q. And did he do that?
 16 A. No.
 17 Q. Do you know why he didn't do that?
 18 A. No.
 19 Q. Did he do that after you and Ms. Landers met
 20 with him?
 21 MR. LIEDLE: Calls for speculation.
 22 Don't answer that question. Also privileged.
 23 BY MR. MOOT:
 24 Q. I'm not asking what occurred, but did he not do
 25 that after you and Ms. Landers met with him?

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1 MR. LIEDLE: Vague, calls for speculation.
 2 THE WITNESS: I don't know why he didn't do
 3 that.
 4 BY MR. MOOT:
 5 Q. You never spoke with him about his letter?
 6 A. I spoke with him. I went down to San Ysidro
 7 with him.
 8 Q. And did you -- did you give him any explanation
 9 as to why no RFP process should be gone through?
 10 A. I don't recall what the conversation was, but
 11 other than the fact that this was an unsolicited
 12 proposal; that it was a good proposal; that they were
 13 investing their money in; that it was an organization
 14 that had the capability and experience to manage a
 15 facility like this and had the potential to deliver us
 16 revenue. And that was good enough. It was good enough
 17 for the board to approve that.
 18 Q. And when you say they invested their own money
 19 in it, wouldn't it be accurate to state that they were
 20 going to recruit all their money they invested into it
 21 before they paid any money to the public agency?
 22 A. That's true. That's true.
 23 Q. In essence, they were going to get all of their
 24 money back before the public agency received any money?
 25 A. That's true. But the contrary to that is that

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1 we didn't have to invest a dime in it.
 2 Q. So in effect --
 3 A. And make substantial improvements.
 4 Q. In fact, neither did they because they were
 5 simply going to get their money recouped from the people
 6 using the center?
 7 A. Well, there is no provision for -- for interest
 8 on that money or return on investment, et cetera.
 9 Q. But the agreement they were going to get their
 10 money back.
 11 MR. LIEDLE: Agreement speaks for itself.
 12 THE WITNESS: Yeah.
 13 BY MR. MOOT:
 14 Q. Is that correct?
 15 A. Yeah. Yeah.
 16 Q. So they were essentially loaning money in
 17 advance and getting it back later; is that correct?
 18 MR. LIEDLE: Agreement speaks for itself.
 19 BY MR. MOOT:
 20 Q. Is that correct?
 21 A. That's correct.
 22 Q. And, in fact, there was also a provision in the
 23 agreement that if things didn't work out, they could
 24 always come back and renegotiate the contract?
 25 A. That's correct.

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1 Q. Now, did you have any concerns about the health
 2 and safety issues that was raised in the Casa Familiar
 3 letter?
 4 MR. LIEDLE: Vague, overbroad.
 5 BY MR. MOOT:
 6 Q. Did you have any concerns about that?
 7 A. No. No.
 8 Q. They raised the issue that -- that people were
 9 being exposed to higher readings of black carbon and
 10 ultrafine particulate matter and that the SYPS proposal
 11 did nothing to reduce the exposures to the diesel
 12 engines; do you recall that?
 13 A. No.
 14 Q. Did you respond to this letter on behalf of the
 15 board about how the SYPS proposal, in fact, did take
 16 into consideration these health issues?
 17 MR. LIEDLE: Assumes -- assumes facts. I mean
 18 calls for speculation.
 19 THE WITNESS: I don't recall.
 20 BY MR. MOOT:
 21 Q. Well, I take it with the history of bus
 22 management, you're aware that these diesel buses are
 23 polluters?
 24 A. Correct.
 25 Q. And that they put high amounts of black carbon

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1 ultrafine particulate matter into the atmosphere?
 2 MR. LIEDLE: Overbroad, calls for speculation.
 3 THE WITNESS: Well, but diesel buses have been
 4 around for decades. In fact, they're still used in many
 5 places in California as well as Southern California.
 6 BY MR. MOOT:
 7 Q. So my question is, did you respond to
 8 Casa Familiar about what could be done to alleviate this
 9 problem?
 10 A. No, I did not.
 11 Q. And I take it you were unaware that the problem
 12 could be alleviated by allowing the second floor of the
 13 McDonald's building to be used as a passenger waiting
 14 area?
 15 MR. LIEDLE: Calls for speculation.
 16 THE WITNESS: Yeah. That thought never entered
 17 into my mind.
 18 BY MR. MOOT:
 19 Q. Why not?
 20 A. I don't know why it would. I already -- I
 21 already --
 22 Q. If they were --
 23 A. I already answered questions to you that said I
 24 was unfamiliar with any plans or discussions to use the
 25 second floor of the building. So I don't know why I

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1 would have come to that conclusion at that time.
 2 Q. So you didn't consider the possibility of going
 3 to the owners of the McDonald's building and putting
 4 passenger waiting areas indoors where the passengers
 5 wouldn't be exposed to these pollutants?
 6 A. No. No.
 7 Q. Were you concerned about the health and safety
 8 of the bus passengers using the center?
 9 A. No, because it was -- it was designed and built
 10 that way for buses to pull up and people to wait there
 11 and load the buses. That's the way it was designed. I
 12 didn't design it. I just was asked to operate it.
 13 Q. As far as you knew, that's the way it was
 14 designed; correct?
 15 A. Well, that's the way it was designed.
 16 Q. No. The way it was designed was to have the
 17 second floor of the McDonald's building being the
 18 passenger area.
 19 A. Was it built? That's irrelevant. It wasn't
 20 built that way. There was -- in 2004, when that was
 21 built, okay, there was no way to enter into the second
 22 floor of the McDonald's building. It was a wall.
 23 Q. Why was -- why was the bus passenger platform
 24 built directly adjacent to the second floor of the
 25 McDonald's building as far as you're aware?

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1 MR. LIEDLE: Calls for speculation.
 2 THE WITNESS: Because it was the -- it was the
 3 property line and bus -- how else would you do it?
 4 BY MR. MOOT:
 5 Q. Well, why was the grade raised to directly
 6 match the second floor of the McDonald's building?
 7 MR. LIEDLE: Calls for speculation, also
 8 disclosure of attorney-client privilege --
 9 THE WITNESS: I have no idea.
 10 MR. LIEDLE: -- information.
 11 BY MR. MOOT:
 12 Q. So you actually didn't know that it was built
 13 to match the second floor of the McDonald's building
 14 specifically anticipating that there would be a door
 15 from the second floor out to the platform?
 16 A. Definitely not.
 17 Q. And you were the CEO and you were completely
 18 unaware of this fact?
 19 MR. LIEDLE: Objection. You don't have to
 20 answer that. I will instruct you not to answer that.
 21 That is argumentative.
 22 You can turn that around and phrase it another
 23 way if you want, Counsel.
 24 BY MR. MOOT:
 25 Q. No one informed you that the reason the bus

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1 platform matched the second floor of the McDonald's
 2 building was because it was anticipated there would, in
 3 fact, be a door there and that the passenger waiting
 4 areas would be inside the McDonald's building?
 5 A. No.
 6 Q. No one told you that?
 7 A. No.
 8 Q. And you never inquired as to why it was built
 9 to match the second floor?
 10 MR. LIEDLE: Assumes facts.
 11 THE WITNESS: Never realized it was built to
 12 match the second floor. I just assumed that it was --
 13 that was the existing grade.
 14 BY MR. MOOT:
 15 Q. Now, in Exhibit 4.1, you were authorized to
 16 negotiate a lease and management agreement. Why did the
 17 agreement that you signed leave out the management part?
 18 MR. LIEDLE: Calls for a legal conclusion.
 19 THE WITNESS: What are we talking about?
 20 BY MR. MOOT:
 21 Q. Well, Exhibit 4.1.
 22 MR. LIEDLE: You can turn back to that,
 23 Mr. Jablonski.
 24 THE WITNESS: Okay. I'm at 4.1.
 25

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1 **BY MR. MOOT:**
2 **Q. It authorized you to enter into a lease and**
3 **management agreement; correct?**
4 A. Yes.
5 **Q. Why did the agreement you executed leave out**
6 **the management portion?**
7 A. I don't know, counsel prepared that lease.
8 **Q. Was it done on purpose?**
9 **MR. LIEDLE: Calls for speculation.**
10 **THE WITNESS: Not that I'm aware of, no.**
11 **MR. LIEDLE: Calls for speculation.**
12 **MR. MOOT: What?**
13 **MR. LIEDLE: Calls for speculation.**
14 **THE WITNESS: Not that I'm aware of. No.**
15 **BY MR. MOOT:**
16 **Q. Was it done to get around the competitive bid**
17 **requirements of the Public Utilities Code?**
18 **MR. LIEDLE: Vague, calls for speculation.**
19 **THE WITNESS: No.**
20 **BY MR. MOOT:**
21 **Q. Did you give a commitment to Councilman Alvarez**
22 **that you would not sign the agreement with SYPS until**
23 **you received a proposal from Mr. Aguirre?**
24 A. The conversation that I had with Mr. Aguirre
25 when he said that he wanted to submit a proposal, I told

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1 him that he would be perfect -- I would be perfectly
2 willing to listen to his proposal.
3 **Q. Didn't you, in fact, tell staff that the horse**
4 **had already left the barn and you weren't -- wouldn't**
5 **consider his ideas?**
6 A. That was after two weeks. That was the time
7 frame. I did not receive any proposal. Even to this
8 day, I have not received any proposal from Mr. Aguirre.
9 **Q. Didn't you get an email from Mr. Aguirre that**
10 **he was prepared to send you a proposal on December 21st?**
11 A. By that time, the agreement was signed. And
12 that was well -- that was over three weeks after I had
13 met with him. We met with him, I believe, on
14 November 29th.
15 **Q. Did you give a commitment to Councilman Alvarez**
16 **that you would not move forward with the agreement until**
17 **Mr. Aguirre and Grand Central had an opportunity to**
18 **submit his management proposal?**
19 A. And that was in the context of giving him --
20 when I asked him how long it would take, he said I'll
21 have it to you in two weeks and I said that's fine.
22 When I didn't receive it in two weeks, I didn't
23 feel obliged to reach out to him saying are you going to
24 give me a proposal.
25 I gave him an opportunity to propose. He

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1 didn't propose. I went ahead with the contract.
2 **Q. Okay.**
3 A. And I did not feel that what I said to
4 Mr. Alvarez was in any conflict of that.
5 **Q. Did Mr. Alvarez's letter indicate there was any**
6 **time limit on this commitment?**
7 **MR. LIEDLE: Well, the letter speaks for**
8 **itself. If you want to show him the letter.**
9 **BY MR. MOOT:**
10 **Q. Why don't you look at Exhibit 17.**
11 **MR. LIEDLE: And you want him to read the whole**
12 **letter?**
13 **MR. MOOT: No, the second-to-last paragraph.**
14 **MR. LIEDLE: Well, just foundationally, do you**
15 **recognize this letter, Mr. Jablonski?**
16 **THE WITNESS: Yes.**
17 **MR. LIEDLE: Okay.**
18 **BY MR. MOOT:**
19 **Q. This is a letter received from**
20 **Councilman Alvarez?**
21 A. Mm-hmm. Yes.
22 **Q. And it states, I believe we would be able to**
23 **review -- "I believe we were able to review many of the**
24 **community concerns at our November meeting, and I**
25 **appreciate your commitment not to move forward with the**

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1 **agreement until Mr. Aguirre of Grand Central West has**
2 **had an opportunity to submit his management proposal."**
3 **Did you make such a commitment to him?**
4 A. I made a commitment when I asked him how long
5 it would take to get me a proposal, he said I will have
6 it to you in two weeks. I said that's fine.
7 Two weeks passed, no proposal, I went ahead and
8 signed the agreement.
9 **Q. Did Mr. Alvarez indicate to you that his --**
10 **that your commitment was only for two weeks?**
11 **MR. LIEDLE: Well, obviously not. It's not in**
12 **the letter.**
13 **BY MR. MOOT:**
14 **Q. Did you ever communicate to Mr. Aguirre that**
15 **the proposal had to be in in two weeks?**
16 A. Yes. That's the conversation we had in his
17 building with Mr. Gomez.
18 **Q. And did Mr. Aguirre send you an email that his**
19 **proposal was ready to be sent to you?**
20 A. On what day?
21 **Q. On December 18th.**
22 A. Do you have a copy of that email?
23 **Q. You don't remember him sending you it?**
24 A. I don't recall that.
25 **Q. That he was prepared to submit his proposal?**

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1 A. You just told me it was September --
 2 December 21st a few minutes ago.
 3 **MR. LIEDLE: So do you have an email?**
 4 **THE WITNESS: Do you have an email to that**
 5 **regard?**
 6 **MR. MOOT: Sure.**
 7 **BY MR. MOOT:**
 8 **Q. You don't remember he sent you an email saying**
 9 **he was ready to submit his proposal?**
 10 A. No, I don't. No, I don't.
 11 **Q. Well, then look at Exhibit 271.**
 12 A. 271?
 13 **Q. 271 or 94. It's been marked both ways. Which**
 14 **one are you at? 271?**
 15 **MR. LIEDLE: Yeah, it's 271.**
 16 **THE WITNESS: And once again, even the 18th,**
 17 **even the 18th was more than two weeks after I met with**
 18 **him. And this was, in fact, sent the day that I signed**
 19 **the agreement.**
 20 **BY MR. MOOT:**
 21 **Q. My question is, did you receive this email from**
 22 **Mr. Aguirre --**
 23 A. I don't know.
 24 **Q. -- that was to you and Mr. Alvarez on**
 25 **December 18th saying that he was prepared to present his**

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1 **BY MR. MOOT:**
 2 **Q. No one relayed your comment that you weren't**
 3 **going to consider it?**
 4 A. I don't know that. Maybe somebody did.
 5 **Q. Now if you look at the email right before**
 6 **Mr. Aguirre's.**
 7 A. What -- what tab?
 8 **MR. LIEDLE: We are on the same tab, 271.**
 9 **MR. MOOT: 271.**
 10 **MR. LIEDLE: The same thing, 271. That same**
 11 **email. There's a lower email from Mr. Alvarez. This is**
 12 **referring to this.**
 13 **THE WITNESS: December 12, please see attached**
 14 **letter. That was the letter I think that he sent to me.**
 15 **BY MR. MOOT:**
 16 **Q. That's my question. Was the email that's at**
 17 **the bottom of 271 --**
 18 A. That's the only -- that's the only letter he
 19 sent to me since he says in here "please see attached
 20 letter," I'm assuming that.
 21 **Q. And so five days after you got the letter from**
 22 **Councilman Alvarez, Mr. Aguirre informed you that he's**
 23 **prepared to present his proposal; is that correct?**
 24 **MR. LIEDLE: Documents speak for themselves and**
 25 **assuming that the time/date is correct.**

204

1 **proposal on Friday the 21st?**
 2 A. I don't recall that I got this.
 3 **Q. Do you recall your response?**
 4 **MR. LIEDLE: Back to Mr. Aguirre?**
 5 **BY MR. MOOT:**
 6 **Q. No, to your staff.**
 7 A. The horse has already left the barn. I think
 8 I've read that one. That's because I had already signed
 9 the agreement.
 10 **Q. So you signed the agreement before you gave**
 11 **Mr. Aguirre an opportunity to present his proposal?**
 12 A. No, Mr. Aguirre had two weeks from our day of
 13 our meeting to submit the proposal. He did not submit
 14 it within that time frame. I went ahead and signed.
 15 **Q. Well --**
 16 A. And, in fact, I never got a proposal. Even
 17 after that. I never received a proposal from
 18 Mr. Aguirre.
 19 **Q. Well, didn't you communicate that the horse had**
 20 **left the barn and there was no --**
 21 A. Not to Mr. Aguirre.
 22 **Q. Well, was your comment then relayed to**
 23 **Mr. Aguirre that you weren't going to consider it?**
 24 A. No.
 25 **MR. LIEDLE: Calls -- okay.**

203

1 **BY MR. MOOT:**
 2 **Q. Is that accurate?**
 3 A. Yes, I believe that's accurate.
 4 **Q. And within that five-day time period, you went**
 5 **ahead and signed the agreement?**
 6 A. That's correct.
 7 **Q. And --**
 8 **THE WITNESS: Do you mind if we take a break?**
 9 **I have to go to the bathroom.**
 10 **BY MR. MOOT:**
 11 **Q. -- is there a particular reason that you did**
 12 **not tell --**
 13 **THE WITNESS: I asked for a break before your**
 14 **question.**
 15 **MR. MOOT: Oh, sure. Absolutely.**
 16 **THE WITNESS: Thanks.**
 17 **(2:24 p.m.)**
 18 **(A recess was taken.)**
 19 **(2:28 p.m.)**
 20 **BY MR. MOOT:**
 21 **Q. Did you then sign the agreement the same day**
 22 **that you received the email from Mr. Aguirre stating you**
 23 **wanted to schedule a time on the 21st to present his**
 24 **proposal?**
 25 A. I don't recall exactly when I signed the

205

1 agreement.

2 **Q. Do you recall that the agreement -- for**

3 **effective purposes was December 18, 2012?**

4 A. Yes.

5 **Q. Do you recall whether it was actually routed**

6 **and signed that day?**

7 A. I don't recall that.

8 **Q. Did you have any discussions with Ms. Cooney**

9 **about Mr. Alvarez's letter?**

10 A. I may have.

11 **Q. And did you ever inform her to tell**

12 **Brad Saunders that you had received a formal request not**

13 **to sign the agreement from Mr. Alvarez?**

14 A. I may have. I don't recall.

15 **Q. And do you recall Mr. Saunders' response to**

16 **Ms. Cooney when he learned of this?**

17 A. No, I do not.

18 **Q. If you could open up to Exhibit 270.**

19 A. What would you like me to look at?

20 **Q. There's an email from Mr. Saunders on**

21 **December 12 to Ms. Cooney, and it says, "I spoke with**

22 **Louise from UETA after meeting, and his advice was for**

23 **us to sign our agreement with MTS as soon as possible.**

24 **He said the way they were talking after we left the**

25 **meeting if the community gets too involved, it could be**

206

1 A. What should be discussed?

2 **MR. LIEDLE: Yeah, that's what I was trying**

3 **to --**

4 **BY MR. MOOT:**

5 **Q. Mr. Alvarez's formal request that MTS not sign**

6 **the agreement.**

7 A. Not that I recall.

8 **Q. Did Ms. Cooney ever share with you her**

9 **communication to Mr. Saunders on December 12 that the**

10 **discussion would be in an open session, we just had to**

11 **figure out how it would be handled?**

12 A. I wasn't copied on the email so no.

13 **Q. So Ms. Cooney acted without your knowledge?**

14 A. Acted in what way?

15 **Q. In communicating to Mr. Saunders that it would**

16 **be discussed in open session.**

17 A. What would be discussed in open session?

18 **Q. Mr. Alvarez's formal request that MTS not sign**

19 **the agreement.**

20 A. Yeah, I -- I don't recall that. And anyway,

21 it's really a moot point because Mr. Alvarez could have

22 easily raised the issue himself during the board

23 meeting. So it didn't -- wasn't predicated that staff

24 do that. Mr. Alvarez could have easily done it himself.

25 **Q. That's interesting because I deposed**

208

1 **delayed indefinitely."**

2 **Did that information from Mr. Saunders to**

3 **Ms. Cooney get relayed to you?**

4 A. No.

5 **Q. Is the reason that you went and signed the**

6 **agreement right after that because Mr. Saunders had**

7 **communicated to your office that if you let this go too**

8 **far, the agreement would be delayed?**

9 A. No.

10 **Q. Did you discuss with Ms. Cooney to communicate**

11 **to Mr. Saunders that David Alvarez had sent a formal**

12 **request that they not -- that MTS not sign the**

13 **agreement?**

14 A. I may have. I don't recall specifically.

15 Sharon Cooney is in charge of government relations and

16 so any communications with board members as well as

17 elected officials, she would be informed of.

18 **Q. Did you and Ms. Cooney discuss that --**

19 **discussing the matter in open session with the board?**

20 **MR. LIEDLE: Can you ask that again, Counsel.**

21 **I think that's vague the way you asked it.**

22 **BY MR. MOOT:**

23 **Q. Did you and Ms. Cooney then discuss whether or**

24 **not this should be discussed in an open session of the**

25 **board?**

207

1 **Mr. Alvarez and when I asked him about this, your**

2 **attorney objected on the attorney-client privilege. So**

3 **was this then discussed in a closed-session meeting?**

4 A. I'm just -- I'm just stating a fact that a

5 board member can bring up anything at a board meeting.

6 **MR. LIEDLE: That's not privileged. He's just**

7 **talking about procedures, Counsel.**

8 **BY MR. MOOT:**

9 **Q. Did you tell Mr. Alvarez to go ahead and bring**

10 **it up at a open board meeting --**

11 A. No.

12 **Q. -- if he was concerned about it?**

13 A. No.

14 **Q. Did you sit down with him and tell him he**

15 **should stop complaining about this --**

16 A. Of course not.

17 **Q. -- and go ahead and sign the agreement?**

18 A. Of course not.

19 **Q. What did you tell Mr. Alvarez about his letter?**

20 A. You know, the only thing that I think his

21 letter resulted in was he and I coming down there to sit

22 down with primarily Mr. Gomez and -- and talk to him

23 about what our plans were, especially with respect to

24 wildcatting and security and everything else.

25 **Q. Did any of your staff advise you that they had**

209

1 a 2010 proposal for Mr. Aguirre --
 2 A. I think you've asked that question of me
 3 already.
 4 MR. LIEDLE: Yeah.
 5 BY MR. MOOT:
 6 Q. No one told you that?
 7 A. No. I think I answered that.
 8 MR. LIEDLE: This morning.
 9 BY MR. MOOT:
 10 Q. Now, did Mr. Saunders ever inquire of you or
 11 anyone at MTS about a meeting he had with Mr. Alvarez --
 12 that MTS had with Mr. Alvarez on the 18th?
 13 MR. LIEDLE: Can you ask that again, Counsel.
 14 I'm a little confused about the time.
 15 THE WITNESS: I don't understand the question.
 16 BY MR. MOOT:
 17 Q. Did MTS have a meeting with Mr. Alvarez on the
 18 18th of December?
 19 A. I don't recall that we did.
 20 Q. If you look at Exhibit 104.
 21 MR. LIEDLE: 104, Counsel?
 22 MR. MOOT: Correct.
 23 THE WITNESS: Okay. I'm at 104. What's the
 24 question?
 25

210

1 about a meeting with Alvarez on Wednesday the 19th?
 2 A. No.
 3 Q. Did you receive the email from Mr. Aguirre the
 4 day before on the 18th?
 5 A. I think that's what day the email was -- was
 6 dated, wasn't it?
 7 Q. Yes.
 8 A. Okay.
 9 Q. So did you tell Mr. Alvarez on the 19th that
 10 you weren't going to consider his proposal anyways?
 11 MR. LIEDLE: Calls for speculation, based on
 12 previous response.
 13 THE WITNESS: I don't recall that I said that.
 14 BY MR. MOOT:
 15 Q. Well, what happened -- how did this meeting
 16 with Mr. Alvarez end on Wednesday the 19th?
 17 A. I don't know.
 18 Q. Did anybody at MTS communicate to them that
 19 they weren't going to consider Mr. Aguirre's proposal on
 20 the 19th?
 21 A. I don't recall. And I still bring up the fact
 22 that we never did receive a proposal from Mr. Aguirre.
 23 Q. Well, did you ever agree to meet with him on
 24 the 21st to get the proposal?
 25 A. No.

212

1 BY MR. MOOT:
 2 Q. I said, was there a meeting with Mr. Alvarez on
 3 Wednesday the 18th?
 4 A. Am I missing something here?
 5 MR. LIEDLE: Yeah, there's nothing.
 6 BY MR. MOOT:
 7 Q. There's an email from Brad Saunders to
 8 Karen Landers and Juan Antonio Lopez that says, "How did
 9 the meeting go with Alvarez on Wednesday and why."
 10 The email is dated December 21st, doing the
 11 math, going back to Wednesday, that would be the 18th;
 12 correct?
 13 A. The 18th -- how did the meeting go with
 14 Alvarez.
 15 MR. LIEDLE: That would be the 19th.
 16 THE WITNESS: Wednesday would have been the
 17 19th.
 18 MR. LIEDLE: Right.
 19 BY MR. MOOT:
 20 Q. Did you have a meeting with Mr. Alvarez, then,
 21 on Wednesday the 19th?
 22 A. I don't recall that I did, no.
 23 MR. LIEDLE: Okay.
 24 BY MR. MOOT:
 25 Q. Do you know why Mr. Saunders was inquiring

211

1 Q. Why not?
 2 A. Because the agreement had been signed by that
 3 point, that I gave him two weeks. We agreed to two
 4 weeks. Two weeks at best and it was -- it was done. I
 5 presume if he was intent on it and had a concrete
 6 proposal, that he would have gotten to me within the two
 7 weeks that we had agreed upon.
 8 Q. To you, waiting an extra four days was too
 9 much?
 10 A. I didn't feel any obligation to wait beyond
 11 that. The board had already voted to it. We were ready
 12 to go. I gave him an opportunity to submit a proposal.
 13 He didn't submit a proposal. I mean, it's not my
 14 obligation to follow up with Mr. Aguirre.
 15 Q. And did you ever advise Mr. Wells when he
 16 submitted his letter on December 20th, 2012, that you
 17 already signed the --
 18 A. I think I answered the question that I did not
 19 respond to his letter.
 20 Q. So as the CEO, you just took it upon yourself
 21 to sign the agreement and move forward despite the
 22 community concerns?
 23 A. No, I did not take it upon myself. I did it
 24 with the vote of the board with their authorization to
 25 do so.

213

1 **Q. Was the board ever notified of these community**
 2 **concerns and these letters before you signed the**
 3 **agreement?**
 4 A. They may have had copies of the letters.
 5 I think we were clear in the presentation that
 6 we made to the board that this is the procurement method
 7 or if you want to call it that or the method we used to
 8 enter into this agreement.
 9 **Q. And you felt the board clearly understood that**
 10 **you had not gone out to the community and solicited any**
 11 **input before the agreement?**
 12 A. Sure. Yes. Yes, I do.
 13 **Q. And it was your understanding that the board**
 14 **was fine with that?**
 15 A. They raised no objections to it.
 16 **Q. Is it true that the notice for the award SYPS**
 17 **was only posted on the website at the downtown office?**
 18 A. I don't recall when it was noticed.
 19 **Q. Do you recall that the notice was not**
 20 **circulated in San Ysidro where the facility was located?**
 21 A. I'm not sure that is a requirement.
 22 **Q. Regardless of whether it's a requirement or**
 23 **not, did that not occur?**
 24 A. I have no idea.
 25 **Q. Do you think that it would have been a good**

214

1 **idea to circulate the notice so that if the public was**
 2 **concerned, they could come and address the board?**
 3 A. We have obligations for making things public.
 4 I think we complied with that.
 5 **Q. So you did the minimal effort --**
 6 A. We did what was required.
 7 **Q. -- to comply with public notice?**
 8 A. We did what was required.
 9 **Q. So you did what was required and no more?**
 10 A. That's correct. I presume. I'm not
 11 responsible for posting that, somebody else was.
 12 **Q. Let me ask the question --**
 13 **MR. LIEDLE: Wait.**
 14 **BY MR. MOOT:**
 15 **Q. Are you done?**
 16 A. Yes.
 17 **Q. I'm sorry.**
 18 **How was the public to know to come to the**
 19 **meeting if you did not go out and solicit their input?**
 20 **MR. LIEDLE: Assumes facts, assumes that what**
 21 **they did was --**
 22 **THE WITNESS: Agendas are posted 72 hours**
 23 **before.**
 24 **BY MR. MOOT:**
 25 **Q. And did you assume that anybody who might be**

215

1 **interested in this award to SYPS would be monitoring**
 2 **your website?**
 3 A. Well, they were.
 4 **Q. Who --**
 5 A. Mr. Aguirre was at the meeting so he knew.
 6 **Q. On December 18th?**
 7 **MR. LIEDLE: You're talking --**
 8 **BY MR. MOOT:**
 9 **Q. Excuse me, on October 18?**
 10 A. October 18th.
 11 **Q. He was at the meeting?**
 12 **THE WITNESS: I think you were. No?**
 13 **MR. LIEDLE: No.**
 14 **BY MR. MOOT:**
 15 **Q. Isn't it true that nobody in the community**
 16 **spoke at the October 18th meeting?**
 17 **MR. LIEDLE: The minutes speak for themselves,**
 18 **Counsel.**
 19 **MR. MOOT: The minutes speak what, Matt?**
 20 **MR. LIEDLE: For themselves.**
 21 **MR. MOOT: What did they say, Matt?**
 22 **THE WITNESS: Is he being deposed?**
 23 **MR. LIEDLE: Now he has me under oath.**
 24 **MR. MOOT: He says the meetings speak for**
 25 **themselves.**

216

1 **THE WITNESS: You're not under oath so how can**
 2 **you answer.**
 3 **MR. MOOT: I have yet to hear a piece of paper**
 4 **speak. So this is a curious objection.**
 5 **BY MR. MOOT:**
 6 **Q. Isn't it true, Mr. Jablonski, that no members**
 7 **of the public attended the meeting?**
 8 A. I would have to review the minutes and see who
 9 spoke, okay?
 10 **Q. All right.**
 11 A. I recall Mr. Aguirre being at one of our board
 12 meetings. I recall Mr. Gomez being at one of our board
 13 meetings. I recall, I believe, Mr. Wells, I think
 14 Mr. Wells was there also. What dates and when they were
 15 there, I don't recall.
 16 **Q. And you would rely on the minutes on the issue**
 17 **of whether or not any public member actually spoke at**
 18 **the meeting?**
 19 A. Sure. Yeah.
 20 **Q. Did you have any reason to believe that the**
 21 **letters you received from the BTC and the San Ysidro**
 22 **Border Coalition and Casa Familiar were not accurate and**
 23 **that they were not informed of the meeting?**
 24 **MR. LIEDLE: Vague, calls for speculation, also**
 25 **assumes facts.**

217

1 **THE WITNESS: I don't know what they knew or**
2 **what they didn't know. They must have known something.**
3 **They wrote a letter.**
4 **BY MR. MOOT:**
5 **Q. After the meeting. Is that correct?**
6 A. I think the dates were after the letter. After
7 the meeting.
8 **MR. LIEDLE: After the meeting.**
9 **BY MR. MOOT:**
10 **Q. Now, was the agreement you entered into with**
11 **SYPS modified in November of 2015?**
12 A. I believe that was -- you're referring to the
13 date of the first amendment?
14 **Q. Yes.**
15 A. Yes.
16 **MR. LIEDLE: If that's accurate, yes.**
17 **BY MR. MOOT:**
18 **Q. Now, would it be accurate to state that**
19 **generating revenue from the private use of the land that**
20 **was acquired by MTS was a secondary goal of the lease?**
21 A. The primary goal of the lease was to manage
22 intercity bus operations at San Ysidro. That was the
23 primary purpose. And to make improvements in that
24 facility for the benefit of the operators as well as the
25 public.

218

1 **Q. If you could open up --**
2 A. The revenue, okay, was something that would be
3 nice. But as I stated before, I did not impose the
4 passenger fees that the pro formas proposed because I
5 did not want to put that on the people.
6 **Q. If you could open up to Exhibit 29.**
7 A. Okay.
8 **MR. LIEDLE: This is the November 12, 2015.**
9 **BY MR. MOOT:**
10 **Q. If you could open up to page 4.**
11 A. Okay.
12 **MR. LIEDLE: Minutes. Not minutes, I'm sorry.**
13 **Agenda Item 31.**
14 **THE WITNESS: Yes. Page 4.**
15 **BY MR. MOOT:**
16 **Q. It indicates in the third paragraph on page 4,**
17 **second sentence, that "generating revenue from the**
18 **private use of the public-owned land is an important**
19 **secondary goal of the lease."**
20 **Is that an accurate statement?**
21 A. I think generally, it is, yes.
22 **Q. What about that statement may not be accurate?**
23 A. I didn't say that. I said generally, I think
24 it is.
25 **Q. I didn't know whether generally was a**

219

1 **qualification.**
2 A. Well, generating revenue, I feel it's part of
3 my job to try to generate revenue wherever I can. In
4 this particular case, getting the facility built,
5 getting the facility managed properly, having a place
6 where people can get intercity buses, that was the
7 primary goal.
8 **Q. So the primary goal was to manage the property?**
9 A. I just told you what the goals were.
10 **Q. So the primary goal was management of the**
11 **property. The secondary goal was to generate revenue?**
12 A. The primary goals were to manage the property,
13 to build the facility, and to improve the conditions for
14 the public as well as the carriers and improve security.
15 **Q. So --**
16 A. The secondary goal was to do revenue.
17 Otherwise if that was the primary goal, I would have
18 instituted the passenger fees right up front. I did
19 not.
20 **Q. So the priority, then, was to improve the**
21 **Rail Court facility and management for the private**
22 **carriers that operated there, that would have been,**
23 **then, the primary purpose?**
24 A. Mm-hmm. Yes.
25 **Q. As of 2015, November 2015, this contract had**

220

1 **been in place --**
2 A. And, in fact, the next paragraph speaks to the
3 elimination of the proposed passenger fee.
4 **Q. Right. So the agreement had been in effect for**
5 **almost three years and produced no revenue --**
6 **MR. LIEDLE: To MTS.**
7 **BY MR. MOOT:**
8 **Q. -- correct?**
9 A. The purpose of this agenda item was to inform
10 the board through an addendum to the contract that the
11 cost to -- to do the work down there had -- had
12 increased substantially. And you're amending the lease
13 to provide for the payback of that.
14 **Q. So as of November 15, the agreement in place**
15 **for three years and produced no revenue to the public**
16 **agency?**
17 A. Not quite three years. But close.
18 **Q. Now, did you give any consideration for**
19 **terminating the agreement because it was not performing**
20 **as represented?**
21 A. No.
22 **Q. Well, in March of --**
23 A. In terms of its primary purposes, it was
24 performing well.
25 **Q. How much revenue did the Greyhound group and**

221

1 **Mr. Saunders represent to you this agreement was going**
 2 **to produce when they proposed it to you in March of**
 3 **2012?**
 4 A. I think the pro formas that were originally
 5 done suggested that maybe we could earn up to 140,000 a
 6 year. But once again, and I think this is the fourth
 7 time I've answered this question, or commented on it, is
 8 that that was predicated on passenger ticket fees. And
 9 I did not impose those passenger ticket fees.
 10 **Q. Well, when is --**
 11 A. So I knew that when I did that. I knew that
 12 those -- those revenues for -- under this agreement
 13 would be more difficult to achieve.
 14 **Q. And March of 2012, did the Greyhound group of**
 15 **Mr. Saunders come to you with this unsolicited proposal**
 16 **and make representations to you that they could produce**
 17 **revenue to MTS for -- of \$98,000 a year?**
 18 **MR. LIEDLE: Is there something you can show**
 19 **him? Are you asking him if he has an independent**
 20 **recollection --**
 21 **MR. MOOT: Right.**
 22 **MR. LIEDLE: -- as he sits here today?**
 23 **THE WITNESS: All I can definitely recollect**
 24 **is that their proposal was one that said we would like**
 25 **to -- we would like to take over the property, manage**
 222

1 **board?**
 2 A. I don't recall.
 3 **Q. If you look at page 5.**
 4 A. Of what?
 5 **Q. Exhibit 2.**
 6 A. Okay.
 7 **Q. It could be the attachment of -- did you**
 8 **understand that the exhibit to this email was their**
 9 **proposal?**
 10 A. Yes.
 11 **Q. And would it be accurate, then, that they were**
 12 **representing to MTS that in Year 1 they would pay**
 13 **\$98,498 to MTS?**
 14 A. Yeah, it was. But it was predicated on a
 15 couple of things. One of them was the expenditure of
 16 their initial assessment of what it would cost to build
 17 out there, which, as we know because of the addendum was
 18 not true. And secondly, that it also presupposed that
 19 we would allow them to implement passenger fees, which
 20 we did not do that.
 21 **Q. Well, did you tell them in March of 2012 you**
 22 **wouldn't let them impose passenger fees?**
 23 A. No. No.
 24 **Q. Did you have anybody independently verify that**
 25 **they could generate \$207,000 in passenger fees?**
 224

1 **the intercity bus terminal, invest the money that we got**
 2 **from the GSA into improving the terminal, and by getting**
 3 **other tenants and by slip fees and by passenger ticket**
 4 **fees, we think we can generate revenue for you.**
 5 **BY MR. MOOT:**
 6 **Q. And did they represent to you in March of 2012**
 7 **that they would -- they would generate \$98,000 for MTS?**
 8 A. That's in the ballpark.
 9 **Q. If you look at Exhibit 2.**
 10 **MR. LIEDLE: Do you want to look at the whole**
 11 **document, Counsel, or is there one thing?**
 12 **MR. MOOT: I'm just going to ask quickly.**
 13 **BY MR. MOOT:**
 14 **Q. Was this an email that Brad Saunders sent to**
 15 **you with the proposal to take over the management of the**
 16 **bus parking operations?**
 17 A. Yeah, I believe I remember this proposal.
 18 **Q. And if you go to the exhibit to it, this was**
 19 **the proposal that was being presented to you?**
 20 A. This was at least one of them.
 21 **Q. Was this the proposal that you took to the**
 22 **executive board of MTS?**
 23 A. In March of 2012 to the executive board?
 24 **Q. Yeah, did you present this proposal after**
 25 **receiving this email to the executive committee of the**
 223

1 A. Well, yeah, you could. It depends on how much
 2 you charged everybody.
 3 **Q. Yeah, but you didn't independently verify**
 4 **whether that amount of money could be generated?**
 5 A. Well, we had discussions around that if I
 6 recall.
 7 **Q. And wasn't the representation that this was a**
 8 **proposal that would generate \$98,000 a year?**
 9 A. This was -- this was a pro forma that they
 10 prepared as part of their proposal for us to consider.
 11 **Q. Did you take this proposal to the MTS executive**
 12 **board?**
 13 A. We may have. We had nothing to hide here.
 14 **Q. You didn't present this March proposal at a**
 15 **public meeting?**
 16 A. Well, if it went to the executive committee, it
 17 wasn't a public meeting.
 18 **Q. Were you aware, in fact, it was presented at a**
 19 **closed meeting?**
 20 A. I don't recall that.
 21 **Q. You don't recall that the agenda statement from**
 22 **March 18th was for a closed executive meeting?**
 23 A. Regarding this?
 24 **Q. Correct.**
 25 A. It may have been to negotiate terms for a
 225

1 property transaction.
2 **Q. So you didn't agendize it for an open meeting**
3 **and then go into closed session to negotiate the terms;**
4 **is that correct?**
5 A. I don't know. I would have to see the agenda.
6 Do you have the agenda? And I can comment on it.
7 **Q. I don't have it with me, but your counsel has**
8 **it.**
9 A. It's all subject to closed session. I can't
10 tell you what was in that.
11 **Q. Well, you can't tell me what happened at the**
12 **meeting.**
13 A. I can tell you what the law allows for us in
14 closed session.
15 **Q. Right. But it wasn't noticed for an**
16 **open-session discussion.**
17 A. That's -- typically, closed sessions are not.
18 **Q. So you didn't want the public to know about**
19 **SYPS's proposal in March of 2012, would that be**
20 **accurate?**
21 A. No, I don't think that's accurate.
22 **MR. LIEDLE: Mischaracterizes the testimony.**
23 **BY MR. MOOT:**
24 **Q. Well, if you wanted the public to know about**
25 **it, you could have agendized it as an open-session item;**

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1 **think maybe we should do an RFP and see whether we can**
2 **get a better deal.**
3 **MR. LIEDLE: Calls for speculation.**
4 **BY MR. MOOT:**
5 **Q. That was an option available to you; correct?**
6 A. Yeah, it's always an option. But this is not
7 the first time this has happened. We get solicited --
8 we get unsolicited proposals for real estate
9 transactions all the time, and we don't go out for
10 proposals on it.
11 **Q. That's a practice that you have at MTS?**
12 A. Sometimes the board and the executive committee
13 says we need to have more competition to this.
14 Sometimes they look at the situation and say, you know,
15 this is a pretty good proposal. It's not likely that we
16 are going to get any better from anybody else.
17 You know, we just did a joint development for
18 a -- transferring to development on one of the rail
19 stations on the Orange Line, that's exactly the way it
20 went down. There is nobody else interested in the
21 property and doing development.
22 **Q. Well, your staff knew that there were other**
23 **people interested in managing the property in March;**
24 **correct?**
25 **MR. LIEDLE: Argumentative, calls for**

228

1 is that true?
2 **MR. LIEDLE: Again, mischaracterizes the**
3 **testimony and what he's explaining, Counsel. And**
4 **argumentative.**
5 **THE WITNESS: I don't know how to answer it.**
6 **There was never anything -- there was never a conscious**
7 **decision to hide this from the public. It was a real**
8 **estate transaction.**
9 **And as such, I presume in that March time frame**
10 **that we went to executive committee to discuss terms of**
11 **price. Because that's what's allowed by the Brown Act.**
12 **BY MR. MOOT:**
13 **Q. But you did let the public know that you were**
14 **soliciting or had been solicited for a proposal to**
15 **change the management?**
16 **MR. LIEDLE: Vague, calls for speculation.**
17 **THE WITNESS: Yeah, I -- there was no mechanism**
18 **for us to do that.**
19 **BY MR. MOOT:**
20 **Q. Other than an RFP?**
21 **MR. LIEDLE: Assumes facts.**
22 **BY MR. MOOT:**
23 **Q. On March 18 -- March 9th, you could have gone**
24 **to the executive committee and said we have received an**
25 **unsolicited proposal that would generate \$98,000. We**

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1 **speculation.**
2 **THE WITNESS: What was the question?**
3 **BY MR. MOOT:**
4 **Q. I said your staff knew there were other persons**
5 **interested in submitting a proposal in March of 2012;**
6 **correct?**
7 **MR. LIEDLE: Calls for speculation.**
8 **THE WITNESS: I don't -- I don't -- I don't**
9 **agree with that.**
10 **BY MR. MOOT:**
11 **Q. So Mr. Allison never informed you that, in**
12 **fact, Mr. Aguirre had submitted a proposal in December**
13 **and would be interested in submitting a proposal?**
14 A. In 2010?
15 **Q. Yeah.**
16 A. That's what you said. That's not -- you said
17 in December made it sound like it was --
18 **Q. I'm sorry, in December 2010, were you advised**
19 **that Mr. Aguirre had submitted a proposal --**
20 A. You asked me that question already.
21 **Q. -- to Mr. Allison?**
22 A. You asked me that question already --
23 **MR. LIEDLE: Asked and answered.**
24 **THE WITNESS: -- and I answered that.**
25

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1 **BY MR. MOOT:**
2 **Q. You answered no.**
3 A. Correct.
4 **Q. Now, did Mr. Allison ever tell you when this**
5 **proposal came in March of 2012 that he was aware of**
6 **someone else who might like to submit a proposal?**
7 A. No.
8 **Q. Would you have liked to have known that?**
9 **MR. LIEDLE: Calls for speculation, assumes**
10 **facts.**
11 **BY MR. MOOT:**
12 **Q. Would you have liked to know that?**
13 **MR. LIEDLE: Same objections.**
14 **THE WITNESS: Yeah, I don't know what I would**
15 **have thought of at that time. Maybe, maybe not.**
16 **BY MR. MOOT:**
17 **Q. You already committed to Greyhound by March of**
18 **2012?**
19 A. No, not at all. Not at all. We didn't commit
20 to Greyhound until I signed the lease on or about
21 December of later that year.
22 **Q. You didn't sign the lease --**
23 A. Nine months, ten months later; right.
24 **Q. -- until before Mr. Aguirre could submit a**
25 **proposal.**

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1 **have a recollection, Mr. Jablonski?**
2 **THE WITNESS: I think there's something in**
3 **there about the proposal. Yeah, the whole proposal is**
4 **in there. It's all in there.**
5 **BY MR. MOOT:**
6 **Q. So what were they now representing they were**
7 **going to pay to MTS?**
8 A. It's on the front page of the agenda item says
9 approximately 105- to 140,000 in annual revenue
10 beginning in calendar year 2014.
11 **Q. So if we look at page --**
12 A. That's because the pro forma presumed or
13 assumed that there would be enough revenue generated to
14 pay back their investment in the next two years and then
15 we would start to receive a cut of 65 percent.
16 **Q. So would it be accurate, then, to say that they**
17 **upped the amount of money that they were going to pay to**
18 **MTS between March 8 and October --**
19 A. Well, you said --
20 **Q. -- 18?**
21 A. The first one was 98,000. This is 105. So it
22 was 7,000 more.
23 **Q. Why don't you look at page 5 of their proposal.**
24 A. Of which proposal?
25 **Q. The one you presented to the board.**

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1 **That's when you signed the lease.**
2 A. Not that I'm aware of, no. I think I gave him
3 his two weeks and he didn't submit a proposal and then I
4 signed the agreement.
5 **Q. Now, in October of 2012, what was this**
6 **Greyhound --**
7 A. And I will say it again for the record that
8 Mr. Aguirre never did send a proposal.
9 **Q. Other than in December of 2010?**
10 A. No, he didn't. Not to my knowledge that he
11 did.
12 **Q. So your staff let you down and didn't tell you**
13 **about this other proposal?**
14 **MR. LIEDLE: Gosh, vague as to let down,**
15 **argumentative.**
16 **THE WITNESS: I'm not going to answer that**
17 **question.**
18 **BY MR. MOOT:**
19 **Q. On October 18, 2012, what was the Greyhound**
20 **group that Mr. Saunders representing they would pay to**
21 **MTS?**
22 A. Is it part of the agenda item? What item --
23 **MR. LIEDLE: Do you want him to take a look at**
24 **it, Counsel, from the slides? It's in 4.1. If you need**
25 **to -- independent of looking at the document, do you**

231

1 A. Okay.
2 **Q. Were they representing that in Year 2, they**
3 **were going to pay \$175,000?**
4 A. Yeah, that's what it says.
5 **Q. And Year 3, 175,000?**
6 A. Mm-hmm.
7 **MR. LIEDLE: 176,000.**
8 **BY MR. MOOT:**
9 **Q. 176?**
10 A. 176.
11 **Q. And then in Year 4, 176?**
12 A. Yes.
13 **Q. And in Year 5, 177?**
14 A. 177, yes.
15 **Q. What did they tell you --**
16 A. Also, once again, we've pointed this out
17 several times, it also presumed we would collect
18 passenger fees of 207,000 on that. So without imposing
19 those passenger fees, then it's almost inconceivable
20 that we would generate 170,000 to MTS by not doing that.
21 **Q. Was Greyhound representing to you and the board**
22 **that they were going to impose these passenger fees on**
23 **the day it was approved?**
24 A. Greyhound was prepared to do that. They were
25 prepared to propose -- to implement the fees. As I told

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1 you, I am the one that was reluctant to impose the fees
2 on those people.

3 **Q. Were you aware on October 18th when you**
4 **presented this item to the board that there was a**
5 **reluctance to oppose passenger fees?**

6 A. No.

7 **Q. Did you --**

8 A. That happened afterwards.

9 **Q. So you didn't then make any query of the users**
10 **of the SYTTC whether these passengers fees would be**
11 **acceptable?**

12 **MR. LIEDLE: Before the board --**

13 **BY MR. MOOT:**

14 **Q. Before you presented to the board that this**
15 **agreement would pay MTS \$175,000?**

16 A. No, no. No.

17 **Q. So you made no effort to determine whether what**
18 **was being proposed was actually something that was**
19 **doable?**

20 **MR. LIEDLE: Argumentative.**

21 **THE WITNESS: I knew it was doable.**

22 **BY MR. MOOT:**

23 **Q. Did you ever inform the board that these**
24 **passenger fees may not be imposed?**

25 A. No.

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1 **Q. As the CEO, when you learned that the passenger**
2 **fees might not be acceptable, did you then immediately**
3 **take the agreement back to the board?**

4 A. No. I still have the ability to impose the
5 fees if we want to under the contract.

6 **Q. Was the agreement with SYPS approved without**
7 **providing for any bathrooms?**

8 **MR. LIEDLE: Vague.**

9 **THE WITNESS: Well, there was no bathrooms**
10 **built at the time. But they were envisioned that they**
11 **would be built.**

12 **BY MR. MOOT:**

13 **Q. When the original agreement was approved, was**
14 **bathrooms part of the public facilities that was going**
15 **to be built?**

16 **MR. LIEDLE: Do you want to look at the**
17 **original agreement, Counsel?**

18 **BY MR. MOOT:**

19 **Q. Well, do you recall?**

20 **MR. LIEDLE: Independent of that.**

21 **THE WITNESS: I don't recall specifically that.**

22 **BY MR. MOOT:**

23 **Q. Okay.**

24 A. We always talked about bathrooms, sun shade,
25 waiting areas, ticket booths.

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1 **Q. Did any of the board members know when they**
2 **approved this agreement that, in fact, these passenger**
3 **fees might not be acceptable to the users of the**
4 **facility?**

5 A. Not that I'm aware.

6 **Q. And you went forward with the agreement, then,**
7 **without any independent audit or determination as to**
8 **whether the revenue generation could actually be**
9 **achieved?**

10 **MR. LIEDLE: Vague, calls for speculation.**

11 **THE WITNESS: I think, if I remember correctly,**
12 **and our discussions that those fees were predicted or**
13 **proposed based on the number of people riding intercity**
14 **transportation.**

15 **BY MR. MOOT:**

16 **Q. Did you ever indicate in the board memo that**
17 **this was a predicted revenue stream?**

18 A. Depends on how it was worded. You can read it.

19 **Q. I read it as saying budget impacts.**

20 A. Approximately. 105- to 140,000 in annual
21 revenue beginning in calendar year 2014.

22 **Q. You didn't qualify that by saying that these**
23 **passenger fees may not be imposed or might not be**
24 **acceptable?**

25 A. No, I did not.

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1 **Q. When the agreement was modified in November of**
2 **2012, were bathrooms considered an important amenity?**

3 **MR. LIEDLE: Agreement modified in 2012? Are**
4 **you talking about 2015?**

5 **MR. MOOT: 2015, I'm sorry, I misspoke.**

6 **BY MR. MOOT:**

7 **Q. When the agreement was modified in 2015, were**
8 **the bathrooms considered an important amenity?**

9 A. I believe that was included in the cost of the
10 project.

11 **Q. So if you look at Exhibit 29, page 3 under**
12 **"Proposed Lease Amendment."**

13 A. Okay.

14 **Q. It indicates, "Provisions for restrooms is an**
15 **important amenity that will serve" --**

16 A. Where are you reading?

17 **Q. Page 3.**

18 A. Yes. Page 3.

19 **Q. Says the provision of the restroom is an**
20 **important amenity -- are you on Exhibit 29?**

21 A. Mm-hmm.

22 **Q. Page 3? Last sentence.**

23 A. Yeah, I see that.

24 **Q. In November of 2015, "The provisions for**
25 **restrooms was an important amenity that will serve the**

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1 **Rail Court terminal customers."**
 2 A. Correct.
 3 **Q. Why were they not an important amenity when the**
 4 **agreement was first proposed?**
 5 A. We had discussed putting in bathrooms there
 6 from the beginning.
 7 **Q. The reason that it was an important amenity was**
 8 **because the people were using the bathrooms in the**
 9 **McDonald's building and there was no need for them?**
 10 **MR. LIEDLE: Calls for speculation.**
 11 **BY MR. MOOT:**
 12 **Q. Were you aware that prior to the closing of the**
 13 **door onto the bus platform that the bus passengers were**
 14 **using restaurants -- excuse me, were using restrooms in**
 15 **the McDonald's building?**
 16 A. Yes, I believe there was a pay-for-use bathroom
 17 in the McDonald's building.
 18 **Q. Was the reason it wasn't an important amenity**
 19 **either when the Ace agreement was entered into or the**
 20 **first SYPS agreement was entered into because there was**
 21 **bathroom facilities directly adjacent to the bus**
 22 **platform?**
 23 A. No, I think it was just a matter of time and
 24 getting approvals and designs and everything. It wasn't
 25 the first thing to be done. The bays -- and those bays

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1 A. I don't recall specifically what they cost.
 2 **Q. Look at the top of page 3.**
 3 A. That's what it says here.
 4 **Q. Would that then, by adding outdoor bathrooms at**
 5 **a cost of \$179,000, then delay the time in which the**
 6 **public agency would receive any money from the**
 7 **agreement?**
 8 A. Yes.
 9 **Q. And was there any discussions that in order to**
 10 **return money quicker to the public entity to enter an**
 11 **agreement with the McDonald's building to allow their**
 12 **bathrooms to be used?**
 13 A. No.
 14 **Q. And why was that not considered as a**
 15 **cost-saving measure to the public entity?**
 16 **MR. LIEDLE: Assumes facts, calls for**
 17 **speculation.**
 18 **THE WITNESS: That already existed.**
 19 **BY MR. MOOT:**
 20 **Q. Well, couldn't you have saved the public agency**
 21 **\$179,000 by simply entering into an agreement with the**
 22 **owners of the McDonald's building?**
 23 A. We didn't spend 179,000.
 24 **Q. You delayed \$179,000 of revenue to the public**
 25 **agency --**

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1 were changed from the original design after consultation
 2 with the BTC. After the agreement was signed, we went
 3 back to a -- a pull-in type of approach and that was
 4 something that was proposed by Mr. Gomez. And everybody
 5 ultimately concurred with that.
 6 The shade areas, the seating, those were all
 7 the primary -- or I should say the top priority things
 8 to do. The bathrooms came later because their
 9 construction would take longer.
 10 **Q. Was the first time bathrooms were proposed for**
 11 **the facility in November 12, 2015?**
 12 A. The date of this thing? No. They were
 13 proposed before then. As I said, we talked about
 14 ultimately having bathrooms at that location right from
 15 the beginning.
 16 **Q. Okay.**
 17 A. And they said that they would look into that
 18 and see what it would take, et cetera, et cetera. But
 19 by the time -- by the time we get to the first amendment
 20 and construction costs had exceeded a half million
 21 dollars, those -- at that point, bathrooms were already
 22 included in that price.
 23 **Q. Right. So the cost of adding the bathroom --**
 24 A. We obviously talked about them before that.
 25 **Q. The cost of adding the bathrooms were \$179,000?**

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1 A. Potentially.
 2 **Q. -- correct?**
 3 A. Potentially.
 4 **Q. So this agreement could have started producing**
 5 **revenue earlier.**
 6 A. Potentially.
 7 **Q. Potentially, had you simply gone to the owners**
 8 **of the McDonald's building and entered into an agreement**
 9 **that would allow the use of their bathrooms?**
 10 **MR. LIEDLE: Calls for speculation.**
 11 **THE WITNESS: Yeah, I -- anything's possible.**
 12 **BY MR. MOOT:**
 13 **Q. That would have saved the public entity**
 14 **money --**
 15 A. Potentially.
 16 **Q. -- correct?**
 17 **MR. LIEDLE: Anything is possible.**
 18 **THE WITNESS: But that was already there and**
 19 **yet there was a need for more bathrooms.**
 20 **BY MR. MOOT:**
 21 **Q. Well, wasn't the need for more bathrooms**
 22 **created by the fact that as part of the agreement with**
 23 **SYPS, you committed to closing the doors that gave**
 24 **access to the bathrooms?**
 25 **MR. LIEDLE: Vague. Misstates the testimony or**

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1 misstates the evidence in this case. The McDonald's
 2 building had doors on the front. People could still go
 3 in the front door. What are we doing here?
 4 **MR. MOOT: I think you're trying to come up**
 5 **with a defense to tell the witness how to defend it. I**
 6 **think that's what you're doing. But let's go back to**
 7 **the witness.**
 8 **THE WITNESS: No, go ahead.**
 9 **BY MR. MOOT:**
 10 **Q. You were aware, were you not, that prior to the**
 11 **doors being closed, that people were using the elevators**
 12 **to get up to the bus platform and using the bathrooms in**
 13 **the McDonald's building? You were aware of that;**
 14 **correct?**
 15 A. You always knew people in San Ysidro were using
 16 the bathrooms in the McDonald's building. That's all I
 17 will -- that's the end of my answer.
 18 **Q. Were you also aware that they were using the**
 19 **elevator and the doors to get up to the bus platform?**
 20 A. No.
 21 **Q. Are you sure?**
 22 A. Positive.
 23 **Q. You were not aware of that?**
 24 A. No.
 25 **Q. Why did you put it in the original agreement?**

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1 A. Right.
 2 **Q. And 179,000 of that was the bathrooms.**
 3 A. Right. And then 105,000 was for other items;
 4 right.
 5 **Q. And was the other item the ramp at the south**
 6 **entrance?**
 7 A. It could have been.
 8 **Q. Was the ramp that was built on the south**
 9 **entrance not ADA compliant?**
 10 **MR. LIEDLE: Originally or later?**
 11 **BY MR. MOOT:**
 12 **Q. In 2015.**
 13 A. That's what it was built for is for access by
 14 people in -- that needed mobility enhancement.
 15 **Q. And on page 2 of this agreement, November 12,**
 16 **2015, it says what's going to be added?**
 17 **MR. LIEDLE: It's not an agreement, it's an**
 18 **agenda item.**
 19 **MR. MOOT: Agenda item, I'm sorry.**
 20 **BY MR. MOOT:**
 21 **Q. It says under Item F that they would install an**
 22 **American-With-Disabilities-Act-compliant access ramp**
 23 **from Rail Court cul-de-sac to Rail Court terminal.**
 24 A. Where are you reading?
 25 **Q. Page 2 of Exhibit 29.**

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1 A. What do you mean?
 2 **Q. A provision to close the doors.**
 3 A. I'm not sure what one has to do with the other.
 4 You mean close the illegal door that Mr. Aguirre put in
 5 that wall?
 6 **Q. The ones that were permitted in 2014 before you**
 7 **filed your lawsuit.**
 8 A. That's because -- that's because that door was
 9 supposed to be a fire door and that's what was approved
 10 and that's what was permitted. Okay? For the public to
 11 walk in and out of that door to use elevators is not a
 12 fire door use.
 13 **Q. My question was, you could have saved your**
 14 **agency money in returned revenue on this agreement**
 15 **earlier?**
 16 A. You asked me that question about four questions
 17 ago.
 18 **Q. And your answer was yes, you could have.**
 19 A. Presumably. Possibly.
 20 **Q. Now, what else caused the increase of the**
 21 **capital improvements from 283,000 to 538,000?**
 22 A. This agenda I'm referencing was about \$100,000
 23 of increased cost.
 24 **Q. Their projected capital improvement went from**
 25 **283,000 to 538,000; correct?**

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1 A. Page 2.
 2 **MR. LIEDLE: Where's the F? That's all we're**
 3 **looking for.**
 4 **MR. MOOT: Very bottom paragraph.**
 5 **MR. LIEDLE: Oh, very bottom. Okay.**
 6 **THE WITNESS: Oh, okay.**
 7 **BY MR. MOOT:**
 8 **Q. It says "install an**
 9 **Americans-with-disabilities-compliant access ramp."**
 10 **Why was that necessary?**
 11 A. To facilitate access for people with
 12 disabilities.
 13 **Q. And was the ADA -- was there ADA access to the**
 14 **bus platform through the elevator and the door to the**
 15 **McDonald's building?**
 16 **MR. LIEDLE: Vague, calls for speculation.**
 17 **THE WITNESS: When people want to come to the**
 18 **bus facility, it's not clear that they have to go into**
 19 **the McDonald's building in order to go up to the top in**
 20 **order to come out.**
 21 **BY MR. MOOT:**
 22 **Q. But --**
 23 A. Through the illegal door.
 24 **Q. I want to -- you clearly understand that at**
 25 **this point both the door and the wall opening have**

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1 permits from the City of San Diego?
 2 MR. LIEDLE: That's mischaracterization of the
 3 evidence, Counsel.
 4 THE WITNESS: Yeah, that's --
 5 BY MR. MOOT:
 6 Q. Are you aware that before you filed your
 7 lawsuit, the doors you were complaining about were
 8 permitted?
 9 MR. LIEDLE: That's a mischaracterization and
 10 he's not going to answer that, Counsel.
 11 BY MR. MOOT:
 12 Q. Well --
 13 A. I think that's subject to litigation.
 14 MR. LIEDLE: That's correct. The Court has
 15 already determined that permitting is immaterial to the
 16 injunction.
 17 MR. MOOT: But not immaterial to this
 18 deposition.
 19 THE COURT REPORTER: 292 is next in order.
 20 MR. MOOT: 292.
 21 (Exhibit No. 292 marked for identification.)
 22 BY MR. MOOT:
 23 Q. Let me show you what's been marked as
 24 Exhibit 292.
 25 Are you aware that --

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1 relocate doors, and there's a signed permit. What's the
 2 problem, Counsel?
 3 MR. LIEDLE: I will just stand on my objection.
 4 It's a mischaracterization of the permit. We've been
 5 through this and argued it in court as well. So
 6 anyway --
 7 MR. MOOT: You haven't argued in this court.
 8 This is a 2/14 permit that was issued to Grand Central
 9 West before you filed your lawsuit and you were unaware
 10 of that?
 11 MR. LIEDLE: Do you know whether a permit was
 12 ever issued to Grand Central West regarding anything in
 13 this building? Outside of conversations you would have
 14 had with me or any -- and Ms. Landers.
 15 THE WITNESS: All of those conversations would
 16 have been with Ms. Landers.
 17 MR. LIEDLE: All right. So no.
 18 Is that your answer?
 19 THE WITNESS: Yeah.
 20 MR. MOOT: Showing you what we will mark as
 21 Exhibit 293.
 22 (Exhibit No. 293 marked for identification.)
 23 BY MR. MOOT:
 24 Q. Were you aware that the trespass lawsuit was
 25 filed by Mr. Liedle's firm on December 31st, 2004 [sic]?

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1 MR. LIEDLE: Are you going to ask him if he has
 2 ever seen that before?
 3 MR. MOOT: Well, that's a good question.
 4 BY MR. MOOT:
 5 Q. Have you never seen the permit for the doors?
 6 MR. LIEDLE: Have you ever seen. That's
 7 argumentative as phrased. Have you ever seen that?
 8 BY MR. MOOT:
 9 Q. Have you ever seen the permit that was issued
 10 to Grand Central West for the doors that were on the
 11 second floor of the McDonald's building?
 12 A. I have never seen this document.
 13 Q. And did anybody ever advise you -- you can keep
 14 that, it's for the court reporter.
 15 A. If the advice came, it was from my counsel and
 16 that's --
 17 MR. LIEDLE: Privileged.
 18 THE WITNESS: -- privileged.
 19 BY MR. MOOT:
 20 Q. So you did not know at the time that you filed
 21 the lawsuit that GCW had obtained a permit for the
 22 doors?
 23 MR. LIEDLE: That's a mischaracterization of
 24 this permit, Counsel.
 25 MR. MOOT: Why, Counsel? It says 106214 to

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1 A. Knowledge and discussions of this would have
 2 been with counsel.
 3 Q. This is a public document. You were not aware
 4 of this --
 5 A. Doesn't make any difference.
 6 Q. -- publicly filed document?
 7 A. It was brought to me in discussion with
 8 counsel.
 9 Q. You were not aware of the publicly filed
 10 document of the date you filed your lawsuit?
 11 A. That's not what I said.
 12 MR. LIEDLE: Yeah, it's privileged, Counsel.
 13 Thank you.
 14 MR. MOOT: Counsel, the publicly filed
 15 complaint is not privileged. It's a publicly filed
 16 complaint.
 17 THE WITNESS: If it was brought to me and
 18 discussed by counsel, then it's privileged.
 19 MR. LIEDLE: Correct. Thank you,
 20 Mr. Jablonski.
 21 MR. MOOT: No, I think it loses its privilege
 22 when it's publicly filed.
 23 THE WITNESS: Well, that may be the case, then
 24 you know about it. And there's no need to -- no need to
 25 ask me that.

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1 MR. LIEDLE: Ask you about it --
 2 BY MR. MOOT:
 3 Q. That's my question: You didn't know about it?
 4 You didn't know about this publicly filed document?
 5 A. No, I didn't say that.
 6 MR. LIEDLE: He didn't say that.
 7 THE WITNESS: I didn't say that.
 8 MR. LIEDLE: Don't discuss anything else about
 9 this. Okay.
 10 THE WITNESS: Yeah, I didn't -- I gave my
 11 answer.
 12 MR. LIEDLE: He's just baiting you to get
 13 privileged information.
 14 MR. MOOT: I'm not trying to get privileged
 15 information.
 16 BY MR. MOOT:
 17 Q. I'm trying to establish whether or not you knew
 18 that at the time this publicly filed lawsuit was filed
 19 that Grand Central West had obtained a permit for the
 20 doors on the second floor?
 21 A. All of those discussions revolving all around
 22 all of the circumstances on this were done with my
 23 attorney and they're privileged. And that's going to
 24 speak to the vast majority of this issue because it's
 25 been with general counsel. And as she talks to me about
 250

1 all of this, it's all privileged.
 2 Q. Now --
 3 A. I didn't talk about it with anything else.
 4 Q. These are publicly filed documents, the permit
 5 is a public document. The lawsuit's a public document.
 6 And I guess the question is that your counsel never
 7 advised you of these publicly filed an existing
 8 documents?
 9 A. I didn't say that.
 10 MR. LIEDLE: And I would instruct you not to
 11 answer.
 12 Objection. Calls for privileged information.
 13 BY MR. MOOT:
 14 Q. Now you indicated that the priority of the
 15 agreement was always to improve the facility; is that
 16 correct?
 17 A. To improve the facility and to provide
 18 management, yes.
 19 Q. And why, after October of 2014, did MTS stop
 20 access to the ITC from the second floor if the goal was
 21 to improve the facility?
 22 MR. LIEDLE: Say that again, Counsel. Say it
 23 one more time.
 24 BY MR. MOOT:
 25 Q. Well, you said the primary goal was to improve
 251

1 the facility and management; correct?
 2 A. Correct. Which I believe we did.
 3 Q. And that, I assume, was for the bus passengers
 4 and the users of the facility as well as the bus
 5 operators?
 6 A. That's true. It's a correct assumption.
 7 Q. Now, is it true that blocking the access to the
 8 SYITC from the second floor was a detriment, not an
 9 improvement to the facility?
 10 A. I didn't see it that way.
 11 MR. LIEDLE: Also calls for speculation and
 12 assumes facts.
 13 BY MR. MOOT:
 14 Q. Now you've been out to the site; is that
 15 correct?
 16 A. I was in -- you mean where?
 17 Q. To the area depicted on these poster boards.
 18 A. Yes.
 19 Q. And were you aware of the effect of blocking
 20 access to the doors on the users of the facility?
 21 MR. LIEDLE: Vague, calls for speculation.
 22 BY MR. MOOT:
 23 Q. Were you aware of the effect on the users of
 24 the facility of blocking access?
 25 A. I think I -- I think I answered the question
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1 before that said that I wasn't familiar or I wasn't
 2 aware that anybody was coming through the McDonald's
 3 building specifically to get up to our facility. So the
 4 answer would be no.
 5 Q. So you were not aware, then, that --
 6 A. There's no sign out in front of the McDonald's
 7 building that says enter here to get to these buses.
 8 Q. So Mr. Allison never advised you that prior to
 9 blocking access to the door, there was a direct route
 10 from your trolley stop through the McDonald's building
 11 up to the bus platform?
 12 MR. LIEDLE: Calls for speculation, vague.
 13 THE WITNESS: No.
 14 MR. MOOT: So we're going to mark as
 15 Exhibit 294 the first poster board, and then why don't
 16 you change the order of these.
 17 The second poster board will be 295.
 18 (Exhibit No. 294 marked for identification.)
 19 (Exhibit No. 295 marked for identification.)
 20 MR. MOOT: And the third 296.
 21 (Exhibit No. 296 marked for identification.)
 22 MR. MOOT: And that's just for the record of
 23 what we're looking at.
 24 THE WITNESS: Obviously, it was only
 25 Mr. Aguirre's assumption that this was the path of
 253

1 travel because nobody else knew about it.
 2 **BY MR. MOOT:**
 3 **Q. You're saying nobody was using that elevator**
 4 **and door to get from your trolley stop to the bus**
 5 **platform?**
 6 A. I'm not aware of it. The time I met with
 7 Mr. Gomez, I went there and it looked to me that the
 8 whole second floor, aside from the office he built
 9 there, they were selling clothes up there. It was a big
 10 clothes thing in the -- on the west side of that top
 11 floor, racks and racks and racks of clothes. To me, it
 12 looked like people might have been coming up the
 13 elevator to buy clothes.
 14 **Q. So you were completely unaware that they**
 15 **were --**
 16 A. Completely unaware.
 17 **Q. -- they were actually users of the bus terminal**
 18 **bus companies that had ticket offices on the second**
 19 **floor?**
 20 A. I knew there -- of course I was aware of it. I
 21 was meeting in one of them.
 22 **Q. So you were aware that the effect of blocking**
 23 **the door access --**
 24 A. They were also -- they were also coming in the
 25 door from -- from the bus facility to get in there.

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1 **Q. So looking --**
 2 A. In fact, I would presume that there was many
 3 more people coming in that door on -- on the backside of
 4 the building than there was in the front door going up
 5 the elevator because there's no way-finding system for
 6 them to get there.
 7 **Q. Looking at 294, copy of which -- were you aware**
 8 **that there was a direct access route from the terminal**
 9 **stop in front of the McDonald's building through --**
 10 **through the McDonald's building and using the elevators**
 11 **and the doors?**
 12 A. No.
 13 **Q. And were you aware that passengers with luggage**
 14 **or elderly people were using this elevator to gain**
 15 **direct access to the bus platform?**
 16 A. No.
 17 **Q. Were you aware that the effect of blocking**
 18 **these doors was to force the users to either walk around**
 19 **the north end or to come around the south end? You were**
 20 **not aware of that?**
 21 A. No. I always presumed that that's the way they
 22 were getting to the facility is either if they were
 23 coming from the north to the north end or if they were
 24 coming from -- through the border, they would walk up
 25 the south end.

255

1 **Q. So --**
 2 A. And it wouldn't be from the trolley station.
 3 It would have been from the border.
 4 **Q. Well, you were aware that the trolley stopped**
 5 **right in front of the McDonald's building.**
 6 A. Of course I'm aware of it.
 7 **Q. And you were aware that the effect of blocking**
 8 **the access to the elevator and the door was to force the**
 9 **users to walk around the buildings on a crowded street**
 10 **to get to the bus platform?**
 11 A. It's all pedestrian. It's not crowded.
 12 **Q. You were aware --**
 13 A. It's pedestrian on the south end.
 14 **Q. -- that by blocking the access here, you either**
 15 **had to walk all the way around the building to the north**
 16 **or you had to walk around the building to the south and**
 17 **up the ramp?**
 18 A. What I would suggest is if they were coming
 19 through the border, it was just as easy for them to walk
 20 up there from the south end.
 21 **MR. LIEDLE: Maybe what you're doing is you're**
 22 **not really adding the facts here, Counsel. That's**
 23 **probably an incomplete hypothetical, I should have been**
 24 **objecting. You're assuming that those ticket offices**
 25 **are up there and that's why those people are going up**

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1 there, is that what you're assuming?
 2 **MR. MOOT: No.**
 3 **BY MR. MOOT:**
 4 **Q. I'm asking you whether you were aware that, in**
 5 **fact, elderly people and people with baggage were using**
 6 **the elevator and the door access --**
 7 **MR. LIEDLE: Asked and answered then.**
 8 **BY MR. MOOT:**
 9 **Q. -- to get to the bus platform?**
 10 A. I think I answered that three times already.
 11 **Q. And you were not aware of that?**
 12 A. No.
 13 **Q. So you were not aware that by blocking the**
 14 **access, you were actually hurting the people who needed**
 15 **the direct access either because they were old or they**
 16 **were carrying heavy bags?**
 17 **MR. LIEDLE: Asked and answered.**
 18 **THE WITNESS: They were blocking the access**
 19 **because the access was illegal.**
 20 **MR. LIEDLE: Right.**
 21 **THE WITNESS: That's why we blocked the access.**
 22 **It was not to deprive people of anything.**
 23 **BY MR. MOOT:**
 24 **Q. So your position was that you were not going to**
 25 **allow those doors to be there as a convenience for the**

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1 users of the bus terminal?
2 A. No. We -- we -- we did that because the door
3 was illegal and it was -- it was an illegal use and
4 that's not what we permitted for. We permitted for an
5 emergency fire door. That's not what was built. That's
6 not what it was used for.

7 Q. Well --

8 A. And, in fact -- in fact, it was after that door
9 that the rest of his second floor was developed. It was
10 only because of that door.

11 Q. My question was that --

12 A. So -- so you make it sound like it existed
13 there and then the door opened when it, in fact, it was
14 the other way around. He built the door. That allowed
15 him to have the second floor usage.

16 Q. Correct.

17 A. And it also diminished our ability to maximize
18 our revenue because he had offices and was selling
19 tickets inside his building rather than what was
20 produced -- presumed by the SYPS agreement.

21 Q. So the purpose of then denying access through
22 the doors was to enhance the secondary goal of producing
23 revenue with your agreement with SYPS?

24 A. The first one was because it was illegal usage.
25 And it was infringing on our property rights.

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1 294 is the first one with the direct access;
2 295 is the second one going around north -- excuse me,
3 295 is the second one going around north; and the third
4 one, 296, is going south.

5 BY MR. MOOT:

6 Q. Your testimony is you were not aware that this
7 was one of the effects of closing off access to the door
8 that the travel would be rerouted as depicted on 295 and
9 296?

10 A. That's true.

11 Q. Now I'm going to direct your attention to
12 Exhibit 10.

13 A. Okay.

14 Q. And that's the agreement that you ended up
15 entering into with SYPS?

16 A. I presume it is.

17 Q. And then can you confirm that that's your
18 signature --

19 A. Yes, it is.

20 Q. -- on the document?

21 Now, I noticed the signature block is not
22 dated.

23 A. That's correct.

24 Q. And do you know, in fact, then, when the fully
25 executed agreement was signed by all parties?

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1 Q. Okay.

2 MR. LIEDLE: Can I -- before you answer this
3 next question, let me talk to you for a second.

4 THE WITNESS: Yeah.

5 (3:32 p.m.)

6 (A recess was taken.)

7 (3:39 p.m.)

8 BY MR. MOOT:

9 Q. Mr. Jablonski, just for the record here, the
10 first diagram showing the direct access to the elevator
11 is Exhibit 294?

12 A. Yes.

13 Q. And then the second one showing the route to
14 travel with the access blocked around the north?

15 A. Yes.

16 MR. LIEDLE: I think you marked that as 295.

17 THE WITNESS: It's written up there, I think.

18 MR. MOOT: Where is 295?

19 THE WITNESS: On top of the board itself.

20 MR. LIEDLE: You put it on the board.

21 THE WITNESS: Top left.

22 MR. MOOT: This is 295.

23 MR. LIEDLE: I see you're marking the sheet.

24 MR. MOOT: Just so we have a record of what he
25 was looking at. So 294, 295, and then the last is 296.

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1 A. No idea. The only reference is that it says in
2 the first paragraph "for reference purposes only" as of
3 December 18th.

4 Q. But that's not the date the agreement went into
5 effect; is that correct?

6 A. No, I think it was February.

7 Q. So the date of December 18 is for reference
8 purposes only, but the agreement does not reflect the
9 date it was actually executed by all parties?

10 MR. LIEDLE: Do you understand the question?
11 So you're saying there is no dates for these signatures
12 on it; right?

13 BY MR. MOOT:

14 Q. So we don't know when the time at which all
15 parties signed the agreements, at least by looking at
16 Exhibit 10?

17 MR. LIEDLE: The document itself; right. Do
18 you understand the question?

19 THE WITNESS: Yeah, I understand the question.
20 You know, and my presumption it was presented
21 to me on the 18th to sign.

22 MR. LIEDLE: Okay.

23 BY MR. MOOT:

24 Q. Now, if you could look at Exhibit 98. Let me
25 give you a Post-it you can put on 10 because we will be

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1 coming back to that, help you get back to it quicker.
 2 First, let's take a look at Exhibit 98.
 3 A. I need a Post-it that actually sticks. There
 4 we go.
 5 MR. LIEDLE: Exhibit 98?
 6 BY MR. MOOT:
 7 Q. Now, Exhibit 98 is an email from Karen Landers
 8 to Brad Saunders with a copy to you and it's the draft
 9 of the lease agreement as of November 20th, 2012. And
 10 if you could take a look at the draft that's attached to
 11 it.
 12 A. Okay.
 13 Q. Did you have any input into the first draft of
 14 the agreement with SYPS?
 15 MR. LIEDLE: Vague.
 16 THE WITNESS: Any input I would have had would
 17 have been with my general counsel and it's privileged.
 18 BY MR. MOOT:
 19 Q. And if I could direct your attention to the
 20 agreement of which it was formed off of.
 21 Do you recall the lease you had with Greyhound
 22 in San Diego?
 23 A. No.
 24 Q. Do you know whether the draft of this agreement
 25 was based off a lease that you had with Greyhound right

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1 A. It says I used the Greyhound downtown lease as
 2 a base.
 3 MR. LIEDLE: Uh-huh.
 4 BY MR. MOOT:
 5 Q. So that particular lease is for a fixed monthly
 6 rent?
 7 A. That's right.
 8 Q. And does not involve any management or
 9 accounting services or anything like that?
 10 A. We leased them the property. They built the
 11 facility. They managed the facility.
 12 Q. And they pay you rent?
 13 A. And they pay us rent. Yep.
 14 Q. A fixed monthly rate?
 15 A. Yeah, we didn't want a piece of their action.
 16 Q. It's a facility that only Greyhound occupies?
 17 A. Well, and its affiliates. Yeah.
 18 Q. Right.
 19 A. When you say "Greyhound," they have a lot of
 20 subsidiaries.
 21 Q. Correct. Do you know who Americanos U.S.A. is?
 22 A. I believe that they're an affiliate.
 23 Q. Did you know that the SYPS partner was, in
 24 fact, not Greyhound but Americanos?
 25 A. Yeah, it's an affiliate of them. Same thing.

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1 down here near our building?
 2 A. You mean downstairs?
 3 Q. Yes, just almost across the street here.
 4 MR. LIEDLE: So are you saying --
 5 BY MR. MOOT:
 6 Q. Do you know if this draft is based off the
 7 agreement?
 8 A. There's probably a lot of terms and conditions
 9 that are in these agreements that are similar to all
 10 agreements.
 11 Q. But do you recall whether this particular --
 12 A. I don't recall that this particular one was
 13 drafted with that base agreement in mind.
 14 Q. Okay.
 15 A. No.
 16 MR. LIEDLE: You can read the email if that
 17 refreshes --
 18 THE WITNESS: It says "Greyhound SYPS," but I'm
 19 not sure that that was crossed off because of that.
 20 BY MR. MOOT:
 21 Q. Now the lease with Greyhound downtown that was
 22 referred to in this email, that's a fixed monthly rent
 23 agreement; is that correct?
 24 A. That's correct.
 25 Q. In other words, they're renting the property?

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1 Q. Did you know that at the time the board
 2 presentation was made?
 3 MR. LIEDLE: You're asking if he knew at the
 4 time that Americanos U.S.A. would be signing the lease?
 5 BY MR. MOOT:
 6 Q. That Americanos U.S.A. was, in fact, a partner
 7 in SYPS, not Greyhound?
 8 A. I'm not sure that I did at that time because
 9 that signing of that lease was two months before --
 10 after the board meeting. All of our -- all of our
 11 discussions were always characterized as discussions
 12 with Greyhound.
 13 Q. So as far as you knew, on October 18, 2012,
 14 your agreement was with BriceHouse and Greyhound as an
 15 entity that was formed to be SYPS?
 16 A. Well, what does the agreement say? With
 17 SYPS LLC, a Delaware company.
 18 Q. Right.
 19 A. So . . . doesn't say -- it doesn't say
 20 Greyhound.
 21 Q. Right. As of October 18, all of the
 22 representations to the board were that Greyhound was
 23 involved in SYPS?
 24 A. Yeah, they were always characterized as with
 25 Greyhound.

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1 **Q. And at any point --**
 2 A. And, you know, and they have a parent company
 3 called First Transit. And we never referred to them as
 4 that either. So --
 5 **Q. But all of the materials --**
 6 A. I'm not sure what -- what --
 7 **Q. But all of the materials presented to the**
 8 **board --**
 9 **MR. LIEDLE: Well --**
 10 **MR. MOOT: Excuse me.**
 11 **BY MR. MOOT:**
 12 **Q. -- all of the material presented to the board**
 13 **was that Greyhound was the member of SYPS?**
 14 **MR. LIEDLE: Calls for speculation.**
 15 **THE WITNESS: Or SYPS.**
 16 **BY MR. MOOT:**
 17 **Q. Right. So it's either referred to as**
 18 **Greyhound --**
 19 A. SYPS.
 20 **Q. -- but never Americanos?**
 21 A. Could have been referred to as First Transit
 22 and been just as good.
 23 **Q. At any rate --**
 24 A. I don't understand the relevance. It doesn't
 25 have to be relevance.

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1 When, you know, I'm copied on these things by
 2 my general counsel, but in terms of hashing out terms of
 3 an agreement, that's for general counsel to do.
 4 **Q. I appreciate that.**
 5 **I just wanted to ask you whether the**
 6 **modifications, based on your counsel's inputs and edits,**
 7 **none of them had to do with Paragraph 6?**
 8 A. Well, I mean, I don't see anything listed here
 9 as with Paragraph 6.
 10 **MR. LIEDLE: On this particular email you're**
 11 **talking about?**
 12 **THE WITNESS: No.**
 13 **BY MR. MOOT:**
 14 **Q. There's also a reference, and this is from**
 15 **Karen Landers to Brad Saunders, it says, "I need to know**
 16 **what type of entity SYPS LLC is. Has it been formed**
 17 **yet?"**
 18 **Did you have any knowledge as of November 29,**
 19 **2012, whether SYPS had been formed yet?**
 20 A. No.
 21 **Q. Did you have any knowledge as of November 29,**
 22 **2012, what entities SYPS comprised of?**
 23 A. No.
 24 **Q. Do you recall Ms. Landers ever inquiring of you**
 25 **to try to get that information directly from you?**

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1 **Q. It may or may not be relevant.**
 2 A. Yeah, okay. A lot of questions.
 3 **Q. If you look at page 5 of this draft in**
 4 **Paragraph 6.**
 5 **On "Conditions of Property," it says, "The**
 6 **premises shall be leased as is in its existing condition**
 7 **and MTS shall have no obligations to make any**
 8 **improvements, modifications, or changes to the**
 9 **premises."**
 10 **And that was how the first draft of the**
 11 **agreement read in November of 2012?**
 12 A. Mm-hmm.
 13 **Q. Now, if you take a look at Exhibit 100, this is**
 14 **an email from Karen Landers to Brad Saunders and**
 15 **Trisha Martinez also with a copy to you.**
 16 **MR. LIEDLE: Do you recognize the email?**
 17 **THE WITNESS: Do you know how many emails I get**
 18 **a day? About 300. So since 2012, which was five years**
 19 **ago, I've probably gotten 30,000 emails.**
 20 **BY MR. MOOT:**
 21 **Q. I appreciate that.**
 22 A. Okay.
 23 **Q. So just looking at this particular email --**
 24 A. You know, I will tell -- appropriately
 25 characterize this.

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1 **MR. LIEDLE: May call for privilege.**
 2 **THE WITNESS: From me?**
 3 **BY MR. MOOT:**
 4 **Q. Yes.**
 5 **MR. LIEDLE: Objection. Attorney-client**
 6 **privilege.**
 7 **THE WITNESS: Any discussions relative to this**
 8 **would have been privileged.**
 9 **BY MR. MOOT:**
 10 **Q. Now if we then go to Exhibit 101.**
 11 A. Okay.
 12 **Q. This is a follow-up email from Trisha Martinez**
 13 **to Karen Landers and Brad Saunders. There's also a copy**
 14 **to you.**
 15 **Did you know who Trisha Martinez was?**
 16 A. No.
 17 **Q. She was also on the email Exhibit 100. Did you**
 18 **understand that it was Greyhound's lawyer that was**
 19 **negotiating the lease with MTS?**
 20 A. Well, I would presume it would be. Lawyer to
 21 lawyer.
 22 **Q. Is that presumption based on the fact that, at**
 23 **least your understanding, November of 2012, was that**
 24 **Greyhound was the member of SYPS?**
 25 **MR. LIEDLE: Vague.**

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1 **THE WITNESS: I'm not sure I understand the**
2 **question, Mr. Moot.**
3 **BY MR. MOOT:**
4 **Q. Was it your understanding November of 2012 that**
5 **it was Greyhound and Greyhound's lawyer that was**
6 **negotiating the lease with you?**
7 A. Well, you know, I don't recall if I saw that in
8 that -- I mean, I see it now that Trisha Martinez has a
9 Greyhound.com email address which means she works for
10 Greyhound. But since they're the parent corporation and
11 SYPS is some subsidiary that they are going to do for
12 doing this deal, which is not unusual, I'm not sure what
13 difference that makes. But -- but --
14 **Q. All right. So you don't --**
15 A. It's not --
16 **Q. You didn't have any understanding?**
17 A. It's not something that would make my eyes open
18 wide and say what's going on here.
19 **Q. So you were not aware of the relative size**
20 **difference between Greyhound Lines, Inc., and**
21 **Americanos U.S.A.?**
22 **MR. LIEDLE: Vague.**
23 **THE WITNESS: Size difference?**
24 **BY MR. MOOT:**
25 **Q. Right, for example --**

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1 A. Revenues?
2 **Q. Whether one entity had more assets than the**
3 **other.**
4 A. Well, traditionally, parent companies have more
5 assets.
6 **Q. And did it raise any bells -- any bells to you**
7 **that you might actually be doing a deal with a company**
8 **that had far less assets than Greyhound?**
9 **MR. LIEDLE: Calls for speculation, assumes**
10 **facts.**
11 **THE WITNESS: Yeah, you know, once again, we**
12 **weren't putting any money into this. We didn't have**
13 **dollars at risk to do this deal. If they didn't**
14 **perform, we would pull the contract away from them.**
15 **BY MR. MOOT:**
16 **Q. And if there was --**
17 A. And that was always our ability to do so.
18 **Q. And if there was some liability issue on the**
19 **property, the SYPS entity would be responsible?**
20 A. Yeah, and they were required to indemnify and
21 have insurance.
22 **Q. Now there's a reference to any -- some minor**
23 **changes and clarifications. Were you privy to any**
24 **discussions regarding what those minor clarifications --**
25 A. No.

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1 **Q. -- were?**
2 A. These are all of the discussions between
3 attorneys.
4 **MR. LIEDLE: Who you really love?**
5 **THE WITNESS: I tried not to make any personal**
6 **comments in this.**
7 **BY MR. MOOT:**
8 **Q. Now if you then go back to Exhibit 10 --**
9 A. 10?
10 **Q. -- and look at Paragraph 6.**
11 **MR. LIEDLE: Exhibit 10.**
12 **BY MR. MOOT:**
13 **Q. Paragraph 6 has been modified from your**
14 **original draft of the lease to add some additional**
15 **language. Do you see that?**
16 A. Yes, I see that. It's about your door, your
17 illegal door.
18 **Q. And it says, "The parties acknowledge that a**
19 **neighboring property owner has installed a door**
20 **approximately 1 foot away from the MTS Rail Court**
21 **property and is currently using the door as a commercial**
22 **access point to the abutting building. MTS did not**
23 **consent to this use and is in the process of identifying**
24 **its options to remove this unauthorized ingress and**
25 **egress across MTS property.**

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1 **"In the event that MTS is not successful in**
2 **removing this use, the parties acknowledge it may impact**
3 **the success of the intercity bus and van terminal**
4 **envisioned in the lease. In such event, MTS and SYPS**
5 **agree to meet and confer and determine if the revisions**
6 **to this lease are necessary."**
7 **When was this provision added to the agreement?**
8 A. I don't know exactly.
9 **Q. Would it have been sometime after the first**
10 **draft that did not contain this provision?**
11 A. It would appear so.
12 **Q. Now what discussions did you have with either**
13 **the Greyhound group or Mr. Saunders about this added**
14 **language to the provision?**
15 A. Any discussions I would have had relative to
16 this would have been with my counsel and it's
17 privileged.
18 **Q. Did you have any direct discussions and**
19 **negotiations with anybody at Greyhound or SYPS about**
20 **why -- who wanted this provision in the agreement?**
21 A. Any discussions involving that would have been
22 with my attorney.
23 **Q. You did not participate in any face-to-face**
24 **discussions with Greyhound or SYPS?**
25 A. It would have been through my attorney.

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1 Q. And did your attorney tell you what Greyhound
2 and SYPS' position was, just what they told her as
3 opposed to what your discussions were?

4 MR. LIEDLE: Objection. Calls for privileged
5 information.

6 Instruct you not to answer.

7 BY MR. MOOT:

8 Q. I just want to know what the third party not
9 covered by the privilege said about this provision and
10 why it was in there.

11 MR. LIEDLE: So are you asking him if he had a
12 conversation with representatives from Greyhound, SYPS,
13 or BriceHouse about Paragraph 6?

14 MR. MOOT: Yes.

15 BY MR. MOOT:

16 Q. Or were you -- were any representations made to
17 you as to why this provision was in the agreement?

18 MR. LIEDLE: Separate from counsel.

19 THE WITNESS: All -- all of my conversations
20 regarding the door were with counsel.

21 BY MR. MOOT:

22 Q. And you have, then, no knowledge about this
23 agreement and why it's in there?

24 A. Oh, I didn't say that.

25 Q. What --

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1 that door that did not involve counsel, because it has
2 been our general counsel and myself 99.9 percent of the
3 time that are dealing with this issue.

4 BY MR. MOOT:

5 Q. My understanding --

6 A. So it's all -- it's all subject to privilege, I
7 believe.

8 Q. So the language in here is privileged and how
9 it got there is privileged, is that your position?

10 A. Well, the discussions surrounding why it's
11 there are -- are subject to privilege, I believe.

12 THE WITNESS: Am I correct, Counsel?

13 MR. LIEDLE: If it's what you learned from
14 Ms. Landers, then yes, it is privileged.

15 THE WITNESS: Okay. Then I did.

16 MR. LIEDLE: Okay.

17 BY MR. MOOT:

18 Q. Now, was this added language a material part of
19 the agreement with SYPS?

20 MR. LIEDLE: Calls for a legal conclusion.

21 THE WITNESS: It's in the agreement; right?

22 BY MR. MOOT:

23 Q. Yes.

24 A. So are there immaterial stuff in an agreement?

25 Q. That's what I'm asking. Did you consider this

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1 A. I said the discussions relative to that were
2 with my counsel.

3 Q. So why was this provision added to the
4 agreement?

5 A. Isn't that privileged?

6 MR. LIEDLE: I didn't know based on the
7 previous response, but yes, it would be because all of
8 the discussions that you had --

9 THE WITNESS: Yeah, yes.

10 MR. LIEDLE: -- were with counsel.

11 BY MR. MOOT:

12 Q. This paragraph is, of course, not privileged;
13 right? It's a public document.

14 A. It is a public document.

15 Q. And it reflects what's in there; correct?

16 Now, as the CEO, why is this in the agreement?

17 A. I can only speculate to that.

18 Q. Tell me your understanding as the CEO of why
19 this language was added to the agreement.

20 MR. LIEDLE: Can you -- can you -- based on
21 that question, can you answer separate from
22 conversations?

23 THE WITNESS: But see, all of these -- and as I
24 said, you know, half an hour ago, anything dealing with
25 the door, there's very little that ever happened with

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1 to be a material provision in the agreement?

2 MR. LIEDLE: Calls for a legal conclusion.

3 THE WITNESS: Yeah, I --

4 BY MR. MOOT:

5 Q. As CEO?

6 A. I mean, I -- I just always take the presumption
7 that there is nothing immaterial in an agreement. It's
8 all material. I'm not -- I'm not an attorney, okay?

9 Q. Right. For example, were there any discussions
10 that you were aware of about what these options were
11 that are referred to in the agreement?

12 MR. LIEDLE: Separate from discussions with
13 counsel, I assume you're asking; right?

14 BY MR. MOOT:

15 Q. Yeah, what were these options to remove? What
16 were they?

17 A. I had no discussions relative to any options
18 other than with my counsel.

19 Q. And you never discussed this with

20 Mr. Saunders --

21 A. I didn't.

22 Q. -- or Mr. Penedo or Mr. Lopez?

23 A. All of the discussions were done through Karen.

24 Q. And other than it being material, you didn't
25 know who asked for it or why it was there, except from

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1 your attorney?
 2 **MR. LIEDLE:** Well, that may call for privileged
 3 information in an indirect way now.
 4 **THE WITNESS:** I mean, it was all done through
 5 Karen.
 6 **BY MR. MOOT:**
 7 **Q.** And you do not want to disclose, for purposes
 8 of this litigation, why that provision is in there and
 9 what it means?
 10 **MR. LIEDLE:** Well, what it means is clearly
 11 spelled out in the agreement.
 12 **THE WITNESS:** I think it's pretty -- I think
 13 it's pretty straightforward as to what it means.
 14 **BY MR. MOOT:**
 15 **Q.** Let me ask you what it means. What does it
 16 mean when it says "identifying the options to remove
 17 ingress and egress"; what does that mean?
 18 **MR. LIEDLE:** The language speaks for itself,
 19 Counsel. I don't know what you're hoping to get here.
 20 It's a term in an agreement.
 21 **BY MR. MOOT:**
 22 **Q.** I want to know, it says identifying its options
 23 to remove, and I just wanted to know what that means,
 24 what options are we talking about?
 25 **MR. LIEDLE:** Calls for speculation and also

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1 instruct not to answer if there is any discussions that
 2 you had with Ms. Landers.
 3 **THE WITNESS:** It was all -- it was all relative
 4 to discussions with counsel and with legal.
 5 **BY MR. MOOT:**
 6 **Q.** And you, as CEO, had no understanding of what
 7 this sentence means in terms of identifying options?
 8 A. Of course I did.
 9 **Q.** Okay.
 10 A. But it was all subject to discussions with
 11 counsel.
 12 **Q.** And not a negotiated term --
 13 **MR. LIEDLE:** Vague.
 14 **BY MR. MOOT:**
 15 **Q.** -- with Greyhound?
 16 **MR. LIEDLE:** Vague. Calls for speculation,
 17 assumes facts.
 18 **THE WITNESS:** I mean, once again, all of the
 19 discussions relative to the language that was put in
 20 here, okay, and why it was put in there were all subject
 21 to discussions with counsel.
 22 **BY MR. MOOT:**
 23 **Q.** Now, did you inform the MTS board of this
 24 provision of the agreement at the time you were
 25 authorized to enter into it?

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1 **MR. LIEDLE:** "This provision" being
 2 Paragraph 6?
 3 **BY MR. MOOT:**
 4 **Q.** This new language of Paragraph 6, was the board
 5 ever advised of this provision in Paragraph 6?
 6 A. I don't believe that we specifically addressed
 7 that provision to the board.
 8 **Q.** Was this provision negotiated after the board
 9 meeting?
 10 A. Well, it was after October 18th.
 11 **Q.** So this -- this paragraph?
 12 A. I presume it was. Only by the draft and the
 13 date on the draft and then the final agreement.
 14 **Q.** So this --
 15 A. I mean, we didn't have -- if we had a contract
 16 all ready to go when we did the board, we typically put
 17 it in there.
 18 **Q.** Correct.
 19 A. You know what I mean?
 20 **Q.** Yes.
 21 A. And sometimes we have an exact contract that's
 22 ready to go. Sometimes we say if it's not quite in its
 23 final form, we would say substantially in this form.
 24 Okay?
 25 And in other cases we just get the authority to

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1 negotiate and sign an agreement.
 2 **Q.** Now, the authority that you did get for the
 3 board on October 18, 2012, stated that you would bring
 4 any material changes or provisions back to the board
 5 prior to implementation.
 6 **MR. LIEDLE:** Are you referring to the minutes
 7 that discussed the actual award?
 8 **BY MR. MOOT:**
 9 **Q.** Well, the agenda item that authorized you to
 10 enter into the negotiations stated in the last sentence,
 11 "Any material modification to deal terms would be
 12 brought back to the board for approval prior to
 13 implementation."
 14 **Is that correct?**
 15 A. Deal terms. That's different than contractual
 16 language.
 17 **Q.** Okay.
 18 A. Deal terms are -- you know, an example would be
 19 what -- we don't want to put up our 255,000. We want
 20 you to put it up. That would be a material change.
 21 **Q.** Well, the language added to Paragraph 6 was a
 22 material change from the first draft, was it not?
 23 A. Yeah, but you're talking about apples and
 24 oranges. You're talking about an agenda item on
 25 October 18th relative to a contract that had not been

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1 done yet. And I don't look at that one paragraph as
 2 deal terms.
 3 **Q.** Well, that's what I wanted to ask you. Was
 4 this not a deal term that was inserted into the
 5 agreement after the board meeting?
 6 **MR. LIEDLE:** Vague.
 7 **THE WITNESS:** It was language that was put into
 8 the contract that was prepared after the board action.
 9 **BY MR. MOOT:**
 10 **Q.** And it obligated MTS to do certain things to
 11 remove unauthorized ingress and egress; is that correct?
 12 **MR. LIEDLE:** The paragraph speaks for itself.
 13 **THE WITNESS:** You can read it that way. It
 14 says we're looking at options.
 15 **BY MR. MOOT:**
 16 **Q.** This particular paragraph obligated MTS to do
 17 certain things that you won't testify to because the
 18 attorney-client privilege, but whatever it was, this was
 19 an added obligation that MTS had under the agreement
 20 different than what the board approved?
 21 **A.** The board didn't approve a contract.
 22 **Q.** Right.
 23 **MR. LIEDLE:** Right.
 24 **THE WITNESS:** So the answer --
 25

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1 **MR. LIEDLE:** 10. And then go to page 4, it's
 2 Paragraph 6, "Condition of the Property."
 3 **MR. MOOT:** For the record, I'll read it.
 4 **MR. LIEDLE:** That's okay.
 5 **MR. MOOT:** No, I'll go ahead and read it and
 6 ask you.
 7 **MR. LIEDLE:** How much time does he have left?
 8 **THE COURT REPORTER:** I have to run the function
 9 if you want me to.
 10 **MR. LIEDLE:** Oh, okay.
 11 **MR. MOOT:** Says, "MTS did not consent to this
 12 use and is in the process of identifying its options to
 13 remove this unauthorized ingress and egress across MTS
 14 property. In the event MTS is not successful in
 15 removing this use, the parties acknowledge it may impact
 16 the success of the intercity bus and van terminal
 17 envisioned in this lease. In such event, MTS and SYPS
 18 agree to meet and confer and determine if revisions to
 19 this lease are necessary."
 20 **THE WITNESS:** Doesn't obligate us to remove the
 21 door.
 22 **BY MR. MOOT:**
 23 **Q.** It did obligate you that if you were not
 24 successful in removing the door that you were required
 25 to meet and confer to determine if revisions to the

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1 **BY MR. MOOT:**
 2 **Q.** In fact, they were unaware --
 3 **A.** The answer to your question is no.
 4 **Q.** In fact, the board was unaware that MTS was
 5 committing to options to remove any door access?
 6 **MR. LIEDLE:** Vague, calls for speculation.
 7 **THE WITNESS:** The board has been fully informed
 8 of all of our actions relative to the door.
 9 **BY MR. MOOT:**
 10 **Q.** Well, that's -- my question is when this
 11 agreement was approved --
 12 **A.** Yeah.
 13 **Q.** -- were they advised of MTS' obligation to
 14 remove the unauthorized ingress or change and revise?
 15 **A.** I don't -- I don't read it that way.
 16 **Q.** Yeah.
 17 **A.** I don't read it as an obligation to remove. If
 18 I recall -- and I don't --
 19 **MR. LIEDLE:** Here, let me get it for you.
 20 **THE WITNESS:** Where's the language again? It's
 21 under 100?
 22 **MR. LIEDLE:** 10, Paragraph 6.
 23 **THE WITNESS:** 4? 10.
 24 **MR. LIEDLE:** Page 4.
 25 **THE WITNESS:** 10; right.

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1 lease are necessary?
 2 **A.** Correct.
 3 **Q.** And the board was never advised of this
 4 material insertion into the contract after the board
 5 meeting?
 6 **MR. LIEDLE:** After the board meeting.
 7 **MR. MOOT:** Correct.
 8 **THE WITNESS:** That's because it wasn't in
 9 existence.
 10 **MR. LIEDLE:** Did you say after or at the board
 11 meeting?
 12 **BY MR. MOOT:**
 13 **Q.** You were never advised of this new provision
 14 after the board meeting?
 15 **MR. LIEDLE:** May call for disclosure of
 16 privileged information.
 17 **THE WITNESS:** Or in closed session.
 18 **MR. LIEDLE:** Closed session; correct.
 19 **BY MR. MOOT:**
 20 **Q.** Well, did you ever bring back the lease
 21 agreement that had this provision for board approval
 22 prior to implementation?
 23 **A.** We didn't have -- we weren't required to go
 24 back to the board to sign the contract.
 25 **Q.** My question is, did you ever bring back to the

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1 board the agreement that had this provision in it for
 2 the board to approve it?
 3 MR. LIEDLE: Assumes facts.
 4 THE WITNESS: It also is subject to
 5 communications with counsel as well as closed session of
 6 the board.
 7 MR. LIEDLE: So instruct you not to answer.
 8 THE WITNESS: Well, I can't answer. I would be
 9 breaking the law if I disclosed what was talked about in
 10 closed session.
 11 BY MR. MOOT:
 12 Q. So you would be breaking --
 13 A. It's different than attorney-client privilege.
 14 Q. So you would be breaking --
 15 A. It's violation of Brown Act.
 16 Q. Just so I understand, you would be breaking the
 17 law to bring this agreement back --
 18 A. No, no, no.
 19 Q. -- in an open-session item --
 20 A. I didn't say that.
 21 MR. LIEDLE: That's not what he said.
 22 BY MR. MOOT:
 23 Q. -- to get the contract through?
 24 A. What I said was that I would be breaking the
 25 law if I disclosed what was discussed in closed session

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1 business.
 2 Q. So my question to you, then, is you would not
 3 have been breaking the law, using your terms, to advise
 4 the board of this added provision in the agreement?
 5 A. No, I would not have.
 6 MR. LIEDLE: Calls for a legal conclusion.
 7 BY MR. MOOT:
 8 Q. And you did not --
 9 MR. LIEDLE: Speculation.
 10 BY MR. MOOT:
 11 Q. You did not consider this to be a material term
 12 of the agreement with SYPS?
 13 MR. LIEDLE: Calls for speculation, calls for a
 14 legal conclusion.
 15 BY MR. MOOT:
 16 Q. You didn't consider this to be a material term
 17 that you had to take back to the board?
 18 MR. LIEDLE: Calls for a legal conclusion.
 19 THE WITNESS: No.
 20 BY MR. MOOT:
 21 Q. And what, in fact -- what options did you
 22 execute after this agreement to remove access?
 23 MR. LIEDLE: That calls for privilege.
 24 THE WITNESS: Well, it's privileged. I mean,
 25 some of it's public.

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1 of the board.
 2 Q. My question is, would you be breaking the law
 3 by taking the agreement back that had this provision
 4 that obligated MTS to identify options to remove the
 5 ingress --
 6 A. Depends on --
 7 Q. -- or renegotiate the agreement?
 8 A. Depends on whether we were in litigation or
 9 not.
 10 MR. LIEDLE: Calls for a legal conclusion as
 11 well.
 12 THE WITNESS: Yeah, yeah.
 13 BY MR. MOOT:
 14 Q. After this agreement was signed, would it be
 15 breaking the law for you to have taken this agreement
 16 back and advised the board what you committed to do in
 17 this paragraph?
 18 A. We didn't commit to do anything. All we
 19 committed to do was to potentially meet and confer.
 20 Q. Well, what --
 21 A. And we could meet and confer at any time during
 22 the course of the contract. Conditions change in any
 23 partnership agreement of this or any other type. So you
 24 always meet and confer with people you have contracts
 25 with about changing conditions. It's just a matter of

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1 BY MR. MOOT:
 2 Q. What public action did you take --
 3 A. I mean, read the court dockets for suits filed.
 4 Q. That's my question.
 5 A. Back and forth.
 6 Q. Pursuant to this provision, you act --
 7 A. But all of those discussions were with my
 8 attorney so I'm not going to answer any of them.
 9 Q. My question is what you told the board.
 10 A. What I told the board was always in closed
 11 session relative to actions on this door and all of that
 12 is -- is nondisclosable under the Brown Act.
 13 Q. So you never, in a public open session, advised
 14 the board that the agreement had been modified since the
 15 board meeting in a way that --
 16 A. You already asked me that question.
 17 Q. -- obligated you to incur money?
 18 A. No, it doesn't obligate me to incur money.
 19 Q. Well, what did you --
 20 A. It only obligates me to meet and confer with
 21 the partner on this contract.
 22 Q. Let's not beat this a dead horse.
 23 A. Well, sounds like it.
 24 Q. What options did you actually undertake to
 25 remove the unauthorized ingress and egress?

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1 A. That's a matter of public record or -- or --
 2 and anything beyond what you know as the public record
 3 was discussed with the board in closed session and I
 4 can't disclose that.
 5 **MR. LIEDLE: Okay.**
 6 **BY MR. MOOT:**
 7 **Q. Did this paragraph obligate you to incur funds**
 8 **to remove the ingress and egress?**
 9 A. No.
 10 **Q. Did you, in fact --**
 11 A. Doesn't say that, does it?
 12 **Q. Under this provision of the agreement, did you**
 13 **incur funds to effectuate this portion of the agreement?**
 14 A. All decisions relative to that were subject to
 15 closed-door sessions, executive sessions with the board
 16 that are protected by the Brown Act and are
 17 undisclosed by me and/or discussions with my general
 18 counsel.
 19 **Q. Did you incur funds under this provision of the**
 20 **agreement?**
 21 **MR. LIEDLE: Incur funds?**
 22 **THE WITNESS: Do you --**
 23 **BY MR. MOOT:**
 24 **Q. Did MTS --**
 25 A. Do you work for free?

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1 **THE WITNESS: So to that extent, they were**
 2 **discussed with the board. And -- and --**
 3 **BY MR. MOOT:**
 4 **Q. So all your discussions --**
 5 A. And they approve all of the actions.
 6 **Q. So all of the discussions regarding what these**
 7 **options were in Paragraph 6 were done in secret?**
 8 **MR. LIEDLE: Secret?**
 9 **BY MR. MOOT:**
 10 **Q. Without the public knowing what you were doing.**
 11 **MR. LIEDLE: Mischaracterization.**
 12 **BY MR. MOOT:**
 13 **Q. Would that be accurate?**
 14 **MR. LIEDLE: Secret? Vague.**
 15 **BY MR. MOOT:**
 16 **Q. Well, closed session is secret; right?**
 17 A. Well, closed session is secret because it
 18 involves litigation and should -- should not be
 19 discussed in public. And the Brown -- and the law
 20 provides for that. And the Brown Act, for the most
 21 part, provides for openness and requires openness in
 22 everything. But there are certain elements of
 23 discussion in public bodies like us that the board has
 24 the right to go into closed session on.
 25 **Q. So you chose --**

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1 **Q. What?**
 2 A. Do you work for free?
 3 **Q. No, I'm asking you whether you ended up**
 4 **incurring funds on behalf of the public agency for this**
 5 **provision.**
 6 A. Mr. Moot, we are in a lawsuit, we have counsel.
 7 I presume he gets paid. So, you know, I don't know
 8 what -- I don't know what that question is. It's --
 9 **Q. Well, my question goes to the materiality of**
 10 **the provision.**
 11 **My understanding if a provision required you to**
 12 **incur funds --**
 13 A. You're assuming --
 14 **Q. -- that would be material.**
 15 A. You're assuming that that was done without
 16 understand -- a board understanding.
 17 **MR. LIEDLE: Right.**
 18 **THE WITNESS: And I'm telling you that all**
 19 **actions relative to this have, in fact -- well -- don't**
 20 **go there.**
 21 **MR. LIEDLE: Don't go there.**
 22 **THE WITNESS: Well, see, I mean, they're**
 23 **agendized, they're agendized that we're in closed**
 24 **session on a lawsuit.**
 25 **MR. LIEDLE: On these.**

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1 A. One is litigation, one is human resources or
 2 personnel matters.
 3 **Q. So you chose to go into closed session about**
 4 **the issue of closing the access and what effect that**
 5 **would have on the use of the facility?**
 6 A. I think it -- all matters of litigation go to
 7 the board in that. That's our -- that's our internal
 8 policy.
 9 **Q. So your internal policy was to discuss the**
 10 **effect of this provision and what it entailed to do that**
 11 **behind the closed-door session?**
 12 **MR. LIEDLE: The matter was in litigation,**
 13 **Counsel. In a closed -- you're a former councilperson.**
 14 **You understand that concept.**
 15 **MR. MOOT: I understand the lawsuit wasn't**
 16 **filed until two years after this. So there wasn't any**
 17 **litigation when this provision was drafted and**
 18 **implemented.**
 19 **THE WITNESS: That's correct. That's correct.**
 20 **And that's because the clause says we're evaluating**
 21 **options.**
 22 **MR. LIEDLE: And the rest is privileged.**
 23 **THE WITNESS: Doesn't say we're going to file a**
 24 **lawsuit.**
 25

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1 BY MR. MOOT:
2 Q. It just happened to be what you did.
3 MR. LIEDLE: Counsel, there are other actions
4 that were taken in order to try and get the door closed.
5 THE WITNESS: A bunch of actions.
6 MR. LIEDLE: Including letters to your client
7 and the city tried to get the city involved. This is
8 all -- we've gone through all of this.
9 MR. MOOT: I know. And the city approved it
10 and gave permits and you're still --
11 MR. LIEDLE: I know.
12 MR. MOOT: -- pursuing a lawsuit.
13 MR. LIEDLE: That's a mischaracterization. We
14 already talked about that.
15 BY MR. MOOT:
16 Q. Let's take a look at Exhibit 172.
17 MR. LIEDLE: While he is looking at that, can
18 you run a time for us see how much more time Mr. Moot
19 has.
20 MR. MOOT: You know, what's good for the goose
21 is good for gander, you realize that?
22 THE WITNESS: I would think you would be
23 thanking me.
24 MR. MOOT: I'm just talking all of a sudden he
25 seems to be obsessed with the seven-hour mark.

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1 Q. Yeah, we looked at it earlier.
2 A. Okay. Yep.
3 Q. So this was the agenda item -- third item was a
4 public meeting.
5 A. It doesn't say closed session on it, so yes.
6 Q. And this first amendment to the lease was then
7 approved as -- at the public meeting?
8 A. Yes.
9 Q. So going to Item No. 5, could you tell me what
10 Item 5 is?
11 A. Item 5?
12 Q. Yeah, it says, "SYPS agrees to install on the
13 premises pursuant to plans approved by MTS an access
14 control-way directly opposite of the improperly
15 installed door on the neighboring building, which access
16 control will be designed to open, allow access from the
17 inside of the neighboring building to the premises but
18 not from the premises into the neighboring building."
19 Could you tell me what this access control-way
20 is?
21 A. This was an attempt, I believe, to -- to limit
22 the free commercial use of that illegal door.
23 Q. Now, of course, by November 15 --
24 November 15th, the doors had been permitted and signed
25 off; is that correct?

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1 MR. LIEDLE: Yeah.
2 MR. MOOT: We will assert that with
3 Mr. Aguirre.
4 THE WITNESS: Just because I'm going to get
5 obsessed with the seven-hour mark. There's only so much
6 of this someone can take.
7 MR. MOOT: I realize that. That's what happens
8 when you file lawsuits; right?
9 MR. LIEDLE: 172 is the first amendment to the
10 lease.
11 MR. MOOT: Right.
12 MR. LIEDLE: What do you want to do here,
13 Counsel? You want him to look at it.
14 MR. MOOT: I want to ask you about Provision 5.
15 (Discussion held off the record.)
16 BY MR. MOOT:
17 Q. Exhibit 5 to the first amendment to lease, that
18 was approved at the November 2015 board meeting?
19 A. Okay.
20 Q. Is that correct?
21 A. I presume it is. It was presented to the
22 board. We don't have the agenda item here.
23 Q. Look at 29.
24 A. 29? That's the one we already looked at,
25 wasn't it?

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1 MR. LIEDLE: No, mischaracterizes the evidence
2 in this case.
3 BY MR. MOOT:
4 Q. Well --
5 THE WITNESS: Didn't the Court -- didn't the
6 Court issue an injunction?
7 MR. LIEDLE: Yes.
8 THE WITNESS: What about that?
9 MR. LIEDLE: Really, I --
10 THE WITNESS: Doesn't that kind of go against
11 permitting?
12 BY MR. MOOT:
13 Q. I understand that you went to court to get an
14 injunction after the City of San Diego approved the
15 doors and the permit for the doors.
16 A. And I guess I would --
17 Q. The record is very clear.
18 A. I guess I would argue that they approved a
19 permit based on falsified information.
20 MR. LIEDLE: He's misusing the permit. The
21 permit is for moving these interior doors.
22 MR. MOOT: This is coming out of your time.
23 BY MR. MOOT:
24 Q. Exhibit 292.
25 MR. LIEDLE: I will not allow you to mislead

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1 Mr. Jablonski.
 2 MR. MOOT: I'm not misleading Mr. Jablonski.
 3 MR. LIEDLE: He didn't know about the permit.
 4 Mr. Moot.
 5 MR. MOOT: This is a public record, Matt, on
 6 October 6, 2014, approving the relocation of the door of
 7 the building.
 8 MR. LIEDLE: Right, relocation.
 9 MR. MOOT: Signed off and approved in the
 10 inspection record by the City of San Diego.
 11 THE WITNESS: On the 14th?
 12 BY MR. MOOT:
 13 Q. What?
 14 A. What year?
 15 Q. Signed off and approved 2/3/15.
 16 A. When was it installed?
 17 Q. What?
 18 A. When was the door installed?
 19 Q. The door was -- well, doesn't matter when the
 20 door was installed.
 21 A. Of course it does. It was installed three
 22 years before that. A door was installed without the
 23 proper permit.
 24 Q. Right.
 25 A. Okay.

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1 based on false information?
 2 Are you just making this up as you go along at
 3 this point?
 4 MR. LIEDLE: Argumentative.
 5 Stop.
 6 You've got to stop him from doing that. Okay?
 7 BY MR. MOOT:
 8 Q. I'm telling you, what makes you believe that
 9 Exhibit 292 was based off illegal information?
 10 A. Because we permitted the door, way back in the
 11 beginning, for an emergency fire exit door only.
 12 Q. That precludes Mr. Aguirre from going to the
 13 City of San Diego and under the proper building codes
 14 getting it changed to a legal door?
 15 A. Well, considering the fact that it enters out
 16 into our property, you need our approval.
 17 Q. Well, it doesn't enter onto your property.
 18 It's become recessed.
 19 A. Recessed?
 20 MR. LIEDLE: Oh.
 21 BY MR. MOOT:
 22 Q. This is what it approves: To relocate a door
 23 in the existing commercial building --
 24 MR. LIEDLE: Okay.
 25

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1 Q. It now has the proper permit.
 2 A. I'm glad you said "right," just so you
 3 acknowledge that it was an illegal door.
 4 MR. LIEDLE: Mischaracterizes the permit.
 5 BY MR. MOOT:
 6 Q. My only point, sir, is that by November 2'15,
 7 there was a lawful signed-off permit for the doors. You
 8 were unaware of that?
 9 MR. LIEDLE: Are you trying to say that the
 10 permit gives -- that permit in 2014 gives GCW access
 11 rights to the MTS transportation platform?
 12 MR. MOOT: No, I'm trying to say that as of
 13 this first amendment to lease, the door had been
 14 permitted and signed off.
 15 BY MR. MOOT:
 16 Q. You were unaware of that?
 17 MR. LIEDLE: Vague as to what door,
 18 mischaracterization of the permit.
 19 THE WITNESS: I don't know what -- it's still
 20 illegal.
 21 BY MR. MOOT:
 22 Q. Why would it be illegal if the City of
 23 San Diego approved it?
 24 A. It was approved based on false information.
 25 Q. What leads you to believe that this permit is

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1 BY MR. MOOT:
 2 Q. -- and relocation of the door.
 3 A. It still leads to access across our property,
 4 which you don't have approval for. I'm not going to
 5 argue with you about this. That's what the Court's for.
 6 MR. LIEDLE: Yeah, can we move on?
 7 MR. MOOT: No.
 8 BY MR. MOOT:
 9 Q. Now tell me what this access control-way door
 10 is that was in the first amendment to lease.
 11 MR. LIEDLE: I think he explained it.
 12 THE WITNESS: Yeah, it was an attempt,
 13 physically, to limit access to the -- to the building.
 14 BY MR. MOOT:
 15 Q. How was it going to do that?
 16 A. I think it was through some kind of scissors
 17 fence or something like that.
 18 Q. And you were -- this was in reference to
 19 Section 6 of the lease that we went over?
 20 A. Well, yeah, it's all relative to that.
 21 Q. So this was one of the implementations of
 22 Section 6?
 23 A. Well, since you weren't complying with the law,
 24 yeah.
 25 MR. LIEDLE: All right. Let's take a break for

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1 a second.
 2 (4:25 p.m.)
 3 (A recess was taken.)
 4 (4:27 p.m.)
 5 BY MR. MOOT:
 6 Q. Going back to the --
 7 MR. LIEDLE: 172.
 8 BY MR. MOOT:
 9 Q. -- 172, Paragraph 5, "Access Control-Way."
 10 Was this access control-way implemented
 11 pursuant to Paragraph 6 of the initial agreement that we
 12 went over?
 13 MR. LIEDLE: Do you know?
 14 THE WITNESS: I mean, I don't know.
 15 MR. LIEDLE: Okay.
 16 BY MR. MOOT:
 17 Q. Well, it says as referenced in Section 6 of the
 18 lease. Would that be the Section 6 of the lease we just
 19 went over?
 20 A. I would presume it is.
 21 Q. So you did --
 22 A. Since this is the first amendment.
 23 Q. So you did at this point then --
 24 MR. LIEDLE: Are you done?
 25 THE WITNESS: Yeah.

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1 BY MR. MOOT:
 2 Q. -- take one of the implementations of
 3 Paragraph 6 to a public meeting; is that correct?
 4 THE WITNESS: Sorry, ask that question again.
 5 MR. LIEDLE: Say it -- yeah.
 6 BY MR. MOOT:
 7 Q. You did take one of the options to implement
 8 Paragraph 6 back to the board in a public meeting; is
 9 that correct?
 10 MR. LIEDLE: Well, argumentative as phrased.
 11 But are you saying -- are you asking if they
 12 took the first amended lease -- the first amendment to
 13 the lease back to the board?
 14 BY MR. MOOT:
 15 Q. No, what I'm asking is this provision is
 16 implemented pursuant to Section 6 of the lease; correct?
 17 A. Right. That's what it says.
 18 Q. And this implementation of Section 6 was
 19 back -- brought back in an open public meeting; is that
 20 correct?
 21 A. That's correct.
 22 Q. Can you tell me where in the staff report
 23 there's any reference to this controlled access door in
 24 Paragraph 5 of the first amended lease?
 25 MR. LIEDLE: Which -- what exhibit number is

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1 that, Counsel?
 2 MR. MOOT: Exhibit 29.
 3 MR. LIEDLE: Exhibit 29.
 4 THE WITNESS: Yeah, I have it.
 5 MR. LIEDLE: Okay.
 6 MR. MOOT: I will represent to you that I have
 7 read it, and I see no reference to this access control
 8 door anywhere in the staff report.
 9 THE WITNESS: Okay. I will take your word for
 10 it.
 11 BY MR. MOOT:
 12 Q. Was this Provision 5 brought back after the
 13 meeting?
 14 A. I believe --
 15 MR. LIEDLE: Well, there is a whole discussion
 16 here about the litigation, Counsel.
 17 MR. MOOT: Well, I understand that, but I don't
 18 see any discussions about this access control-way. I'm
 19 just wondering why --
 20 THE WITNESS: Well, the first amendment to the
 21 lease is attached to this agenda item. And it's the
 22 same one here as it is in Number 172 or whatever it is.
 23 So it was brought before the board.
 24 BY MR. MOOT:
 25 Q. You just didn't address what it was.

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1 A. We just didn't address what it was. That
 2 doesn't mean that it's not there for people or the board
 3 to read it.
 4 Q. So you never gave any explanation to the board
 5 as to the fact that you were going to allow access from
 6 the inside of the building to the platform but not the
 7 other way around?
 8 MR. LIEDLE: Vague.
 9 THE WITNESS: I don't understand that question.
 10 MR. LIEDLE: Yeah.
 11 BY MR. MOOT:
 12 Q. Well, it says this access control-way was
 13 designed to open/allow access from the inside of the
 14 building but not from the premises into the building.
 15 So you --
 16 A. This is consistent with what I said before is
 17 that what we permitted was an emergency exit from that
 18 building in the case of fire.
 19 Q. Provision 5 doesn't say anything about
 20 emergency exit, does it?
 21 A. Doesn't have to. That's why it's allowing
 22 access out and not in. Because it's supposed to be an
 23 emergency exit in case of emergency or fire.
 24 Q. So did you ever inform the board that you were
 25 going to allow people to use the elevator to go out to

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1 the -- and the door to go out to the platform but not
 2 the other way around?
 3 A. Nope. Didn't know about the elevator,
 4 remember?
 5 Q. By 2015, you didn't know about the elevator?
 6 A. I don't think so.
 7 Q. And is there anything that leads you to believe
 8 that the first amendment to lease was actually attached
 9 to the staff report?
 10 A. I would have. If it's attached here, then it
 11 was. When we asked the board to approve the amendment,
 12 I'm sure it was attached.
 13 MR. LIEDLE: Yeah, A-1.
 14 THE WITNESS: Yeah.
 15 MR. LIEDLE: Okay.
 16 MR. MOOT: It's not attached to the one that we
 17 have.
 18 MR. LIEDLE: Exhibit 29?
 19 MR. MOOT: Yes.
 20 MR. LIEDLE: They seem to be consecutive Bates
 21 numbers, Counsel.
 22 THE WITNESS: Yeah, it's attached to it. It's
 23 A-1. It's listed as A-1.
 24 MR. LIEDLE: And not signed; right?
 25 THE WITNESS: Yeah.

306

1 MR. LIEDLE: Okay.
 2 THE WITNESS: Yeah, it says to execute --
 3 execute Attachment A.
 4 MR. LIEDLE: A.
 5 BY MR. MOOT:
 6 Q. All right. And so the board wasn't given any
 7 particular explanation as to what the access control
 8 would allow or would not allow?
 9 MR. LIEDLE: During open session on
 10 November 12.
 11 BY MR. MOOT:
 12 Q. Or in the staff report.
 13 A. Well, as you can read, as you said, you read
 14 the staff report, and I presume you read it closer than
 15 I did, that it wasn't discussed so I will take your word
 16 for that.
 17 Q. Now in the discussion of the MTS Grand Central
 18 West litigation, why was the board not informed of the
 19 permit that existed for the doors at the time?
 20 MR. LIEDLE: Well --
 21 THE WITNESS: Answering that question would
 22 serve to disclose things that were potentially said in
 23 closed session with the board.
 24 MR. LIEDLE: Right.
 25 THE WITNESS: I'm not going to answer that.

307

1 BY MR. MOOT:
 2 Q. Well, this is an open session item that
 3 represents the status of the litigation; correct?
 4 A. No, it doesn't.
 5 Q. Well, looks to me like there's a discussion of
 6 the MTS Grand Central West litigation on page 3 of the
 7 staff report; is that correct?
 8 A. Where are you reading?
 9 MR. LIEDLE: Page 3.
 10 BY MR. MOOT:
 11 Q. Page 3.
 12 A. Of the staff report?
 13 Q. Correct.
 14 A. Okay.
 15 Q. And I'm wondering why on November 12, 2015, and
 16 at a time when the City of San Diego approved a permit
 17 for the door, why that was never mentioned in the report
 18 to the board.
 19 MR. LIEDLE: There's -- Counsel, you're
 20 intentionally misleading the witness.
 21 The last sentence of that paragraph right above
 22 "Proposed Lease" says, "MTS also informed that the City
 23 of San Diego has opened a code enforcement case to
 24 review whether the door was properly permitted when it
 25 was originally installed." It says it right there.

308

1 MR. MOOT: But it doesn't say that, in fact,
 2 that the code enforcement case was closed and a door
 3 permit was issued. I was just wondering why that was
 4 left out.
 5 MR. LIEDLE: Counsel, we're mixing apples and
 6 oranges.
 7 As you know, that permit was issued because the
 8 doors were opening onto the MTS property and they had to
 9 get that alcove. And that was a creative way for you to
 10 avoid the 3-foot setback.
 11 MR. MOOT: Counsel, I appreciate you testifying
 12 for Mr. Jablonski.
 13 MR. LIEDLE: He doesn't know any of this stuff.
 14 My God, let's move on.
 15 MR. MOOT: That is the CEO of this
 16 organization.
 17 (Reporter interruption.)
 18 THE WITNESS: You don't know that I don't know
 19 it. What I'm saying is that all of those discussions I
 20 had were either with my general counsel or with my board
 21 in closed session.
 22 BY MR. MOOT:
 23 Q. So you, as the signer of the staff report, made
 24 the decision not to inform the board in the open session
 25 item about the status of the City of San Diego issuing a

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1 permit for the door?
 2 MR. LIEDLE: Assumes facts, mischaracterizes
 3 the permit.
 4 THE WITNESS: As you can read in this document,
 5 it was not written that way.
 6 BY MR. MOOT:
 7 Q. And is that something you wanted to keep secret
 8 from the board? You didn't want to tell them, hey, wait
 9 a minute --
 10 A. Answer to that question would disclose
 11 information that I talked to the board or my general
 12 counsel with -- talked to the board in closed session or
 13 with my -- my counsel.
 14 Q. So I guess what we --
 15 A. I'm not going to answer it.
 16 Q. I guess what we can deduce from the
 17 open-session board item is that you chose not to tell
 18 the board members in open session as to the status of
 19 that door and the permitting of that door with the City
 20 of San Diego?
 21 MR. LIEDLE: Simply not true.
 22 THE WITNESS: I think it was said.
 23 BY MR. MOOT:
 24 Q. Well, as I read this --
 25 A. At this time, MTS is also informed that the

310

1 BY MR. MOOT:
 2 Q. Were there any discussions with MTS and
 3 Councilman Alvarez's office about him participating in
 4 getting the City of San Diego to issue code violations?
 5 A. Any discussions relative to this would have
 6 been done in closed session with the board. And that's
 7 not disclosable.
 8 Q. Can you tell me why MTS CC'd Councilman Alvarez
 9 on its letters to code enforcement?
 10 MR. LIEDLE: Do you have an example of a
 11 letter, Counsel? Is it one that he wrote? I mean, I
 12 don't know what you're talking about.
 13 MR. MOOT: You don't?
 14 MR. LIEDLE: Well, no, I mean, I don't know
 15 which letter you're referring to.
 16 MR. MOOT: You seriously -- you're seriously
 17 telling me, Matt, you don't know?
 18 MR. LIEDLE: I don't know which letter, and
 19 it's unfair to the witness to be put in the situation
 20 where he's being asked to speculate about something he
 21 doesn't even -- may not even know about.
 22 THE WITNESS: I knew we wrote letters to the
 23 city.
 24 BY MR. MOOT:
 25 Q. And did you know that Councilman Alvarez was

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1 City of San Diego has opened a code enforcement case.
 2 That was at the time that this agenda item was before
 3 the board.
 4 Q. And that --
 5 A. That was the current status.
 6 Q. And at the time, in fact, they had closed the
 7 code enforcement case with respect to the door?
 8 A. If that were the case, then we would have
 9 written that. If we had known that.
 10 Q. So --
 11 A. So . . .
 12 Q. So you dispute the fact that anybody at MTS
 13 knew that the code enforcement case for the doors you
 14 were complaining about had been closed?
 15 MR. LIEDLE: Objection. Calls for information
 16 protected by the attorney-client privilege.
 17 BY MR. MOOT:
 18 Q. What role did Councilman Alvarez play in
 19 getting the City of San Diego to issue notices of
 20 violations against Grand Central?
 21 MR. LIEDLE: Notices of what violation?
 22 MR. MOOT: Code violations.
 23 MR. LIEDLE: Oh.
 24 THE WITNESS: I have no idea of any of that.
 25

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1 CC'd on those letters?
 2 A. Wouldn't surprise me. He may have asked to be
 3 CC'd.
 4 Q. That's my question. Did Mr. Alvarez ask to be
 5 CC'd on this letter?
 6 A. I don't recall that.
 7 Q. Did you ever ask Mr. Alvarez,
 8 Councilman Alvarez, if you could get his permission to
 9 CC him on this letter?
 10 MR. LIEDLE: Assumes facts.
 11 BY MR. MOOT:
 12 Q. Well, why don't you look at Exhibit 20.
 13 MR. LIEDLE: There we go.
 14 THE WITNESS: Exhibit 20?
 15 MR. LIEDLE: 20.
 16 THE WITNESS: 20.
 17 Okay. I presume this was written by counsel;
 18 right? Yes, it was.
 19 You know, all I will say is that generally,
 20 when we have issues in a specific council district with
 21 the city that we will let the councilperson be aware of
 22 that.
 23 BY MR. MOOT:
 24 Q. Well, that's what I want to ask you.
 25 A. Generally, when we have issues like that.

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1 **Q. What did -- okay.**
 2 A. We are having issues in Pacific Beach now with
 3 pedestrian walkways and we -- and we CC
 4 Councilman Zapf -- Councilwoman Zapf on issues that we
 5 communicate with. So it's a matter of courtesy.
 6 **Q. My question is, were there any discussions with**
 7 **MTS staff about CC'ing Mr. Alvarez on letters to the**
 8 **neighborhood code compliance of the City of San Diego?**
 9 A. Not that I recall.
 10 **Q. Were any requests made of Mr. Alvarez to see if**
 11 **he could use his status as a councilperson to get**
 12 **favorable treatment on those code compliance complaints?**
 13 **MR. LIEDLE: Vague.**
 14 **THE WITNESS: I -- well, I can tell you no.**
 15 **MR. LIEDLE: Calls for speculation.**
 16 **BY MR. MOOT:**
 17 **Q. Well, then why -- why would you CC a city**
 18 **councilperson on a letter to code compliance?**
 19 A. I just told you that. I just told you that. I
 20 told you any time we have communications with the city
 21 relative to an issue that we would -- we would CC the
 22 appropriate councilperson. This is his district.
 23 **Q. So you weren't trying to influence the code**
 24 **compliance department by including --**
 25 A. It's a matter of courtesy.

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1 A. I don't know that for a fact.
 2 **MR. LIEDLE: Calls for speculation then.**
 3 **Did you authorize this letter?**
 4 **THE WITNESS: No.**
 5 **BY MR. MOOT:**
 6 **Q. It was given to you in an email with a**
 7 **reference to CC'ing Councilman Alvarez; is that correct?**
 8 A. Who do you mean?
 9 **MR. MOOT: Well, let's mark it. What's the**
 10 **next in order?**
 11 **THE COURT REPORTER: 297.**
 12 **MR. LIEDLE: Let me see the email, Counsel. Is**
 13 **that between Saunders and Mr. Jablonski?**
 14 **MR. MOOT: Mr. Saunders isn't covered by the**
 15 **attorney-client privilege.**
 16 **(Discussion held off the record.)**
 17 **MR. MOOT: We will mark for the record**
 18 **Exhibit 297.**
 19 **(Exhibit No. 297 marked for identification.)**
 20 **THE WITNESS: Okay.**
 21 **BY MR. MOOT:**
 22 **Q. And I want to ask you why was it -- well,**
 23 **strike that.**
 24 **Was there any discussions between Mr. Saunders**
 25 **and MTS about CC'ing Councilman Alvarez a letter to code**

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1 (Reporter interruption.)
 2 **BY MR. MOOT:**
 3 **Q. Let me finish, please.**
 4 A. Well, I was answering and you interrupted me.
 5 **MR. LIEDLE: Right.**
 6 **BY MR. MOOT:**
 7 **Q. Well, why don't you let me finish my question.**
 8 A. Go ahead.
 9 **Q. So you were not trying to influence code**
 10 **compliance for an outcome favorable to MTS by including**
 11 **a councilman as a CC on the letter?**
 12 A. Of course not.
 13 **Q. And you did not obtain Mr. Alvarez's permission**
 14 **to put his name on a letter to an agency that he**
 15 **oversaw?**
 16 **MR. LIEDLE: Assumes facts.**
 17 **THE WITNESS: As I said, it was done as a**
 18 **matter of courtesy.**
 19 **BY MR. MOOT:**
 20 **Q. Without his permission?**
 21 **MR. LIEDLE: Assumes facts. Assumes that the**
 22 **permission is required.**
 23 **BY MR. MOOT:**
 24 **Q. I'm just asking, it was done without his**
 25 **permission; correct?**

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1 **compliance?**
 2 A. Not to my knowledge.
 3 **Q. Were you aware that SYPS was trying to get the**
 4 **city attorney's office involved in issuing violations**
 5 **against Grand Central West?**
 6 A. Not to my knowledge.
 7 **Q. Did Mr. Saunders ever inform you in a report**
 8 **that they were trying to get the City of San Diego city**
 9 **attorney's office involved in an investigation?**
 10 A. I don't recall. But if you're going to show me
 11 something.
 12 **Q. I mean, you don't have any recollection of**
 13 **trying to get the City of San Diego city attorney's**
 14 **office to get permits that that issue revoked?**
 15 A. Well, that would also be subject to my
 16 communication with my general counsel.
 17 **Q. Well, I will show you something that's not**
 18 **subject to communication with your general counsel.**
 19 **(Exhibit No. 298 marked for identification.)**
 20 **MR. LIEDLE: You are marking this, too,**
 21 **Counselor, has it been marked 8?**
 22 **MR. MOOT: 298 next in order.**
 23 **MR. LIEDLE: Thank you, Counsel.**
 24 **BY MR. MOOT:**
 25 **Q. If you will take a look at --**

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1 MR. LIEDLE: Well, why don't we ask the witness
 2 if he's ever seen this before.
 3 MR. MOOT: This was a report submitted to MTS
 4 regarding the status of the SYPS lease.
 5 MR. LIEDLE: Is there a date on this? I guess
 6 year in review, 2013?
 7 MR. MOOT: Yes.
 8 Q. If you open to SYPS 249, reporting as to what
 9 occurred in October of 2013.
 10 A. What's the question?
 11 Q. Were you aware that your partner in this
 12 project, SYPS, was getting the city attorney's office of
 13 San Diego involved in closed-door meetings that notices
 14 of violation issued against Grand Central West?
 15 MR. LIEDLE: If you're trying to use this
 16 document, the document says they were not allowed to
 17 attend.
 18 THE WITNESS: To attend; right.
 19 MR. LIEDLE: If you read this.
 20 BY MR. MOOT:
 21 Q. This was a report of the meeting to MTS;
 22 correct?
 23 MR. LIEDLE: Well, what meeting are you talking
 24 about, the meeting that police had and the code
 25 compliance and the San Diego city attorney?

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1 A. No.
 2 Q. Did MTS try to influence the city attorney's
 3 office in this investigation?
 4 MR. LIEDLE: Vague, calls for speculation.
 5 THE WITNESS: Other -- other than writing the
 6 letters that we wrote which are public documents.
 7 BY MR. MOOT:
 8 Q. Were you unaware, then, that SYPS was involved
 9 in requesting an investigation by the city attorney into
 10 Grand Central West?
 11 MR. LIEDLE: Are you -- are you asking that
 12 independent of this? Are you asking him if he ever
 13 became aware that SYPS --
 14 BY MR. MOOT:
 15 Q. Did you ever become aware that SYPS was
 16 involved in getting the city attorney's office to
 17 conduct an investigation into Grand Central West?
 18 A. You mean by this document? You're referencing
 19 this?
 20 MR. LIEDLE: Or are you saying separate from
 21 that document --
 22 THE WITNESS: Yeah.
 23 MR. LIEDLE: -- Counsel?
 24 BY MR. MOOT:
 25 Q. That's my question. Did you ever become aware

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1 MR. MOOT: It says SYPS met with San Diego code
 2 compliance regarding the McDonald's fire door that leads
 3 to the platform and requested an inspection.
 4 MR. LIEDLE: Then it says the inspection was
 5 made and discussed during a closed-door meeting between
 6 the police code compliance and the city attorney, SYPS
 7 was not allowed to attend. So I don't know what this
 8 has to do with the city attorney and SYPS.
 9 MR. MOOT: Well, that's because they're now
 10 reporting to MTS, this was occurring. I was questioning
 11 how they knew it was occurring if they weren't allowed
 12 to attend the meeting.
 13 MR. LIEDLE: Probably should ask Mr. Saunders.
 14 THE WITNESS: Yeah, I think that's a question
 15 more for him.
 16 MR. LIEDLE: Yeah.
 17 BY MR. MOOT:
 18 Q. Well, did you note this report when it --
 19 A. At the time, I may have noted it, but this was
 20 a year in review. So presumably, I got this, looked at
 21 this in January sometime maybe. Could have been
 22 February or March. And this relates back to October.
 23 So at that time, it was old news.
 24 Q. So did you ever inquire of Mr. Alvarez what the
 25 city attorney's investigation was about?

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1 that SYPS --
 2 A. If I became aware, it would have been through
 3 conversations with my general counsel, and that's
 4 privileged.
 5 Q. So when this document came across your desk,
 6 you didn't make any inquiries, other than your counsel,
 7 as to the status of the city attorney investigation?
 8 A. I may have had discussions with counsel, but
 9 it's privileged.
 10 Q. You didn't discuss it with Mr. Saunders?
 11 A. No.
 12 Q. Now, have you ever had any discussions with
 13 Ron Roberts about the SYPS lease?
 14 MR. LIEDLE: Outside of closed-door session,
 15 Counsel?
 16 MR. MOOT: Yes.
 17 BY MR. MOOT:
 18 Q. Outside of closed-door sessions, before, at, or
 19 during any meetings, did you ever have any discussions
 20 with Ron Roberts about the SYPS lease?
 21 A. About the lease?
 22 Q. Yeah. The agreement with SYPS.
 23 MR. LIEDLE: Separate from board meetings?
 24 THE WITNESS: There could have been. He's vice
 25 chair of the board.

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1 **BY MR. MOOT:**
2 **Q. How long has Mr. Roberts been on the board?**
3 A. Over 25 years.
4 **Q. And what role, if any, did Mr. Roberts play in**
5 **SYPS securing the management agreement with SYPS?**
6 A. None other than his position as any other board
7 member.
8 **Q. Do you know how long Mr. Roberts and**
9 **Mr. Saunders have known each other?**
10 A. No.
11 **Q. Has Mr. Saunders ever indicated to you that he**
12 **has a 35-year relationship with Mr. Roberts?**
13 A. No, but, you know, I find very often in this
14 town people that grew up here and live here know each
15 other.
16 **Q. Do you know whether Supervisor Roberts has any**
17 **other business dealings with Brad Saunders?**
18 A. No, I do not.
19 **Q. Did Mr. Roberts ever tell you that GCW should**
20 **not be messing with the SYPS lease?**
21 A. No.
22 **Q. Are you aware that he's made that statement to**
23 **other people?**
24 A. No.
25 **Q. For example, did Mr. Roberts ever advise to you**

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1 **Have you ever discussed this with Mr. Roberts outside of**
2 **any board meeting?**
3 A. You know, I may have. But I don't recall
4 specifically.
5 **Q. You went to a chamber event in the last year or**
6 **so with Mr. Roberts back to Washington?**
7 A. Oh, yeah, Miguel was there too.
8 **Q. Right. And at that meeting, did you and Mr. --**
9 **did you and Supervisor Roberts discuss the situation in**
10 **San Ysidro with the Grand Central West building?**
11 A. No. No. I may have told him that Mr. Aguirre
12 was accompanying the group. But that would have been
13 about it.
14 **Q. And --**
15 A. I didn't really spend a lot of time on that
16 meeting -- on that trip.
17 **Q. But you didn't discuss with him the situation**
18 **with Mr. Aguirre of what was occurring in San Ysidro at**
19 **his building?**
20 A. I don't know, you know. Mr. Roberts may have
21 said to me at some point in time so what's -- what's --
22 is there anything new developments or anything like
23 that, but I don't recall specifically.
24 **Q. And he didn't indicate to you --**
25 A. And I wouldn't have -- I wouldn't have told him

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1 **that he told a representative of Grand Central West that**
2 **they should not be messing with the SYPS lease?**
3 A. I don't know, I don't --
4 **Q. You never had any discussions with Mr. Roberts**
5 **that touched on or related to the SYPS lease?**
6 A. Other than general knowledge about the lease
7 and what the deal was all about as with any other board
8 member, yeah, I mean, that's what it was confined to.
9 **Q. So in other words --**
10 A. And any other -- and any other discussions
11 relative to the issues with us would have been in closed
12 session with the full board.
13 **Q. So you never discussed the issues that were**
14 **occurring in San Ysidro with Mr. Roberts outside of a**
15 **board meeting?**
16 **MR. LIEDLE: Vague. When you say "issues that**
17 **were occurring in San Ysidro," that's just vague and**
18 **overbroad.**
19 **MR. MOOT: We are talking about this particular**
20 **issue.**
21 **MR. LIEDLE: "This issue" being what?**
22 **MR. MOOT: This litigation.**
23 **MR. LIEDLE: Okay.**
24 **BY MR. MOOT:**
25 **Q. The problem with Grand Central West and SYPS.**

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1 anything that the board hadn't been told.
2 **Q. And the topic of his relationship with**
3 **Mr. Saunders then never came up?**
4 A. No.
5 **MR. MOOT: I'm going to mark as 299.**
6 **(Exhibit No. 299 marked for identification.)**
7 **MR. MOOT: It's another email regarding code**
8 **compliance letters.**
9 **MR. LIEDLE: Dated January 23, 2014, from**
10 **Mr. Saunders to Mr. Penedo and a person by the name of**
11 **Craig Leake, L-E-A-K-E, is at the top.**
12 **MR. MOOT: Yeah.**
13 **BY MR. MOOT:**
14 **Q. And it starts with an email from Karen Landers**
15 **to Melina Meza with a CC to Sharon Cooney, yourself, and**
16 **Tim Allison, MTS letter to Miguel Aguirre.**
17 **Do you know why Ms. Landers was emailing**
18 **Melina Meza at Councilman Alvarez's office this 2014**
19 **letter to Mr. Aguirre?**
20 **MR. LIEDLE: May call for speculation and also**
21 **the disclosure of attorney-client privileged**
22 **information.**
23 **MR. MOOT: This email is to Mr. Alvarez's staff**
24 **person.**
25 **MR. LIEDLE: I understand that, but you're**

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1 asking him why and when you get to the why, Counsel,
2 that's the problem. That's all. I don't know what
3 conversations may have occurred at this point.

4 THE WITNESS: Yeah, and they were discussions
5 with counsel relative to leading up to this letter.

6 MR. LIEDLE: And that letter's the letter
7 that's attached dated January 22, 2014.

8 THE WITNESS: The letter is a matter of public
9 record, and it's a demand that they stop using the door.
10 BY MR. MOOT:

11 Q. And did Councilman Alvarez's office get back to
12 you regarding the letter and any questions that they
13 have?

14 A. Not to me personally. I can't speak for
15 Ms. Landers.

16 Q. Do you know why Ms. Landers was keeping
17 Councilman Alvarez's office apprised of the matter as it
18 progresses?

19 A. I can . . .

20 MR. LIEDLE: Calls for speculation, may call
21 for disclosure of attorney-client-privileged
22 information.

23 MR. MOOT: Well, certainly any communications
24 from Mr. Alvarez's office to MTS regarding this letter
25 wouldn't be privileged.

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1 like to be informed of what was going on there as a
2 board member.

3 Q. When did you first have discussions with
4 Mr. Saunders in the Greyhound group about their wanting
5 to use the SYITC?

6 A. You mean IBC?

7 Q. IBC. IBT or SYITC.

8 A. I presume it was sometime in early 2012 on or
9 around that March PowerPoint date.

10 Q. Open up to Exhibit 64.

11 MR. LIEDLE: Single email.

12 MR. MOOT: Yes.

13 MR. LIEDLE: Dated August 19, 2011, from

14 Mr. Saunders to Mr. Penedo.

15 MR. MOOT: Yes.

16 MR. LIEDLE: And Antonio Lopez.

17 BY MR. MOOT:

18 Q. Bottom email indicates in August 13, 2011,
19 Mr. Saunders gave Al Penedo your email address.

20 A. Right.

21 Q. Did you and Mr. Penedo start communicating by
22 email starting in August of 2011?

23 A. I don't recall that.

24 Q. Do you recall Mr. Saunders --

25 A. To refresh my memory, what exactly do I want to

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1 MR. LIEDLE: Communications with that office;
2 correct. But if it's in a closed-door session because
3 he's got two hats on. That's all.

4 THE WITNESS: You know, and I will answer to
5 the extent that as I answered it to it before, when we
6 have something going on in a specific council district,
7 we think it is just a matter of courtesy that we let the
8 appropriate council member know.

9 BY MR. MOOT:

10 Q. So this was not as a result of Mr. Alvarez
11 writing you a letter expressing his concerns about the
12 project?

13 MR. LIEDLE: Vague.

14 BY MR. MOOT:

15 Q. Do you recall the December 12th letter he sent
16 to you saying that he thought the project needed to go
17 out for an RFP?

18 A. But this is a year and a half later. This is
19 almost two years later.

20 Q. My question is, was he asking to be kept
21 informed of what was occurring?

22 A. I don't know whether he ever gave directions to
23 Karen Landers to copy him. I can only speculate as to
24 why it was put on there because it is his council
25 district. And he -- one would presume that he would

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1 tell Paul. I don't think he was too clued in at that
2 point.

3 Q. Well, that's my -- my question is did the --
4 did your discussions with the Greyhound and Saunders
5 group begin in August of 2011?

6 A. I think it was actually -- no, I think that was
7 way earlier. It wouldn't have taken ten months to bring
8 us that in March. I don't know exactly what had
9 happened. But Al Penedo, whether he called me or how
10 the communication happened, but in some way -- and it
11 could have been through Brad Saunders where they said,
12 you know, Greyhound is being removed from that location,
13 and they would like to -- they have a proposal for you
14 to talk to about.

15 Q. Okay. This --

16 A. And then --

17 Q. -- this email from Mr. Saunders above it --

18 A. Yeah.

19 Q. -- after providing Mr. Penedo your email
20 address indicates that they would try to get him an
21 operating plan, and Mr. Saunders indicates that that him
22 was you.

23 Do you recall as early as August of 2011
24 Greyhound trying to get you an operating plan, a
25 financial proposal to take over the management of the

329

1 **SYITC?**
 2 A. No, I -- and I don't remember back then
 3 specifically, but if they did get kicked out at that
 4 point in time, they may have come to the -- to the bus
 5 terminal just like anybody else while it was under the
 6 management of Ace.
 7 **Q. Did --**
 8 A. And paid their fees to -- to load and unload
 9 buses.
 10 **Q. Did --**
 11 A. And then they experienced that and had another
 12 idea and then came to us.
 13 **Q. So you don't recall discussions regarding**
 14 **Greyhound taking over the management starting as early**
 15 **as August of 2011?**
 16 A. I don't think that that was the case back then.
 17 Even Mr. Penedo -- a lot of the higher-level discussions
 18 I had were with Mr. Penedo. He was the certain person
 19 from Greyhound that I dealt with.
 20 **Q. As of August 2011, he had your email address.**
 21 A. Well, it looks that way. Somebody gave it to
 22 him on August 19.
 23 **MR. LIEDLE: Calls for speculation.**
 24 **BY MR. MOOT:**
 25 **Q. Did you have any discussions with Ms. Coney**

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1 **about allowing Greyhound access to the lower bus**
 2 **terminal where the local buses, taxi, and jitney were**
 3 **operating?**
 4 A. I may have. Sharon is my chief of staff and
 5 head of planning and so I have 20 conversations with her
 6 a day.
 7 **Q. And do you recall advising her that you**
 8 **approved Greyhound using this lower banjo area in the**
 9 **August 2011 time frame?**
 10 A. Yeah, I don't recall that. But -- if you have
 11 a document saying it.
 12 **Q. Look at Exhibit 70.**
 13 A. Okay. This doesn't say that I approved it.
 14 **Q. That's what I'm asking you. Do you recall**
 15 **giving Ms. Cooney permission for Greyhound as an**
 16 **intercity bus transport use of the local lower circle**
 17 **area?**
 18 A. Oh, all this -- yeah. No. And all this
 19 document says is that Brad Saunders with Juan Antonio
 20 would like to meet with Sharon and Tim this week. I
 21 don't even know if that happened.
 22 **Q. My question is, do you recall giving**
 23 **Sharon Cooney permission to allow Greyhound to use these**
 24 **lowers circle?**
 25 **MR. LIEDLE: That testimony calls for**

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1 **speculation.**
 2 **THE WITNESS: Yeah, I don't recall giving her**
 3 **permission. I think when we discussed it, it was with**
 4 **Greyhound as a group, and I -- and I -- if I remember**
 5 **correctly, I told them if they wanted to use the banjo,**
 6 **they could, but they were going to have to pay more**
 7 **money.**
 8 **BY MR. MOOT:**
 9 **Q. And you were, I guess at the time, not aware**
 10 **that under their original SYITC plan that had been**
 11 **approved in the community process that that was to be**
 12 **the area reserved for local shuttles, MTS buses, and**
 13 **jitneys?**
 14 **MR. LIEDLE: Calls for speculation.**
 15 **THE WITNESS: At that time, I think there was**
 16 **less of those vehicles. MexiCoach was no longer there**
 17 **so those spaces identified for MexiCoach and those**
 18 **carriers weren't there anymore. So there was -- there**
 19 **was availability.**
 20 **BY MR. MOOT:**
 21 **Q. So Greyhound was the only intercity bus carrier**
 22 **that was given this special permission to use the lower**
 23 **banjo area in August of 2011?**
 24 A. I don't know whether it was August 2011. I
 25 don't remember. I thought it was much later than that

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1 when they -- when they asked for that.
 2 **Q. Now, Greyhound's kiosk that they were leasing**
 3 **with MTS was right adjacent to this lower banjo area; is**
 4 **that correct?**
 5 A. Yes.
 6 **Q. And the lower banjo area was the area where**
 7 **people exiting Mexico, pedestrians entering Mexico was**
 8 **also directly adjacent to this lower banjo area?**
 9 A. Yes. It wasn't really that adjacent to it.
 10 **Q. Well, when you walked --**
 11 A. The parking space is on the west side of the
 12 banjo. The kiosk is actually closer to -- to the
 13 McDonald's building than it is in those parking spaces.
 14 **Q. But Greyhound's ticket booth that they were**
 15 **renting from MTS and the lower banjo area were both**
 16 **closer to the lower banjo circle than where the**
 17 **intercity bus terminal was behind the McDonald's**
 18 **building?**
 19 A. That's correct.
 20 **Q. And therefore allowing Greyhound to use this**
 21 **lower bus area would have been advantageous to them**
 22 **because it was close to the potential customers and**
 23 **their ticket area?**
 24 A. Mm-hmm.
 25 **Q. And you recall allowing -- giving eventually,**

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1 **at some point, Greyhound permission to do that?**
 2 A. Yes, through BriceHouse, that was our
 3 concessioner.
 4 **Q. Now --**
 5 A. I don't recall that anybody else asked us for
 6 that permission. Nor did we deny anybody the permission
 7 if they wanted to pay special rent for a ticket booth
 8 down there.
 9 **Q. Now if you take a look at Exhibit 72. And the**
 10 **email that starts at the bottom and goes over to the**
 11 **second page.**
 12 **Did you meet with Mr. Penedo at the end of**
 13 **November or during the week of -- excuse me, during the**
 14 **week of December 5th and get a presentation from**
 15 **Greyhound about their proposal to manage the parking lot**
 16 **behind the McDonald's building?**
 17 A. I think these were, you know, you were
 18 referring -- before back in August sounds to me like
 19 these meetings started in December if, in fact, I did
 20 meet with them, which I don't recall. But at those
 21 early ones, it was very conceptual. And I asked them to
 22 put together a proposal and I presume that's when they
 23 came back in March with this specific proposal.
 24 **Q. Did you have a meeting with them in December of**
 25 **2011 about a proposal for the reconfiguration of**

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1 effectively either.
 2 **Q. Were you interested in getting more revenue and**
 3 **effective management?**
 4 A. Of course.
 5 **Q. But you were only interested in a proposal from**
 6 **Greyhound?**
 7 **MR. LIEDLE: Argumentative. Assumes facts.**
 8 **BY MR. MOOT:**
 9 **Q. Is that true, that you were only interested in**
 10 **getting a proposal from them and not from anybody else?**
 11 A. At that time -- at that time, they came to me
 12 and said we would like to give you a proposal. And I
 13 said go ahead and develop it and bring it back to me.
 14 **Q. How long did you give them to develop this**
 15 **proposal?**
 16 A. I don't recall.
 17 **Q. Would it have been a year?**
 18 A. Well, it wouldn't have been a year because we
 19 saw the -- we saw the proposal that was dated in March.
 20 **Q. Well, if there was a meeting in December and it**
 21 **didn't get approved until October of 2012, wouldn't they**
 22 **have had a year to come up with a proposal?**
 23 A. No, you showed me a PowerPoint that was dated
 24 in March.
 25 **Q. Right. That proposal wasn't the proposal that**

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1 **McDonald parking lot?**
 2 A. I don't recall.
 3 **Q. Do you recall speaking with Mr. Saunders at the**
 4 **downtown San Diego site about him wanting to submit a**
 5 **proposal to manage the SYITC?**
 6 A. That's -- it's not inconceivable. I mean, all
 7 during that time there obviously was discussions among
 8 Greyhound and BriceHouse about this idea. And they were
 9 trying to get it before me for discussion.
 10 **Q. And what's --**
 11 A. When exactly it happened, I'm not sure.
 12 **Q. And once you learned of these discussions**
 13 **possibly as early as December of 2011, did you ever give**
 14 **any consideration at that time to going out to a formal**
 15 **process to see what other persons might be interested in**
 16 **taking over the management of the SYITC?**
 17 A. What I did was I said to them, well, prepare a
 18 proposal and give it to us just the way I did
 19 Mr. Aguirre.
 20 **Q. What you didn't do is initiate an RFP process**
 21 **at that time to submit -- solicit multiple proposals?**
 22 A. That's correct.
 23 **Q. Are you aware that the Ace Parking agreement**
 24 **was producing very little revenue?**
 25 A. Yes, I was. And it wasn't being managed that

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1 **was accepted, was it?**
 2 A. It was one of the earliest -- I think it was
 3 the earliest proposal that really had any specificity to
 4 what this was all about.
 5 **Q. Would it be accurate to say that you gave**
 6 **Greyhound just less than a year to come up with a**
 7 **proposal but you gave Mr. Aguirre only two weeks?**
 8 **MR. LIEDLE: Assumes facts. Seems we have**
 9 **apples and oranges here which -- fruit.**
 10 **THE WITNESS: They are apples and oranges.**
 11 **BY MR. MOOT:**
 12 **Q. I'm just saying is that fact correct that you**
 13 **gave Greyhound almost a year to put together their**
 14 **proposal to give the board but you gave Mr. Aguirre two**
 15 **weeks?**
 16 A. The facts are different in each of those cases.
 17 We had a current contractor that was doing it. Somebody
 18 came unsolicited and said we have an idea. I said go
 19 ahead, give it to me.
 20 We had no intention at that point of doing away
 21 with that contract. I said go ahead go ahead and give
 22 me a proposal.
 23 When I talked to Mr. Aguirre, we had already
 24 gone to the board. We had already gotten approval to do
 25 an agreement with them and he said he wanted to do it,

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1 when can you get it to me, and he said two weeks. Two
2 weeks passed and I got nothing and I still have gotten
3 nothing.
4 **Q. So you cut off Mr. Aguirre after two weeks but**
5 **gave Greyhound almost a year?**
6 **MR. LIEDLE: That's misleading.**
7 **THE WITNESS: I don't think that's a fair**
8 **characterization.**
9 **MR. LIEDLE: Misconstrues facts, it's**
10 **argumentative.**
11 **How much more time do we have?**
12 **BY MR. MOOT:**
13 **Q. If you could look at --**
14 **THE WITNESS: 15 minutes.**
15 **MR. LIEDLE: Okay.**
16 **MR. MOOT: We've got more than that.**
17 **THE WITNESS: 5:29.**
18 **(Discussion held off the record.)**
19 **BY MR. MOOT:**
20 **Q. Why don't you look at Exhibits 139, 141, 142,**
21 **and 143.**
22 **A. Okay.**
23 **Q. Are you familiar with what's shown in**
24 **Exhibit 139, 141, 142, and 143?**
25 **A. They're bathrooms.**

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1 **Q. And 141?**
2 **A. I'm not sure what 141 was. Some examples of --**
3 **Q. Are those the -- are those the kiosks that were**
4 **put on the bus platform?**
5 **A. They could have been an example of it.**
6 **MR. LIEDLE: You don't know is what you're**
7 **saying, Mr. Jablonski?**
8 **THE WITNESS: No.**
9 **BY MR. MOOT:**
10 **Q. You haven't been out to the site and seen**
11 **the --**
12 **A. I was out there once. I don't really recall**
13 **what they looked at. I wasn't -- 144, the UETA, I have**
14 **been in that one.**
15 **MR. LIEDLE: 144?**
16 **THE WITNESS: Yeah.**
17 **MR. LIEDLE: Did you ask him about 143,**
18 **Counsel, just to move this along?**
19 **BY MR. MOOT:**
20 **Q. 142, 143.**
21 **A. The UETA one. I have been in that one.**
22 **MR. LIEDLE: Okay.**
23 **THE WITNESS: I was introduced to the people in**
24 **there.**
25 **MR. LIEDLE: Do you have a question?**

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1 **BY MR. MOOT:**
2 **Q. Yes, do you recognize these as the kiosks**
3 **that --**
4 **A. And the bathrooms.**
5 **Q. -- that were being installed on the bus**
6 **platform and the bathrooms?**
7 **A. And the bathrooms, yes.**
8 **Q. And were you aware that no permits were**
9 **obtained from the City of San Diego for any of these**
10 **structures?**
11 **A. You know, required permitting is an obligation**
12 **of the tenant. I know generally we don't need permits**
13 **to build on our property.**
14 **Q. Do you know whether the tenants who build on**
15 **your property need permits?**
16 **A. No, you would have to ask counsel about that or**
17 **real estate.**
18 **Q. Did anybody ever -- at MTS ever tell SYPS or**
19 **BriceHouse that they didn't need to get permits from the**
20 **City of San Diego for these structures?**
21 **A. I think the contracts are pretty specific. It**
22 **requires the people to get all required permits.**
23 **Q. Are you aware --**
24 **A. And approvals.**
25 **Q. -- that none of these structures have permits**

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1 **from the City of San Diego?**
2 **A. Then I presume they didn't need them.**
3 **Q. Why would you presume that?**
4 **A. Well, if they didn't get them, I presume they**
5 **didn't need them.**
6 **Q. So you do presume --**
7 **A. I think what I was told was that they receive**
8 **some kind of permits from the State of California.**
9 **Q. Mr. Jablonski, did you assume that if**
10 **Mr. Aguirre didn't have permits for his doors, he didn't**
11 **need them?**
12 **A. Different issue. He was -- he was -- he was**
13 **doing things on private property. This is being done on**
14 **our property. And we have -- we have different laws**
15 **that pertain to us.**
16 **Q. Is it your position MTS has the right to exempt**
17 **private parties from getting building permits from the**
18 **City of San Diego?**
19 **MR. LIEDLE: May call for a legal conclusion.**
20 **THE WITNESS: You would have to ask the lawyer**
21 **on that, but we don't have to get building permits for**
22 **what we do on our property.**
23 **BY MR. MOOT:**
24 **Q. And why do you believe you don't have to get**
25 **building permits?**

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1 **MR. LIEDLE: May call for legal conclusion.**
2 **THE WITNESS: It's what the law says.**
3 **BY MR. MOOT:**
4 **Q. What law says that you don't have to get --**
5 **A. I don't know, I'm not an attorney.**
6 **Q. You're not aware of any statute that exempts**
7 **MTS from having to comply with local land use**
8 **ordinances?**
9 **A. I'm just aware -- yeah, it's part of our**
10 **enabling legislation and other public authority**
11 **legislation that exempts us from land use. I don't know**
12 **which laws exactly do that, but I've been told by**
13 **counsel that's exactly what it is.**
14 **Q. Well, we will see if your counsel can come up**
15 **with any of that because we haven't seen any so far.**
16 **A. Okay. Well --**
17 **Q. But at any rate, do you believe that you have**
18 **the power to exempt a private party who's leasing from**
19 **you from getting lease -- from getting permits from the**
20 **City of San Diego for structures they installed?**
21 **MR. LIEDLE: May call for legal conclusion,**
22 **asked and answered.**
23 **THE WITNESS: Yeah, you would have to ask**
24 **counsel about that, I'm not aware.**
25

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1 **MR. LIEDLE: Assumes facts, calls for**
2 **speculation.**
3 **THE WITNESS: I'm not sure I understand that.**
4 **MR. LIEDLE: Vague.**
5 **BY MR. MOOT:**
6 **Q. Were you aware -- well, first of all,**
7 **Mr. Saunders testified that these kiosks didn't have**
8 **permits.**
9 **MR. LIEDLE: That's not what he testified to.**
10 **MR. MOOT: Actually, he did. Small kiosks, he**
11 **said he didn't even get permits from the State.**
12 **MR. LIEDLE: He testified he got permits from**
13 **the State.**
14 **MR. MOOT: Not for the small kiosks.**
15 **MR. LIEDLE: I can't -- I can't remember**
16 **exactly.**
17 **What relevance does this have to anything in**
18 **this case? This is a trespass case. Illegal use**
19 **property case by your client.**
20 **MR. MOOT: It's also --**
21 **MR. LIEDLE: This is not --**
22 **MR. MOOT: It's also a case of unfair**
23 **competition and injunction to stop unfair competition**
24 **and to challenge the legality of an agreement that MTS**
25 **entered into with SYPS.**

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1 **BY MR. MOOT:**
2 **Q. We showed Mr. Saunders Exhibit 169. If you**
3 **could open up your book, he tried to tell me that all he**
4 **needed was approval from this State agency, the**
5 **Department of Housing and Community Development. And I**
6 **showed him that -- a bulletin from the City of San Diego**
7 **that required these transportable structures to get**
8 **permits from the City of San Diego.**
9 **Were you aware that Mr. Saunders was actually**
10 **required by the City of San Diego to get building**
11 **permits?**
12 **MR. LIEDLE: Assumes facts.**
13 **THE WITNESS: Like I said, I'm not an attorney.**
14 **I don't know what he was required to do. You would have**
15 **to ask Ms. Landers about that.**
16 **BY MR. MOOT:**
17 **Q. Were you aware that Mr. Saunders has been told**
18 **that he didn't need to get building permits to build**
19 **these structures that were competing with Grand Central**
20 **West?**
21 **A. No.**
22 **Q. Were you aware that SYPS was using these**
23 **unpermitted structures to get tenants that were in**
24 **Grand Central West building to lease these unpermitted**
25 **kiosks?**

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1 **MR. LIEDLE: MTS is not involved in the unfair**
2 **competition claim.**
3 **MR. MOOT: They absolutely are involved in the**
4 **unfair competition. They're the ones who told**
5 **Mr. Saunders he didn't need to get permits.**
6 **MR. LIEDLE: Not true. Your cross-complaint is**
7 **only against SYPS.**
8 **MR. MOOT: Well, I understand that.**
9 **MR. LIEDLE: The only claims you have -- the**
10 **only claims --**
11 **MR. MOOT: MTS is, in the vernacular of a**
12 **criminal case, the co-conspirator.**
13 **MR. LIEDLE: The only claim you have against**
14 **MTS involves a PUC violation and a quiet title claim**
15 **having to do with dedication of prescriptive easement, I**
16 **guess. Something like that.**
17 **MR. MOOT: Yes. I'm entitled to ask questions**
18 **that might prove my case against SYPS that they are**
19 **engaged in unlawful competition by virtue of permission**
20 **MTS gave to allow them to compete with --**
21 **THE WITNESS: I'm not aware -- I'm not aware of**
22 **any communication with Mr. Saunders that would have**
23 **allowed him to do anything illegal.**
24 **BY MR. MOOT:**
25 **Q. And you are not aware of the fact that he**

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1 needed building permits from the City of San Diego for
 2 these structures?
 3 A. No.
 4 Q. And I take it that you haven't issued any code
 5 compliance complaints against Mr. Saunders' illegal
 6 structures?
 7 MR. LIEDLE: Assumes facts, argumentative.
 8 THE WITNESS: No.
 9 BY MR. MOOT:
 10 Q. Now, do you believe that the McDonald's trolley
 11 station building, a worldwide-known landmark and
 12 national gateway facility, was intended to be part of
 13 the SYITC project?
 14 A. Where did that characterization come from?
 15 You? I'm glad there's still a sense of humor in all of
 16 this stuff. A worldwide landmark?
 17 MR. AGUIRRE: What does that look like?
 18 BY MR. MOOT:
 19 Q. Do you believe Exhibit 146 shows the McDonald's
 20 building as part of the SYITC project?
 21 A. Well, but whose is this?
 22 Q. MTS'.
 23 A. Oh, this is MTS'? No. All it -- all it says
 24 is that it just -- like the Wells -- it does -- it puts
 25 its name on it like Jack In The Box. This doesn't -- I

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1 mean, it shows that here's the bus terminal, here is bus
 2 parking, and it shows here's McDonald's. Here's
 3 Wells Fargo, here it shows Jack In The Box. I'm not
 4 trying -- understanding what you're trying to infer by
 5 this.
 6 Q. Well, just asking the question. I wasn't
 7 trying to infer anything.
 8 A. Okay.
 9 Q. Except was McDonald's building --
 10 A. I think what you said was that it was part of
 11 the project.
 12 Q. It was intended to be part of the project.
 13 A. And I think we were over this this morning.
 14 Q. Right.
 15 MR. LIEDLE: A lot.
 16 THE WITNESS: Right?
 17 BY MR. MOOT:
 18 Q. That you were not aware that it was intended to
 19 be part of the project.
 20 MR. LIEDLE: Assumes facts.
 21 THE WITNESS: And there was never any
 22 agreements signed for it to be part of the project. So,
 23 you know, as far as my tenure here when I came on, I
 24 understand why I didn't know about it because there was
 25 no agreements or understanding to be part of that. It

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1 was water under the bridge at that point.
 2 BY MR. MOOT:
 3 Q. And you then went forward with the project not
 4 as it was initially designed and planned?
 5 MR. LIEDLE: No, assumes facts.
 6 THE WITNESS: The project was already built
 7 when I got here.
 8 BY MR. MOOT:
 9 Q. Right. And it was designed to match the second
 10 floor of the McDonald's building and to have ticket
 11 offices in the second floor of the McDonald's building
 12 and you proceeded to do a plan contrary to that?
 13 MR. LIEDLE: Assumes facts, assumes that he's
 14 required to follow that plan that was not finally
 15 approved or executed.
 16 THE WITNESS: Ever built.
 17 MR. LIEDLE: Okay.
 18 BY MR. MOOT:
 19 Q. So you felt that you had the right to change
 20 the community-approved plan after you came aboard?
 21 A. When was the door put in?
 22 MR. LIEDLE: 2006.
 23 THE WITNESS: 2006? So three or four years
 24 after it was opened, after it was constructed?
 25 MR. LIEDLE: Mm-hmm.

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1 BY MR. MOOT:
 2 Q. Are you aware of the efforts that Mr. Aguirre
 3 made to get MTS to sign some type of agreement for the
 4 joint access and use of the two properties that were
 5 directly adjacent to each other?
 6 A. No.
 7 Q. Were you aware that since 2007, there have been
 8 ongoing discussions with Mr. Allison and Mr. Aguirre
 9 about putting together an agreement over the joint use
 10 and access of the building and the platform that was
 11 directly adjacent to each other?
 12 MR. LIEDLE: Vague, calls for speculation.
 13 THE WITNESS: That was after the illegal door
 14 had been put in.
 15 BY MR. MOOT:
 16 Q. Yes, and discussions to legalize the door in
 17 agreement with MTS.
 18 MR. LIEDLE: Is there a question?
 19 BY MR. MOOT:
 20 Q. Were you aware of the history, the ongoing
 21 history since 2007, of the discussions between
 22 Mr. Allison and Mr. Aguirre to put together an agreement
 23 by virtue of the fact that his building was directly
 24 adjacent to a bus platform that MTS built that was
 25 literally touching his property?

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1 A. Yeah, no.
 2 **Q. So Mr. Allison never told you that starting in**
 3 **2007, he had been showing him plans for the second floor**
 4 **and been asking him to put together some type of**
 5 **document by virtue of the fact that his building touched**
 6 **a platform that MTS intentionally built directly**
 7 **adjacent to his property?**
 8 **MR. LIEDLE: Overbroad, calls for speculation.**
 9 **THE WITNESS: Yeah, I think you're drawing all**
 10 **kind of conclusions that --**
 11 **MR. LIEDLE: Right.**
 12 **THE WITNESS: -- are not based in fact.**
 13 **BY MR. MOOT:**
 14 **Q. Well, I don't -- I think it is a fact that MTS**
 15 **constructed the bus platform to be directly adjacent to**
 16 **the building Mr. Aguirre purchased.**
 17 A. By virtue of its location, it is adjacent to
 18 the building.
 19 **Q. Correct. And it was built without any setback**
 20 **away from Mr. Aguirre's building.**
 21 A. That's our property.
 22 **Q. It was built without any setback away from**
 23 **Mr. Aguirre's property.**
 24 A. All it was was a wall. So we had the right to
 25 improve the property up to the property line. And it

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1 was just a blank wall. So if you looked at the design
 2 of it, it would have been perfectly logical to make that
 3 a passenger waiting area and the buses to come up the
 4 hill and park there to pick up.
 5 **Q. And, in fact, that's what MTDB was discussing**
 6 **with McDonald's with their permission to build it that**
 7 **way?**
 8 A. Yeah, but nothing was ever resolved with them.
 9 **Q. Why, when Mr. Aguirre bought the property, did**
 10 **you not go through with that plan since that was the way**
 11 **it was built and designed?**
 12 A. I don't know. I already testified that I
 13 wasn't aware of any plan like that. I can't -- I don't
 14 know how you expect me to answer that question.
 15 **Q. So you never, at some point, learned that**
 16 **Mr. Aguirre was proposing ticket windows and -- was**
 17 **proposing ticket offices on the second floor?**
 18 A. Much, much later than 2007, that his intention
 19 was to open ticket windows in that building.
 20 **Q. Have you look at Exhibit 188.**
 21 A. Point of entry.
 22 **Q. Were you aware that that right-of-entry permit**
 23 **was given to put in the elevator that was originally**
 24 **envisioned in the discussion with McDonald's?**
 25 A. I'm reading the first paragraph where it says,

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1 "For the purpose of installing an emergency exit door
 2 double 36 by 84 inches on the back wall of the
 3 San Ysidro McDonald's building."
 4 **Q. And were you aware that the reason for cutting**
 5 **open that wall was to install the elevator that was**
 6 **envisioned in the plan with McDonald's?**
 7 A. No, it was -- it was there to provide an
 8 emergency exit door.
 9 **Q. Well, what did you think the elevator was for?**
 10 A. To gain access to the second floor for retail.
 11 **Q. And were you aware that that retail was**
 12 **intended under the approved community plan to be the**
 13 **ticket offices for the SYITC?**
 14 A. When I went up there, it was clothing. It had
 15 nothing to do with ticket offices.
 16 So it was very safe for me to assume that the
 17 elevator was put in there to get patron access to the
 18 second floor since there was no ability to come off our
 19 property to take the elevator up to go shopping.
 20 **Q. So Mr. Allison never informed you in 2007 of**
 21 **the plans to build out the second floor?**
 22 A. No.
 23 **Q. Look at Exhibit 189.**
 24 **Is it your testimony that Mr. Allison never**
 25 **informed you that in 2007, Mr. Aguirre presented to MTS**

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1 **plans to build out the second floor reserving space on**
 2 **the second floor for ticket offices?**
 3 A. I don't see that here. I see for apparel.
 4 **Q. Why don't you take a look at the plans that are**
 5 **submitted.**
 6 A. Yeah, but I'm reading the email. That's what
 7 you asked me to look at.
 8 **Q. Now look at the plans.**
 9 A. What does the email say?
 10 **Q. Email says, "We appreciate you recognizing the**
 11 **need to utilize perpetual license REA or CC&R instrument**
 12 **governing property for joint use access maintenance**
 13 **purpose."**
 14 A. It was final negotiations with
 15 Everything 5-Dollar Apparel to operate the second floor.
 16 **Q. And do you see the plans that he submitted for**
 17 **Mr. Allison?**
 18 A. "And the new proposed delivery doors." This is
 19 interesting.
 20 **Q. It is interesting; isn't it?**
 21 A. It is. Because now you want to use that
 22 emergency exit for delivery doors of apparel, I presume,
 23 to that place. So it was never intended as the purpose
 24 it's being used now.
 25 **Q. No. Why don't you take a look at the plans**

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1 that are attached.
 2 A. I'm reading what's in writing. What you have
 3 pictures of is --
 4 MR. LIEDLE: Mr. Jablonski, here they are
 5 talking about putting in --
 6 THE WITNESS: Oh, another door.
 7 MR. LIEDLE: Yeah.
 8 THE WITNESS: Another door -- to another
 9 illegal door on to our property. One is not enough, you
 10 had -- we're going for two? No, I never saw this.
 11 BY MR. MOOT:
 12 Q. So you were --
 13 A. To the best of my recollection.
 14 Q. You were unaware that those --
 15 A. Tim may have showed it to me. I'm not sure
 16 that Tim ever showed it to me.
 17 Q. So you're not sure that Mr. Aguirre actually
 18 proactively went to MTS, showed him his plans for the
 19 second floor and discussed with Mr. Allison some type of
 20 perpetual license agreement allowing for joint use and
 21 access?
 22 A. No, all I know is the permit that I signed
 23 which was for emergency exit door.
 24 Q. So did you ever instruct Mr. Allison that MTS
 25 would not agree to any type of perpetual license

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1 agreement covering joint use and access to the second
 2 floor?
 3 A. I don't recall having that conversation. And
 4 if I had a conversation, it probably was with my
 5 counsel. Because she's responsible for Tim Allison.
 6 These are all legal matters.
 7 Q. So you were unaware that Mr. Aguirre was
 8 proactively trying to work with MTS for joint access and
 9 maintenance to the second floor of his property?
 10 A. I knew Mr. Aguirre was trying to develop the
 11 second floor of the property and I know he did.
 12 Q. And he was trying to do that in conjunction
 13 with and with the permission of MTS?
 14 MR. LIEDLE: And you're asking if he was aware
 15 of that in 2007?
 16 MR. MOOT: Yes.
 17 THE WITNESS: No.
 18 MR. LIEDLE: Okay.
 19 THE WITNESS: No. The answer to that is no.
 20 BY MR. MOOT:
 21 Q. Did Mr. Allison ever inform you that in June of
 22 2008, he met with Mr. Aguirre on-site regarding a
 23 proposed plan for the development of the top floor of
 24 the McDonald's building?
 25 MR. LIEDLE: Is there an email or something he

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1 should look at?
 2 BY MR. MOOT:
 3 Q. Just do you independently remember this?
 4 A. I don't recall. That was too many years ago.
 5 Q. Did he ever tell you of any discussions that
 6 were occurring in 2008 with respect to development of
 7 the second floor of the McDonald's building and what
 8 that was intended to be?
 9 A. No, I don't recall. Especially any sitdown
 10 meeting where we reviewed detailed plans. It may have
 11 been something in passing, but I don't recall it.
 12 Q. Take a look at Exhibit 190.
 13 MR. LIEDLE: It's an email dated June 18, 2008,
 14 and I don't see Mr. Jablonski on that.
 15 BY MR. MOOT:
 16 Q. It's to Tim Allison and Pierre Saladin. Do you
 17 know who Pierre Saladin is?
 18 A. Yes.
 19 Q. Was he the right-of-way manager?
 20 A. He worked in our real estate office, did a
 21 number of things, but he probably worked on
 22 right-of-way.
 23 Q. Did Mr. Allison or Mr. Saladin ever inform you
 24 of plans that Mr. Aguirre had put together in 2008 with
 25 the development of top floor of the McDonald's trolley

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1 station building?
 2 A. Didn't we already answer this?
 3 Q. This is now a year later.
 4 A. Oh, a year later.
 5 Q. This is a second time in 2008.
 6 A. No.
 7 Q. So neither of your two real estate people --
 8 MR. LIEDLE: Okay.
 9 BY MR. MOOT:
 10 Q. -- who were in charge of the property of the
 11 busiest trolley station in your system told you about
 12 the plans to put proposed ticket offices in a large
 13 retail operation on the second floor?
 14 MR. LIEDLE: Argumentative as phrased.
 15 THE WITNESS: I don't recall any specific
 16 meetings regarding these plans.
 17 BY MR. MOOT:
 18 Q. Do you recall any conversations?
 19 A. No.
 20 Q. Mr. Allison and Mr. Saladin informed you that
 21 next to your busiest trolley stop, there was a building
 22 and the owner was proposing retail operation and ticket
 23 offices on the second floor?
 24 A. He wasn't proposing to pay us any money, was
 25 he?

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1 Q. I'm just asking.
 2 A. And I'm just telling you.
 3 Q. Is this all about money to you? Is that what
 4 you want? You want money?
 5 MR. LIEDLE: Don't answer that, that's
 6 argumentative.
 7 BY MR. MOOT:
 8 Q. You brought it up; right? Is that what this is
 9 all about? You want him to pay money?
 10 MR. LIEDLE: Well, let's move on.
 11 THE WITNESS: No, no, I want him to shut his
 12 door.
 13 BY MR. MOOT:
 14 Q. What?
 15 A. I want him to shut his door, his illegal door.
 16 MR. LIEDLE: What's the next question?
 17 BY MR. MOOT:
 18 Q. It's no longer illegal.
 19 A. Huh?
 20 Q. According to City of San Diego, it's no longer
 21 illegal.
 22 MR. LIEDLE: Objection. Mischaracterization.
 23 BY MR. MOOT:
 24 Q. So your real estate people did not inform you?
 25 MR. LIEDLE: In 2008.

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1 development of the concept and secure certificate of
 2 occupancy permits."
 3 And then it asks that you review the plans to
 4 discuss -- excuse me, MTS to review the plans and
 5 discuss the next step.
 6 A. And I presume nothing happened after this.
 7 Q. Well, did you -- were you ever presented with
 8 these plans that he had put together?
 9 A. No.
 10 Q. Were you ever informed of his plans for the
 11 ticket office and the door onto the platform?
 12 MR. LIEDLE: Asked and answered. I think he
 13 already said he was not informed in 2008.
 14 BY MR. MOOT:
 15 Q. Take a look at the second-to-last sheet of the
 16 plans.
 17 MR. LIEDLE: Second-to-the-last sheet.
 18 BY MR. MOOT:
 19 Q. You're looking at an email. I want to show you
 20 the plans. A-3, Mr. Jablonski.
 21 A. Excuse me?
 22 Q. I want you to look at the plans that are A-3
 23 attached to this email.
 24 A. Okay.
 25 Q. Is it your testimony, then, that your real

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1 THE WITNESS: I don't recall --
 2 BY MR. MOOT:
 3 Q. In 2008?
 4 A. I don't recall any conversations with --
 5 MR. LIEDLE: Okay.
 6 THE WITNESS: -- Pierre or Tim regarding this.
 7 BY MR. MOOT:
 8 Q. So they didn't tell you about the plans that he
 9 had put together and submitted to actually put in ticket
 10 offices on the second floor?
 11 MR. LIEDLE: Asked and answered.
 12 THE WITNESS: They may have, but it never
 13 proceeded anywhere.
 14 BY MR. MOOT:
 15 Q. Did it not proceed anywhere because you told
 16 them not to do it?
 17 A. No.
 18 Q. Did they ever tell Mr. Aguirre not to do it?
 19 A. I don't know.
 20 MR. LIEDLE: May call for speculation.
 21 THE WITNESS: Yeah, I don't know that.
 22 BY MR. MOOT:
 23 Q. The email indicates that "We appreciate the
 24 cooperation you extended to facilitate your reciprocal
 25 easement entitlements necessary to process the

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1 estate and right-of-way managers in 2008 did not inform
 2 you of these plans to utilize the second floor as ticket
 3 offices for the bus platform that was built directly
 4 adjacent to the second floor?
 5 A. Yeah. Yes.
 6 Q. They never told you this?
 7 MR. LIEDLE: Asked and answered.
 8 BY MR. MOOT:
 9 Q. In 2008, how was the Ace management agreement
 10 performing?
 11 MR. LIEDLE: May call for speculation.
 12 THE WITNESS: It was performing.
 13 BY MR. MOOT:
 14 Q. Not well; correct?
 15 A. Well, that's why we agreed to changes.
 16 Q. Well, in 2008, they didn't tell you about a
 17 proposal that might increase the use of the bus platform
 18 and parking revenue by building ticket offices for the
 19 users right next to the platform?
 20 MR. LIEDLE: Vague, calls for speculation,
 21 overbroad and assumes facts.
 22 THE WITNESS: I think I answered the question
 23 already. Three times.
 24 BY MR. MOOT:
 25 Q. So as the CEO, they were not empowered to

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1 inform you of proposals that would increase revenue that
2 could be generated from this bus platform?

3 A. People don't have to be empowered to inform me.
4 People at this level deal with issues and proposals and
5 everything and they determine the time when to bring it
6 to me for approval.

7 Q. Did you ever indicate to them that you were not
8 interested in proposals that would increase revenue to
9 being generated -- generated at the bus platform?

10 A. No.

11 Q. I take it you were interested in increasing the
12 revenue that could be generated from the bus platform?

13 A. Yes.

14 Q. I take it as a CEO, if you could provide more
15 space and more access for more bus users, that that
16 would be a way to increase the parking fees?

17 MR. LIEDLE: Vague, calls for speculation.

18 THE WITNESS: Yeah, and what I would say with
19 this proposal and the documents have showed me there was
20 no proposal of revenue.

21 MR. LIEDLE: And you're looking at Exhibit 190?

22 THE WITNESS: Yeah.

23 BY MR. MOOT:

24 Q. It was asking MTS for what would be the next
25 step at getting reciprocal easement agreement to

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1 seen this email before?

2 BY MR. MOOT:

3 Q. Have you ever seen this email before?

4 A. No.

5 Q. Did Mr. Allison or Mr. Saladin ever advise you
6 that Mr. Aguirre was working on plans to submit to the
7 city to build out these ticket windows and offices on
8 the second floor?

9 A. No.

10 Q. Were you aware --

11 A. They would have been illegal ticket windows.

12 Q. Are you speculating?

13 A. Well, considering the fact that it was a hole
14 in the wall that opened up onto our property and the use
15 of which would require travel over our property to use
16 them, they're not legal. He has no right to access our
17 property for his benefit.

18 Q. Why do you say that?

19 A. His commercial benefit.

20 Q. Well, he was presenting plans to you that he
21 wanted to take to the city to enter into an agreement
22 with MTS --

23 A. You can -- people present -- people present
24 things all the time. It was never acted on.

25 I don't know what the point is here --

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1 effectuate this proposal.

2 A. But reciprocal easement agreements doesn't
3 relate at all to any kind of revenue-producing
4 opportunity for us.

5 Q. Well, couldn't you put that revenue-producing
6 agreement in the reciprocal easement agreement?

7 A. Potentially.

8 MR. LIEDLE: Calls -- well, calls for
9 speculation.

10 THE WITNESS: You're asking me to speculate
11 about something that's almost ten years ago.

12 MR. LIEDLE: Right.

13 THE WITNESS: For something I was not formally
14 briefed on.

15 MR. LIEDLE: Are we almost done?

16 THE WITNESS: Ten minutes.

17 MR. LIEDLE: That was the agreement; right?

18 THE WITNESS: Right.

19 BY MR. MOOT:

20 Q. If you look at Exhibit 243, I take it you were
21 not aware of the follow-up email in which Mr. Aguirre
22 asked for comments on the plan and that he was
23 proceeding with working drawings for submittal to the
24 city.

25 MR. LIEDLE: So the question is has he ever

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1 MR. LIEDLE: Right.

2 THE WITNESS: -- of the line of questioning.

3 BY MR. MOOT:

4 Q. Well, the point of the line of questioning is
5 did you ever instruct Mr. Allison --

6 A. No.

7 Q. -- and Mr. Saladin not to get back to
8 Mr. Aguirre on these plans and not to work on any
9 agreement --

10 A. No.

11 Q. -- that would allow these plans to be built?

12 A. No. This wasn't even on my radar screen.

13 Q. Now there's a reference in this to are there
14 any developments with the bus parking management
15 arrangement. Were you aware of discussions between
16 Mr. Allison and Mr. Saladin about looking for someone
17 else to take over the management of the bus parking?

18 MR. LIEDLE: In 2008?

19 THE WITNESS: Correct.

20 MR. LIEDLE: Is there somewhere specifically he
21 should look in this document?

22 BY MR. MOOT:

23 Q. Well, the email references it and I guess the
24 question is this, again, something that Mr. Saladin and
25 Mr. Allison did not bring to your attention?

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1 A. What are you referencing?
 2 MR. LIEDLE: Yeah.
 3 THE WITNESS: What is this?
 4 BY MR. MOOT:
 5 Q. Developments with the bus parking management
 6 arrangement.
 7 A. Where are you reading this?
 8 Q. Exhibit 243.
 9 A. 243.
 10 Q. Mr. Aguirre asked Mr. Allison and Mr. Saladin
 11 for comments on the plans he's submitting to the city.
 12 A. Okay.
 13 Q. He also asked about any developments with the
 14 bus parking management arrangement. The question is --
 15 A. Are there any further developments for the bus
 16 parking management, okay. So yes.
 17 Q. So did Mr. Allison ever discuss with you the
 18 fact that MTS was looking for another manager of the bus
 19 parking bays?
 20 MR. LIEDLE: In 2008?
 21 MR. MOOT: Correct.
 22 THE WITNESS: I don't recall. All I will say
 23 is that we weren't enamored with Ace at that time.
 24 BY MR. MOOT:
 25 Q. And were you aware that they were soliciting

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1 Q. And were you aware that, in fact, that interest
 2 was solicited by Mr. Allison due to the poor functioning
 3 operations of the Ace agreement?
 4 A. No, I'm not aware of any discussions between
 5 Mr. Allison and Mr. Aguirre.
 6 Q. Now, did Mr. Allison ever advise you that in
 7 2009 the doors were actually being used to get to and
 8 from the bus platform?
 9 A. I became aware of that at some point in time.
 10 Q. Were you aware that Mr. Allison knew about the
 11 door's use in 2009?
 12 MR. LIEDLE: May call for speculation.
 13 THE WITNESS: Yeah, I can't recall
 14 specifically.
 15 BY MR. MOOT:
 16 Q. Did Mr. Allison or Mr. Saladin ever discuss
 17 with you that -- that Mr. Aguirre was in a unique
 18 position to integrate important building facilities in a
 19 master plan system --
 20 A. No.
 21 Q. -- that would include secondary passenger
 22 shelter and staging offices and office space on the
 23 second floor?
 24 A. No.
 25 Q. Had you ever indicated to Mr. Allison or

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1 Mr. Aguirre for potentially his ideas on taking over the
 2 bus bay parking management?
 3 MR. LIEDLE: Vague. I believe Mr. -- well,
 4 vague. Calls for speculation.
 5 THE WITNESS: But no, I'm not.
 6 BY MR. MOOT:
 7 Q. If you open up Exhibit 244, did your staff and
 8 leads on this property adjacent to your most-utilized
 9 trolley stop advise you of the discussions in March of
 10 2009 about effective management and operations at the
 11 San Ysidro border MTS bus parking facility and the
 12 ongoing discussions regarding that?
 13 A. All I see here is that certain questions were
 14 asked of Mr. Aguirre -- Mr. Aguirre asked certain
 15 questions of Pierre Saladin, CC'd Tim Allison.
 16 Q. Did anybody inform you why he was asking these
 17 questions?
 18 A. No.
 19 Q. Did anyone inform you that per his discussions
 20 with Mr. Saladin and Mr. Allison that he would be
 21 interested in pursuing an official arrangement to manage
 22 and develop the operations of the ten existing bus
 23 parking stalls?
 24 A. Well, it sounds here that Mr. Aguirre is saying
 25 that he has some interest.

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1 Mr. Saladin that you were not interested in providing
 2 shelter offices and bathrooms for the intercity bus
 3 platform?
 4 A. No.
 5 Q. Did you ever consider that maybe this facility
 6 would operate better if it had passenger shelter, office
 7 space, and bathrooms?
 8 MR. LIEDLE: Vague, overbroad, calls for
 9 speculation.
 10 THE WITNESS: No.
 11 BY MR. MOOT:
 12 Q. You never considered that you might be able to
 13 improve the function of the IBT by having indoor
 14 shelter, ticket offices, and bathrooms?
 15 A. Well, at some point in time, I did.
 16 Q. But in 2009, you weren't interested in that?
 17 A. I -- I don't remember specifically talking
 18 about that with staff.
 19 Q. Open up to Exhibit 195.
 20 MR. LIEDLE: Three minutes.
 21 BY MR. MOOT:
 22 Q. Did Mr. Allison or Mr. Saladin advise you that
 23 in 2010, he was out at the site and noticed that the
 24 doors opened outward and wanted to get a document
 25 allowing the doors to open onto the property for

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1 liability purposes?
 2 A. Is there a question there?
 3 Q. Yeah. Were you made aware that, in fact,
 4 Mr. Allison had observed these doors and wanted to put
 5 together a license agreement for liability purposes for
 6 these doors that were opening onto the property?
 7 MR. LIEDLE: Assumes facts and potentially
 8 mischaracterizes the text of this email.
 9 THE WITNESS: If I had any discussions, it
 10 probably would have been with counsel at this point too.
 11 So I would have --
 12 BY MR. MOOT:
 13 Q. So we will hide behind your attorney again.
 14 MR. LIEDLE: Not going to do that, you're not
 15 going to ask that kind of a question.
 16 You have two or three minutes left, Counsel.
 17 BY MR. MOOT:
 18 Q. So are you telling me that, again, Mr. Allison
 19 did not make you aware of the fact that he was putting
 20 together a license agreement for these doors?
 21 A. I don't ever recall a license agreement
 22 approving these doors being given to me.
 23 Q. Did you ever recall --
 24 A. We did do a permit. We looked at that. What
 25 we did is what we did.

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1 Q. Well, my question is --
 2 A. And what year was that, when we --
 3 Q. Without taking up any more time --
 4 A. Okay.
 5 Q. -- you, as the CEO, were not aware that, in
 6 fact, Mr. Allison wanted to put together a license
 7 agreement for the doors that he was aware of that were
 8 opening up onto the platform?
 9 MR. LIEDLE: Vague, calls for speculation,
 10 potentially mischaracterizes this event.
 11 Do you have any knowledge of that,
 12 Mr. Jablonski?
 13 THE WITNESS: No, I don't.
 14 BY MR. MOOT:
 15 Q. Were you ever advised that Mr. Aguirre says
 16 please send me the license agreement for review?
 17 A. I'm sure he would have. But I don't have any
 18 knowledge of that.
 19 Q. Did Mr. Saladin and Mr. Allison ever advise you
 20 that they asked Mr. Aguirre in March of 2010 whether he
 21 was still interested -- that they were -- that MTS was
 22 still interested in changing the manager on site and if
 23 there was any interest on his side in submitting a
 24 proposal?
 25 A. No.

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1 MR. LIEDLE: I think we are at the time,
 2 Counsel. Why don't we stipulate to relieve the court
 3 reporter of her duties.
 4 MR. MOOT: I'm not going to stipulate to
 5 closing the deposition.
 6 MR. LIEDLE: Well, I'm going to tell you you're
 7 going to have to go get a motion to compel. You've been
 8 here for seven hours with this witness.
 9 THE WITNESS: Seven hours of testimony.
 10 MR. LIEDLE: Seven hours in nine hours.
 11 MR. MOOT: You're going to unilaterally
 12 terminate the -- you're going to unilaterally terminate
 13 the deposition before it's finished?
 14 MR. LIEDLE: I'm going to end the deposition.
 15 I'm going to put this on the record. If you
 16 want to do something about it, this is not a complex
 17 case. We have been through this before.
 18 MR. MOOT: You're going to unilaterally
 19 terminate?
 20 MR. LIEDLE: You're going to have to bring him
 21 back via motion to compel. He's been here for seven
 22 hours testifying, Counsel. And I've given you every
 23 opportunity to ask questions about it. So let's go
 24 ahead, we will stipulate relieve the court reporter of
 25 her duties under the Code.

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1 MR. MOOT: I will not stipulate to terminate
 2 the deposition or relieving the court reporter of her
 3 duties. I believe the deposition should be finished.
 4 MR. LIEDLE: Okay.
 5 THE COURT REPORTER: By Code?
 6 MR. LIEDLE: By Code.
 7 Thank you very much. Thank you, Mr. Jablonski.
 8 THE WITNESS: Thank you.
 9 MR. LIEDLE: Thanks for taking your whole day
 10 here.
 11 MR. AGUIRRE: Thank you, Paul.
 12 ---
 13 (Deposition was concluded at 5:56 p.m.)
 14 ---
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Declaration Under Penalty of Perjury

I, PAUL JABLONSKI, the witness herein, declare under penalty of perjury that I have read the foregoing in its entirety; and that the testimony contained therein, as corrected by me, is a true and accurate transcription of my testimony elicited at said time and place.

Executed this _____ day of _____ 20__, at

_____,
(city) (state)

PAUL JABLONSKI

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STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

I, Lynette Marie Nelson, Certified Shorthand Reporter, in and for the State of California, Certificate No. 11585, do hereby certify:

That the witness in the foregoing deposition was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth in the foregoing cause; that the deposition was then reported by me in shorthand and transcribed, through computer-aided transcription, under my direction; and that the above and foregoing transcript, is a true record of the testimony elicited and proceedings had at said deposition.

I do further certify that I am a disinterested person and am in no way interested in the outcome of this action or connection with or related to any of the parties in this action or to their respective counsel.

In witness whereof, I have hereunto set my hand this _____ day of _____ 20__.

Lynette Marie Nelson, CSR No. 11585, RPR
CRR, CCRR, REALTIME SYSTEMS ADMINISTRATOR

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