**IN THE SUPREME COURT OF THE STATE OF NEVADA**

CASHMAN EQUIPMENT COMPANY, a Nevada corporation,

Appellant,

vs.

WEST EDNA ASSOCIATES, LTD., dba MOJAVE ELECTRIC, a Nevada corporation; WESTERN SURETY COMPANY, a surety; THE WHITING TURNER CONTRACTING COMPANY, a Maryland corporation; FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a surety; TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, a surety; QH LAS VEGAS LLC, a foreign limited liability company; PQ LAS VEGAS, LLC, a foreign limited liability company; L W T I C SUCCESSOR LLC, an unknown limited liability company; FC/LW VEGAS, a foreign limited liability company;

Respondents.

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**Case No: 61715**
**Case No: 65819**

District Court Case Nos.: **A642583 & A653029**

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| 35 | Notice of Entry of Findings of Fact and Conclusions of Law Based upon Counterclaimants Motion to Procure Codes | 08/13/2012 | 2 | JA000417-22 |
| 107 | Notice of Entry of Judgment | 08/21/2014 | 32 | JA0007792-96 |
| 77 | Notice of Entry of Order Denying Cashman's Motion for Summary Judgment on Defendants' Payment Bond Claim | 05/06/2013 | 10 | JA0002396-2401 |
| 109 | Notice of Entry of Order Denying Cashman's Request for Costs Pursuant to NRS 18.020 | 09/02/2014 | 32 | JA0007799-7804 |
| 26 | Notice of Entry of Order Denying Defendants' | 05/25/2012 | 2 | JA000300-04 |

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|---|---|---|---|---|
| | Motion for Summary Judgment without Prejudice | | | |
| 78 | Notice of Entry of Order Denying Mojave's Motion to Expunge or Reduce Mechanic's Lien | 05/06/2013 | 10 | JA0002402-07 |
| 79 | Notice of Entry of Order Denying QH Las Vegas, LLC, PQ Las Vegas, LLC, LWTIC Successor, LLC, and FC/LW Vegas Motion to Dismiss, or in the alternative, Motion for Summary Judgment | 05/06/2013 | 10 | JA0002408-13 |
| 87 | Notice of Entry of Order Granting Cashman's Motion for Award of Attorneys' Fees and Costs Pursuant to NRS 108.2275 | 09/24/2013 | 10-11 | JA0002498-2502 |
| 25 | Notice of Entry of Order Granting Cashman's Motion to Amend Complaint | 05/25/2012 | 2 | JA000295-99 |



PEZZILLO LLOYD

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| 52 | Notice of Entry of Order Granting Cashman's Motion to Stay or Suspend Order Granting in Part Motion for Preliminary Injunction to Procure Codes | 11/02/2012 | 5 | JA0001079-83 |
| 60 | Notice of Entry of Order Granting Motion to Amend Complaint | 01/09/2013 | 5 | JA0001149-53 |
| 16 | Notice of Entry of Order Granting Motion to Consolidate (Filed in A653029) | 02/02/2012 | 1 | JA000129-34 |
| 114 | Notice of Entry of Stipulation and Order for Dismissal of Defendants Fidelity and Deposit Company of Maryland and Travelers Casualty and Surety Company of America with Prejudice | 05/11/2015 | 32 | JA0007837-42 |
| 57 | Notice of Posting Bond | 11/07/2012 | 5 | JA0001112-16 |



PEZZILLO LLOYD

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| 44 | Notice of Posting Cost Bond | 09/19/2012 | 4 | JA000854-57 |
| 33 | Notice of Posting Security Bond | 08/09/2012 | 2 | JA000407-13 |
| 82 | Opposition to Cashman's Motion for Award of Attorneys' Fees and Costs Pursuant to NRS 108.2275 | 06/20/2013 | 10 | JA0002462-74 |
| 39 | Opposition to Cashman's Motion for Reconsideration of Order Granting in Part Counter-claimants' Motion for Preliminary Injunction to Procure Codes or Alternatively Motion for Clarification and Request for OST | 09/07/2012 | 2-3 | JA000499-609 |
| 96 | Opposition to Motion for Relief Pursuant to NRCP 60(b) and Motion for Attorneys' Fees and Costs Pursuant to NRS Ch. 108 | 04/15/2014 | 30-31 | JA0007360-7693 |
| 58 | Opposition to Motion to Amend Complaint | 11/19/2012 | 5 | JA0001117-26 |



PEZZILLO LLOYD

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| 108 | Order Denying Cashman's Request for Costs Pursuant to NRS 18.020 | 09/02/2014 | 32 | JA0007797-98 |
| 86 | Order Granting Cashman's Motion for Award of Attorneys' Fees and Costs Pursuant to NRS 108.2275 | 09/20/2013 | 10 | JA0002496-97 |
| 51 | Order Granting Cashman's Motion to Stay or Suspend Order Granting in Part Motion for Preliminary Injunction to Procure Codes | 11/02/2012 | 5 | JA0001077-78 |
| 75 | Order Rescheduling Pretrial/Calendar Call | 04/17/2013 | 10 | JA0002388-89 |
| 18 | Order Setting Civil Non-Jury Trial, Pre-Trial/Calendar Call | 02/21/2012 | 1 | JA000145-46 |
| 32 | Order Setting Civil Non-Jury Trial, Pre-Trial/Calendar Call | 08/06/2012 | 2 | JA000405-06 |



PEZZILLO LLOYD

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| 84 | Order Setting Civil Non-Jury Trial, Pre-Trial/Calendar Call | 09/06/2013 | 10 | JA0002488-90 |
| 88 | Order Setting Civil Non-Jury Trial, Pre-Trial/Calendar Call | 10/1/2013 | 11 | JA0002503-05 |
| 90 | Plaintiff's Trial Brief | 01/16/2014 | 11 | JA0002534-59 |
| 66 | QH Las Vegas, LLC, PQ Las Vegas, LLC, LWTIC Successor, LLC, and FC/LW Vegas Motion to Dismiss, or in the alternative, Motion for Summary Judgment | 02/07/2013 | 5-6 | JA0001241-1355 |
| 74 | QH Las Vegas, LLC, PQ Las Vegas, LLC, LWTIC Successor, LLC, and FC/LW Vegas Reply to their Motion to Dismiss, or in the alternative, Motion for Summary Judgment | 04/05/2013 | 9-10 | JA0002102-2387 |
| 81 | QH Las Vegas, PQ Las Vegas, LWITC Successor and FC/LW Vegas' | 06/11/2013 | 10 | JA0002441-61 |

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| | Answer to Fourth Amended Complaint | | | |
| 59 | Reply in Support of Motion to Amend Complaint | 12/17/2012 | 5 | JA0001127-48 |
| 31 | Reply to Cashman's Opposition to Motion for Injunctive Relief or Writ of Possession | 07/31/2012 | 2 | JA000398-404 |
| 97 | Reply to Cashman's Opposition to Motion for Relief Pursuant to NRCP 60(b) and Motion for Attorneys' Fees and Costs Pursuant to NRS Ch. 108 | 04/23/2014 | 31 | JA0007694-7707 |
| 56 | Reply to Cashman's Opposition to Motion to Expunge or Reduce Mechanic's Lien | 11/02/2012 | 5 | JA0001102-11 |
| 15 | Scheduling Order | 01/31/2012 | 1 | JA000126-28 |
| 4 | Second Amended Complaint | 09/30/2011 | 1 | JA00034-50 |
| 113 | Stipulation and Order for | 05/08/2015 | 32 | JA0007834-36 |

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|---|---|---|---|---|
| | Dismissal of Defendants Fidelity and Deposit Company of Maryland and Travelers Casualty and Surety Company of America with Prejudice | | | |
| 73 | Supplement to Cashman's Supplement to its Countermotion for Summary Judgment on its Payment Bond and Mechanic's Lien Claims | 04/05/2013 | 9 | JA0002095-2101 |
| 24 | Third Amended Complaint | 05/24/2012 | 2 | JA000276-94 |
| 36 | Transcript of Proceedings for August 3, 2012 | 08/22/2012 | 2 | JA000423-38 |
| 62 | Transcript of Proceedings for November 9, 2012 | 01/11/2013 | 5 | JA0001173-1203 |



PEZZILLO LLOYD

any facts to demonstrate unjust enrichment, and the Fifteenth Cause of Action for unjust enrichment should be dismissed.

**c. Moving Defendants are not the current owners of the Property and therefore are not liable.**

A mechanic's lien action is an equitable proceeding. *Dickson v. Corbett*, 10 Nev. 439, 1876 WL 4533 (1976). It is also an *in rem* proceeding. *See, e.g., Heidritter v. Elizabeth oil-Cloth Co.*, 112 U.S. 294, 5 S.Ct. 135, 28 L.Ed. 729 (1998). The "thing" in question in the in rem proceeding is the land itself (not the owner of the property), and only those with current owner interest are necessary, or even allowed to participate. This is because a property owner is the beneficiary of the improvements. If encumbrances exist on the property at the time of sale from one owner to another, those can be bonded to allow the transaction to clear.

Plaintiff admits that Moving Defendants previously had ownership interest in the land that the Project was built on.[17] Upon substantial completion, the Property was titled to the City as part of a transfer of assets.[18] Thus, Moving Defendants have no place in this action. The legislative purpose of the lien action is to secure payment to those who perform labor or furnish material to improve the property of the owner. *Lehrer McGovern Bovis, Inc. v. Bullock Insullation, Inc.*, 197 P. 3d 1032 (Nev. 2008). Claims made prior to the sale based upon improvements have been assumed by Mojave with its bond, and Moving Defendants are not liable whatsoever to Plaintiff. Plaintiff chose its remedy of the mechanic's lien and does not get to double up in efforts to collect from every party for the same damage.

Furthermore, the Property at issue has not really benefited at all because the system is not fully functional or capable of doing what is was designed for.[19] When the Property was sold, it was without a functioning system. Therefore, Plaintiff does not have any claims against Moving Defendants in this action and should be dismissed with prejudice.

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[17] *See* Fourth Amended Complaint, at ¶10.
[18] Exhibit B.
[19] *See* Deposition Transcript of David Phillips, attached hereto as **Exhibit A**, pg. 25.

## V. CONCLUSION

The Moving Defendants respectfully request that this Court grant its Motion, dismiss Plaintiff's Fifteenth Cause of Action for unjust enrichment, and dismiss the Moving Defendants from this action with prejudice because Moving Defendants have not been enriched and instead have an incomplete system, Moving Defendants previously paid for the work and should not be required to pay again, and Moving Defendants are not the current owners of the property and any improvements subject to lien were bonded by Mojave before the property was transferred.

Dated this 7th day of February, 2013.

**COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON**

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*Attorneys for Defendants West Edna, Ltd., dba Mojave Electric, Western Surety Company, The Whiting Turner Contracting Company and Fidelity and Deposit Company of Maryland, Travelers Casualty and Surety Company of America, Counterclaimant and Crossclaimant; QH Las Vegas, LLC; PQ Las Vegas, LLC; LWTIC Successor, and FC/LW Vegas*

# EXHIBIT A

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

CASHMAN EQUIPMENT COMPANY, a Nevada corporation,

Plaintiff,

vs.

CAM CONSULTING, INC., a Nevada corporation; ANGELO CARVALHO, an individual; JANEL RENNIE aka JANEL CARVALHO, an individual; WEST EDNA ASSOCIATES, LTD., dba MOJAVE ELECTRIC, a Nevada corporation; WESTERN SURETY COMPANY, a surety; THE WHITING TURNER CONTRACTING COMPANY, a Maryland corporation; FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a surety; DOES 1 through 10, inclusive; and ROE CORPORATIONS 1 through 10, inclusive,

Defendants.

AND ALL RELATED MATTERS.

CASE NO. A642583

DEPOSITION OF DAVID PHILLIPS
Taken on Thursday, January 10, 2013
At 3:00 p.m.
At 6725 Via Austi Parkway, Suite 290
Las Vegas, Nevada

REPORTED BY: CHRISTY LYN DeJONKER, CCR NO. 691

APPEARANCES:
For the Plaintiff:
JENNIFER R. LLOYD, ESQ.
Pezzillo Lloyd
6725 Via Austi Parkway
Suite 290
Las Vegas, Nevada 89119

For the Defendants:

BRIAN W. BOSCHEE, ESQ.
Cotton, Driggs, Walch,
Holley, Woloson & Thompson
400 South Fourth Street
Third Floor
Las Vegas, Nevada 89101

I N D E X

WITNESS: DAVID PHILLIPS


| | Examination | Further Examination |
|---|---|---|
| By Ms. Lloyd: | 3 | 37 |
| By Mr. Boschee: | 33 | |


E X H I B I T S


| Exhibit No. | Description | Page |
|---|---|---|
| 1 | Preliminary Notice of Right to Lien | 11 |
| 2 | Application and Certification for Payment | 26 |
| 3 | Notice of Lien | 32 |

(Prior to the commencement of the deposition, all of the parties present agreed to waive statements by the court reporter, pursuant to Rule 30(b)(4) of NRCP.)

Thereupon --

DAVID PHILLIPS,

was called as a witness, and having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MS. LLOYD:

Q. Hi, I am Jennifer Lloyd. I am attorney for Cashman Equipment Company in this matter. We are here for your deposition today. You can go ahead and state your name for the record.

**A. It's David Ross Phillips, P-H-I-L-L-I-P-S.**

Q. You have done this before.

**A. Yes, I have.**

Q. Have you had your deposition taken before?

**A. Yes, I have.**

Q. How many times? A number of times?

**A. Probably a dozen maybe.**

Q. When was the most recent?

**A. It's probably been 16, 17 years.**

Q. Okay. So let's briefly go over the rules. It's question and answer. We need verbal responses to all of the questions. The court reporter is going to

take down everything that we say, so we need to not speak at the same time. You can take a break at any time you need, just ask. Except for when a question is pending, I would ask that you answer the question prior to taking the break.

If any of my questions are unclear or you don't understand what I am asking, just ask me to rephrase it and I will be happy to do that. Your testimony is under oath today. It's the same oath you take in a court of law.

Is there any reason why you cannot give your complete and truthful testimony here today?

A. No.

Q. What did you do to prepare for your deposition today?

A. I met with Shimali (phonetic) on Tuesday.

Q. Not going into the substance of those communications, did you do anything else to prepare for your deposition today?

A. No.

Q. What is the highest level of education you have obtained?

A. I have a degree in architecture from Texas A&M University.

Q. And when did you graduate there?

A. 1974.
Q. And do you hold any professional licenses?
A. I am a member of the Construction Specifications Institute.
Q. And how long have you been a member there?
A. I believe since '88.
Q. And have you been convicted of any crimes within the last ten years?
A. No.
Q. I am required to ask that. I hate to ask that question.
A. I know.
Q. So tell me about where you are currently employed.
A. I am currently employed with ForestCity Construction Services, LLC, which is a business unit of ForestCity Enterprises, Inc. based in Cleveland, Ohio.
Q. And what's your position with ForestCity Construction Services?
A. Vice president.
Q. Of a particular division or just vice president?
A. Vice president.
Q. Okay. What do your job duties entail?
A. I manage our development in construction

projects in the west.

Q. The whole western region?

A. West of the Mississippi.

Q. Are you based here in Las Vegas?

A. Yes, I am.

Q. And how long have you been in that position with ForestCity?

A. Fifteen years.

Q. And prior to that, where were you employed?

A. I was employed with Domingo Camaro Architects.

Q. What was your position with --

A. I was the director of construction services.

Q. And have you been based here in Las Vegas for 15 years with ForestCity?

A. Yes.

Q. Okay. So this litigation concerns the new Las Vegas City Hall, as I am sure you are aware. I am going to use the word "project." If I use the word "project," I am going to be referring to that particular project. So can you describe to me ForestCity Construction Services' role on that project.

A. We were employed by -- we were employed as the owner's representative on-site by QH Las Vegas, LLC, which was the entity that owned the property and

developed the property.

Q. Okay. And then is there also a PQ Las Vegas?

A. There is a PQ Las Vegas, LLC.

Q. What is that?

A. That was the entity established for -- there is a land swap within the development agreement. QH Las Vegas is the property in Symphony Park. And it's the two parcels, Q and H. And so, you know, QH is Queen of Hearts, because that is the property. The Queen of Hearts sat on that property. So that is how they determined the two LLCs.

Q. Just coming up with a name?

A. Coming up with a name. So PQ was tied to the development agreement with the City. And when we closed we swapped land.

Q. Okay. So then what is ForestCity Enterprises' role? Are they like the parent corporation?

A. That is the parent corporation.

Q. For all the different individual --

A. Entities.

Q. And is there a ForestCity Commercial Construction Entity?

A. In the first quarter of 2012 we merged our two construction divisions together. We had a

commercial construction division as well as a residential construction. And in the reorganization of the company, as everybody is doing, we merged. And now we are just Construction Services to deal with everything.

Q. So at the time was it ForestCity Commercial Construction that was the owner's rep on this project?

A. It was ForestCity Commercial Construction CO, Inc.

Q. Were there any other owner affiliated companies that were involved in the projects, or did we cover them?

A. The project was developed under ForestCity Commercial Development California.

Q. Can you think of any others?

A. That is all the entities I believe that was involved.

Q. So what was your role on the project?

A. I was designated by the City as well as our company as the owner's rep. I assisted in the development of the construction documents with the architects. I was involved in the RP for the construction manager at risk. I was involved in the final selections of contractors, subcontractors, with Whiting Turner. And then I was on site to make sure

that the construction was pursuant to construction documents.

Q. Did you have an office on site?

A. I had a trailer.

Q. And were you there on a daily basis or a weekly basis?

A. Every day.

Q. So when you are there at the project, are you just observing the construction activities, or did you have a particular role you took on at different times?

A. No. I was there to just observe and make sure that the project was moving smoothly; it was within schedule, within budget; if there was any questions that occurred that I could answer, or I would take to the engineers to get answered. So I was more of an assistant to make sure that the project ran smoothly.

Q. And then did you hold meetings at the project with the general contractor?

A. We had one once a month, OAC meetings, what we called OAC, which is the owner, architect, contractor meetings. At that time that would include City staff representatives. A lot of my corporate from Cleveland would come down; the developer from LA would come over. And we would just do an overview of the

project, how the schedule was going, how the costs were going. They would walk the project just to see how everything was going.

Q. Okay. Then did you participate in any meetings with the subcontractors?

A. No.

Q. Did you keep any records on site, concerning preliminary notices or other things that the owner might receive as part of construction?

A. I only received things that corporate would somehow send to me. They all went to our corporate office, which they kept, you know, lien notices and things. But they weren't mailed directly to the trailer.

Q. Because the record address was the address --

A. Public Square and Queen.

Q. So who in Cleveland would be responsible for tracking that information?

A. I am not quite sure who in our corporate office did that, It went to legal, I believe.

Q. How big is ForestCity Enterprises?

A. We are a multi-billion-dollar corporation with about 2800 employees across the country.

Q. That is pretty big.

A. It used to be a lot larger.

Q. Oh, yeah?

(Exhibit 1 marked.)

BY MS. LLOYD:

Q. So have you seen this document?

A. I don't recall seeing this one.

Q. So it would have been served obviously on the Cleveland address for QH Las Vegas, and then you didn't necessarily get copies of everything.

A. No, I didn't.

Q. Okay. But do you think that there are records in Cleveland concerning the preliminary notices that were received?

A. Well, if it went to Suite 1005, that is ForestCity Construction Services or ForestCity Commercial Construction suite numbers.

Q. So they would likely kept records there somewhere concerning all of these preliminary notices or other notices that they might have received?

A. Yes.

Q. Let's talk a little bit about JMA's role on the project. Can you tell me what JMA was hired to do.

A. ForestCity Commercial Development hired JMA as the executive architect, which under the executive architect they were to do all the construction documents. The design architect, which is Helkis

Manfredi out of Boston, worked under JMA. And his contract, JMA's contract, included all subtiers of structural engineers, mechanical, electrical engineers. It was all under their control.

Q. So did they act as part of their role to be the owner's rep concerning certain items on the project?

A. No.

Q. What was their role, then, in, I guess, dealing with those subtiers? Like JBA was one of their subtiers?

A. Right.

Q. So what was their role if they weren't acting as owner's rep for certain approvals, or how did that work?

A. I am not sure what you are asking.

Q. Like, for instance, if they asked for submittals on certain items to make sure that what was going to be provided by a contractor or subcontractor was to contract, were they the one that would have the ultimate approval or would it go all the way up to, say, you as the owner's rep for approval?

A. How did that process work?

Q. Yeah, how did that process work?

A. Well, the process is that in the construction

documents there is specifications that clearly indicate what submittals are required in the project. The subcontractor would prepare those specifications; you know, product data, drawings, whatever was required within the spec. It would first go to Whiting Turner. They are required by our contract to review those documents to make sure that they meet and fall within the range of the contract documents. If they did, they transmitted directly to JMA.

JMA would then distribute to whatever party was required, either JBA or the structural engineer. They would review them for the specification, to meet all the specifications. If they did, they would stamp them reviewed. Sometimes they stamped them reviewed as noted, just because there might be some minor errors. It would go back to JMA; JMA would review them. Then if they were approved and stamped by them, then it would go back to Whiting Turner. Then Whiting Turner would in turn give copies back to the subcontractor.

Q. And down the line?

A. Down the line. The only time I ever got involved on anything would be if the submittal was totally out of range of the specifications.

Q. And do you recall any instances like that on this project?

A. No.
Q. So in the submittal process, then, JMA had the final approval of the submittals that were for the contract work?
A. Well, it's a combination. I require that the contractor approve them because he bid the job, and I am holding him responsible for, you know -- I am holding Whiting Turner responsible to build it within the specifications. So from my point of view, Whiting Turner's approval is just as important as the engineer's approval. They are all equal in the realm of responsibility.
Q. JMA, Whiting Turner?
A. JBA. Everyone is -- from the owner's point of view, they are all held --
Q. Equally responsible?
A. -- equally responsible.
Q. What was your involvement with the selection of subcontractors on the project?
A. What the process is that we go through is that we do an RFP. Whiting Turner did an RFP to at least three and mostly five subcontractors for each trade. We would review who they were bidding to in case we had people that we wanted to add; or if we had experiences with contractors we don't want to deal with

anymore, then they would bid the project. We would as a team -- and that would include myself and our corporate -- we have an estimating group and we have other people in Cleveland that would review the scope of work, make sure that the scope was complete. We would evaluate the cost.

As a public company we do not have to select the lowest bidder, but we do select the lowest qualified bidder on the project. We would normally narrow that down to three. We had -- I mean, we had five to six on each trade because of the timing, and everybody wanted to work on the City Hall project. So we narrow it down to three.

We would bring them in and have an interview. We require -- ForestCity requires interviews, which means you bring your project managers, you bring your foremen. You bring anyone in upper level that would be on that site in. And we would have resumes. And we truly -- you know, it's a team effort. So we do a complete review.

At that time, we would go back and reconvene. We would say, okay, we like, you know, this person or that person. There was always qualifications of the initial bid, because someone would miss this or we would have questions. Then we would bring them back in

for their final cost proposal.

At that point Whiting Turner would also have a major input and provide their selection to ForestCity for approval. And at that time we would review the final packages and make, you know, and say that is the contractor.

Q. That is a very owner-involved process.

A. ForestCity is a general contractor. We got away from it years ago because development goes up and down. But we are a very hands-on group and we do understand construction. And we have done it ourselves. So, you know, we pride ourselves on, you know, producing quality projects on time and on budget, or that are under budget, which this project was under budget.

Q. Oh, really? I wasn't aware of that.

So you were involved in obviously with the selection of Mojave --

A. Yes.

Q. -- as a subcontractor?

A. Along with other ForestCity entities -- or personnel.

Q. Okay. And do you go any further down the --

A. No.

Q. -- subtier?

And when it comes to, I guess, management of payments, are you -- is the owner involved in managing payments to subcontractors?

A. No.

Q. So would you only then be approving payments to Whiting Turner, or how did the whole payment process work?

A. The payment process was also pretty detailed. It was detailed in development agreement of how it would be done. Once a month all the subcontractors would provide Whiting Turner with their billing information. I would review all the detail of Mojave's billing per se. Because it's billed on a percentage of completion, I would say yes or no, or this area is not what he is billing for or whatever; we would make corrections.

At that point, when that was corrected, we would sit down with the City staff and walk the project. They would also review the completion percentages, as well as the architect at the same time. When that was -- when everybody agreed to that package, then we would -- it would be signed by the architect. I would send that package to Cleveland, where the executive vice president was required to initial off to make sure, which he understood that I went through it

pretty thoroughly.

And then the invoice would at that point be put together -- that billing would be put together with our invoice, for our fees and architectural fees or any other fees we would have a combined invoice of everyone's. That would be submitted to the City. The City had a five-person signoff of that invoice.

At that time it would be sent to the trustee for the project, which is I believe Bank of America. They would at that time wire transfer funds to Whiting Turner for their billing. They would wire transfer ForestCity, which in turn we would wire transfer to our third-party consultants.

Q. And that happened every month?

A. Every month.

Q. Wow. So how long would that process take for the approval of a billing?

A. We were required to do that within ten days in the development agreement. The City had -- as soon as we completed our process, the City had ten days to do it. We were following under the State statute of I believe 45 days, which we always met.

Q. Wow. So I guess just to backtrack a tiny bit, how exactly did the whole development -- because it was privately owned property, but there was

obviously a public component, I guess, in some way. Can you describe to me how that sort of worked?

A. It was a private public partnership. The funding came from Build American Bonds, and we were able to construct and develop it for the City. And we negotiated for land costs to do the trade of the two parcels for the rest of it.

Q. Okay. So did you have a requirement for Whiting Turner concerning the Disadvantaged Business Entities percentage that was to be met or to try to be met on the project?

A. That was -- during our negotiations with the City, it was at a time when they were laying off people. It was a tough time to sell a new City Hall. The City had a lot of pressure on them from the minority groups to say, If you are going to do this, please get participation. The City does not have a diversity program that they can enforce in the city.

So they came to us and said, We would like you to try and get the participation. And we agreed as a goal to try to get 15 percent. We included that goal to Whiting Turner's contracts. And from there they managed how that was obtained.

Q. So it was a city requirement essentially?

A. Well, it was a request, a strong request.

Which we ended up getting over 20 percent at the end of the day.

Q. So did you leave it to Whiting Turner, then, to enforce it or encourage subcontractors to meet certain goals?

A. During that first interview process before, you know, we awarded contractors, we told them that it was an important factor in selection, as well as for selection purposes. They needed to come to the table with some diversity.

Q. So were they required to identify like which areas they would be, you know, meeting diversity with?

A. Early on, no. They basically came back and said, We feel for this contract we can get 8 percent or we can get 10 percent, you know. And we monitored them. And most of the contractors met their goals. And the ones that didn't actually we had them contribute.

Q. How do you mean?

A. There was one contractor that poorly missed his goal. And we had him -- well, he volunteered to -- in the minority publications take out ads for his company, which was a benefit to the minority magazines and to the minority groups. So we convinced them to do things of that nature.

Q. Okay. Was there -- I guess speaking of if they didn't meet their goal, was there any consequence?

A. No. We would only ask that they do something.

Q. Okay.

A. It was monitored on a monthly basis during the pay application process.

Q. Because they were required to submit like the certificates of DBE with their pay aps?

A. Yeah.

Q. So did you check that with Whiting Turner on a monthly basis?

A. No. They provided ForestCity with a report. It was based off costs of the project, costs of each subcontractor. They provided us a breakdown and we never audited.

Q. Then I guess in conjunction with payments, did you require a certain waiver or releases from subs and suppliers for Whiting Turner to get those, or did you rely on Whiting Turner to make sure that they were obtaining the proper releases?

A. We did get all releases.

Q. How did you monitor, I guess, what releases you would need?

A. They had a -- Whiting Turner had a breakdown

within the pay application for the previous month's payments. We would get unconditionals, you know, for that breakdown after the payment and they would provide us conditional waivers with the initial payment. And Whiting Turner had to do unconditionals and conditionals to us for the project too.

Q. So did you have anyone in your offices tracking, say, preliminary notices with releases, or how did you --

A. Yes, that went to our corporate.

Q. So someone in Cleveland was handling that?

A. Yes. Michelle did -- Michelle Lagina did that. She bugged me all the time. When am I getting my releases?

Q. So did you rely on a combination of Whiting Turner keeping track of which suppliers were supplying to the projects under subcontractors, or did you have your own tracking system?

A. We did not get conditionals or unconditionals from suppliers. It was from the first tier. So we would get -- like, Mojave would provide us conditionals and unconditionals for --

Q. Its payments?

A. Yeah.

Q. Then you weren't tracking downstream subs and

suppliers to Mojave?

A. No.

Q. Is there a reason why you weren't tracking downstream?

A. Because that is not part of our standard process.

Q. Did you rely on Whiting Turner to be tracking downstream?

A. No, not in our contract it's not required.

Q. Were you concerned about lien claims from people who might be unpaid under the subcontractor's second, third tier suppliers or subs?

A. Concerned about it? It happens all the time.

Q. But, I mean, not concerned enough to require that, I guess, releases be provided?

A. It hasn't been in our past history a major concern for us on subtiers and suppliers.

Q. Okay. Can you tell me what the status of the project is now?

A. Well, on February 14th of this year it's going to be one year opened. We had substantial completion on February 14th of 2012.

Q. Is the project totally closed out at this point?

A. No.

Q. And what is, I guess, left open?
A. The contract with Whiting Turner is still open.
Q. Why is it open?
A. We were still negotiating some requests from them specifically. We still have the Mojave contract open because there is payments still within that -- their line items or schedule of values for the generator, which I held after -- it was pretty much paid out, but it was the completion portion that's there.
Q. So you are holding money for the generator from Whiting Turner?
A. From Mojave.
Q. From Mojave. Do you recall offhand how much you are holding? Is it the full cost of the generator line item?
A. No. I would be surprised if it's $30,000. It's somewhere in there, I think.
Q. So the project has a permanent C of O?
A. Correct.
Q. Do you recall when you got that?
A. On February 14th.
Q. And then -- I mean, I am sure you generally know that we are here because Cashman didn't get paid

for the generator and the UPS equipment that it supplied to the project.

A. I have been told that.

Q. So when we talk about the generator and UPS equipment, it's kind of a package deal. You know what I am referring to?

A. Yes.

Q. So what is the status of the generator, UPS equipment on the project now?

A. Well, it's installed. I am being told that it would operate in case of an emergency. I have not witnessed that. Due to a lack of some programming on the system itself, it does not give my client, the City, the opportunity to go into a laptop on site or off site and monitor the status of the generator systems, which is critical. Most buildings are fully automated and have a building management system. And they sit up in an office when they need to check to verify that the fuel is correct, the batteries are operating, how that system is operating after it starts up for RPMs and the technical things that need to be monitored on these systems in case of an emergency, and that is not available.

Q. And so as a result of that, were you taking any action against Whiting Turner or Mojave or --

A. We have been, you know, pushing to get resolution of that.

Q. Of that issue?

A. Of that issue.

Q. So does that leave any pending issues between you, your company, or ForestCity and the City of Las Vegas?

A. The City is aware of the situation. Being aware of it, they can manually go check things, which they are doing, but they are not very pleased about it. Because there is a fault on the generator panel.

Q. What do you mean? What does that mean?

A. It's a big red light that flashes.

Q. Like something is wrong?

A. Yeah.

(Exhibit 2 marked.)

BY MS. LLOYD:

Q. Can you take a look at this document? This was produced in conjunction with a subpoena that I issued to ForestCity. Do you recognize this document?

A. Yes. It's the one I provided. It's the last executed pay application to Whiting Turner.

Q. Okay. And then if you go to page Bates stamp 5, can you tell me what -- under the electrical, that first line item, it looks like there is a withholding.

Am I reading that correctly?

**A. Yeah, there was a retainage still held.**

Q. It looks like -- is that 792 or --

**A. Yeah, it's --**

Q. In that range?

**A. Yeah, I believe.**

Q. Is that still being withheld?

**A. Yes.**

Q. From Whiting Turner?

**A. From Mojave.**

Q. Through Whiting Turner, I guess. So why is that being withheld?

**A. We were closing out with Mojave. There were several change orders that they had asked for that did not get approved before this was done.**

Q. So that line item is not related to the generator equipment?

**A. No.**

Q. Do you have a breakdown of what it is related to somewhere else?

**A. Whiting Turner would. Whiting Turner held all the files for this project. I did not keep -- they are to provide me on disk the entire file system, which I have not received because we haven't closed out yet. So this is all I had available.**

Q. What type of file, like, recordkeeping software do they use?
A. I don't know.
Q. There wasn't a requirement for a specific program?
A. (Shakes head.)
Q. So that withholding on there is not related to the generator?
A. No.
Q. In speaking with Nancy from Whiting Turner, she seemed to indicate that it was related to the generator. Unless I misunderstood -- I guess I am trying to understand. Do you recall -- you are still holding it, or have you paid it out?
A. No.
Q. You are still holding it?
A. Until a project is completely closed out with a contractor, I do not release. I release 5 percent. That is 5 percent, I believe. And then column, I think it says 5 percent. I released under percentage retainage; it's 5 percent. Until a project is closed out, ForestCity's policy is we do not release all the retainage. And it's not specifically to any certain item.
Q. Well, that particular item shows both a

balance to finish and a retainage amount. Those are two separate -- are those two separate -- because most of the items show basically no balance to finish, because they are all looking like they are complete and have been paid out, except for some show retention. So that's why I was trying to understand exactly what the status of the payment to Whiting Turner was on that particular item, because it looks like there is a balance to finish and then a retainage amount.

A. The balance to finish was listed of the contract change orders that we were still negotiating.

Q. Do you recall what those were about?

A. No.

Q. So did the owner withhold any funds from Whiting Turner and Mojave related to the generator beyond -- I think you identified 30,000?

A. That's all we did because it was a specific line item. Mojave's contract would have -- or pay application would have this cover sheet. And then they were required to give us schedule of values for every item of their scope of work, which entailed the electrical, audio, visual, I mean, the whole breakdown. It was a specific line item for the generator.

Q. So the generator line item was somewhere in the range of 800,000. But if it was, would you have

withheld 800,000 or would you withhold an amount you determined separately, or did you have a way of coming up with what you were going to withhold?

A. The generator was already paid out before this was brought to our attention. So I just refused to pay any more on that line item.

Q. Okay. I guess what's the status of the negotiations with Whiting Turner to close everything out?

A. We are hoping to have it all closed out within the next two weeks.

Q. Then what is your plan, I guess, in reference to the operation of the generator equipment as far as, you know, I guess sort of how that is going to work with the City?

A. We have asked Whiting Turner to give us a proposal on how they want to handle it. They have to deal with their contractor.

Q. Have they come to you with any proposal yet?

A. No. They are in the -- they are just following this process. That is all they can give us the information.

Q. So is that item just going to remain open until the litigation is complete?

A. Well, the lien has been bonded around. As

far as the City, the lien has been bonded. But operationalwise I am not sure. We have been trying to get resolution of this, so that I can go down and talk to the City to determine exactly what their position is on this.

Q. Okay. Did you have any involvement in choosing the generator system requirements?

A. No, I am not an electrical engineer.

Q. So was that a JMA role as part of their design services?

A. Yes. JMA, JBA.

Q. Did you have any involvement in approving the system that was proposed by Mojave to be used?

A. No.

Q. Would that just have been JMA and Whiting Turner?

A. It's a combination of JMA, Whiting Turner and JBA.

Q. So would you have seen any of the submittals concerning any type of the equipment that was being supplied to the project?

A. No, not on that specific item, no. The specifications are performance specifications. It requires -- it will provide at least three different manufacturers of equipment, three to five, which is our

requirement. We cannot single-source a product for ForestCity. We are a public company. Any of those manufacturers would have to meet the performance specifications that the engineers design to. If those -- that selection process, they are all equal in the engineer's eyes as well as the owner's eyes, then they can -- they are responsible for making sure that system is complete.

(Exhibit 3 marked.)

BY MS. LLOYD:

Q. Take a look at this document. Have you seen it before?

A. Yes.

Q. And when did you first see the lien?

A. I don't recall exactly when I saw the lien.

Q. Was it shortly after it was recorded?

A. At some point. Like I said, I can't give an exact time.

Q. Did you -- it was forwarded to you from Cleveland, your Cleveland offices?

A. Yes.

Q. And then what action did you take once you were aware of the lien?

A. I took a copy over to Whiting Turner and said, Address this issue.

Q. And what did they say?
A. That is when it was bonded around.
Q. And so did you take any other action in relation to the lien or the lien claim?
A. No.
Q. Did you have any discussions with Whiting Turner about what happened or why there was a lien?
A. I asked what was going on and they said they were trying to contact Mojave to find out.
Q. Did you do any inquiry beyond that afterwards?
A. No.
MS. LLOYD: I don't think I have any other questions.
MR. BOSCHEE: I think I have a couple.

EXAMINATION

BY MR. BOSCHEE:
Q. Looking at Exhibit 3, I understand that you don't recall exactly what date that you saw that. Was that the first time that you learned or ascertained of the issue that has caused us to sit here today?
A. Well, this was not specific to the issues we are sitting here today. It was a lien from Cashman for equipment. That didn't explain why we are sitting here today.

Q. Well, what is your understanding of why we are here today?

A. It's all hearsay.

Q. Okay.

MS. LLOYD: Depos are okay for hearsay.

THE WITNESS: When we started to commission this building, we have a third-party commissioner on the project. When they started to come out and test equipment and do things, there was this flag that was put on the generator system by our third-party consultant concerning, you know, PCL or whatever. And at that point it sat there and I kept asking, Is this resolved? Is this resolved? And they said, No, not yet, not yet. And finally it came out that -- how it was told that there was an issue with Cashman and CAM.

BY MR. BOSCHEE:

Q. Yeah.

A. And they explained to me the situation. At that point they didn't have all the detailed facts. They just -- you know, they reassured ForestCity. It was at an owner's meeting. We would have a meeting prior to -- before the City came in. So in our meeting they explained of the situation. And that they assured us that we had final releases and things of that nature. That put people somewhat to comfort and it was

bonded around. And we didn't know how -- we knew we needed to get the program so that we could complete our commissioning and move forward with the City.

Q. Prior to seeing this lien and getting this from your corporate office, did you have any actual knowledge that Cashman Equipment Company was involved in what we will call the project? Have you ever heard of them before?

A. I have been here for 24 years. I have heard of Cashman. But no, generators show up, equipment shows up. Who supplies it, who is installing it, I am just relying on Whiting Turner to make sure it's done.

Q. Okay. And I mean, sitting here right now, do you have any actual knowledge of when or whether Cashman Equipment Company actually supplied the generators to the project?

A. No, I don't.

Q. And following up on that, do you have any specific recollection of when the generators were delivered to the project?

A. Not specifically, no.

Q. Is it fair to say you just know that they got there and it got put in and the construction kept flowing?

A. Correct.

Q. Now, I had another question from my notes in talking to you. Do you recall -- I believe there was a pending log that you reviewed from time to time; is that correct?

**A. Every day.**

Q. I didn't want to hold your feet to the fire on the everyday thing, but I knew it was pretty much every day. Do you recall seeing anything in the pending log about change orders with respect to the generators?

**A. There was none.**

Q. Okay. And again, just to clarify, your company and you personally had played no part in the -- I guess we will call it the screening process for the disadvantaged business entities that were used on this project, did you?

**A. No.**

Q. And with respect to -- with respect to JMA's involvement, you talked to Ms. Lloyd about this a little bit earlier. Is it fair to say that their primary job was to deal with the design and the design changes once the project got going; is that fair?

**A. Yes.**

MR. BOSCHEE: I don't think I have anything further.

MS. LLOYD: I have a follow-up.

FURTHER EXAMINATION

BY MS. LLOYD:

Q. What is a pending log?

A. ForestCity requires all of our contractors to keep track of any possible change or foreseeable change and project a cost that could impact the project. We don't like surprises. If you know you have a problem -- if we know we have a problem out there with some steel, we would indicate that on this pending log and we would project a cost. So every month we knew what our exposure was to the project in any changes. It might end up being zero.

The City might come and say, Dave, I want you to redo these floor plans, which they did. We would put that on there and we would project a cost involved in that. So that at the end of the day, every month we knew what our true cost exposure was on a monthly basis for finance purposes.

Q. Would you see, like, a pending cost if Whiting Turner determined that, say, a sub missed something and didn't bid it properly so they were going to essentially put the cost back onto the sub? Would they have notified you of something like that?

A. No.

Q. Or only if it was going to be an owner-impacted change or potential cost?

A. It tracked -- if Whiting Turner missed something in the contract itself, that item would be put -- it would be tracked to Whiting Turner. If ForestCity asked for a change, it would be listed as ForestCity. And if the City made a change, it would be City. Beyond that, nothing else went on that log.

Q. So it was only if, say, Whiting Turner was going to ask for more money --

A. Right.

Q. -- related to a certain item.

So if they made a determination that, say, Mojave missed something and it was in the drawings and they should have included it and it wasn't going to be a change to the owner, you wouldn't be notified --

A. No, I wasn't.

Q. -- an issue like that.

Talking about the generator, I guess, delivery. Do you recall seeing the generators be delivered?

A. I just saw them sitting there one day.

Q. Before they were in the box or however they are housed in the equipment room, or after they were already in the equipment room?

A. After they were already in the -- it's a wall enclosure.

Q. Okay. Do you recall meeting Shane Norman of Cashman Equipment Company?

A. His name doesn't sound familiar.

Q. It would have been around the time of the lien, sort of the dispute concerning the payment issues. He recalled, I guess visiting the site and meeting you, but I don't know if you had recalled.

A. I met so many people.

Q. No, I am sure. Especially every day.

A. The name doesn't sound familiar, but I am not saying I didn't meet him. I am just saying I don't recall meeting him.

Q. But you don't recall having a conversation concerning this bounced check and the issue with the nonpayment of the generator?

A. I don't recall that.

MS. LLOYD: Okay. That is all I have.

(Thereupon, the deposition concluded at 4:00 p.m.)

CERTIFICATE OF DEPONENT

| PAGE | LINE | CHANGE | REASON |
|---|---|---|---|
| 6 | 10 | Camaro to "Cambeiro" | mispelling |
| 7 | 7 | Q.H to "PQ" | Clarification |
| 7 | 8 | QandH to "P and Q" | Clarification |
| 8 | 22 | RP to "RFP" | Mispelling |
| 11 | 25 | Helkis to "Elkis" | Mispelling |

* * * * *

I, David Phillips, deponent herein, do hereby certify and declare the within and foregoing transcription to be my deposition in said action; that I have read, corrected and do hereby affix my signature to said deposition under penalty of perjury.

DAVID PHILLIPS, Deponent

CERTIFICATE OF REPORTER

STATE OF NEVADA )
) ss:
COUNTY OF CLARK )

I, Christy L. DeJonker, a duly commissioned Notary Public, Clark County, State of Nevada, do hereby certify: That I reported the deposition of David Phillips, commencing on Thursday, January 10, 2012, at 3:00 p.m.

That prior to being deposed, the witness was duly sworn by me to testify to the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript is a complete, true and accurate transcription of my said shorthand notes. That review of the transcript was requested.

I further certify that I am not a relative, employee or independent contractor of counsel of any of the parties; nor a relative, employee or independent contractor of the parties involved in said action; nor a person financially interested in the action; nor do I have any other relationship with any of the parties or with counsel of any of the parties involved in the action that may reasonably cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this 14th day of January, 2013.

_____
CHRISTY LYN DeJONKER, CCR NO. 691

# EXHIBIT B

Inst #: 201202170001875
Fees: $0.00 N/C Fee: $0.00
RPTT: $0.00 Ex: #002
02/17/2012 11:16:14 AM
Receipt #: 1070223
Requestor:
FIRST AMERICAN TITLE HOWARD
Recorded By: KGP Pgs: 5
DEBBIE CONWAY
CLARK COUNTY RECORDER

Affix R.P.T.T.: $ Exempt 02

**RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:**
City of Las Vegas
c/o Office of Business Development
400 Stewart Avenue, 2nd Floor
Las Vegas, Nevada 89101
Attn: Director

**MAIL TAX STATEMENTS TO:**
City of Las Vegas
c/o Office of Business Development
400 Stewart Avenue, 2nd Floor
Las Vegas, Nevada 89101
Attn: Director

APNs: 139-34-201-022
386052 -563
(Space above line for Recorder's use only)

## GRANT, BARGAIN AND SALE DEED

PQ LAS VEGAS, LLC, a Delaware limited liability company, as "GRANTOR," do hereby Grant, Bargain, Sell and Convey to the CITY OF LAS VEGAS, NEVADA, a political subdivision of the State of Nevada, as "GRANTEE" the real property located in County of Clark, State of Nevada bounded and described as follows:

See Exhibit "A" attached hereto and incorporated herein by this reference;

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or otherwise appertaining.

SUBJECT TO:

1. General taxes for the current fiscal tax year not yet due and payable.
2. All matters of record.

*{Signature Page Follows}*

Affix R.P.T.T.: $ Exempt 02

Recorded Electronically
ID
County
Date Time
Simplifile.com 800.460.5657

**RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:**
City of Las Vegas
c/o Office of Business Development
400 Stewart Avenue, 2nd Floor
Las Vegas, Nevada 89101
Attn: Director

**MAIL TAX STATEMENTS TO:**
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Attn: Director

APNs: 139-34-201-022
386052 565
(Space above line for Recorder's use only)

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See Exhibit "A" attached hereto and incorporated herein by this reference;

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or otherwise appertaining.

SUBJECT TO:

1. General taxes for the current fiscal tax year not yet due and payable.
2. All matters of record.

*{Signature Page Follows}*

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on the date set forth below.

Dated as of February 16, 2012

"GRANTOR"

PQ LAS VEGAS, LLC,
a Delaware limited liability company

By: _____
Name: Dimitri Vazelakis
Title: Authorized Representative

Dimitri Vazelakis

STATE OF Nevada }
COUNTY OF Clark } ss.

This instrument was acknowledged before me on Dec. 14, 2009 by Dimitri Vazelakis as Authorized Rep. of PQ LAS VEGAS, LLC, a Delaware limited liability company.

S. Renee Hoban
NOTARY PUBLIC

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
S. RENEE HOBAN
No: 94-2190-1
My Appointment Expires Oct. 25, 2010

S. RENEE HOBAN
#94-2190-1
EXP. 10-25-10

LV 410,078,226v1 12-9-09

**EXHIBIT A**
Legal Description of Land

**EXPLANATION**
THIS DESCRIPTION DESCRIBES THE REMAINING BLOCK 6 OF CLARK'S LAS VEGAS TOWNSITE, CITY OF LAS VEGAS, NEVADA.

**LEGAL DESCRIPTION**
BEING A PORTION OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 34, TOWNSHIP 20 SOUTH, RANGE 61 EAST, M.D.M., IN THE CITY OF LAS VEGAS, CLARK COUNTY, NEVADA, BEING A PORTION OF LOTS 1 THROUGH 16 INCLUSIVE AND ALL OF LOTS 17 THROUGH 32 INCLUSIVE AND ALL OF THAT CERTAIN VACATED 20'ALLEY THAT LIES BETWEEN LEWIS AVENUE AND CLARK AVENUE WITHIN A PORTION OF BLOCK 6 AS SHOWN ON THE PLAT OF CLARK'S LAS VEGAS TOWNSITE, ON FILE IN BOOK 1, PAGE 37 OF PLATS OF CLARK COUNTY, NEVADA RECORDS AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE FOUND ALUMINUM CAP MARKING THE INTERSECTION OF MAIN STREET AND CLARK AVENUE ON THE NEVADA DEPARTMENT OF TRANSPORTATION "Q" CENTERLINE; THENCE NORTH 27°54'11" EAST, ALONG SAID CENTERLINE, A DISTANCE OF 50.03 FEET; THENCE SOUTH 62°05'49" EAST, A DISTANCE OF 49.00 FEET TO THE POINT OF BEGINNING, SAID POINT ALSO BEING ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF MAIN STREET;

THENCE NORTH 27°54'11" EAST, ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 380.72 FEET (380.00' RECORD) TO THE BEGINNING OF A 10.00 FOOT RADIUS TANGENT CURVE, CONCAVE SOUTHEASTERLY; THENCE NORTHEASTERLY ALONG SAID CURVE, HAVING A CENTRAL ANGLE OF 90°01'00", A CURVE LENGTH OF 15.71 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF LEWIS AVENUE; THENCE SOUTH 62°04'49" EAST, ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 275.19 FEET (275.00' RECORD) TO THE BEGINNING OF A 10.00 FOOT RADIUS TANGENT CURVE, CONCAVE SOUTHWESTERLY; THENCE SOUTHEASTERLY ALONG SAID CURVE, HAVING A CENTRAL ANGLE OF 89°59'04", A CURVE LENGTH OF 15.71 FEET TO A POINT ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF FIRST STREET; THENCE SOUTH 27°54'15" WEST, ALONG SAID NORTHWESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 380.52 FEET (380.00' RECORD) TO THE BEGINNING OF A 10.00 FOOT RADIUS TANGENT CURVE, CONCAVE NORTHWESTERLY; THENCE SOUTHWESTERLY ALONG SAID CURVE, HAVING A CENTRAL ANGLE OF 89°56'27", A CURVE LENGTH OF 15.70 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF CLARK AVENUE; THENCE NORTH 62°07'18" WEST, ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 275.19 FEET (275.00' RECORD) TO THE BEGINNING OF A 10.00 FOOT RADIUS TANGENT CURVE, CONCAVE NORTHEASTERLY; THENCE NORTHWESTERLY ALONG SAID CURVE, HAVING A CENTRAL ANGLE

90°01'29", A CURVE LENGTH OF 15.71 FEET TO THE POINT OF BEGINNING.

CONTAINING IN ALL 2.71 ACRES OF LAND.

**BASIS OF BEARING**

SOUTH 27°54'30" WEST, BEING THE CENTERLINE OF CASINO CENTER BOULEVARD BETWEEN STEWART AVENUE AND COOLIDGE AVENUE AS SHOWN BY THAT CERTAIN MAP IN FILE 87, PAGE 79 OF SURVEYS IN THE CLARK COUNTY RECORDER'S OFFICE, CLARK COUNTY, NEVADA.

MARK D. HERZIG
PROFESSIONAL LAND SURVEYOR
NEVADA LICENSE NO. 18982
FOGGEMEYER DESIGN GROUP, INC.
6960 SMOKE RANCH ROAD, SUITE 110
LAS VEGAS, NEVADA 89146

07-14-09

**ALSO DESCRIBED AS FOLLOWS:**

**LOT 1 AS SHOWN BY MAP THEREOF ON FILE IN FILE 117 OF PARCEL MAPS, PAGE 14, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.**

**STATE OF NEVADA**
**DECLARATION OF VALUE**

1. Assessor Parcel Number(s)
   a) 139-34-201-022
   b) _____
   c) _____
   d) _____

2. Type of Property
   a) ☐ Vacant Land  b) ☐ Single Fam. Res.
   c) ☐ Condo/Twnhse  d) ☐ 2-4 Plex
   e) ☐ Apt. Bldg.  f) ☒ Comm'l/Ind'l
   g) ☐ Agricultural  h) ☐ Mobile Home
   i) ☐ Other _____

**FOR RECORDERS OPTIONAL USE ONLY**
Book _____ Page: _____
Date of Recording: _____
Notes: _____

3. a) Total Value/Sales Price of Property: $ N/A
   b) Deed in Lieu of Foreclosure Only (value of property) ( $ N/A )
   c) Transfer Tax Value: $ N/A
   d) Real Property Transfer Tax Due $ N/A

4. **If Exemption Claimed:**
   a. Transfer Tax Exemption, per 375.090, Section: 2
   b. Explain reason for exemption: Transfer to a government entity.

5. Partial Interest: Percentage being transferred: _____ %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: _____ Capacity: Grantor
Signature: Elizabeth J. Fretwell Capacity: Grantee

| SELLER (GRANTOR) INFORMATION (REQUIRED) Elizabeth N Fretwell | BUYER (GRANTEE) INFORMATION (REQUIRED) |
|---|---|
| Print Name: PQ LAS VEGAS, LLC | Print Name: CITY OF LAS VEGAS, NEVADA |
| Address: Terminal Tower, Slo. 1410, 50 Public Sq. | Address: 400 Stewart Avenue, 2nd Floor |
| City: Cleveland | City: Las Vegas |
| State: Ohio 44113 | State: Nevada Zip: 89101 |

APPROVED AS TO FORM: 2-15-12 Date

**COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)**
Print Name: First American Title File Number: 3860512
Address 2490 Paseo Verde Pkwy 3860512
City: Henderson State: NV Zip: 89074

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

LV 419,670,261v1

Inst #: 201202170001874
Fees: $22.00 N/C Fee: $0.00
RPTT: $169167.00 Ex: #
02/17/2012 11:16:14 AM
Receipt #: 1070223
Requestor:
FIRST AMERICAN TITLE HOWARD
Recorded By: KGP Pgs: 7
DEBBIE CONWAY
CLARK COUNTY RECORDER

Affix R.P.T.T.: $ 169,167.00

**WHEN RECORDED RETURN TO:**
GREENBERG TRAURIG, LLP
Attention: Gregg R. Vermeys, Esq.
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169

**MAIL TAX STATEMENTS TO:**
FOREST CITY ENTERPRISES, INC.
Attention: Director of Tax
Terminal Tower, Suite 1410
50 Public Square
Cleveland, Ohio 44113

APNs: 139-34-110-005
139-34-110-011
(Space above line for Recorder's use only)
523174.565

## GRANT, BARGAIN AND SALE DEED

CITY PARKWAY IV A, INC., a Nevada non-profit corporation, as "GRANTOR," does hereby Grant, Bargain, Sell and Convey to PQ LAS VEGAS, LLC, a Delaware limited liability company, as "GRANTEE" the real property located in County of Clark, State of Nevada bounded and described as follows:

See Exhibit "A" attached hereto and incorporated herein by this reference;

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or otherwise appertaining.

SUBJECT TO:

1. General taxes for the current fiscal tax year not yet due and payable.

2. All matters of record.

*[Signature Page Follows]*

Affix R.P.T.T.: $ 169,1600

**WHEN RECORDED RETURN TO:**
GREENBERG TRAURIG, LLP
Attention: Gregg R. Vermeys, Esq.
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169

Recorded Electronically
ID
County
Date Time
Simplifile.com 800.460.6657

**MAIL TAX STATEMENTS TO:**
FOREST CITY ENTERPRISES, INC.
Attention: Director of Tax
Terminal Tower, Suite 1410
50 Public Square
Cleveland, Ohio 44113

APNs: 139-34-110-005
139-34-110-011
(Space above line for Recorder's use only)
5238745 63

## GRANT, BARGAIN AND SALE DEED

CITY PARKWAY IV A, INC., a Nevada non-profit corporation, as "GRANTOR," does hereby Grant, Bargain, Sell and Convey to PQ LAS VEGAS, LLC, a Delaware limited liability company, as "GRANTEE" the real property located in County of Clark, State of Nevada bounded and described as follows:

See Exhibit "A" attached hereto and incorporated herein by this reference;

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or otherwise appertaining.

SUBJECT TO:

1. General taxes for the current fiscal tax year not yet due and payable.
2. All matters of record.

*{Signature Page Follows}*

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on the date set forth below.

Dated as of December 17, 2009.

"GRANTOR"

CITY PARKWAY IV A, INC.,
a Nevada non-profit corporation

By: Elizabeth N. Fretwell
Name: Elizabeth N. Fretwell
Title: President

Elizabeth N Fretwell

Attest:

Scott D. Adams, Secretary

APPROVED AS TO FORM:

M. A. Dz ESQ
12-9-09 Date
M. Niachos

LV 418,978,198v1 12-9-09

STATE OF NEVADA
COUNTY OF CLARK } ss.

This instrument was acknowledged before me on December 10, 2009 by Elizabeth N. Fretwell, as President of CITY PARKWAY IV A, INC., a Nevada non-profit corporation.

Carolyn Marinello
NOTARY PUBLIC Carolyn Marinello

CAROLYN MARINELLO
Notary Public State of Nevada
No. 94-0918-1
My appt. exp. March 10, 2012

#94-0918-1
Exp. 3-10-12

LV 418,978,108v1 12-9-09

**EXHIBIT A**
Legal Description of Land

## PARCEL P-Q LEGAL DESCRIPTION

**PARCEL NO. 1:**

BEING A PORTION OF LOT 5 OF THAT COMMERCIAL SUBDIVISION KNOWN AS "PARKWAY CENTER" ON FILE IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA IN BOOK 53 OF PLATS, AT PAGE 61, LYING WITHIN THE NORTH HALF (N 1/2) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 34, TOWNSHIP 20 SOUTH, RANGE 61 EAST, M.D.M., CITY OF LAS VEGAS, CLARK COUNTY NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE MOST EASTERLY, NORTHEAST CORNER OF SAID LOT 5, BEING ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAIL ROAD; THENCE SOUTH 27°55'16" WEST, ALONG THE EAST LINE OF SAID LOT 5, COINCIDENT WITH THE NORTHWESTERLY RIGHT-OF-WAY LINE OF SAID UNION PACIFIC RAIL ROAD, 741.16 FEET TO THE BEGINNING OF A NON-TANGENT CURVE -CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 1510.00 FEET, A RADIAL LINE TO SAID BEGINNING BEARS NORTH 31°53'35" WEST; THENCE SOUTHWESTERLY 157.61 FEET, DEPARTING SAID EAST LINE AND THE NORTHWESTERLY RIGHT-OF-WAY LINE OF SAID UNION PACIFIC RAILROAD AND ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 05°58'50"; THENCE NORTH 62°07'30" WEST, 191.52 FEET; THENCE NORTH 27°53'43" EAST, 123.38 FEET TO THE BEGINNING OF A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 703.00 FEET; THENCE NORTHERLY, 463.53 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 37°46'43"; THENCE NORTH 09°53'00" WEST, 89.69 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 30.00 FEET; THENCE NORTHERLY, 12.66 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 24°10'18" TO THE SOUTHERLY RIGHT-OF-WAY LINE OF GRAND CENTRAL PARKWAY; THENCE NORTH 74°18'09" EAST, ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, 222.76 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 350.00 FEET; THENCE EASTERLY, 266.51 FEET ALONG SAID CURVE AND CONTINUING ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE THROUGH A CENTRAL ANGLE OF 43°37'41"; THENCE SOUTH 27°55'50" WEST, CONTINUING ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, 5.00 FEET; THENCE SOUTH 62°04'10" EAST, CONTINUING ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, 68.79 FEET TO THE POINT OF BEGINNING, AS SHOWN ON THE "EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION" ATTACHED HERETO AND MADE A PART HEREOF. NOTE: THE ABOVE METES AND BOUNDS DESCRIPTION PREVIOUSLY APPEARED IN THAT CERTAIN DOCUMENT RECORDED MAY 01, 2008 IN BOOK 20080501 OF OFFICIAL RECORDS AS INSTRUMENT NO. 02091, CLARK COUNTY, NEVADA. EXCEPTING THEREFROM THOSE PORTIONS CONVEYED BY DOCUMENTS RECORDED APRIL 23, 2009 IN BOOK 20090423 OF OFFICIAL RECORDS, CLARK COUNTY, NEVADA, AS INSTRUMENT NO. 03874

PARCEL NO. 2:

BEING A PORTION OF THAT PARCEL OF LAND CONVEYED TO "OFFICE DISTRICT PARKING I, INC." PER DOCUMENT: 20080501 INSTRUMENT: 02090, ALSO BEING A PORTION OF LOT 5 OF THAT COMMERCIAL SUBDIVISION KNOWN AS "PARKWAY CENTER" ON FILE IN THE OFFICE OF THE COUNTY RECORDER IN BOOK 53 OF PLATS, AT PAGE 61, LOCATED WITHIN THE NORTHWEST QUARTER (NW 1/4) OF SECTION 34, TOWNSHIP 20 SOUTH, RANGE 61 EAST, M.D.M., CITY OF LAS VEGAS, CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE MOST NORTHERLY CORNER OF THAT PARCEL OF LAND CONVEYED TO "OFFICE DISTRICT PARKING I, INC." PER DOCUMENT: 20080501 INSTRUMENT: 02090, BEING ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD, SAID POINT BEING MARKED BY A 5/8 INCH REBAR AND ALUMINUM CAP STAMPED "PLS 5094"; THENCE SOUTH 27°55'16" WEST ALONG SAID RAILROAD RIGHT-OF-WAY, 140.08 FEET ; THENCE NORTH 62°07'30" WEST, DEPARTING SAID RAILROAD RIGHT-OF-WAY, 72.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 1510.00 FEET, A RADIAL LINE TO THIS POINT BEARS NORTH 37°52'25" WEST, SAME PONT BEING THE MOST SOUTHERLY CORNER OF PARCEL "P/Q" AS CONVEYED BY DOCUMENT: 20080501, INSTRUMENT: 02091; THENCE NORTHEASTERLY, ALONG THE BOUNDARY LINE OF SAID PARCEL "P/Q" AND ALONG SAID CURVE 157.61 FEET THROUGH A CENTRAL ANGLE OF 05°58'50" TO THE POINT OF BEGINNING.

NOTE: THE ABOVE METES AND BOUNDS DESCRIPTION WAS PREPARED BY ALAN R. REKKI LAND SURVEYOR, PLS, NEVADA LICENSE NO. 12469

EXCEPTING THEREFROM THOSE PORTIONS CONVEYED BY DOCUMENTS RECORDED APRIL 23, 2009 IN BOOK 20090423 OF OFFICIAL RECORDS, CLARK COUNTY, NEVADA, AS INSTRUMENT NO. 03874

**STATE OF NEVADA**
**DECLARATION OF VALUE**

1. Assessor Parcel Number(s)
   a) 139-34-110-006
   b) 139-34-110-011
   c) _____
   d) _____

2. Type of Property
   a) [X] Vacant Land  b) [ ] Single Fam. Res.
   c) [ ] Condo/Twnhse  d) [ ] 2-4 Plex
   e) [ ] Apt. Bldg.  f) [ ] Comm'l/Ind'l
   g) [ ] Agricultural  h) [ ] Mobile Home
   i) [ ] Other _____

**FOR RECORDERS OPTIONAL USE ONLY**
Book _____ Page: _____
Date of Recording: _____
Notes: _____

3. a) Total Value/Sales Price of Property: $ 33,170,000
   b) Deed in Lieu of Foreclosure Only (value of property) ( $ N/A )
   c) Transfer Tax Value: $ 33,170,000
   d) Real Property Transfer Tax Due $ 169,167.00

4. **If Exemption Claimed:**
   a. Transfer Tax Exemption, per 375.090, Section: _____
   b. Explain reason for exemption: _____

5. Partial Interest: Percentage being transferred: _____ %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: Elizabeth A. Fretwell Capacity: Grantor
Signature: Elizabeth A. Fretwell Capacity: Grantee

| SELLER (GRANTOR) INFORMATION (REQUIRED) | BUYER (GRANTEE) INFORMATION (REQUIRED) |
|---|---|
| Print Name: CITY PARKWAY IV A, INC. | Print Name: PQ LAS VEGAS, LLC |
| Address: 400 Stewart Avenue, 2nd Floor | Address: Terminal Tower, Ste. 1410, 50 Public Sq. |
| City: Las Vegas | City: Cleveland |
| State: Nevada Zip: 89101 | State: Ohio Zip: 44113 |

APPROVED AS TO FORM: 2-5-12 Date

**COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)**
Print Name: First American Title File Number: 523174 565
Address: 2490 Paseo Verde Pkwy, S100 3860526
City: Henderson State: NV Zip: 89074

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

Inst #: 201202170001878
Fees: $26.00
N/C Fee: $26.00
02/17/2012 11:16:14 AM
Receipt #: 1070223
Requestor:
FIRST AMERICAN TITLE HOWARD
Recorded By: KGP Pgs: 10
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN NOS: 139-34-110-005
139-34-110-011
WHEN RECORDED, MAIL TO:

City of Las Vegas
c/o Office of Business Development
400 Stewart Avenue, 2nd Floor
Las Vegas, Nevada 89101
Attn: Director

523174 SGS

(Space Above Line For Recorder's Use)

# ASSIGNMENT OF GROUND LEASE

THIS ASSIGNMENT OF GROUND LEASE (this "**Assignment**") is made on the 17th day of December 2009 (the "**Effective Date**"), by and among PQ Ground Lessee, LLC, a Delaware limited liability company ( "**Lessee**"), PQ Las Vegas, LLC, a Delaware limited liability company ("**Assignee**"), and City Parkway IV A, Inc., a Nevada non-profit corporation ("**Assignor**").

## RECITALS:

A. Assignor is the fee simple owner of the real property described on the attached Exhibit A (the "**Real Property**");

B. Assignor and Lessee are parties to the Ground Lease dated December 17, 2009 (as amended from time to time, the "**Ground Lease**"), pursuant to which Assignor has leased the Real Property to Lessee. A memorandum of the Ground Lease is being recorded in the real property records of Clark County, Nevada, simultaneously with this Assignment;

C. Assignee and Assignor have entered into that certain Exchange and Parcel P-Q Development Agreement dated December 17, 2009 (the "**Exchange Agreement**") by which Assignor has agreed to convey to Assignee the Real Property and in connection therewith Assignor and Assignee have entered into an escrow pursuant to written instructions (the "**Escrow Instructions**") with First American Title Insurance Company, a California corporation ("**Escrow Agent**"), for the closing of all transactions related to the Exchange Agreement;

D. Pursuant to the Exchange Agreement, Assignor and Assignee have mutually agreed that Assignor's interest in the Ground Lease shall be assigned by Assignor to Assignee at the closing of the conveyance of the Real Property by Assignor to Assignee pursuant to the Exchange Agreement and the Escrow Instructions; and

E. In connection therewith, Assignor and Assignee have deposited with Escrow Agent pursuant to the Escrow Instructions duly executed and acknowledged counterparts of this Assignment.

APN NOS: 139-34-110-005
139-34-110-011
WHEN RECORDED, MAIL TO:

Recorded Electronically
ID:
County
Date Time
Simplifile.com 800.460.5657

City of Las Vegas
c/o Office of Business Development
400 Stewart Avenue, 2nd Floor
Las Vegas, Nevada 89101
Attn: Director

523174 SGS

(Space Above Line For Recorder's Use)

**ASSIGNMENT OF GROUND LEASE**

THIS ASSIGNMENT OF GROUND LEASE (this "**Assignment**") is made on the 17th day of December 2009 (the "**Effective Date**"), by and among PQ Ground Lessee, LLC, a Delaware limited liability company ( "**Lessee**"), PQ Las Vegas, LLC, a Delaware limited liability company ("**Assignee**"), and City Parkway IV A, Inc., a Nevada non-profit corporation ("**Assignor**").

RECITALS:

A. Assignor is the fee simple owner of the real property described on the attached Exhibit A (the "**Real Property**");

B. Assignor and Lessee are parties to the Ground Lease dated December 17, 2009 (as amended from time to time, the "**Ground Lease**"), pursuant to which Assignor has leased the Real Property to Lessee. A memorandum of the Ground Lease is being recorded in the real property records of Clark County, Nevada, simultaneously with this Assignment;

C. Assignee and Assignor have entered into that certain Exchange and Parcel P-Q Development Agreement dated December 17, 2009 (the "**Exchange Agreement**") by which Assignor has agreed to convey to Assignee the Real Property and in connection therewith Assignor and Assignee have entered into an escrow pursuant to written instructions (the "**Escrow Instructions**") with First American Title Insurance Company, a California corporation ("**Escrow Agent**"), for the closing of all transactions related to the Exchange Agreement;

D. Pursuant to the Exchange Agreement, Assignor and Assignee have mutually agreed that Assignor's interest in the Ground Lease shall be assigned by Assignor to Assignee at the closing of the conveyance of the Real Property by Assignor to Assignee pursuant to the Exchange Agreement and the Escrow Instructions; and

E. In connection therewith, Assignor and Assignee have deposited with Escrow Agent pursuant to the Escrow Instructions duly executed and acknowledged counterparts of this Assignment.

NOW, THEREFORE, the parties do hereby agree as follows:

1. Assignment of Ground Lease. Assignor hereby assigns to Assignee, automatically effective upon the closing of the conveyance of the Real Property from Assignor to Assignee (the "**Closing Date**"), all of Assignor's right, title and interest in the Ground Lease. Assignor hereby assumes, automatically effective upon the Closing Date, all of Assignor's right, title, obligations and interest in the Ground Lease. Lessee agrees that upon the Closing Date, (i) Lessee automatically releases Assignor from any and all liability under the Ground Lease to the extent such liabilities or obligations arise or are incurred and are first required to be performed on or after the Closing Date and (ii) on and after the Closing Date Lessee shall look solely to Assignee for performance of the Landlord's obligations under the Ground Lease.

2. Recordation and Distribution of this Assignment. Lessee, Assignee and Assignor acknowledge that (i) three original counterparts of this Assignment have been duly executed and acknowledged by Lessee, Assignee and Assignor, respectively and (ii) Lessee, Assignee and Assignor have respectively deposited such counterparts with Escrow Agent pursuant to the Exchange Agreement and the Escrow Instructions. Pursuant to the Exchange Agreement and Escrow Instructions, the Escrow Agent has been instructed to record original counterparts of this Assignment and to distribute original counterparts of this Assignment to Lessee, Assignee and Assignor.

3. Execution in Counterparts. This Assignment has been executed in three counterparts, each of which shall be in original, but all of which shall constitute one and the same instrument.

4. Governing Law. The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Assignment.

5. Severability. The invalidity or illegality of any provision shall not affect the remainder of this Assignment and all remaining provisions shall, notwithstanding any such invalidity or illegality, continue in full force and effect.

6. Exhibits. All exhibits to which reference is made in this Assignment are hereby incorporated by reference. Any reference to "this Assignment" includes matters incorporated by reference.

7. Entire Agreement; Modification. This Assignment contains the entire agreement between the parties with respect to the subject matter contained herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof, any statements, law or custom to the contrary notwithstanding. No promise, representation, warranty, or covenant not included in this Assignment has been or is relied on by either party. No provision of this Assignment may be amended or varied except by an agreement in writing signed by the parties hereto or their respective successors-in-interest.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the undersigned have executed this Assignment on the date first above written.

ASSIGNOR

CITY PARKWAY IV A, INC., A Nevada non-profit corporation

By: Elizabeth N. Fretwell
Name: Elizabeth N. Fretwell
Title: President Elizabeth N Fretwell

ATTEST:

Scott D. Adams, Secretary

APPROVED AS TO FORM:

M Niarchos ESQ
M Niarchos 12-15-09 Date

ASSIGNEE

PQ LAS VEGAS, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

LESSEE

PQ GROUND LESSEE, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

STATE OF NEVADA )
: ss.
COUNTY OF CLARK )

This instrument was acknowledged before me on December 15, 2009, by Elizabeth N. Fretwell, President of City Parkway IV A, Inc.

WITNESS my hand and official seal.

Carolyn Marinello

Notary Public for the State of Nevada

Carolyn Marinello

(NOTARY SEAL)

CAROLYN MARINELLO
Notary Public State of Nevada
No. 94-0918-1
My appt. exp. March 10, 2012

#94-0918-1
EXP. 3-10-12

STATE OF NEVADA )
: ss.
COUNTY OF CLARK )

This instrument was acknowledged before me on _____, 2009, by _____ as _____ of _____.

WITNESS my hand and official seal.

_____

Notary Public for the State of Nevada

(NOTARY SEAL)

STATE OF NEVADA )
: ss.
COUNTY OF CLARK )

This instrument was acknowledged before me on _____, 2009, by _____ as _____ of _____.

WITNESS my hand and official seal.

_____

Notary Public for the State of Nevada

(NOTARY SEAL)

IN WITNESS WHEREOF, the undersigned have executed this Assignment on the date first above written.

ASSIGNOR

CITY PARKWAY IV A, INC., A Nevada non-profit corporation

By: _____
Name: _____
Title: _____

ATTEST:

_____
_____, Title

APPROVED AS TO FORM:

_____
Date

ASSIGNEE

PQ LAS VEGAS, LLC, a Delaware limited liability company

By: _____
Name: Dimitri Vazelakis
Title: Authorized Representative

LESSEE Dimitri Vazelakis

PQ GROUND LESSEE, LLC, a Delaware limited liability company

By: _____
Name: Dimitri Vazelakis
Title: Authorized Representative
Dimitri Vazelakis

STATE OF NEVADA )
: ss.
COUNTY OF CLARK )

This instrument was acknowledged before me on _____, 2009, by _____, Mayor of the City of Las Vegas, Nevada.

WITNESS my hand and official seal.

_____
Notary Public for the State of Nevada

(NOTARY SEAL)

STATE OF NEVADA )
: ss.
COUNTY OF CLARK )

This instrument was acknowledged before me on Dec. 14, 2009, by D. Smith as Vazehkis as Auth Rep. of PQ Las Vegas, LLC.

WITNESS my hand and official seal.

S. Renee Hoban
Notary Public for the State of Nevada

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
S. RENEE HOBAN
No: 94-7190-1
My Appointment Expires Oct. 25, 2010

S Renee Hoban
(NOTARY SEAL) #94-7190-1

STATE OF NEVADA )
: ss. Exp. 10-25-10
COUNTY OF CLARK )

This instrument was acknowledged before me on _____, 2009, by _____ as _____ of _____.

WITNESS my hand and official seal.

_____
Notary Public for the State of Nevada

(NOTARY SEAL)

*LV 418,978,223v1 12-9-09*

STATE OF NEVADA )
: ss.
COUNTY OF CLARK )

This instrument was acknowledged before me on _____, 2009, by_____, Mayor of the City of Las Vegas, Nevada.

WITNESS my hand and official seal.

_____
Notary Public for the State of Nevada

(NOTARY SEAL)

STATE OF NEVADA )
: ss.
COUNTY OF CLARK )

This instrument was acknowledged before me on Dec. 14, 2009, by Dimitrios Vazelakis as Auth. Rep of FD Las Vegas, LLC.

WITNESS my hand and official seal.

_____
Notary Public for the State of Nevada

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
S. RENEE HOBAN
No: 01-2190-1
My Appointment Expires Oct. 25, 2010

(NOTARY SEAL)

S. Renee Hoban
#01-2190-1
Exp. 10-25-10

STATE OF NEVADA )
: ss.
COUNTY OF CLARK )

This instrument was acknowledged before me on _____, 2009, by_____ as _____ of _____.

WITNESS my hand and official seal.

_____
Notary Public for the State of Nevada

(NOTARY SEAL)

*LV 418,978,223v1 12-9-09*

EXHIBIT "A"

DESCRIPTION OF REAL PROPERTY

## PARCEL P-Q LEGAL DESCRIPTION

**PARCEL NO. 1:**

BEING A PORTION OF LOT 6 OF THAT COMMERCIAL SUBDIVISION KNOWN AS "PARKWAY CENTER" ON FILE IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA IN BOOK 53 OF PLATS, AT PAGE 61, LYING WITHIN THE NORTH HALF (N 1/2) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 34, TOWNSHIP 20 SOUTH, RANGE 61 EAST, M.D.M., CITY OF LAS VEGAS, CLARK COUNTY NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE MOST EASTERLY, NORTHEAST CORNER OF SAID LOT 5, BEING ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAIL ROAD; THENCE SOUTH 27°55'16" WEST, ALONG THE EAST LINE OF SAID LOT 5, COINCIDENT WITH THE NORTHWESTERLY RIGHT-OF-WAY LINE OF SAID UNION PACIFIC RAIL ROAD, 741.16 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 1510.00 FEET, A RADIAL LINE TO SAID BEGINNING BEARS NORTH 31°53'35" WEST; THENCE SOUTHWESTERLY 157.61 FEET, DEPARTING SAID EAST LINE AND THE NORTHWESTERLY RIGHT-OF-WAY LINE OF SAID UNION PACIFIC RAILROAD AND ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 05°58'50"; THENCE NORTH 62°07'30" WEST, 191.52 FEET; THENCE NORTH 27°53'43" EAST, 123.38 FEET TO THE BEGINNING OF A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 703.00 FEET; THENCE NORTHERLY, 463.53 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 37°46'43"; THENCE NORTH 09°53'00" WEST, 89.69 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 30.00 FEET; THENCE NORTHERLY, 12.66 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 24°10'18" TO THE SOUTHERLY RIGHT-OF-WAY LINE OF GRAND CENTRAL PARKWAY; THENCE NORTH 74°18'09" EAST, ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, 222.76 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 350.00 FEET; THENCE EASTERLY, 266.51 FEET ALONG SAID CURVE AND CONTINUING ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE THROUGH A CENTRAL ANGLE OF 43°37'41"; THENCE SOUTH 27°55'50" WEST, CONTINUING ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, 5.00 FEET; THENCE SOUTH 62°04'10" EAST, CONTINUING ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, 68.79 FEET TO THE POINT OF BEGINNING, AS SHOWN ON THE "EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION" ATTACHED HERETO AND MADE A PART HEREOF. NOTE: THE ABOVE METES AND BOUNDS DESCRIPTION PREVIOUSLY APPEARED IN THAT CERTAIN DOCUMENT RECORDED MAY 01, 2008 IN BOOK 20080501 OF OFFICIAL RECORDS AS INSTRUMENT NO. 02091, CLARK COUNTY, NEVADA. EXCEPTING THEREFROM THOSE PORTIONS CONVEYED BY DOCUMENTS RECORDED APRIL 23, 2009 IN BOOK 20090423 OF OFFICIAL RECORDS, CLARK COUNTY, NEVADA, AS INSTRUMENT NO. 03874

PARCEL NO. 2:

BEING A PORTION OF THAT PARCEL OF LAND CONVEYED TO "OFFICE DISTRICT PARKING I, INC." PER DOCUMENT: 20080501 INSTRUMENT: 02090, ALSO BEING A PORTION OF LOT 5 OF THAT COMMERCIAL SUBDIVISION KNOWN AS "PARKWAY CENTER" ON FILE IN THE OFFICE OF THE COUNTY RECORDER IN BOOK 53 OF PLATS, AT PAGE 61, LOCATED WITHIN THE NORTHWEST QUARTER (NW 1/4) OF SECTION 34, TOWNSHIP 20 SOUTH, RANGE 61 EAST, M.D.M., CITY OF LAS VEGAS, CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE MOST NORTHERLY CORNER OF THAT PARCEL OF LAND CONVEYED TO "OFFICE DISTRICT PARKING I, INC." PER DOCUMENT: 20080501 INSTRUMENT: 02090, BEING ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD, SAID POINT BEING MARKED BY A 5/8 INCH REBAR AND ALUMINUM CAP STAMPED "PLS 5094"; THENCE SOUTH 27°55'16" WEST ALONG SAID RAILROAD RIGHT-OF-WAY, 140.08 FEET ; THENCE NORTH 62°07'30" WEST, DEPARTING SAID RAILROAD RIGHT-OF-WAY, 72.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 1510.00 FEET, A RADIAL LINE TO THIS POINT BEARS NORTH 27°52'25" WEST, SAME PONT BEING THE MOST SOUTHERLY CORNER OF PARCEL "P/Q" AS CONVEYED BY DOCUMENT: 20080501, INSTRUMENT: 02091; THENCE NORTHEASTERLY, ALONG THE BOUNDARY LINE OF SAID PARCEL "P/Q" AND ALONG SAID CURVE 157.61 FEET THROUGH A CENTRAL ANGLE OF 05°58'50" TO THE POINT OF BEGINNING.

NOTE: THE ABOVE METES AND BOUNDS DESCRIPTION WAS PREPARED BY ALAN R. REKKI LAND SURVEYOR, PLS, NEVADA LICENSE NO. 12469

EXCEPTING THEREFROM THOSE PORTIONS CONVEYED BY DOCUMENTS RECORDED APRIL 23, 2009 IN BOOK 20090423 OF OFFICIAL RECORDS, CLARK COUNTY, NEVADA, AS INSTRUMENT NO. 03874

Inst #: 201202170001876
Fees: $24.00
N/C Fee: $25.00
02/17/2012 11:18:14 AM
Receipt #: 1070223
Requestor:
FIRST AMERICAN TITLE HOWARD
Recorded By: KGP Pgs: 8
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN NOS: 139-34-201-022

WHEN RECORDED, MAIL TO:

City of Las Vegas
c/o Office of Business Development
400 Stewart Avenue, 2nd Floor
Las Vegas, Nevada 89101
Attn: Director

386052 SGS

(Space Above Line For Recorder's Use)

# AGREEMENT OF TERMINATION OF SUB-GROUND LEASE

THIS AGREEMENT OF TERMINATION OF SUB-GROUND LEASE (this "**Sub-Ground Lease Termination Agreement**") is made on the 17th day of December 2009 (the "**Effective Date**"), by and between QH Las Vegas, LLC, a Delaware limited liability company ("**Lessor**"), and the City of Las Vegas, Nevada ("**Lessee**").

## RECITALS:

A. Lessor has a leasehold interest in certain property located in the City of Las Vegas, Clark County, Nevada, which is more particularly described on Exhibit A attached hereto and made a part hereof (the "**Real Property**"), as documented by the Ground Lease dated concurrently with the Sub-Ground Lease (defined below) and executed by PQ Las Vegas, LLC, a Delaware limited liability company ("**PQLV**") as ground lessor, and Lessor as ground lessee (the "**Ground Lease**"). A memorandum of the Ground Lease is being recorded in the real property records of Clark County, Nevada, simultaneously with this Sub-Ground Lease Termination Agreement;

B. Pursuant to the Ground Lease, Lessor and Lessee have entered into that certain Sub-Ground Lease dated December 17, 2009 whereby Lessor has sub-ground leased the Real Property to Lessee (the "**Sub-Ground Lease**"). A memorandum of the Sub-Ground Lease is being recorded in the real property records of Clark County, Nevada, simultaneously with this Sub-Ground Lease Termination Agreement;

C. PQLV and City Parkway IV A, Inc., a Nevada non-profit corporation ("**CPIVA**"), have entered into that certain Exchange and Parcel P-Q Development Agreement dated December 17, 2009 (the "**Exchange Agreement**") by which PQLV has agreed to convey to Lessee the Real Property and in connection therewith CPIVA and PQLV have entered into an escrow pursuant to written instructions (the "**Escrow Instructions**") with First American Title Insurance Company, a California corporation ("**Escrow Agent**"), for the closing of all transactions related to the Exchange Agreement;

APN NOS: 139-34-201-022

WHEN RECORDED, MAIL TO:

City of Las Vegas
c/o Office of Business Development
400 Stewart Avenue, 2nd Floor
Las Vegas, Nevada 89101
Attn: Director

Recorded Electronically
ID
County
Date Time
Simplifile.com 800.460.5657

386052 SGS

(Space Above Line For Recorder's Use)

# AGREEMENT OF TERMINATION OF SUB-GROUND LEASE

THIS AGREEMENT OF TERMINATION OF SUB-GROUND LEASE (this "**Sub-Ground Lease Termination Agreement**") is made on the 17th day of December 2009 (the "**Effective Date**"), by and between QH Las Vegas, LLC, a Delaware limited liability company ("**Lessor**"), and the City of Las Vegas, Nevada ("**Lessee**").

## RECITALS:

A. Lessor has a leasehold interest in certain property located in the City of Las Vegas, Clark County, Nevada, which is more particularly described on Exhibit A attached hereto and made a part hereof (the "**Real Property**"), as documented by the Ground Lease dated concurrently with the Sub-Ground Lease (defined below) and executed by PQ Las Vegas, LLC, a Delaware limited liability company ("**PQLV**") as ground lessor, and Lessor as ground lessee (the "**Ground Lease**"). A memorandum of the Ground Lease is being recorded in the real property records of Clark County, Nevada, simultaneously with this Sub-Ground Lease Termination Agreement;

B. Pursuant to the Ground Lease, Lessor and Lessee have entered into that certain Sub-Ground Lease dated December 17, 2009 whereby Lessor has sub-ground leased the Real Property to Lessee (the "**Sub-Ground Lease**"). A memorandum of the Sub-Ground Lease is being recorded in the real property records of Clark County, Nevada, simultaneously with this Sub-Ground Lease Termination Agreement;

C. PQLV and City Parkway IV A, Inc., a Nevada non-profit corporation ("**CPIVA**"), have entered into that certain Exchange and Parcel P-Q Development Agreement dated December 17, 2009 (the "**Exchange Agreement**") by which PQLV has agreed to convey to Lessee the Real Property and in connection therewith CPIVA and PQLV have entered into an escrow pursuant to written instructions (the "**Escrow Instructions**") with First American Title Insurance Company, a California corporation ("**Escrow Agent**"), for the closing of all transactions related to the Exchange Agreement;

D. Lessor and Lessee have mutually agreed, in accordance with the Exchange Agreement, that the Sub-Ground Lease shall be terminated upon the closing of the conveyance of the Real Property by PQLV to Lessee; and

E. In connection therewith, Lessor and Lessee have deposited with Escrow Agent pursuant to the Escrow Instructions duly executed and acknowledged counterparts of this Sub-Ground Lease Termination Agreement.

NOW, THEREFORE, the parties do hereby agree as follows:

1. Sub-Ground Lease Termination. Lessor and Lessee agree that upon the closing of the conveyance of the Real Property by PQLV to Lessee pursuant to the Exchange Agreement, the Sub-Ground Lease shall automatically terminate and be null and void.

2. Recordation and Distribution of this Sub-Ground Lease Termination Agreement. Lessee and Lessor acknowledge that (i) original counterparts of this Sub-Ground Lease Termination Agreement have been duly executed and acknowledged by Lessor and Lessee and (ii) Lessor and Lessee have respectively deposited such counterparts with Escrow Agent pursuant to the Exchange Agreement and the Escrow Instructions. Pursuant to the Exchange Agreement and Escrow Instructions, the Escrow Agent has been instructed to record original counterparts of this Sub-Ground Lease Termination Agreement and to distribute original counterparts of this Sub-Ground Lease Termination Agreement to Lessor and Lessee.

3. Execution in Counterparts. This Sub-Ground Lease Termination Agreement has been executed in two counterparts, each of which shall be in original, but all of which shall constitute one and the same instrument.

4. Governing Law. The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Sub-Ground Lease Termination Agreement.

5. Severability. The invalidity or illegality of any provision shall not affect the remainder of this Sub-Ground Lease Termination Agreement and all remaining provisions shall, notwithstanding any such invalidity or illegality, continue in full force and effect.

6. Exhibits. All exhibits to which reference is made in this Sub-Ground Lease Termination Agreement are hereby incorporated by reference. Any reference to "this Sub-Ground Lease Termination Agreement" includes matters incorporated by reference.

7. Entire Agreement; Modification. This Sub-Ground Lease Termination Agreement contains the entire agreement between the parties with respect to the subject matter contained herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof, any statements, law or custom to the contrary notwithstanding. No promise, representation, warranty, or covenant not included in this Sub-Ground Lease Termination Agreement has been or is relied on by either party. No provision of this Sub-Ground Lease Termination Agreement may be amended or varied except by an agreement in writing signed by the parties hereto or their respective successors-in-interest.

IN WITNESS WHEREOF, the undersigned have executed this Sub-Ground Lease Termination Agreement on the date first above written.

LESSEE

CITY OF LAS VEGAS, NEVADA

By: _____
Name: Oscar B. Goodman
Title: Mayor

ATTEST:

By: _____
Beverly K. Bridges, MMC, City Clerk
Beverly K Bridges

APPROVED AS TO FORM:

_____ ESQ
Date
12-9-09
M. Niarchos

LESSOR

QH LAS VEGAS, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the undersigned have executed this Sub-Ground Lease Termination Agreement on the date first above written.

LESSEE

CITY OF LAS VEGAS , NEVADA

By: _____
Name: _____
Title: Mayor

ATTEST:

_____
_____, Title

APPROVED AS TO FORM:

_____
Date

LESSOR

QH LAS VEGAS, LLC, a Delaware limited liability company

By: _____
Name: Dimitri Vazelakis
Title: Authorized Representative

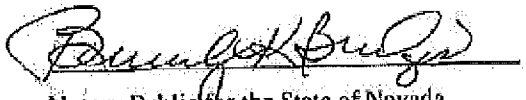
Dimitri Vazelakis

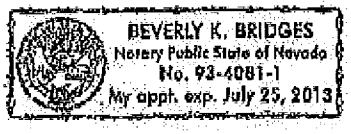
LV 418,978,200v1 12-9-09

STATE OF NEVADA )
: ss.
COUNTY OF CLARK )

This instrument was acknowledged before me on December 11, 2009, by Oscar B. Goodman, Mayor of the City of Las Vegas, Nevada.

WITNESS my hand and official seal.






Notary Public for the State of Nevada

Beverly K Bridges
# 93-4081-1
EXP. 7-25-13

(NOTARY SEAL)

STATE OF NEVADA )
: ss.
COUNTY OF CLARK )

This instrument was acknowledged before me on _____, 2009, by_____ as _____ of _____.

WITNESS my hand and official seal.

_____

Notary Public for the State of Nevada

(NOTARY SEAL)

LV 418,978,200v1 12-9-09

STATE OF NEVADA )
: ss.
COUNTY OF CLARK )

This instrument was acknowledged before me on _____, 2009, by _____, Mayor of the City of Las Vegas, Nevada.

WITNESS my hand and official seal.

_____
Notary Public for the State of Nevada

(NOTARY SEAL)

STATE OF NEVADA )
: ss.
COUNTY OF CLARK )

This instrument was acknowledged before me on Dec. 14, 2009, by Dimitrios Vazelakis as Auth Rep of QH Las Vegas, LLC.

WITNESS my hand and official seal.

S. Renee Hoban
Notary Public for the State of Nevada S Renee Hoban

(NOTARY SEAL)

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
S. RENEE HOBAN
No: 94-2190-1
My Appointment Expires Oct. 25, 2010

#94-2190-1
Exp. 10-25-10

LV 418,078,200v1 12-9-09

**EXHIBIT A**
Legal Description of Land

**EXPLANATION**
THIS DESCRIPTION DESCRIBES THE REMAINING BLOCK 6 OF CLARK'S LAS VEGAS TOWNSITE, CITY OF LAS VEGAS, NEVADA.

**LEGAL DESCRIPTION**
BEING A PORTION OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 34, TOWNSHIP 20 SOUTH, RANGE 61 EAST, M.D.M., IN THE CITY OF LAS VEGAS, CLARK COUNTY, NEVADA, BEING A PORTION OF LOTS 1 THROUGH 16 INCLUSIVE AND ALL OF LOTS 17 THROUGH 32 INCLUSIVE AND ALL OF THAT CERTAIN VACATED 20'ALLEY THAT LIES BETWEEN LEWIS AVENUE AND CLARK AVENUE WITHIN A PORTION OF BLOCK 6 AS SHOWN ON THE PLAT OF CLARK'S LAS VEGAS TOWNSITE, ON FILE IN BOOK 1, PAGE 37 OF PLATS OF CLARK COUNTY, NEVADA RECORDS AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE FOUND ALUMINUM CAP MARKING THE INTERSECTION OF MAIN STREET AND CLARK AVENUE ON THE NEVADA DEPARTMENT OF TRANSPORTATION "Q" CENTERLINE; THENCE NORTH 27°54'11" EAST, ALONG SAID CENTERLINE, A DISTANCE OF 50.03 FEET; THENCE SOUTH 62°05'49" EAST, A DISTANCE OF 49.00 FEET TO THE POINT OF BEGINNING, SAID POINT ALSO BEING ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF MAIN STREET;

THENCE NORTH 27°54'11" EAST, ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 380.72 FEET (380.00' RECORD) TO THE BEGINNING OF A 10.00 FOOT RADIUS TANGENT CURVE, CONCAVE SOUTHEASTERLY; THENCE NORTHEASTERLY ALONG SAID CURVE, HAVING A CENTRAL ANGLE OF 90°01'00", A CURVE LENGTH OF 15.71 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF LEWIS AVENUE; THENCE SOUTH 62°04'49" EAST, ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 275.19 FEET (275.00' RECORD) TO THE BEGINNING OF A 10.00 FOOT RADIUS TANGENT CURVE, CONCAVE SOUTHWESTERLY; THENCE SOUTHEASTERLY ALONG SAID CURVE, HAVING A CENTRAL ANGLE OF 89°59'04", A CURVE LENGTH OF 15.71 FEET TO A POINT ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF FIRST STREET; THENCE SOUTH 27°54'15" WEST, ALONG SAID NORTHWESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 380.52 FEET (380.00' RECORD) TO THE BEGINNING OF A 10.00 FOOT RADIUS TANGENT CURVE, CONCAVE NORTHWESTERLY; THENCE SOUTHWESTERLY ALONG SAID CURVE, HAVING A CENTRAL ANGLE OF 89°58'27", A CURVE LENGTH OF 15.70 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF CLARK AVENUE; THENCE NORTH 62°07'18" WEST, ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 275.19 FEET (275.00' RECORD) TO THE BEGINNING OF A 10.00' FOOT RADIUS TANGENT CURVE, CONCAVE NORTHEASTERLY; THENCE NORTHWESTERLY ALONG SAID CURVE, HAVING A CENTRAL ANGLE

90°01'29", A CURVE LENGTH OF 15.71 FEET TO THE POINT OF BEGINNING.

CONTAINING IN ALL 2.71 ACRES OF LAND.

**BASIS OF BEARING**

SOUTH 27°54'30" WEST, BEING THE CENTERLINE OF CASINO CENTER BOULEVARD BETWEEN STEWART AVENUE AND COOLIDGE AVENUE AS SHOWN BY THAT CERTAIN MAP IN FILE 87, PAGE 79 OF SURVEYS IN THE CLARK COUNTY RECORDER'S OFFICE, CLARK COUNTY, NEVADA.

MARK D. HERZIG
PROFESSIONAL LAND SURVEYOR
NEVADA LICENSE NO. 18982
POGGEMEYER DESIGN GROUP, INC.
6980 SMOKE RANCH ROAD, SUITE 110
LAS VEGAS, NEVADA 89146

09-14-09

**ALSO DESCRIBED AS FOLLOWS:**

**LOT 1 AS SHOWN BY MAP THEREOF ON FILE IN FILE 117 OF PARCEL MAPS, PAGE 14, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.**

Inst #: 201202170001877
Fees: $22.00
N/C Fee: $0.00
02/17/2012 11:16:14 AM
Receipt #: 1070223
Requestor:
FIRST AMERICAN TITLE HOWARD
Recorded By: KGP Pgs: 6
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN NOS: 139-34-201-022

WHEN RECORDED, MAIL TO:

Greenberg Traurig, LLP
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, Nevada 89169
Attn: Gregg Vermeys

386052 565

(Space Above Line For Recorder's Use)

# AGREEMENT OF TERMINATION OF GROUND LEASE

THIS AGREEMENT OF TERMINATION OF GROUND LEASE (this "**Ground Lease Termination Agreement**") is made on the 16 day of February 2012 (the "**Effective Date**"), by and between QH Las Vegas, LLC, a Delaware limited liability company ("**Lessee**"), and PQ Las Vegas, LLC, a Nevada limited liability company ("**Lessor**").

## RECITALS:

A. Lessor is the fee simple owner of the real property described on the attached Exhibit A (the "**Real Property**");

B. Lessor and Lessee are parties to the Ground Lease dated December 17, 2009 (as amended from time to time, the "**Ground Lease**"), pursuant to which Lessor has leased the Real Property to Lessee. A memorandum of the Ground Lease is being recorded in the real property records of Clark County, Nevada, simultaneously with this Ground Lease Termination Agreement;

C. Lessor and City Parkway IV A, Inc., a Nevada non-profit corporation ("**CPIVA**") have entered into that certain Exchange and Parcel P-Q Development Agreement dated December 17, 2009 (the "**Exchange Agreement**") by which Lessor has agreed to convey to the City of Las Vegas, Nevada, a political subdivision of the State of Nevada (the "**City**"), the Real Property and in connection therewith Lessor and CPIVA have entered into an escrow pursuant to written instructions (the "**Escrow Instructions**") with First American Title Insurance Company, a California corporation ("**Escrow Agent**"), for the closing of all transactions related to the Exchange Agreement;

D. Lessor and Lessee have mutually agreed, in accordance with the Exchange Agreement, that the Ground Lease shall be terminated upon the closing of the conveyance of the Real Property by Lessor to the City; and

APN NOS: 139-34-201-022

WHEN RECORDED, MAIL TO:

Greenberg Traurig, LLP
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, Nevada 89169
Attn: Gregg Vermeys

Recorded Electronically
ID
County
Date Time
SimpliFile.com 800.460.6657

386052 565

(Space Above Line For Recorder's Use)

# AGREEMENT OF TERMINATION OF GROUND LEASE

THIS AGREEMENT OF TERMINATION OF GROUND LEASE (this "**Ground Lease Termination Agreement**") is made on the 16 day of February 2012 (the "**Effective Date**"), by and between QH Las Vegas, LLC, a Delaware limited liability company ("**Lessee**"), and PQ Las Vegas, LLC, a Nevada limited liability company ("**Lessor**").

## RECITALS:

A. Lessor is the fee simple owner of the real property described on the attached Exhibit A (the "**Real Property**");

B. Lessor and Lessee are parties to the Ground Lease dated December 17, 2009 (as amended from time to time, the "**Ground Lease**"), pursuant to which Lessor has leased the Real Property to Lessee. A memorandum of the Ground Lease is being recorded in the real property records of Clark County, Nevada, simultaneously with this Ground Lease Termination Agreement;

C. Lessor and City Parkway IV A, Inc., a Nevada non-profit corporation ("**CPIVA**") have entered into that certain Exchange and Parcel P-Q Development Agreement dated December 17, 2009 (the "**Exchange Agreement**") by which Lessor has agreed to convey to the City of Las Vegas, Nevada, a political subdivision of the State of Nevada (the "**City**"), the Real Property and in connection therewith Lessor and CPIVA have entered into an escrow pursuant to written instructions (the "**Escrow Instructions**") with First American Title Insurance Company, a California corporation ("**Escrow Agent**"), for the closing of all transactions related to the Exchange Agreement;

D. Lessor and Lessee have mutually agreed, in accordance with the Exchange Agreement, that the Ground Lease shall be terminated upon the closing of the conveyance of the Real Property by Lessor to the City; and

E. In connection therewith, Lessor and Lessee have deposited with Escrow Agent pursuant to the Escrow Instructions two duly executed and acknowledged copies of this Ground Lease Termination Agreement.

NOW, THEREFORE, the parties do hereby agree as follows:

1. Ground Lease Termination. Lessor and Lessee agree that upon the closing of the conveyance of the Real Property by Lessor to the City pursuant to the Exchange Agreement, the Ground Lease shall automatically terminate and be null and void.

2. Recordation and Distribution of Ground Lease Termination Agreement. Lessee and Lessor acknowledge that (i) two originals of this Ground Lease Termination Agreement have been duly executed and acknowledged by Lessor and Lessee and (ii) Lessor and Lessee have deposited such originals with Escrow Agent pursuant to the Exchange Agreement and the Escrow Instructions. Pursuant to the Exchange Agreement and Escrow Instructions, the Escrow Agent has been instructed to record an original of this Ground Lease Termination Agreement and to distribute originals of this Ground Lease Termination Agreement to Lessor and CPIVA.

3. Governing Law. The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Ground Lease Termination Agreement.

4. Severability. The invalidity or illegality of any provision shall not affect the remainder of this Ground Lease Termination Agreement and all remaining provisions shall, notwithstanding any such invalidity or illegality, continue in full force and effect.

5. Exhibits. All exhibits to which reference is made in this Ground Lease Termination Agreement are hereby incorporated by reference. Any reference to "this Ground Lease Termination Agreement" includes matters incorporated by reference.

6. Entire Agreement; Modification. This Ground Lease Termination Agreement contains the entire agreement between the parties with respect to the subject matter contained herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof, any statements, law or custom to the contrary notwithstanding. No promise, representation, warranty, or covenant not included in this Ground Lease Termination Agreement has been or is relied on by either party. No provision of this Ground Lease Termination Agreement may be amended or varied except by an agreement in writing signed (i) by the parties hereto or their respective successors-in-interest and (ii) by the City.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the undersigned have executed this Ground Lease Termination Agreement on the date first above written.

LESSOR

PQ LAS VEGAS, LLC, a Delaware limited liability company

By: _____
Name: Dimitri Vazelakis
Title: Authorized Representative

Dimitri Vazelakis

LESSEE

QH LAS VEGAS, LLC, a Delaware limited liability company

By: _____
Name: Dimitri Vazelakis
Title: Authorized Representative

Dimitri Vazelakis

STATE OF NEVADA )
: ss.
COUNTY OF CLARK )

This instrument was acknowledged before me on Dec. 14, 2009, by Dimitri Vazelakis as Auth. Rep. of PQ Las Vegas, LLC.

WITNESS my hand and official seal.

S. Renee Hoban

Notary Public for the State of Nevada

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
S. RENEE HOBAN
No: 94-2190-1
My Appointment Expires Oct. 25, 2010

(NOTARY SEAL)

S. Renee Hoban
Notary Public
State of Nevada
County of Clark
S Renee Hoban
My Appointment Expires
Oct. 25, 2010

#94-2190-1

STATE OF NEVADA )
: ss.
COUNTY OF CLARK )

This instrument was acknowledged before me on Dec. 14, 2009, by Dimitri Vazelakis as Auth Rep of QH Las Vegas, LLC.

WITNESS my hand and official seal.

S. Renee Hoban

Notary Public for the State of Nevada

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
S. RENEE HOBAN
No: 94-2190-1
My Appointment Expires Oct. 25, 2010

(NOTARY SEAL)

S Renee Hobin
Notary Pubic
State of Nevada
County of Clark
S. Renee Hobin
My appointment
Expires Oct 25, 2010

#94-2190-1

LV 418,879,401v1 12-10-09

**EXHIBIT A**
Legal Description of Land

**EXPLANATION**
THIS DESCRIPTION DESCRIBES THE REMAINING BLOCK 6 OF CLARK'S LAS VEGAS TOWNSITE, CITY OF LAS VEGAS, NEVADA.

**LEGAL DESCRIPTION**
BEING A PORTION OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 34, TOWNSHIP 20 SOUTH, RANGE 61 EAST, M.D.M., IN THE CITY OF LAS VEGAS, CLARK COUNTY, NEVADA, BEING A PORTION OF LOTS 1 THROUGH 16 INCLUSIVE AND ALL OF LOTS 17 THROUGH 32 INCLUSIVE AND ALL OF THAT CERTAIN VACATED 20' ALLEY THAT LIES BETWEEN LEWIS AVENUE AND CLARK AVENUE WITHIN A PORTION OF BLOCK 6 AS SHOWN ON THE PLAT OF CLARK'S LAS VEGAS TOWNSITE, ON FILE IN BOOK 1, PAGE 67 OF PLATS OF CLARK COUNTY, NEVADA RECORDS AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE FOUND ALUMINUM CAP MARKING THE INTERSECTION OF MAIN STREET AND CLARK AVENUE ON THE NEVADA DEPARTMENT OF TRANSPORTATION "Q" CENTERLINE; THENCE NORTH 27°54'11" EAST, ALONG SAID CENTERLINE, A DISTANCE OF 50.03 FEET; THENCE SOUTH 62°05'49" EAST, A DISTANCE OF 49.00 FEET TO THE POINT OF BEGINNING, SAID POINT ALSO BEING ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF MAIN STREET;

THENCE NORTH 27°54'11" EAST, ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 380.72 FEET (380.00' RECORD) TO THE BEGINNING OF A 10.00 FOOT RADIUS TANGENT CURVE, CONCAVE SOUTHEASTERLY; THENCE NORTHEASTERLY ALONG SAID CURVE, HAVING A CENTRAL ANGLE OF 90°01'00", A CURVE LENGTH OF 15.71 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF LEWIS AVENUE; THENCE SOUTH 62°04'49" EAST, ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 275.19 FEET (275.00' RECORD) TO THE BEGINNING OF A 10.00 FOOT RADIUS TANGENT CURVE, CONCAVE SOUTHWESTERLY; THENCE SOUTHEASTERLY ALONG SAID CURVE, HAVING A CENTRAL ANGLE OF 89°59'04", A CURVE LENGTH OF 15.71 FEET TO A POINT ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF FIRST STREET; THENCE SOUTH 27°54'15" WEST, ALONG SAID NORTHWESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 380.52 FEET (380.00' RECORD) TO THE BEGINNING OF A 10.00 FOOT RADIUS TANGENT CURVE, CONCAVE NORTHWESTERLY; THENCE SOUTHWESTERLY ALONG SAID CURVE, HAVING A CENTRAL ANGLE OF 89°58'27", A CURVE LENGTH OF 15.70 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF CLARK AVENUE; THENCE NORTH 62°07'16" WEST, ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 275.19 FEET (275.00' RECORD) TO THE BEGINNING OF A 10.00 FOOT RADIUS TANGENT CURVE, CONCAVE NORTHEASTERLY; THENCE NORTHWESTERLY ALONG SAID CURVE, HAVING A CENTRAL ANGLE

90°01'26", A CURVE LENGTH OF 15.71 FEET TO THE POINT OF BEGINNING.

CONTAINING IN ALL 2.71 ACRES OF LAND.

**BASIS OF BEARING**

SOUTH 27°54'30" WEST, BEING THE CENTERLINE OF CASINO CENTER BOULEVARD BETWEEN STEWART AVENUE AND COOLIDGE AVENUE AS SHOWN BY THAT CERTAIN MAP IN FILE 67, PAGE 79 OF SURVEYS IN THE CLARK COUNTY RECORDER'S OFFICE, CLARK COUNTY, NEVADA.

MARK D. HERZIG
PROFESSIONAL LAND SURVEYOR
NEVADA LICENSE NO. 18092
POGGEMEYER DESIGN GROUP, INC.
6980 SMOKE RANCH ROAD, SUITE 110
LAS VEGAS, NEVADA 89146

07-14-09

**ALSO DESCRIBED AS FOLLOWS:**

**LOT 1 AS SHOWN BY MAP THEREOF ON FILE IN FILE 117 OF PARCEL MAPS, PAGE 14, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.**

Inst #: 201202170001679
Fees: $34.00
N/C Fee: $25.00
02/17/2012 11:16:14 AM
Receipt #: 1070223
Requestor:
FIRST AMERICAN TITLE HOWARD
Recorded By: KOP Pgs: 16
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN NOS: 139-34-201-022

WHEN RECORDED, MAIL TO:

City of Las Vegas
c/o Office of Business Development
400 Stewart Avenue, 2nd Floor
Las Vegas, Nevada 89101
Attn: Director
386 052 SGS

(Space Above Line For Recorder's Use)

**DECLARATION OF SPECIAL LAND USE RESTRICTIONS**

**by**

**CITY OF LAS VEGAS,**
**a political subdivision of the State of Nevada**

**and**

**PQ LAS VEGAS, LLC,**
**a Delaware limited liability company**

*LV 416,876,196v1 12-9-09*

APN NOS: 139-34-201-022

WHEN RECORDED, MAIL TO:

City of Las Vegas
c/o Office of Business Development
400 Stewart Avenue, 2nd Floor
Las Vegas, Nevada 89101
Attn: Director

386 052 56-5

Recorded Electronically
ID
County
Date Time
Simplifile.com 800.460.6657

(Space Above Line For Recorder's Use)

# DECLARATION OF SPECIAL LAND USE RESTRICTIONS

by

**CITY OF LAS VEGAS,**
**a political subdivision of the State of Nevada**

and

**FQ LAS VEGAS, LLC,**
**a Delaware limited liability company**

## DECLARATION OF SPECIAL LAND USE RESTRICTIONS

THIS DECLARATION OF SPECIAL LAND USE RESTRICTIONS ("Declaration") is made as of the 17th day of December 2009, by and among the City of Las Vegas, a political subdivision of the state of Nevada (the "City) and PQ LAS VEGAS, LLC, a Delaware limited liability company (the "Developer") (each of the City and Developer may be referred to collectively herein as the "*Parties*" or singularly as a "*Party*." ), with reference to the following facts and objectives:

### RECITALS

A. Pursuant to that certain Exchange and Parcel P-Q Development Agreement dated December 17, 2009, (the "Exchange Agreement"), Developer has conveyed to the City that certain real property located in Clark County, Nevada known as the Queen of Hearts Parcel, and more particularly described in Exhibit A attached hereto (the "Property").

B. QH Las Vegas, LLC, a Delaware limited liability company ("QHLLC"), has constructed a new building on the Property (the "Project") to be operated by the City as the city hall for the City (the "City Hall") and QHLLC, as lessor, and the City, as lessee, have entered into a Lease Purchase Agreement dated December 17, 2009, for the City Hall (the "Lease").

C. Developer owns other certain real property located in Clark County, Nevada comprising approximately 4 blocks within the downtown area of the City of Las Vegas, Nevada. The 4 blocks are referred to in this Declaration as "Block A," "Block B," "Block C," and "Block D" (collectively, the "Benefitted Property") and are illustrated along with the Property in Exhibit B attached hereto. (The Benefitted Property is more particularly described in Exhibit C attached hereto.)

D. In connection with the acquisition of the Property by the City, the City has represented to Developer that the City intends to operate the Project as the City Hall.

E. But for such agreement by City, Developer would not have entered into the Exchange Agreement and conveyed the Property to the City; instead, Developer would have retained the Property to develop on its own, sold the Property to another party, or developed the Property in a manner consistent with Developer's long term goals. Accordingly, City and Developer agreed that this Declaration would be executed and recorded as a condition to the closing of such transaction.

### DECLARATION

**NOW, THEREFORE**, in consideration of the foregoing, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

## 1. GENERAL RESTRICTIONS.

1.1 General Use Restrictions. The violation of any of the following general use limitations within thirty (30) years after the recordation of this Declaration shall, at Developer's option, constitute a default hereunder and a breach of the Restrictions, which shall entitle Developer to exercise any of the rights and remedies set forth in Article 2 below. The Property, and any and all improvements thereon, shall be used for the operation of the City Hall, and related and ancillary uses as may be determined from time to time by the City, including, without limitation, leases to third parties for retail use and the operation of the City municipal courts, but for no other purpose without Developer's prior written approval, which approval shall not be unreasonably withheld or delayed (the "*Restrictions*"). Upon the expiration or earlier termination of this Declaration, the Restrictions shall lapse and this Declaration shall be of no further force and effect. This Declaration shall automatically be null and void thirty (30) years after the recordation of this Declaration.

1.2 Exception. Notwithstanding anything to the contrary contained herein, in the event either (i) the Lease is terminated pursuant to Section 3.3 or Section 13.2 of the Lease, (ii) the City loses its right to occupy the Property or Project or both by reason of a default under any agreement or any failure to appropriate money under any agreement or otherwise, or (iii) ownership of either the Property or the Project (or both) has been transferred at any time to a party that is not an Affiliate of the City as a result of the foreclosure or any conveyance in lieu of foreclosure on either the Property or the Project (or both) by a lender secured by the Property and/or the Project, then thereafter the Property and the Project may be used for general office for private and/or public tenants, and related and ancillary uses as may be determined from time to time, including, without limitation, leases to third parties for retail use, and the restriction in Section 1.1 shall thereafter be null and void.

1.3 City Affiliate. As used herein, "Affiliate of the City" means any other Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, the City. For purposes hereof, the term "control" (including the term "controlled by" and "under common control with") shall mean the possession, directly or indirectly, of the legal right to direct the voting of, more than 50% of the voting interests in a Person or the governing body of such Person. "*Person*" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization or government, or any city or political subdivision thereof.

## 2. ENFORCEMENT; RELEASE; ASSIGNMENT BY DEVELOPER.

2.1 Enforcement; Waiver. The covenants, restrictions, and reservations of this Declaration shall run with and bind the Property. Developer, and any assignee permitted pursuant to Section 2.3 below, alone shall have the right to enforce, by proceedings at law or in equity, all restrictions, covenants, and reservations, now or hereafter imposed by the provisions of this Declaration or any amendment thereto, including the right to prevent the violation of any such restrictions, covenants, or reservations, the right to recover damages, or other amounts due for such violation and the right to specific enforcement of any provision in this Declaration. Failure by Developer to enforce any condition, covenant, or restriction herein contained in any

certain instance or on any particular occasion shall not be deemed a waiver of such right on any future breach of the same or any other condition, covenant, or restriction by the City. All rights, options, and remedies of Developer under this Declaration are cumulative, and no one of them shall be exclusive of any other, and Developer shall have the right to pursue any one or all of such rights, options, and remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Declaration.

2.2 Right of Release. Developer shall have the right to release, from time to time and at any time, all or portions of the Property from this Declaration for any reason.

2.3 Assignment by Developer. Developer may assign any of its rights and powers under this Declaration to any Person owning any of the Benefitted Property so long as such Person agrees in writing to assume the interest and obligations of Developer under this Declaration. Upon the recordation of such writing accepting such assignment and assuming such obligations, such Person shall, to the extent of such assignment, have the same powers and rights and obligations under this Declaration as Developer. Without limiting the generality of the foregoing, Developer may make such assignment as to all of the Benefitted Property or to any portion thereof. The rights and obligations of Developer under this Declaration shall inure to the benefit of and shall be binding on the successors and assigns of Developer. As used in the foregoing sentence, "successors" shall include the Developer's successors to all or substantially all of its assets and to its successors by merger or consolidation.

2.4 City Obligations Limited. No obligation assumed by or imposed upon the City by this Declaration or remedy granted or otherwise arising in, under or pursuant to this Declaration against the City shall require the payment of money by the City, or the performance of any action by the City, the performance of which requires money from the City, except to the extent that funds are available for such payment or performance from the City appropriations therefor lawfully made by the City. This Declaration shall not be construed as obligating the governing council of the City to make future appropriations for the payment of monies for the performance of any obligations of the City under this Declaration. The foregoing shall not limit any remedy available to Developer hereunder except that any such remedy shall not require, and the City shall not be obligated to make, future appropriations for the payment of monies.

## 3. Amendments.

Except as provided in this Declaration concerning the assignment by Developer of its rights under this Declaration, and except as provided in Article 5 hereof, this Declaration may only be amended by a writing executed by Developer and the record owner of the Property which shall be recorded against the Property.

## 4. Miscellaneous.

4.1 Force Majeure. A Party's performance under this Declaration shall be excused for such period of time as such performance is prevented due to "Force Majeure" which includes strikes, lockouts, acts or the failures to act or delays in acting by a governmental agency (other than City and its agencies) or board where such acts, delays or failures to act are not caused by such Party, unlawful or unpermitted acts of the another Party, acts of God, wars, riots, terrorist

activity, civil insurrection or abnormal force of elements; fire, casualty, abnormal weather conditions, unknown subsurface conditions, artifacts, archeological and other historical resources, and unanticipated adverse soil conditions), any delays associated with the remediation of Hazardous Substances located on the Property, a court order which prevents performance unless resulting from disputes between or among the Party alleging Force Majeure, present or former employees, officers, members, partners or shareholders of such alleging Party, or other causes beyond the Party's reasonable control; provided, however, that in no event shall any Party's performance be excused unless (a) the Party whose performance is excused shall have given notice to the other Party within 10 days after the occurrence of the event excusing performance, setting forth the facts giving rise thereto, and (b) the applicable period or periods of time within which such other Party may exercise its rights hereunder shall be commensurately extended. The Party whose performance is excused shall give prompt written notice to the other Party of the cessation of the event or condition giving rise to the excusal of performance.

4.2 Interpretation; Governing Law. This Declaration shall be construed as if prepared by both Parties. Each Party acknowledges that it has had full benefit of legal counsel in the preparation and negotiation of this Declaration. This Declaration shall be governed by and construed under the laws of the State of Nevada.

4.3 Severability. In the event that any phrase, clause, sentence, paragraph, section, article, or other portion of this Declaration shall become illegal, null, void, or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null, void, or against public policy, the remaining portions of this Declaration shall not be affected thereby and shall remain in force and effect to the full extent permissible by law.

4.4 Gender and Number. In this Declaration (unless the context requires otherwise), the masculine, feminine, and neuter genders and the singular and plural include one another.

4.5 Notices. All notices or other communications between Developer and City required or permitted hereunder shall be in writing and personally delivered or sent by reputable overnight commercial courier service (such as Federal Express) or sent by facsimile (followed by personal delivery or mailing as permitted hereunder within one (1) business day) or sent by certified United States mail, return receipt requested, postage prepaid, to the following address or telephone number (until a notice of change thereof shall have been delivered as provided in this Section 4.5):

| | |
|---|---|
| To City: | City of Las Vegas<br>c/o Office of Business Development<br>400 Stewart Avenue, 2nd Floor<br>Las Vegas, Nevada 89101<br>Phone:(702) 229-6551<br>Fax: (702) 385-3128<br>Attn: Bill Arent, Director |
| With a copy to: | City Attorney Office<br>City Hall |

400 Stewart Avenue
Las Vegas, NV 89101
Phone: (702) 229-6629
Fax: (702) 386-1749
Attn: Teri Ponticello

To Developer:

PQ Las Vegas, LLC
c/o Mitchell Holdings
41 E. 60th Street
6th Floor
New York, NY 10022
Attn: David Mitchell
Tel: (212) 486-4444
Fax: (212) 588-0286

PQ Las Vegas, LLC
c/o Forest City Commercial Development
949 S. Hope Street
Suite 200
Los Angeles, CA 90015
Attn: Dimitri Vazelakis
Tel: (213) 416-2274
Fax: (213) 488-9308

With a copy to:

Forest City Enterprises, Inc.
Terminal Tower
Suite 1360
50 Public Square
Cleveland, OH 44113
Attn: General Counsel
Tel: (216) 621-6060
Fax: (216) 263-6206

A notice shall be effective (i) on the date of personal delivery if personally delivered to the primary notice recipient before 5:00 p.m., otherwise on the day following personal delivery, (ii) when delivered, if sent by facsimile before 5:00 p.m., otherwise on the day following the facsimile transmission or (iii) if mailed as provided above, upon the date of execution of the return receipt or the date upon which the postal authorities first attempt delivery.

4.6 Effect of Declaration. This Declaration is made for the purposes set forth in the Recitals to this Declaration, and Developer makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration or as to

the compliance of any of these provisions with public laws, ordinances, and regulations applicable thereto.

4.7 Captions. The captions used herein are for convenience only and are not a part of this Declaration and do not in any way limit or amplify the terms and provisions hereof.

4.8 Counterparts. This Declaration may be executed in counterparts, each of which shall be deemed a part of this Declaration unless so specified.

4.9 Days of the Week. If the date upon which any act is to be performed or notice is to be delivered under this Agreement shall fall upon a Saturday, Sunday or legal holiday, such act or notice shall be timely if performed or delivered on the next business day.

*[Signatures to follow]*

**IN WITNESS WHEREOF**, Developer and the City have executed this instrument on the day and year first above written.

CITY

CITY OF LAS VEGAS NEVADA, a political subdivision of State of Nevada

By: _____
Name: Oscar B. Goodman
Title: Mayor

ATTEST:

_____
Beverly K. Bridges, MMC, City Clerk

APPROVED AS TO FORM:

_____ Date: _____

DEVELOPER

PQ LAS VEGAS, LLC, a Delaware limited liability company

By: SIGNED IN COUNTERPART
Name: _____
Title: _____

STATE OF NEVADA )
)
COUNTY OF CLARK. )

This instrument was acknowledged before me on December 11, 2009, by Oscar B. Goodman, as Mayor of the City of Las Vegas.

BEVERLY K. BRIDGES
Notary Public State of Nevada
No. 93-4081-1
My appt. exp. July 25, 2013

_____
Notary Public

STATE OF NEVADA )
)
COUNTY OF CLARK )

This instrument was acknowledged before me on _____, ____, by _____, as _____ of _____.

_____
Notary Public

**IN WITNESS WHEREOF,** Developer and the City have executed this instrument on the day and year first above written.

| CITY | DEVELOPER |
|---|---|
| CITY OF LAS VEGAS NEVADA, a political subdivision of State of Nevada | PQ LAS VEGAS, LLC, a Delaware limited liability company |
| By: _____ | By: _____ |
| Name: SIGNED IN COUNTERPART | Name: Dimitri Vazelakis |
| Title: _____ | Title: Authorized Representative |
| | DIMITRI VAZELAKIS |

ATTEST:

SIGNED IN COUNTERPART
_____, Title

APPROVED AS TO FORM:

SIGNED IN COUNTERPART
Date

STATE OF NEVADA )
)
COUNTY OF CLARK )

This instrument was acknowledged before me on Dec. 24 2009, by Dimitr. Vazelakis, as Authorized Rep. of PQ Las Vegas, LLC

S. Renee Hoban

STATE OF NEVADA )
)
COUNTY OF CLARK )

S. RENEE HOBAN
Notary Public
STATE OF NEVADA
County of Clark
No: 94-3190-1
My Appointment Expires Oct. 25, 2010

Exp. 10-25-10

This instrument was acknowledged before me on _____, ____, by _____, as _____ of _____

_____
Notary Public

# EXHIBIT A

## *DESCRIPTION OF THE PROPERTY*

**EXPLANATION**
THIS DESCRIPTION DESCRIBES THE REMAINING BLOCK 6 OF CLARK'S LAS VEGAS TOWNSITE, CITY OF LAS VEGAS, NEVADA.

**LEGAL DESCRIPTION**
BEING A PORTION OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 34, TOWNSHIP 20 SOUTH, RANGE 61 EAST, M.D.M., IN THE CITY OF LAS VEGAS, CLARK COUNTY, NEVADA, BEING A PORTION OF LOTS 1 THROUGH 16 INCLUSIVE AND ALL OF LOTS 17 THROUGH 32 INCLUSIVE AND ALL OF THAT CERTAIN VACATED 20'ALLEY THAT LIES BETWEEN LEWIS AVENUE AND CLARK AVENUE WITHIN A PORTION OF BLOCK 6 AS SHOWN ON THE PLAT OF CLARK'S LAS VEGAS TOWNSITE, ON FILE IN BOOK 1, PAGE 37 OF PLATS OF CLARK COUNTY, NEVADA RECORDS AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE FOUND ALUMINUM CAP MARKING THE INTERSECTION OF MAIN STREET AND CLARK AVENUE ON THE NEVADA DEPARTMENT OF TRANSPORTATION "O" CENTERLINE; THENCE NORTH 27°54'11" EAST, ALONG SAID CENTERLINE, A DISTANCE OF 50.03 FEET; THENCE SOUTH 62°05'49" EAST, A DISTANCE OF 49.00 FEET TO THE POINT OF BEGINNING, SAID POINT ALSO BEING ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF MAIN STREET:

THENCE NORTH 27°54'11" EAST, ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 380.72 FEET (380.00' RECORD) TO THE BEGINNING OF A 10.00 FOOT RADIUS TANGENT CURVE, CONCAVE SOUTHEASTERLY; THENCE NORTHEASTERLY ALONG SAID CURVE, HAVING A CENTRAL ANGLE OF 90°01'00", A CURVE LENGTH OF 15.71 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF LEWIS AVENUE; THENCE SOUTH 62°04'49" EAST, ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 275.19 FEET (275.00' RECORD) TO THE BEGINNING OF A 10.00 FOOT RADIUS TANGENT CURVE, CONCAVE SOUTHWESTERLY; THENCE SOUTHEASTERLY ALONG SAID CURVE, HAVING A CENTRAL ANGLE OF 89°59'04", A CURVE LENGTH OF 15.71 FEET TO A POINT ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF FIRST STREET; THENCE SOUTH 27°54'15" WEST, ALONG SAID NORTHWESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 380.52 FEET (380.00' RECORD) TO THE BEGINNING OF A 10.00 FOOT RADIUS TANGENT CURVE, CONCAVE NORTHWESTERLY; THENCE SOUTHWESTERLY ALONG SAID CURVE, HAVING A CENTRAL ANGLE OF 89°58'27", A CURVE LENGTH OF 15.70 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF CLARK AVENUE; THENCE NORTH 62°07'18" WEST, ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 275.19 FEET (275.00' RECORD) TO THE BEGINNING OF A 10.00 FOOT RADIUS TANGENT CURVE, CONCAVE NORTHEASTERLY; THENCE NORTHWESTERLY ALONG SAID CURVE, HAVING A CENTRAL ANGLE

90°01'29", A CURVE LENGTH OF 15.71 FEET TO THE POINT OF BEGINNING.

CONTAINING IN ALL 2.71 ACRES OF LAND.

**BASIS OF BEARING**

SOUTH 27°54'30" WEST, BEING THE CENTERLINE OF CASINO CENTER BOULEVARD BETWEEN STEWART AVENUE AND COOLIDGE AVENUE AS SHOWN BY THAT CERTAIN MAP IN FILE 67, PAGE 79 OF SURVEYS IN THE CLARK COUNTY RECORDER'S OFFICE, CLARK COUNTY, NEVADA.

MARK D. HERZIG
PROFESSIONAL LAND SURVEYOR
NEVADA LICENSE NO. 18982
POGGEMEYER DESIGN GROUP, INC.
6960 SMOKE RANCH ROAD, SUITE 110
LAS VEGAS, NEVADA 89148

09-14-09

Exhibit B

PAGE ILLEGIBLE

LEGIBLE COPY ON FILE WITH THE

OFFICE OF THE DECLARANTS

## EXHIBIT C

***DESCRIPTION OF BENEFITTED PROPERTY***

PARCEL 1:

LOTS SEVEN (7) AND EIGHT (8) IN BLOCK TEN (10) OF CLARK'S LAS VEGAS TOWNSITE, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 2:

LOT FOURTEEN (14) AND THE SOUTH FIFTEEN (15) FEET OF LOT THIRTEEN (13) IN BLOCK TEN (10) OF CLARK'S LAS VEGAS, TOWNSITE, AS SHOWN BY MAP ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 3:

LOT FIFTEEN (15) AND SIXTEEN (16) IN BLOCK TEN (10) OF CLARK'S LAS VEGAS TOWNSITE, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 4:

THE WEST 100 FEET OF LOTS ONE (1) AND TWO (2) IN BLOCK TEN (10) OF CLARK'S LAS VEGAS TOWNSITE, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 5:

THE EAST FORTY (40) FEET OF LOTS ONE (1) AND TWO (2) IN BLOCK TEN (10) OF CLARK'S LAS VEGAS TOWNSITE, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 6:

LOTS SEVENTEEN (17) THROUGH TWENTY-ONE (21) INCLUSIVE IN BLOCK EIGHT (8) OF CLARK'S LAS VEGAS TOWNSITE, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

EXCEPTING THEREFROM THAT PORTION AS CONVEYED TO THE CITY OF LAS VEGAS BY THAT CERTAIN GRANT DEED RECORDED OCTOBER 03, 2007 IN BOOK 20071003 AS INSTRUMENT NO. 03569 OF OFFICIAL RECORDS.

PARCEL 7:

BEING A PORTION OF THE NORTH HALF (N1/2) OF THE SOUTHWEST QUARTER (SW1/4) OF SECTION 34, TOWNSHIP 20 SOUTH, RANGE 61 EAST, M.D.M., CITY OF LAS VEGAS, CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHERN MOST CORNER OF LOT TWENTY-FIVE (25) OF BLOCK TEN (10) OF CLARK'S LAS VEGAS TOWNSITE, AS SHOWN IN BOOK 1 OF PLAT MAPS, PAGE 37 AND ALSO BEING A POINT ON THE EAST RIGHT-OF-WAY LINE OF THE 20 FOOT WIDE PUBLIC ALLEY; THENCE NORTH 27°54'30" EAST, ALONG THE EAST LINE OF SAID PUBLIC ALLEY, A DISTANCE OF 174.96 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF CLARK AVENUE (80 FEET WIDE); THENCE SOUTH 62°07'28" EAST, ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 139.99 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF CASINO CENTER BOULEVARD (80 FEET WIDE); THENCE SOUTH 27°54'30" WEST, ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 175.00 FEET; THENCE NORTH 62°06'34" WEST, A DISTANCE OF 139.99 FEET TO THE POINT OF BEGINNING; PURSUANT TO THAT CERTAIN REVERSIONARY MAP IN BOOK 82 OF PLATS, PAGE 49, IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA AND RECORDED DECEMBER 17, 1997 IN BOOK 971217 AS DOCUMENT NO. 00665, OFFICIAL RECORDS.

NOTE: THE ABOVE METES AND BOUNDS DESCRIPTION WAS PREPARED BY ROBERT C. JOHNSON PLS, AT BAUGHMAN AND TURNER 1210 HINSON STREET, LAS VEGAS, NEVADA.

PARCEL 8:

LOT TWENTY-EIGHT(28) AND TWENTY-NINE (29) IN BLOCK SEVEN (7) OF CLARK'S LAS VEGAS TOWNSITE, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 9:

THE NORTH ONE AND ONE-HALF FEET TO LOT NINETEEN (19), ALL OF LOT TWENTY (20) AND THE SOUTH HALF (S 1/2) OF LOT TWENTY-ONE (21), ALL IN BLOCK SEVEN (7) OF CLARK'S LAS VEGAS TOWNSITE, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 10:

LOT TWENTY-TWO (22) AND THE NORTH HALF (N 1/2) OF LOT TWENTY-ONE (21) AND THE SOUTH HALF (S 1/2) OF LOT TWENTY-THREE (23) ALL IN BLOCK SEVEN (7) OF CLARK'S LAS VEGAS TOWNSITE, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 11:

THE NORTH HALF (N 1/2) OF LOT TWENTY-THREE (23) AND ALL OF LOTS TWENTY-FOUR (24) AND TWENTY-FIVE (25) IN BLOCK SEVEN (7) OF CLARK'S LAS VEGAS TOWNSITE, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 12:

LOTS TWENTY-SIX (26) AND TWENTY-SEVEN (27) IN BLOCK SEVEN (7) OF CLARK'S LAS VEGAS TOWNSITE, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 13:

LOTS FIVE (5) AND SIX (6) IN BLOCK TEN (10) OF CLARK'S LAS VEGAS TOWNSITE, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 14:

LOT ELEVEN (11) IN BLOCK SEVEN (7) OF CLARK'S LAS VEGAS TOWNSITE, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 15:

LOTS 19 AND 20 IN BLOCK 10 OF CLARK'S LAS VEGAS TOWNSITE AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 16:

LOTS ONE (1), TWO (2), THREE (3) AND FOUR (4) IN BLOCK SEVEN (7) OF CLARK'S LAS VEGAS TOWNSITE, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF

PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 17:

LOTS FIVE (5) AND SIX (6) IN BLOCK SEVEN (7) OF CLARK'S LAS VEGAS TOWNSITE, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA. EXCEPTING THEREFROM THE INTEREST IN AND TO THE NORTHWESTERLY 5.00 FEET AS CONVEYED TO THE CITY OF LAS VEGAS BY DEED RECORDED JANUARY 27, 1976 IN BOOK 590 AS DOCUMENT NO. 549027 OF OFFICIAL RECORDS.

PARCEL 18:

LOTS THIRTY (30), THIRTY-ONE (31) AND THIRTY-TWO (32) IN BLOCK SEVEN (7) OF CLARK'S LAS VEGAS TOWNSITE, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 19:

LOTS NINE (9), TEN (10), ELEVEN (11), TWELVE (12) AND THE NORTHERLY TEN (10) FEET OF LOT THIRTEEN (13) IN BLOCK TEN (10) OF CLARK'S LAS VEGAS TOWNSITE, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 20:

LOTS FOUR (4) THROUGH SIXTEEN (16) IN BLOCK EIGHT (8) OF CLARK'S LAS VEGAS TOWNSITE, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

EXCEPTING THE INTEREST IN THE NORTHWESTERLY 5.00 FEET OF SAID LAND AS CONVEYED BY DEED RECORDED MAY 10, 1978 AS DOCUMENT NO. 844496, OFFICIAL RECORDS.

EXCEPTING THEREFROM THAT PORTION AS CONVEYED TO THE CITY OF LAS VEGAS BY THAT CERTAIN GRANT DEED RECORDED OCTOBER 03, 2007 IN BOOK 20071003 AS INSTRUMENT NO. 03569 OF OFFICIAL RECORDS.

PARCEL 21:

LOTS TWENTY-EIGHT (28), TWENTY-NINE (29) AND THIRTY (30) IN BLOCK EIGHT (8) OF CLARK'S LAS VEGAS TOWNSITE AS SHOWN BY MAP THEREOF ON FILE IN

BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 22:

LOT SEVENTEEN (17) AND THE SOUTH 10 1/2 FEET OF LOT EIGHTEEN (18) IN BLOCK SEVEN (7) OF CLARK'S LAS VEGAS TOWNSITE, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

EXCEPTING THEREFROM THAT PORTION AS CONVEYED TO THE CITY OF LAS VEGAS BY THAT CERTAIN GRANT DEED RECORDED JUNE 6, 1991 IN BOOK 910606 AS INSTRUMENT NO. 00707 OF OFFICIAL RECORDS.

PARCEL 23:

THE NORTH 14 1/2 FEET OF LOT EIGHTEEN (18) AND THE SOUTH23 1/2 FEET OF LOT NINETEEN (19), BLOCK SEVEN (7), CLARK'S LAS VEGAS TOWNSITE, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 24:

LOT THREE (3) AND FOUR (4) IN BLOCK TEN (10) OF CLARK'S LAS VEGAS TOWNSITE AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA.

PARCEL 25:

LOT 10 IN BLOCK 7 OF CLARK'S LAS VEGAS TOWNSITE AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 26:

THE EAST HALF (E 1/2) OF LOTS 15 AND 16 IN BLOCK 7 OF CLARK'S LAS VEGAS TOWNSITE AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 27:

LOTS 8 AND 9 IN BLOCK 7 OF CLARK'S LAS VEGAS TOWNSITE AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 28:

LOTS TWENTY-TWO (22) AND TWENTY-THREE (23) INCLUSIVE IN BLOCK EIGHT (8) OF CLARK'S LAS VEGAS TOWNSITE, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 29:

LOTS TWENTY-FOUR (24) THROUGH TWENTY-SEVEN (27) INCLUSIVE IN BLOCK EIGHT (8) OF CLARK'S LAS VEGAS TOWNSITE, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 30:

LOTS ONE (1), TWO (2), THREE (3), THIRTY-ONE (31), AND THIRTY-TWO (32) IN BLOCK 8 OF CLARK'S LAS VEGAS TOWNSITE, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

EXCEPTING THEREFROM THAT PORTION AS CONVEYED TO THE CITY OF LAS VEGAS BY THAT CERTAIN GRANT DEED RECORDED OCTOBER 03, 2007 IN BOOK 20071003 AS INSTRUMENT NO. 03569 OF OFFICIAL RECORDS.

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CLERK OF THE COURT

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| CASHMAN EQUIPMENT COMPANY, a Nevada corporation,<br><br>Plaintiff,<br>vs.<br><br>CAM CONSULTING INC., a Nevada corporation; ANGELO CARVALHO, an individual; JANEL RENNIE aka JANEL CARVALHO, an individual; WEST EDNA ASSOCIATES, LTD., dba MOJAVE ELECTRIC, a Nevada corporation; WESTERN SURETY COMPANY, a surety; THE WHITING TURNER CONTRACTING COMPANY, a Maryland corporation; FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a surety; TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, a surety; QH LAS VEGAS LLC, a foreign limited liability company; PQ LAS VEGAS, LLC, a foreign limited liability company; L W T I C SUCCESSOR LLC, an unknown limited liability company; FC/LW VEGAS, a | Case No.: A642583<br>Dept. No.: 32<br><br>Consolidated with Case No.: A653029<br><br>**CASHMAN EQUIPMENT COMPANY'S MOTION FOR SUMMARY JUDGMENT AGAINST WEST EDNA ASSOCIATES, LTD. dba MOJAVE ELECTRIC and WESTERN SURETY COMPANY ON THE PAYMENT BOND CLAIM**<br><br>Date:<br>Time: |

foreign limited liability company; DOES 1 - 10, inclusive; and ROE CORPORATIONS 1 - 10, inclusive;

Defendants.

AND ALL RELATED MATTERS.

**CASHMAN EQUIPMENT COMPANY'S MOTION FOR SUMMARY JUDGMENT AGAINST WEST EDNA ASSOCIATES, LTD. dba MOJAVE ELECTRIC and WESTERN SURETY COMPANY ON THE PAYMENT BOND CLAIM**

Plaintiff, CASHMAN EQUIPMENT COMPANY ("Cashman"), by and through its undersigned counsel of record and pursuant to NRCP 56, respectfully submits the following Motion for Summary Judgment Against WEST EDNA ASSOCIATES, LTD. dba MOJAVE ELECTRIC and WESTERN SURETY COMPANY on its claim against the Payment Bond. This Motion is supported by the following Memorandum of Points and Authorities, the exhibits attached hereto, the Court's file, and any evidence adduced at a hearing, should one be held.

**NOTICE OF MOTION**

PLEASE TAKE NOTICE that the undersigned will bring this Motion for Summary Judgment on for hearing before the above-entitled Court on the 4 day of April 2013, at the hour of 9:00 a.m.

DATED: February 25, 2013

PEZZILLO LLOYD

By: _____

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## MEMORANDUM OF POINTS AND AUTHORITIES

## I.

## INTRODUCTION

Summary Judgment should be granted in favor of Cashman and against Defendants, WEST EDNA ASSOCIATES, LTD. dba MOJAVE ELECTRIC ("Mojave") and WESTERN SURETY COMPANY ("Western") on Cashman's claim against the payment bond issued to Mojave by Western (hereinafter "the Payment Bond"), as no genuine issues of material fact exist and Cashman is therefore entitled to judgment as a matter of law.

The facts of this matter have been well briefed over the course of the litigation. Cashman and Defendant, CAM CONSULTING INC. ("Cam") entered into an agreement wherein Cashman agreed to sell materials to Cam for incorporation into the City Hall project in the City of Las Vegas (the "Project") for the total price of $755,893.89. *See* Exhibit "1," Affidavit of Shane Norman and Exhibit "2," Invoices. The materials were delivered and incorporated into the Project. *See* Exhibit "1" and Exhibit "3," Delivery Receipts. Cam failed to pay Cashman for the materials provided to the Project. *See* Exhibit "1." The principal balance of $755,893.89 currently remains due and owing to Cashman. *Id.*

Mojave contracted with Cam to purchase the materials provided by Cashman, as Mojave's scope of work required set forth in its contract that it procure and install these materials. *See* Exhibit "4," Deposition of Nancy Briseno-Rivera at pgs. 15-16, identifying the contract between Mojave and THE WHITING TURNER CONTRACTING COMPANY ("Whiting Turner") at Exhibit "1" of the Transcript, attached; and Exhibit "5," Deposition of Brian Bugni at p. 26, ln. 25 – p. 27, ln. 5, identifying the Purchase Agreement between Mojave and Cam at Exhibit "3" of the Transcript, attached. Mojave then installed the materials at the Project. *See* Exhibit "6," Deposition of Christopher Meiers at p. 21, ln. 21 – p. 22, ln. 7. It is important to note that Cashman provided bids to Mojave directly to supply these materials and that Cam was only involved in the transaction to fulfill Mojave's promise

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to Whiting Turner, the general contractor on the Project, concerning the use of disadvantaged business entities. *See* Exhibit "5," at p. 26, lns. 13 - 22. Mojave selected Cashman to provide these materials. *See* Exhibit "7," Deposition of Peter Rodney Fergen at p. 9, lns. 11 – 16. Mojave was required to obtain a payment bond by Whiting Turner. *See* Exhibit "4" at p. 16, ln. 22 – p. 17, ln. 2, and Exhibit "5" at p. 20, lns. 19 – 23. The purpose of the payment bond was to protect the general contractor from liability if Mojave failed to "promptly make payments to all persons supplying labor, materials, rental equipment, supplies or services" in the performance of Mojave's contract with Whiting Turner. *See* Exhibit "5," p. 21, lns. 16 – 24 and p. 20, ln. 25 – p. 21, ln. 5, identifying the Payment Bond at Exhibit "2" of the Transcript.[1] Mojave obtained the Payment Bond from Western (Bond No. 929490974) as security for the protection of unpaid claimants on the Project like Cashman. Cashman, who is unpaid for the materials it supplied in the performance of Mojave's contract, now seeks judgment against Mojave and Western on its Payment Bond claim.

Based on the evidence set forth herein, there is no dispute that: (1) Cashman sold materials to Cam and Mojave for incorporation into the Project; (2) Cashman was not paid for said materials per the terms of the agreement; (3) the materials were supplied to and incorporated into the Project by Mojave as required by its contract and Mojave has been paid in full for the work it performed on the Project; (4) Cashman is owed the principal amount of $755,893.89 for the materials; and (5) Cashman falls within the protection of the Payment Bond and is entitled to payment on that basis. Therefore, the Court should grant summary judgment in favor of Cashman on its Payment Bond claim against Mojave and Western in the principal amount of $755,893.89.

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[1] This Exhibit (the Payment Bond) was marked as "Confidential" by Defendants (WTUR0001153 – 1156). Pursuant to the terms of the Stipulation and Order for Confidentiality and Protection, filed on August 1, 2012, the Exhibit will be submitted and filed under seal as a supplement.

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## II.

## STATEMENT OF UNDISPUTED FACTS

1. The Project was constructed on privately owned property at the time of construction. *See* Exhibit "8," Project property information.

2. The Project was owned by FC/LW Las Vegas LLC and LWTIC Successor LLC c/o Forest City Enterprises (a conglomerate of private entities which include PQ Las Vegas and QH Las Vegas) from December 2009 until February 17, 2012, when the building was transferred to the City of Las Vegas, Nevada. *Id.*

3. Cashman contracted with CAM CONSULTING INC. ("Cam") to supply materials to the Project. *See* Exhibit "1" and Exhibit "9," Credit Application.

4. Mojave contracted with Cam to purchase the materials provided by Cashman, as Mojave's scope of work on the Project required that it procure and install these materials, as set forth in its Contract with Whiting Turner. *See* Exhibit "4" at Exhibit "1" of the Transcript. *See also* Exhibit "5" at Exhibit "3" of the Transcript.

5. The materials were bid as a lump sum by Cashman to Mojave to meet owner requirements with a total price of $755,893.89. *See* Exhibit "1."

6. Mojave selected Cashman to supply the materials and required that the materials be supplied through a disadvantaged business entity. *See* Exhibit "7," p. 16, lns. 3 – 5.

7. The owner(s) of the Project had a requirement for minority participation. *See* Exhibit "5," p. 25, lns. 6 – 9.

8. Cashman has not received payment for the materials it supplied to the Project. *See* Exhibit "1."

9. Cashman is currently owed $755,893.89 for materials supplied to Mojave through Cam and incorporated into the Project by Mojave. *Id.*

10. Mojave's performance of its contract with Whiting Turner included supplying and installing the materials provided by Cashman. *See* Exhibit "4" at Exhibit "1"of the Transcript (WTC00002).

11. Mojave installed the materials Cashman provided to the Project. *See* Exhibit "6," p. 21, ln. 21 – p. 22, ln. 7.

12. Mojave has received payment for the materials Cashman provided to the Project. *See* Exhibit "5," p. 19, lns. 7 – 9.

13. Mojave's contract with Whiting Turner required that Mojave obtain a payment bond on the Project. *See* Exhibit "5," at Exhibit "2"of the Transcript (WTC00007).

14. The Payment Bond was issued to Mojave on March 2, 2010 by Western in the amount of $10,969,669.00. *Id.*

15. The Payment Bond states that Mojave, as Principal, and Western, as surety, are bound unto Whiting Turner, as Obligee, in the amount of $10,996,669.00, and references Contract No. 12600-26A between Mojave and Whiting Tuner for the Project. *Id.*

16. Mojave and Western agreed that the Payment Bond "shall inure to the benefit of all persons supplying labor, material, rental equipment, supplies, or services in the performance of the said Contract, as well as to the Obligee, and that such persons may maintain independent actions upon this Bond, in their own names." *Id.*

17. Cashman was informed of the existence of the Payment Bond on or about November 26, 2012 when a copy of the Payment Bond was first disclosed by Whiting Turner as WTUR0001153 – 1156 in its Third Supplemental Disclosure of Documents Pursuant to NRCP 16.1. *Id. See also* Exhibit "10."

18. Cashman filed a Motion to Amend Complaint on October 31, 2012 to include a claim on the Payment Bond and the hearing was set for December 21, 2012. *See Court File.*

19. The Order Granting Cashman's Motion to Amend Complaint was filed on January 8, 2013. *See* Exhibit "11."

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20. Cashman's Fourth Amended Complaint was filed on January 10, 2013 and it includes a claim against Mojave and Western on this Payment Bond. *See* Exhibit "12."

## III.

## ARGUMENTS AND AUTHORITIES

### A. Standard for Summary Judgment

In the case of *Wood v. Safeway, Inc.*, 121 Nev. 724, 121 P.3d 1026 (2005), the Nevada Supreme Court adopted the same standard employed by the U.S. Supreme Court. The Court stated that:

> Summary Judgment is appropriate under NRCP 56 when the pleadings, deposition, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant. A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party.

*Id.* at 1029. In so holding, the Court expressly rejected the "slightest doubt" standard and reiterated that the nonmoving party "is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture." *Id.* at 1030 (citations omitted).

Summary judgment is appropriate when, as a matter of law, there is no genuine issue as to any material fact. NRCP 56(c); *Prostack v. Songailo*, 97 Nev. 38, 40, 623 P.2d 978 (1981); *see also Barr v. Gaines*, 103 Nev. 548, 549, 746 P.2d 634, 635-36 (1987) (summary judgment is appropriate where only question is one of law). Here, it is undisputed that Cashman provided materials to the Project and has not received payment for those materials. Further, it is undisputed that Mojave obtained a Payment Bond as a requirement of its contract with Whiting Turner and that the Payment Bond was posted for the benefit of all persons supplying labor, material, rental equipment, supplies, or services in the performance of the

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Mojave's Contract with Whiting Turner, including Cashman. By its terms, Cashman is a claimant on the Payment Bond. The terms of the Payment Bond are clear and unambiguous. Therefore, Cashman is entitled to summary judgment against Defendants Mojave, as principal, and Western, as surety, on its claim against the Payment Bond for the outstanding principal amount due and owing Cashman totaling $755,893.89.

**B. Cashman is Entitled to Summary Judgment Against Mojave and Western on its Payment Bond Claim.**

Summary judgment should be awarded in favor of Cashman on its claim against the Payment Bond, as it is undisputed that Cashman is within the class of claimants for which the Payment Bond was obtained, as defined within the Payment Bond, and Cashman remains unpaid for the materials it supplied. Cashman supplied materials to the Project that were incorporated into the Project by Mojave, were included in Mojave's scope of work, and for which Mojave has received payment, and Cashman is owed the principal amount of $755,893.89 for the materials it supplied to the Project. As such, no question of fact exists that precludes judgment in favor of Cashman on its claim against the Payment Bond.

1. Cashman's Claim Against the Payment Bond is Subject Only to the Requirements of the Bond and its Interpretation is a Question of Law to be Decided by this Court.

The Payment Bond obtained by Mojave is a private payment bond governed only by its terms and its interpretation is question of law to be decided by this Court. "A surety bond is a contract and should be construed as such." *John McShain, Inc. v. Eagle Indem. Co.,* 180 Md. 202, 205 (Md. 1942). The interpretation of a contract is a question of law, where the facts in a case are not in dispute. *Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.,* 124 Nev. 1103, 1115 (Nev. 2008).

The provisions of the Payment Bond govern the requirements for making a claim and set forth the procedure to be followed in prosecuting such a claim. Where a bond is a private bond and not statutory, the bond language must be examined in order to determine who can

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make a claim and the procedure for making that claim. *Norquip Rental Corporation v. Sky Steel Erectors, Inc.*, 175 Ariz. 199, 202 (Ariz. Ct. App. 1993); *see also Robinson Explosives, Inc. v. Dalon Contracting Co.*, 209 S.E.2d 264 (where a bond is a private, voluntary bond, the issue of who can make a claim on the bond must be determined by the intent of the parties).

The Payment Bond provides that Mojave, as Principal, and Western, as Surety are bound unto Whiting Turner, the Obligee, in the amount of $10,969,669.00 and it references Contract No 12600-26A, the contract between Whiting Turner and Mojave for the work Mojave was to perform on the Project. *See* Exhibit "5," at Exhibit "2" of the Transcript. The Payment Bond states:

> The said Principal and the said Surety agree that this Bond shall inure to the benefit of all persons supplying labor, material, rental equipment, supplies, or services in the performance of the said Contract, as well as to the Obligee, and that such persons may maintain independent actions upon this Bond, in their own names.

*Id.* (WTUR0001154).

Mojave was required to obtain this Payment Bond pursuant to its contract with Whiting Turner. *See* Exhibit "4," at p. 15 – 16 and at Exhibit "1" of the Transcript. The contract states that "the Subcontractor agrees to furnish a bond guaranteeing its performance of this Subcontract, and the payment of its subcontractors and suppliers, if so requested by the Contractor, in amount and form and with such surety as are acceptable to the Contractor." *Id.* Brian Bugni, Mojave's Vice President of Finance, testified that Whiting Turner required Mojave to obtain the Payment Bond, and that the Payment Bond Mojave obtained from Western on March 2, 2010 was for the Project. *Id.* Therefore, the Payment Bond at issue was provided by Mojave to protect Whiting Turner from claims for payment from "persons supplying labor, material, rental equipment, supplies or services" in the performance of Mojave's Contract on this Project and allows those persons to "maintain independent actions" upon the Payment Bond. *Id.* Mojave's liability on the Payment Bond is only extinguished

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where Mojave "promptly make[s] payments to all persons supplying labor, material, rental equipment, supplies, or services in the performance of the said Contract..." *Id.*

2. Cashman Supplied Materials in the Performance of Mojave's Contract with Whiting Turner and is Therefore a Covered Claimant on the Payment Bond Allowed to Maintain an Independent Action against the Payment Bond.

Mojave's Contract No. 12600-26A with Whiting Turner sets forth Mojave's scope of work on the Project. This Contract is the Contract for which the Payment Bond was obtained, as the Payment Bond specifically references Contract No. 12600-26A and incorporates it into the Bond. *Id.* Mojave's scope of work includes that Mojave will provide and install the Core & Shell Emergency Generator and UPS System. *See* Exhibit "4" at Exhibit "1"of the Transcript (SC00027). Peter Fergen, Mojave's Vice President of Project Development, testified that Mojave solicited bids from Cashman and other vendors for the materials that comprise the Core & Shell Emergency Generator and UPS System ultimately supplied by Cashman. *See* Exhibit "7," p. 9, lns. 6 - 19. Mr. Fergen reviewed the bids and decided that Cashman should provide those materials to the Project. *Id.* Mojave has admitted that the materials supplied by Cashman to the Project were part of Mojave's scope of work in its contract with Whiting Turner. *See* Exhibit "5," p. 16, ln. 14 – p. 17, ln. 9. Therefore, these materials were supplied by Cashman in the performance of Mojave's contract on the Project.

The Payment Bond states that it is for the benefit of all personal supplying labor, material, rental equipment supplies and services used in the performance of Mojave's Contract and that those persons may maintain an action an independent action against the Payment Bond. *See* Exhibit "5," at Exhibit "2" of the Transcript. The Payment Bond contains no other requirements for a claimant to fulfill prior to enforcing a claim against it. *Id.* As set forth previously, it is undisputed that the materials provided by Cashman were used by Mojave in the performance of this Contract making Cashman one of the persons for which the Payment Bond provides coverage in the event of non-payment. As such, Cashman is a covered claimant on this Payment Bond and is allowed to maintain this action for payment

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against the Payment Bond as it has not received payment for the material it supplied to this Project.

3. Cashman Supplied the Materials in Question to the Project, the Materials Have Been Installed and Incorporated Into the Project by Mojave, Mojave has Received Payment for These Materials and Cashman is Owed $755,893.89 for the Materials it Supplied to the Project in the Performance of Mojave's Contract.

Cashman contracted to supply the materials that comprise the Emergency Generator and UPS System for the Project which were included in Mojave's scope of work. *See* Exhibit "1," and Exhibit "5," p. 16, ln. 14 – p. 17, ln. 9. The materials were bid as a lump sum and include the individual items listed on Cashman's invoice. *See* Exhibits "1" and "2." The total price for the materials was $755,893.89. *Id.* Mojave selected Cashman to supply these materials and then required that Cashman supply the materials through another entity that would satisfy Mojave's requirement for minority participation on this Project. *See* Exhibit "7," p. 9, ln. 6 – p. 13, ln. 13. Cashman provided the required submittals for approval of the materials it was to supply to Mojave. *Id.* at p. 22, lns. 13-15. Mr. Meiers, Mojave's Project Manager for this Project, testified that he dealt with Cashman directly concerning these materials. *See* Exhibit "6," p. 19, lns. 9-23. Cashman caused the materials to be delivered to the Project and said materials were immediately placed into position at the Project by Mojave. *See* Exhibit "3," and Exhibit "6," p. 21, ln. 21 – p. 22, ln. 7. The installation of these materials occurs in phases, as testified to by Mr. Meiers. *Id.* at p. 25, ln. 12 – p. 26, ln. 23. Cashman completed all required work until it was excused from further performance after failing to receive payment for the materials. *See* Exhibit "1." Mojave has been paid in full for its work on this Project under this Contract. *See* Exhibit "5," p. 19, lns. 7 – 9.

Cashman has not received any payment toward the materials it supplied to the Project and is owed the principal amount of $755,893.89 for said materials. *See* Exhibit "1." The materials have been installed and incorporated into the Project by Mojave in the course of Mojave's performance of its contract and Mojave has been paid in full for its work. Mojave

PEZZILLO LLOYD
6725 Via Austi Parkway, Suite 290
Las Vegas, Nevada 89119
Tel. 702 233-4225

was contractually required to provide the Payment Bond at issue here, and Cashman has established that it is a claimant under the Payment Bond, has fulfilled all requirements to make a claim on the Payment Bond and Cashman remains unpaid for the materials it supplied to the Project. Therefore, Cashman is entitled to judgment against Mojave and Western on its Payment Bond claim in the amount of $755,893.89 for these materials.

## IV.

## CONCLUSION

Based on the foregoing, Cashman is entitled to judgment against Mojave and Western on its Payment Bond claim in the amount of $755,893.89.

DATED: February 25, 2013

PEZZILLO LLOYD

By: _____

Jennifer R. Lloyd, Esq.
Nevada State Bar No. 9617
Marisa L. Maskas, Esq.
Nevada State Bar No. 10928
6725 Via Austi Parkway, Suite 290
Las Vegas, Nevada 89119
*Attorneys for Plaintiff,*
*Cashman Equipment Company*

PEZZILLO LLOYD
6725 Via Austi Parkway, Suite 290
Las Vegas, Nevada 89119
Tel. 702 233-4225

# EXHIBIT 1

**AFFIDAVIT OF SHANE NORMAN IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AGAINST WEST EDNA ASSOCIATES, LTD. dba MOJAVE ELECTRIC and WESTERN SURETY COMPANY ON THE PAYMENT BOND CLAIM**

STATE OF NEVADA )
) ss.
COUNTY OF CLARK )

I, Shane Norman, having been duly sworn and under the penalty of perjury do hereby state:

1. I am personally knowledgeable about the facts contained herein and am competent to testify.

2. I am the Credit Manager at CASHMAN EQUIPMENT COMPANY ("Cashman") and am authorized to make this Affidavit.

3. Cashman is a Nevada corporation authorized to conduct business in Clark County, Nevada.

4. Plaintiff and Defendant CAM CONSULTING, INC. ("Cam") entered into an agreement (the "Contract") in which Plaintiff agreed to sell to certain materials to Cam for incorporation into the City Hall project in the City of Las Vegas (the "Project").

5. The total cost of the materials was $755,893.89 and Cam agreed to pay this amount to Cashman.

6. The materials were bid as a lump sum to Mojave.

7. Invoices for the materials supplied were issued on February 1, 2011 and March 25, 2011. *See* Exhibit "2," a true and correct copy of the Invoices, attached hereto.

8. Cashman delivered the materials to the Project as requested. *See* Exhibit "3," Delivery Receipts, true and correct copies of the Invoices, attached hereto.

9. Cashman worked directly with Mojave on supplying these materials to the Project.

10. Defendant Cam failed to pay Cashman for the materials supplied.

11. Cashman has not received any payment toward the materials it supplied to the Project and is owed the principal amount of $755,893.89 for said materials.

///

///

Pezzillo Lloyd
6725 Via Austi Pkwy, Suite 290
Las Vegas, Nevada 89119

12. As an unpaid material supplier to the Project, Cashman is a proper claimant to the Mojave Electric/Western Surety Payment Bond (Bond No. 929490974).

FURTHER YOUR AFFIANT SAYETH NAUGHT.

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
S JOHNSON
No: 12-6345-1
My Appointment Expires Dec 6, 2015

Shane Norman 2/25/13
Date

Subscribed and sworn to before me
this 25 day of February, 2013.

Clark Nevada
Notary Public in and for said county and state

Pezzillo Lloyd
6725 Via Austi Pkwy, Suite 290
Las Vegas, Nevada 89119
702-233-4225

# EXHIBIT 2

CASHMAN CAT

# INVOICE

1.800.937.2326
www.cashmanequipment.com

CAM CONSULTING
3874 CIVIC CENTER DR
NORTH LAS VEGAS NV 89030-7524

PLEASE REMIT TO:
Cashman Equipment Company
File # 56751
Los Angeles, CA 90074-6751

| INVOICE NUMBER | INVOICE DATE | CUSTOMER NO. |
|---|---|---|
| S1236701 | 02-01-11 | 109502 |
| AMOUNT | | |
| 598936.26 | | |

THANK YOU!

***** To ensure proper credit, please detach this portion and return with remittance. *****

| INVOICE NUMBER | INVOICE DATE | CUSTOMER | CUSTOMER ORDER | STORE | PLANT | SALESMAN | TERMS | PAGE |
|---|---|---|---|---|---|---|---|---|
| S1236701 | 02-01-11 | 109502 | 767810-GEN10010 | 00 | E | 815 | 4 | 2 |
| SHIPMENT NUMBER | SHIP DATE | | | | | | | |
| S12367 | 02-01-11 | | 10 | | | | 206227 | |
| MAKE | MODEL | SERIAL NUMBER | EQUIPMENT NUMBER | METER READING | | | WORK ORDER NUMBER | |
| AA | C32 | JSJ01016 | | .0 | | | 10-081 | |

| QUANTITY | DESCRIPTION | PRICE |
|---|---|---|
| | FUEL | 7611.75 |
| | SPARE PARTS | 2353.17 |
| | SHUNT TRIP STATION | 497.50 |
| | TRUCK LAY OVER | 1741.25 |
| | CUST SRV AGRMT | 7462.50 |

COD

| | |
|---|---|
| PLEASE PAY THIS AMOUNT | 598936.26 |
| AMOUNT ENCLOSED | |

SOLD TO:

CAM CONSULTING
3874 CIVIC CENTER DR
NORTH LAS VEGAS NV 89030-7524

SHIP TO/REFERENCE:

CITY OF LAS VEGAS NEW CITY
MOJAVE ELECTRIC INC
3755 W HACIENDA AVE
LAS VEGAS NV 89118

CASHMAN Power Solutions CAT

Computer Protection Systems

TERMS: DUE UPON RECEIPT OF INVOICE. A 1.5% PER MONTH LATE CHARGE WILL BE ASSESSED ON PAST DUE INVOICES.

CASH004

CASHMAN CAT

# INVOICE

1.800.937.2326
www.cashmanequipment.com

CAM CONSULTING
3874 CIVIC CENTER DR
NORTH LAS VEGAS NV 89030-7524

**PLEASE REMIT TO:**
Cashman Equipment Company
File # 56751
Los Angeles, CA 90074-6751

| INVOICE NUMBER | INVOICE DATE | CUSTOMER # |
|---|---|---|
| S1236601 | 02-01-11 | 109502 |
| AMOUNT | | |
| 156627.92 | | |

. THANK YOU!

**** To ensure proper credit, please detach this portion and return with remittance. ****

| INVOICE NUMBER | INVOICE DATE | CUSTOMER # | CUSTOMER ORDER # | STORE | ROUTE | SALESMAN | TERMS | PAGE |
|---|---|---|---|---|---|---|---|---|
| S1236601 | 02-01-11 | 109502 | 767810-GEN10010 | 00 | E | 815 | 4 | 1 |

| SERVICE NUMBER | DISPATCH DATE | PO | RC | JOB | UNIT NUMBER |
|---|---|---|---|---|---|
| S12366 | 02-01-11 | | | 10 | 206228. |

| MAKE | MODEL | SERIAL NUMBER | EQUIPMENT NUMBER | METER READING | WORK ORDER |
|---|---|---|---|---|---|
| XX | 98AE500244 | 10-71M73354-01 | | .0 | 10-504 |

| QUANTITY | U/M | DESCRIPTION | PRICE |
|---|---|---|---|
| | | CUSTOMER CONTACT: ANGELO CARVALHO | |
| 1.0 | | EQUIPMENT SALE<br>MISC MODEL 98AE500244<br>UPS<br>ID NO: 10-504 SERIAL NO: 10-71M73354-01<br>400 KW 277/480V, 3 PHASE W/BATTERIES<br>MGE MODEL EPS6000<br>SHUNT TRIP STATION | 156627.92 |

COD

| | |
|---|---|
| PLEASE PAY THIS AMOUNT | 156627.92 |
| AMOUNT ENCLOSED | |

**SOLD TO:**

CAM CONSULTING
3874 CIVIC CENTER DR
NORTH LAS VEGAS NV 89030-7524

**SHIP TO/REFERENCE:**

CITY OF LAS VEGAS NEW CITY
MOJAVE ELECTRIC INC
3755 W HACIENDA AVE
LAS VEGAS, NV 89118

CASHMAN CAT Power Solutions

Computer Protection Systems

TERMS: DUE UPON RECEIPT OF INVOICE. A 1.5% PER MONTH LATE CHARGE WILL BE ASSESSED ON PAST DUE INVOICES.

CASH005

CASHMAN CAT

# INVOICE

1.800.937.2326
www.cashmanequipment.com

CAM CONSULTING
3874 CIVIC CENTER DR
NORTH LAS VEGAS NV 89030-7524

PLEASE REMIT TO:
Cashman Equipment Company
DEPT 3397
Los Angeles, CA 90084-3397

| INVOICE NUMBER | INVOICE DATE | CUSTOMER # |
|---|---|---|
| S1238901 | 03-25-11 | 109502 |
| AMOUNT | | |
| 329.71 | | |

THANK YOU!

***** To ensure proper credit, please detach this portion and return with remittance. *****

| INVOICE NUMBER | INVOICE DATE | CUSTOMER # | CUSTOMER P.O. NUMBER | STORE | DIV | SALESMAN | TERMS | TAG |
|---|---|---|---|---|---|---|---|---|
| S1238901 | 03-25-11 | 109502 | 767810GEN-10010 | 00 | E | 815 | 4 | 1 |
| SHIPMENT NUMBER | SHIP DATE | | | BILL VIA | | | | INVOICE AMOUNT |
| S12389 | 03-25-11 | | 10 | | | | | 208546 |
| MAKE | MODEL | SERIAL NUMBER | EQUIPMENT NAME | METER READING | | | | EQUIPMENT NUMBER |
| AA | | XXXXX | | .0 | | | | MISC-PD |

| QUANTITY | DESCRIPTION | PRICE |
|---|---|---|
| | CUSTOMER CONTACT: ANGELO CARVALHO | |
| 1.0 | EQUIPMENT SALE<br>CATERPILLAR INC. MODEL<br>ID NO: MISC-PD SERIAL NO: XXXXX | |
| | LUGS | 305.00 |
| | 6 EA [illegible] | |
| | 6 EA [illegible] | |
| | NV CLARK | 24.71 |

COD

| | |
|---|---|
| PLEASE PAY THIS AMOUNT | 329.71 |
| AMOUNT CREDITED | |

SOLD TO:

CAM CONSULTING
3874 CIVIC CENTER DR
NORTH LAS VEGAS NV 89030-7524

SHIP TO/REFERENCE:

LV CITY HALL

CASHMAN Power Solutions CAT

Computer Protection Systems

TERMS: DUE UPON RECEIPT OF INVOICE. A 1.5% PER MONTH LATE CHARGE WILL BE ASSESSED ON PAST DUE INVOICES.

CASH006

# EXHIBIT 3

CASH007
JA 00001376

# STRAIGHT BILL OF LADING—SHORT FORM

ORIGINAL – NOT NEGOTIABLE

Shipper's No. _____

Carrier's Name: RST

Carrier's No. _____

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of lading,

at 9394 Pinto (Date) 1-7-11 FROM FBT, LLC

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as shown below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own railroad, water line, highway route or route, or within the territory of its highway operations, otherwise to deliver to another carrier on the route to said destination. It is agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the terms and conditions of the Uniform Domestic Straight Bill of Lading set forth (1) in the Uniform Freight Classification in effect on the date hereof, if this is a rail or rail-water shipment, or (2) in the applicable motor carrier classification or tariff if this is a motor carrier shipment. Shipper hereby certifies that he is familiar with all the terms and conditions of the said Bill of Lading, including those on the back thereof, set forth in the classification or tariff which governs the transportation of this shipment, and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.

Consigned To Cashmen Equip (Lk City Hall (Not or street address for purposes of notification only)

On Collect on Delivery Shipments, Do letter "COD" must appear below consignee's name or as otherwise provided in Item 430, Sec. 1.

Destination 618 South Street 1st St. City

County _____ State _____ Zip

Route Las Vegas, NV Delivery Address* Same

(*To be filled in only when shipper desires and governing tariffs provide for delivery thereat.)

Delivering Carrier _____ Car or Vehicle Initials and No. _____

Collect on Delivery $ Kim @ Cashman And Remit to _____

702-326-6596

Street _____ City _____ State _____

| No. Packages | H.M. | Kind of Package, Description of Articles, Special Marks, and Exceptions | *Weight (Subject to Correction) | Class or Rate | Check Column |
|---|---|---|---|---|---|
| 1 | | Encl. Gen Tank | | | |
| | | #4226-2 | | | |
| | | Project - Las Vegas City Hall | | | |
| 1 | | muffler | | | |
| 2 | | Pkgs - parts | | | |
| | | Chris Myers | | | |
| | | Cell 702-205-3311 | | | |

*If the shipment moves between two ports by a carrier by water, the law requires that the Bill of Lading shall state whether it is carrier's or shipper's weight.
NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding _____ per _____

Shipper, Per _____

Permanent post-office address of shipper, _____

Agent

Per _____

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of consignor)

C. O. D. Charges to be Paid by ☐ Shipper ☐ Consignee

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $ _____ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per _____

(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$ _____

†The fair contract rate for this shipment conforms to the specifications set forth in the box maker's certificate thereon, and all other requirements of Rule 41 of the Uniform Freight Classification and Rule 5 of the National Motor Freight Classification.

*Shipper's inclusion in the box of cleats not a part of bill of lading approved by the Interstate Commerce Commission.

1

**THIS SHIPPING ORDER** must be legibly filled in, in ink, in indelible Pencil, or in Carbon, and retained by the Agent.

Shipper's No.

Carrier's Name: RST

Carrier's No.

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of lading,

at 20394 Hwy 95 (Date) 1-17-11 FROM IBI, L.L.C

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as shown below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own railroad, water line, highway route or its own water line, highway operations, otherwise to deliver to another carrier on the route to said destination. It is agreed, as to each carrier of all or any of said property over all or any portion of said route or to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the terms and conditions of the Uniform Domestic Straight Bill of Lading set forth (1) in the Uniform Freight Classification in effect on the date hereof, if this is a rail or rail-water shipment, or (2) in the applicable motor carrier classification or tariff if this is a motor carrier shipment. Shipper hereby certifies that he is familiar with all the terms and conditions of the said bill of lading, including those on the back thereof, set forth in the classification or tariff which governs the transportation of this shipment, and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.

Consigned TO Cinkinnen Equip / LV City Steel (Name of consignee for purposes of notification only)

On Collect on Delivery Shipments, the letters "COD" must appear before consignee's name or as otherwise provided in Item 430, Sec. 1.

Destination 518 South Street 1st St. City

County State Zip

Route Las Vegas, NV 89101 Delivery Address* (*To be filled in only when shipper desires and governing tariff provides for delivery thereat)

Delivering Carrier Car or Vehicle Initials and No.

Collect on Delivery $ Mike Q Cinkinnen And Remit to

702-324-6696

Street City State

| No. Packages | RM | Kind of Package, Description of Articles, Special Marks, and Exceptions | *Weight (Subject to Correction) | Class or Rate | Check Column |
|---|---|---|---|---|---|
| 1 | | Weather Pac / Fuel Tank | | | |
| | | # 42706-1 | | | |
| | | Dropped - Las Vegas City Yard | | | |
| | | Fuel Oil Lines | | | |
| 1 | | Muffler Electric parts ect | 1-19-11 | | |
| 1 | | Chris Myers - 702-205-3311 | | | |

*If shipper does not enter weight, leave blank. Weight to be entered by carrier only when rate is dependent on weight. Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of consignor)

C. O. D. Charges to be Paid by ☑ Shipper ☐ Consignee

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per (The signature here acknowledges only the amount prepaid)

Charges Advanced: $

† The Tariff minimum used for this shipment conforms to the specifications set forth in the box maker's certificate thereon, and all other requirements of Rule 41 of the Uniform Freight Classification and Rule 5 of the National Motor Freight Classification.

††Shipper's imprint in lieu of stamp; not a part of Bill of lading approved by the Interstate Commerce Commission.

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding per

Shipper, Per

Permanent postoffice address of shipper,

IS Agent must detach and retain this Shipping Order and must sign the Original Bill of Lading.

2

CASHMAN CAT
POWER SOLUTIONS

CASHMAN POWER SOLUTIONS
3300 SAINT ROSE PARKWAY
HENDERSON, NV 89052
PHONE: (702) 649-8777
FAX: (702) 639-5090

| | | | |
|---|---|---|---|
| To | Mojave Electric | Date | November 19, 2011 |
| | | PO No. | |
| | | Material | |
| Att | | Project | Las Vegas City Hall |

***IF ENCLOSURES ARE NOT AS NOTED, PLEASE ADVISE IMMEDIATELY.***

☐ Submittal / Resubmittal ☐ Product Specification Sheets / Brochures ☐ Specifications / Plans
☐ Operation & Maintenance Manuals ☐ Shop Drawings-Wiring Diagrams ☐ Other

| No of Copies | Manufacturer | Description |
|---|---|---|
| 2 | CAT | C32 Generators S/N JSJ01016, JSJ01013 |
| | | |
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| | | |
| | | |
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| | | |
| | | |
| | | |

☐ As Requested ☐ Review / Comment / Clarification ☐ Information / Other

| Additional Notes and Comments |
|---|
| |

Received By: _____ Title: Project Manager

Date Received: 1-20-11

Submitted By: _____ Date: _____

CASH009

# EXHIBIT 4

DISTRICT COURT
CLARK COUNTY, NEVADA

CASHMAN EQUIPMENT COMPANY, a Nevada Corporation,

Plaintiff,

vs.

CAM CONSULTING, INC., a Nevada corporation; ANGELO CARVALHO, an individual; JANEL RENNIE aka JANEL CARVALHO, an individual; WEST EDNA ASSOCIATES, LTD., dba MOJAVE ELECTRIC, a Nevada corporation; WESTERN SURETY COMPANY, a surety; THE WHITING TURNER CONTRACTING COMPANY, a Maryland corporation; FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a surety; DOES 1-10, inclusive; and ROE CORPORATIONS 1-10, inclusive,

Defendants.

AND ALL RELATED MATTERS.

CASE NO.: A642583
DEPT NO.: 32

DEPOSITION OF NANCY BRISENO-RIVERA
PERSON MOST KNOWLEDGEABLE FOR
WHITING-TURNER CONTRACTING COMPANY

Taken on Thursday, October 4, 2012
At 1:41 p.m.
At 6725 Via Austi Parkway, Suite 290
Las Vegas, Nevada

REPORTED BY: JEAN DAHLBERG, RPR, CCR NO. 759, CSR 11715







APPEARANCES:

For the Plaintiff:
PEZZILLO ROBINSON
BY: JENNIFER R. LLOYD, ESQ.
6725 Via Austi Parkway, Suite 290
Las Vegas, Nevada 89119
(702) 233-4225
(702) 233-4252 (Facsimile)

For the Defendant, WHITING-TURNER CONTRACTING COMPANY:
COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON
BY: SHEMILLY A. BRISCOE, ESQ.
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
(702) 791-0308
(702) 791-1912 Facsimile







INDEX


| WITNESS: | | PAGE |
|---|---|---|
| NANCY BRISENO-RIVERA | | |
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EXHIBITS


| EXHIBIT | DESCRIPTION | PAGE |
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| 2 | Performance Bond, Bates MOJ000170 through MOJ000184 | 35 |
| 3 | Notice to General Contractor of Claim on Payment and Performance Bond, Bates CASH033 through CASH034 | 39 |
| 4 | Notice of Lien, Bates CASH027 through CASH030 | 42 |








LAS VEGAS, NEVADA; THURSDAY, OCTOBER 4, 2012
1:41 P.M.
-oOo-

Whereupon --

(In an off-the-record discussion held prior to the commencement of the proceedings, counsel agreed to waive the court reporter's requirements under Rule 30(b)(4) of the Nevada Rules of Civil Procedure.)

NANCY BRISENO-RIVERA,
having been first duly sworn to testify to the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

EXAMINATION

BY MS. LLOYD:

Q. Hi, I'm Jennifer Lloyd, counsel for Cashman Equipment Company, the plaintiff in this matter. Can you please state your name for the record.

A. Nancy Briseno-Rivera.

Q. Can you spell your last name for me?

A. B as in boy, -r-i-s-e-n-o hyphen Rivera, R-i-v-e-r-a.

Q. And you've been designated as Whiting-Turner's person most knowledgeable as to the notice that was served on your counsel; is that correct?

A. Yes.
Q. Have you ever had your deposition taken before?
A. No.
Q. We'll just go over a couple of the ground rules; you've probably already spoke to your counsel about it, but we'll just go over them anyway.
It's question and answer. I'll ask the questions, and then you get to answer. Verbal responses only. So instead of nodding your head or, you know, saying "uh-huh," we need a yes or a no or whatever else might be required.
It's important -- because the court reporter is taking down everything that we say -- that we try not to speak over one another. So I'll try to wait for you to stop talking; if you could try to wait for me to stop talking, so that she can adequately make a good record.
We can take a break at any time except when a question is pending. I would ask that you answer first, and then we can take a break. So if you need to, you know, take a minute or use the rest room, whatever, just let me know.
I'm here to ask you questions about this matter. If you don't understand the question that I ask, or you're not clear on what I'm asking, just ask me to rephrase it and I'll be happy to help where I can.







Your testimony is under oath. It's the same oath you would take in a court of law.
Is there any reason why you can't give your complete and truthful testimony here today?
A. No.
Q. What did you do to prepare for your deposition today?
A. Just reviewed the paperwork.
Q. Which paperwork did you review?
A. These three sheets that were given to me.
Q. Which three sheets? Oh, the deposition notice?
A. Yeah.
Q. So you didn't do any other preparation for your deposition here today?
A. No.
Q. Okay. Did you speak with anyone to prepare for your deposition today?
A. Yes.
Q. Who did you speak with?
A. Shemilly.
Q. Did you speak with anyone else at Whiting-Turner concerning your deposition?
A. My boss.
Q. Who is your boss?
A. Paul Schmitt.







Q. And when you were speaking with Mr. Schmitt, did you review any documents with him --
A. No.
Q. -- to prepare?
Okay. Do you hold any professional licenses?
A. No.
Q. What's the highest level of education you have attained?
A. Bachelor's of architecture.
Q. And where did you go to school?
A. Cal Poly, San Luis Obispo.
Q. And when did you get your degree?
A. 1997.
Q. Have you been convicted of any crimes within the last ten years?
A. No.
Q. That's a required question; it's not anything on your character.
MS. BRISCOE: I hate asking that question.
MS. LLOYD: I know. I always feel like there's no good place to put it.
BY MS. LLOYD:
Q. What's your current employment?
A. Whiting-Turner.
Q. And what's your position with Whiting-Turner?







A. Project manager.
Q. And how long have you been a project manager with Whiting-Turner?
A. For 12 years.
Q. And for your entire time employed with Whiting-Turner, you've been a project manager this entire 12 years?
A. No.
Q. Can you go through what other positions you've held with Whiting-Turner?
A. Project engineer; that was two years.
Q. And then?
A. Assistant project manager for one year.
Q. And then you became a project manager?
A. Yes.
Q. So for the remaining nine years, the last nine years you've been a project manager with Whiting-Turner?
A. Yes.
Q. And can you describe for me what the job duties are of a project manager?
A. Oversee a project; budget; schedule; and construction.
Q. And are you involved with the bidding process at all on the project?
A. Yes.

Q. So when do your responsibilities on the project start?
A. At the very beginning of the project during design.
Q. And are you responsible for choosing subcontractors on a project?
A. Yes.
Q. And then are you responsible for negotiating contracts with those subcontractors?
A. Yes.
Q. And then do you manage all of the work that's being performed on the project?
A. Yes.
Q. Today we're here on the new Las Vegas City Hall project -- which I'm sure you're aware -- so I'm going to use the word "Project," and I'm going to be referring to that particular project.
So can you describe to me what your role was on that Project?
A. The lead project manager. So I oversaw the construction, the schedule, and the budget.
Q. How many other project managers were on the Project?
A. Three.
Q. And did they all report to you?







A. Yes.
Q. So what was Whiting-Turner's role on the Project?
A. The construction manager at risk.
Q. And who did Whiting-Turner contract with?
A. PQ Las Vegas.
Q. And was PQ Las Vegas also the owner of the property that the City Hall was constructed on?
A. Yes.
Q. And can you tell me about the owner-affiliated companies that were involved in the construction, to the extent that you're aware?
A. I don't understand.
Q. For instance, I've come across documents mentioning a QH Las Vegas.
A. Yes.
Q. Do you know who QH Las Vegas is?
A. I'm not sure who they are, but there's also Forest City.
Q. Uh-huh. And it seems like there may be a Q Forest City affiliate. Are you aware of all the different owner-affiliate companies that were involved in this Project?
A. No.
Q. Who did you deal with as an owner rep on this







Project?
A. Forest City.
Q. Forest City. And who on behalf of Forest City did you deal with on this Project?
A. Mainly David Phillips.
Q. And do you know what David Phillips' role was on the Project for Forest City?
A. Owner's rep.
Q. Can you describe to me what JMA's role was on the Project?
A. The architect for construction documents.
Q. Who was the architect for design?
A. Elkus Manfredtti Manfredtti.
Q. Was the architect, JMA, employed by Forest City?
A. Yes.
Q. And then what was JBA's role on the Project?
A. Mechanical and electrical consultant.
Q. And who was JBA contracted with, if you know?
A. JMA.
Q. How involved was Forest City with the day-to-day project construction?
A. He was onsite.
Q. David Phillips was onsite?
A. Yeah. I would say very.
Q. Very involved?







A. Uh-huh.
Q. Did they have a trailer onsite?
A. Yes.
Q. Was he aware of the schedule and the -- I guess, of the completion of the Project?
A. Yes.
Q. Did you have, like, weekly meetings with the owner concerning the progress?
A. Sometimes.
Q. How did the updates to the owner work on the progress of the Project?
A. Can you repeat that again?
Q. Sure. Sometimes I know, in previous cases, it seems as though generals would have weekly meetings with the owner to update them, or they would have a particular schedule where they would provide either written or meeting updates to the owner. Did anything like that happen on this Project?
A. Yeah. We did an executive summary monthly.
Q. And then who did you submit that to?
A. Forest City.
Q. And were any other Forest City employees involved on the Project?
A. Yes.
Q. Can you give me their names?

A. Eric Louttit.
Q. Can you spell the last name?
A. L-o-u-t-t-i-t.
Q. Do you know what his role was?
A. No.
Q. And can you think of anyone else on behalf of the owner?
A. Singh. It's actually Joginder, J-o-g-i-n-g-e-r (sic).
Q. Is that the first name or the last name?
A. First name. It's actually d-e-r.
Q. -- d-e-r, okay.
A. Singh, S-i-g-n-h (sic).
Q. Okay. And do you know what -- is that a woman or a male?
A. Male.
Q. Do you know what his involvement was on the Project?
A. No.
Q. And, offhand, can you think of any other owner reps that you dealt with?
A. Jerry Starry.
Q. Jerry?
A. Uh-huh, Starry.
Q. Anyone else?







A. Huh-uh.
Q. Did you deal with anyone from the City of Las Vegas on this Project?
A. On monthly -- for monthly meetings we did.
Q. What type of monthly meetings were those?
A. Owner monthly meetings.
Q. So who was -- who attended those meetings?
A. Rusty Coleman.
Q. On behalf of the City?
A. Uh-huh, yes.
David Bratcher.
Q. Okay.
A. And Mike Velavich.
Q. Did Forest City also attend those meetings?
A. Yes.
Q. And were any other entities or persons at those meetings?
A. JMA.
Q. JMA. So a meeting was held monthly with the City, JMA, and Forest City as to the status of the Project?
A. Yes.
Q. What was the City's involvement in the Project at that time?
A. Just to update.







Q. Just to update. So you didn't consider the City to be the owner of the project?
A. No.
Q. How did Whiting-Turner come into contact with Mojave on this Project?
A. We went out to bid to several subcontractors, electric subcontractors.
Q. And how did you bid it? Did you just contact different electrical subcontractors, or did you notice it? How did the bidding process work?
A. Noticed it in the newspaper; various.
Q. Do you know who else -- what other electrical subcontractors submitted bids on this Project?
A. I can't remember.
Q. How did Whiting-Turner select Mojave?
A. Low bid. Well, lowest, most qualified.
MS. LLOYD: Okay, we'll do Exhibit 1.
(Exhibit 1 was marked for identification.)
BY MS. LLOYD:
Q. Can you take a look at this document.
Are you familiar with it?
A. Yes.
Q. Can you describe to me what it is?
A. Mojave's subcontract with Whiting-Turner.
Q. For this Project?







A. Right, for this Project.
Q. And it lists the owner of the Project as QH Las Vegas; is that correct?
A. Yes.
Q. And I think you had identified the owner possibly as PQ Las Vegas previously?
A. Okay. I thought I said QH.
Q. Did you say QH? Okay. Maybe I misunderstood. I don't know; maybe I was just thinking of the affiliate entity that I had in my head, of all the QH, PQ.
A. Actually, there's -- you had mentioned earlier -- there's several of them, so PQ might be one of them.
Q. But Whiting-Turner's contract was with QH?
A. Correct.
Q. And if you can turn to Article IX of the contract. I think it's Bates-stamped Page MOJAVE7 at the bottom. I'm looking for Subsection P.
A. Okay.
Q. Can you describe to me what that requirement is?
A. That we request a bond from our subs.
Q. Did you request a bond from Mojave on this Project?
A. Yes.
Q. And was it a payment and performance bond, or

what type of bond was it?
A. Yes, payment and performance.
Q. Do you know what the terms of that bond are?
A. No.
Q. Has a claim been made against that bond?
A. I don't know.
Q. Who at Whiting-Turner would know whether a claim had been made against the bond?
A. Paul Schmitt, possibly.
Q. Were you provided a copy of the bond by Mojave?
A. Yes.
Q. Would that have been at the beginning of the Project?
A. Yes.
Q. If you become aware of claims from Mojave's subs or suppliers, do you provide them with a copy of that bond?
A. No.
Q. What action would you take if you became aware of a claim brought by a Mojave subcontractor or supplier?
A. Well, find out what the claim is, and then just try to resolve it with them and Mojave and ourselves.
Q. Do you have a copy of this bond?
A. Yes. Not with me; but, yes, we have a copy.







Q. So are you aware whether Cashman would be a claimant under this bond?
A. No.
Q. Okay. Let's go to Exhibit B of the contract, specifically Paragraph 50, which is Mojave Bates-stamped 16. Do you want to review this requirement and describe to me what it is?
A. Yeah. We ask our subcontractors to commit to using diversity; at least make a good effort to use diversity type subcontractors, suppliers, vendors.
Q. And why was this requirement included in this subcontract?
A. We had a goal of at least 15 -- it wasn't -- we were -- internally, we were trying to get 15 percent, but it was -- we were just trying to get diversity inclusion.
Q. And were you required to do that by the owner of the Project?
A. Yes.
Q. And did the owner have a minimum amount of diversity contractors that it wanted included?
A. Our goal was 15 percent.
Q. So that was a goal given to you by the owner?
A. Yes. But it wasn't a -- it was kind of an internal, This is what we're going to try to shoot for.







But it was never a stated goal, you know, publicly to say, Okay, we're gonna -- you know, we didn't --
Q. It wasn't, like, a hard requirement?
A. Yeah, it wasn't a hard requirement. That was just our goal as a team.
Q. Okay. So was that included in the owner's contracts with Whiting-Turner to have that goal, or was that not included in that contract?
A. I believe it was included, but not the -- not a percentage. It's a good-faith effort, is what they call it.
Q. And so did you communicate with Mojave a certain percentage that you wanted them to have for that goal?
A. No.
Honestly, I can't remember. We might have said --
Q. Okay.
A. We might have said -- I can't remember if we did.
MS. BRISCOE: I'm going to object to that question; it was a little unclear. Form, to what you were getting at.
BY MS. LLOYD:
Q. Okay, then we'll just restate it.
You stated that that Whiting-Turner had an







internal goal of reaching 15 percent diversity on this Project. Did you communicate to Mojave a specific percentage that you wanted Mojave to reach for its diversity subcontractors or suppliers on this Project?
A. I can't remember exactly what amount we said, but I think we did ask them for a certain amount.
Q. Okay. And what was the ramification if a subcontractor couldn't reach the amount that you had requested that they reach for the diversity subcontractors and suppliers?
A. Nothing, as long as they made the good-faith effort.
Q. And how did you evaluate if a good-faith effort was made?
A. They have to show us that they -- you know, that they contacted certain suppliers, vendors, sub-tiers, and state if they were competitive or not competitive.
Q. Okay.
A. So they may have -- in an instance, we had a sub who looked for -- to try to get diversity, and that sub just wasn't competitive, so he didn't -- he wasn't able to utilize him.
Q. Because the bid was too high or --
A. Right. Right.
Q. So how did you verify the use of the diversity

vendors for Mojave?
A. Just asked for certificates. There's WBE certificates, disabled veteran certificates, DBE certificates.
Q. And was there any, I guess, incentive to reach a certain requirement on this Project?
A. No.
Q. So in terms of Mojave specifically, did you designate certain materials that were to be supplied, or work that was to be performed that should be through a diversity contractor?
A. No.
Q. Was that left completely up to Mojave?
A. Yes.
Q. Does Whiting-Turner prohibit a subcontractor from issuing a joint check to lower-tiered subs and suppliers if they feel it's necessary?
A. Do we prohibit it? No.
Q. So, for instance, if Mojave -- hypothetically speaking -- had issued a joint check to two of its suppliers, would Whiting-Turner feel that that violated a diversity requirement?
A. No.
Q. Okay. Let's look at Paragraph 51.
Can you describe to me what this entails?







A. It's just a certified payroll project, and prevailing wage has to be paid to employees.
Q. So did Mojave submit certified payrolls?
A. Yes.
Q. And why was this Project designated as a prevailing-wage project?
A. I believe because of the bonds.
Q. That were paying for the Project?
A. Right.
Q. And did you require that subcontractors like Mojave obtain certified payrolls from their lower-tiered subs to submit?
A. If they're on the project.
Q. Okay. Then let's go to Paragraph 43, which is backwards one page. Or I apologize, Paragraph 43 of the next section, which is on Mojave Bates 20?
A. 43?
Q. Uh-huh. Is this a description of the equipment that was eventually supplied by Cashman to the Project?
A. Yes.
Q. And do you know if the installation of this equipment required a crane?
A. I can't remember.
Q. Did Whiting-Turner provide the crane for the Project, or did each individual sub provide its own







crane?
A. Whiting-Turner didn't provide a crane.
Q. So if Mojave had needed a crane for the installation, Mojave would have had to provide it themselves?
A. Yes.
Q. Was there any type of job log on the Project for, I guess, deliveries or different personnel that were entering or exiting the Project?
A. No.
Q. So did anyone have to check in if they were coming onsite?
A. Only if they were a visitor.
Q. So contracted subs wouldn't have to check in?
A. No.
Q. Would material suppliers to subs have to check in?
A. No.
Q. And how would you know if someone was a material supplier to a subcontractor, so they wouldn't have to check in?
A. They provide a 24-hour notice, letting us know that they're going to have something delivered.
Q. So the subcontractor, like Mojave, would provide notice to Whiting-Turner that they are going to have a







delivery by a supplier?
A. Right.
Q. And did that notice go just to Whiting-Turner, or did that notice go to Whiting-Turner and Forest City?
A. Just Whiting-Turner. It could have been just a verbal notice, though, not -- it doesn't necessarily have to be a written notice.
Q. And who would Mojave inform?
A. Our superintendent.
Q. How many superintendents were on the job, the Project?
A. Four.
Q. And do they keep daily logs of what occurs on the Project?
A. Most of the time.
Q. And would something like that -- like that notice we just talked about -- be included in the daily log?
A. It should be.
Q. Does the daily log also note the deliveries that day?
A. Well, that's -- isn't that what you just asked me?
Q. I think I was talking about if Mojave gave a verbal notice to a superintendent, would the

superintendent note it in the daily log?
A. Probably not.
Q. But if a delivery occurred on a day, that would be noted in the daily log?
A. It should be.
Q. Okay. Where did the generator system requirements originate from?
A. JBA's supplies.
Q. So it was kind of an owner-generated --
A. Yes.
Q. -- requirement?
And then whose responsibility was it to procure the system?
A. Mojave's.
Q. And did that process start during the bid process, or did it occur after contract with Mojave?
A. I wouldn't know.
Q. Because did the bid require a pricing for this generator system?
A. Yes. But it doesn't -- we don't ask who they're using or -- we just -- all we know is they've included it in their cost.
Q. Okay. So what would Whiting-Turner's involvement be in choosing the generator system?
A. Nothing, unless it's specified; the







specifications.
Q. Okay. And so, then, what would the owner's involvement be in choosing the system?
A. Nothing.
Q. So does Mojave have to submit what it wants to use to meet the requirement?
A. Yes.
Q. And then does that get approved?
A. Yes.
Q. So there is an owner-approval process for the particular equipment to be used to satisfy that Subparagraph 43?
A. Not owner. The design team, JBA --
Q. JBA?
A. -- would review it.
Q. And then JMA?
A. Uh-huh. Yes.
Q. On behalf of the owner?
A. Yes.
Q. So then can you describe to me how the approval process would work for the generator equipment?
A. We receive product data from our subcontractors, we review it, and then we send it to JMA. JMA sends it to JBA, and then it comes back approved or not approved, or approved with remarks.







Q. Okay. Now, do you recall for this particular system, was that approval process easy or was it involved?
A. I don't know.
Q. Okay. So do you recall whether Cashman's package was the only package submitted for approval, or if other potential suppliers also had been submitted for approval?
A. I wouldn't know that.
Q. Okay. Who would know that at Whiting-Turner?
A. Dave Lee.
Q. Who is Dave Lee?
A. Project manager.
Q. Do you recall when Whiting-Turner first became aware that Cashman was supplying the generator equipment to the Project?
A. Do I remember when? No.
Q. Do you know if anyone at Whiting-Turner would recall when they became aware that Cashman was providing this generator equipment?
A. It would be Dave Lee, whenever it was -- whenever we got the submittal.
Q. Okay. So when you received the submittal package that you would send to JBA for approval, that would have been when you first became aware of Cashman's







involvement?
A. Probably.
Q. And what was Dave Lee's role on the Project?
A. He managed several subcontracts.
Q. Who did he manage?
A. He managed Mojave, Bombard Mechanical, fire sprinkler, civil -- or underground utilities, landscape, and a few others. I don't know if you --
Q. No. No. I just kind of -- so basically what happened was you would split up different areas of the project to different project managers under you at Whiting-Turner for the Project; so you were the overall manager. And then you had, I think you said, four project managers?
A. Yes.
Q. And then you would give them each maybe particular subcontractors or areas of the Project that they would then manage; so, like, electrical, mechanical, that type of thing?
A. Yes.
Q. So Dave Lee was the one that managed the Mojave scope of work subcontract on this Project?
A. Yes.
Q. Okay. When did Whiting-Turner first become aware that CAM was involved in the project, CAM

Consulting?
A. Probably when we got their certificate.
Q. Oh, for the DBE --
A. Yes.
Q. -- certification?
And do you recall when that would have been?
A. No.
Q. Would Dave Lee be aware of that?
A. No.
Q. No? And did you require the certificates to be given at the beginning of the Project or the end, or did you not have a requirement as to timing?
A. It was typically when they were trying to bill for it.
Q. Oh, okay. So just to go back a little bit, Whiting-Turner didn't require that this equipment supplied by Cashman be supplied through a WBE or a disadvantaged diversity?
A. Yeah, it's not our -- we don't make that decision for them. They choose who or how they can try to achieve the diversity.
Q. Are you familiar with the term "pass-through contractor"?
A. Yeah.
Q. So, and encouraging the diversity, did







Whiting-Turner have a position on the use of a pass-through contractor --
A. No.
Q. -- to meet that requirement?
A. What was your question? Do we --
Q. In requiring the diversity usage, did Whiting-Turner have a position on the use of a pass-through contractor to meet that requirement?
A. No.
Q. Did you consider the use of a pass-through contractor to meet that requirement?
A. Did I consider it?
Q. Well, does Whiting-Turner consider it?
A. No.
Q. And by a "pass-through contractor," we mean someone who doesn't do actually any work, but just as a percentage, and then, I guess, in order for it to go through a diversity business. Is that your understanding too?
A. Yes.
Q. Okay. So Whiting-Turner doesn't consider a pass-through contractor to meet that requirement?
A. We don't -- as long as they have the certificate, that's really -- that's really all we're looking for.







Q. Okay. And in your meetings with the owner, you said they were monthly?
A. Yes.
Q. Did you inform the owner of the status of the diversity goals at the monthly meetings?
A. Yes.
Q. Are you familiar at all with Cashman's invoices for the equipment on this Project?
A. No.
Q. So you wouldn't have seen the invoices at any time?
A. No. We probably not -- maybe not the invoice, but we would have to see something, so that when they bill we know that the generators is either procured or -- so we don't -- we don't -- they typically won't give us their invoice, but we ask for proof.
Q. That they've purchased it?
A. Right.
Q. Okay. What type of proof would you receive, then, from someone like Mojave for equipment like this?
A. Maybe like a bill of lading or -- we'll take an invoice. I mean, just anything that shows that they've acquired the generator.
Q. Okay.
A. Or that the material's onsite. Sometimes they







won't show us anything -- any sub won't show us anything, and if some material shows up on the site, then we know it's -- we know we can pay our sub for it.
Q. And you let them go ahead and bill you for it?
A. Uh-huh.
Q. Okay. Did Whiting-Turner pay Mojave for the equipment supplied by Cashman?
A. Yes.
Q. So are you aware now of what equipment was supplied by Cashman?
A. The generator.
Q. The whole system? Because I guess it's a switch gear and a few other items.
And so you had stated previously that Dave Lee would know when Whiting-Turner first became aware of what Cashman was supplying?
A. Right.
Q. But you know now, when I'm talking about the equipment, you know what I'm referring to?
A. Right.
Q. Did Whiting-Turner pay Mojave for the equipment?
A. Yes.
Q. And do you recall when that was?
A. Early 2011.
Q. And in order to pay Mojave for that equipment,

what would you have required from Mojave?
A. The generator to be onsite.
Q. And then would you have required any releases?
A. No.
Q. So do you require unconditional or conditional releases from suppliers to subcontractors before issuing payment?
A. Just a conditional --
Q. Okay.
A. -- prior to issuing payment. And then unconditional following payment.
Q. Okay.
A. Sometimes we switch at that moment.
Q. What do you mean?
A. I mean we'll give them a check and they'll give us their unconditional.
Q. So if Whiting-Turner was asking a subcontractor like Mojave for an unconditional from a particular supplier, would that be because payment had already been issued to Mojave?
MS. BRISCOE: Objection; calls for speculation.
BY MS. LLOYD:
Q. You can answer.
A. Can you repeat the question?
Q. So if Whiting-Turner was asking for an







unconditional from a subcontractor like Mojave on this Project for a particular supplier, would that be because payment had already been issued for the equipment or materials supplied by that supplier?
A. We typically just get the subs, and then follow up with the suppliers.
Q. So when you would pay for a particular piece of equipment, you wouldn't require a subcontractor to give you a release from that equipment supplier at that time?
A. No. If we get it, great; but it's not a requirement.
Q. Okay. So then how do you ensure that the subcontractor is going to pay the supplier for the equipment?
A. We typically just -- if there's somebody like Mojave that we've had a relationship with, it's not -- we know that they're not gonna -- we don't have problems with them. So it's more on a case by case. If I know that there's an issue with a sub, then we'll probably make sure and ask. You know, sometimes we ask the suppliers, or they call us, Hey, when should we expect payment? So it's just a case by case, honestly.
Q. Okay. That makes sense.
How many other previous projects have you worked with Mojave on?







A. We personally, one other in addition.
Q. Which project was that?
A. The Palms, Upper Venues.
Q. And then for Whiting-Turner, do you know how many other projects Whiting-Turner has worked with Mojave on?
A. No.
Q. A substantial amount?
A. No. I don't -- I don't know, but I wouldn't say substantial.
Q. But you feel comfortable working with Mojave, because you kind of indicated you weren't concerned about --
A. Right.
Q. -- getting releases?
A. Just because of previous -- that previous project, they did a great job.
MS. LLOYD: Exhibit 2.
(Exhibit 2 was marked for identification.)
BY MS. LLOYD:
Q. Just take a minute and review it.
Are you familiar with this document?
A. Yeah.
Q. Can you describe to me what it is?
A. It's our payment and performance bond and our







certificate of insurance.
Q. And why did you retain this payment and performance bond?
A. It was a requirement per our contract with the owner.
Q. Did you provide a copy of this bond to any subcontractors or suppliers?
A. If they requested it.
Q. Were there any claims made on the bond?
A. I don't know. I think there were. I don't understand the actual -- the claim, what, how.
Q. What do you mean?
A. Well, people would say that they were going to do a claim, you know; but whether -- I'm not sure how far in paperwork it has to go before it becomes a claim.
Q. Do you know if any subs or suppliers -- I mean, are you aware of any that notified Whiting-Turner that they made a claim on the bond?
A. Yes.
Q. And how many were there?
A. Approximately three.
Q. And who were they?
A. And, again, I'm not -- I'm not sure because I don't know -- I would have to say I don't know, because there was liens that were -- they wanted to place liens,

so I'm not sure if it was against the bond or not.
Q. Okay. Who at Whiting-Turner would know about that?
A. Possibly Paul Schmitt.
Q. So at this time, are there any -- besides Cashman -- are there any other unresolved claims for subcontractors or suppliers on this Project?
A. No.
Q. So if you became aware of someone saying they wanted to make a claim on a bond, what would you do at that point? Who do you notify, or what action do you take?
A. I notify Paul, and then our person back East; I think it's Dan China.
Q. And then do you take any further action at that point?
A. Try to resolve it.
Q. Did I ask you before what Paul Schmitt's role is at Whiting-Turner?
A. No.
Q. Can you tell me?
A. He's Division Vice President.
Q. And what division? What area is that division?
A. I guess Las Vegas.
Can we go back to one of the questions?







Q. Sure, yeah.
A. On your question about a claim, we're in a settlement of one right now; so we're -- we've settled.
MS. BRISCOE: Okay. I would just say not to talk about the settlement.
THE WITNESS: Okay. I mean, I just --
MS. BRISCOE: Itself.
MS. LLOYD: I don't care about the terms of the settlement.
THE WITNESS: Right. That's -- I wasn't going to talk about the terms of the settlement. But I just want to be clear that we were in disagreement, however.
BY MS. LLOYD:
Q. Did that go to litigation?
A. No.
Q. Okay. And was that against the bond?
A. No. I don't think it was.
Q. Was it against the Project? Or you're not sure; that would be more Paul Schmitt?
A. Yeah, he would be able to know.
Q. And who -- can you tell me who was involved in that claim?
A. The sub, Ventura.
Q. What work did they provide to the Project?
A. Stonework.







Q. Okay. And was that a direct contractor to you?
A. Yes.
MS. LLOYD: Okay, Exhibit 3.
(Exhibit 3 was marked for identification.)
BY MS. LLOYD:
Q. Are you familiar with this document?
A. Yes.
Q. And when did you first see this document?
A. I don't remember.
Q. If it was served on Whiting-Turner, would it be given to you or who would it be given to?
A. No, it would be given to Paul Schmitt.
Q. So, then, how would you find out about it?
A. He would give it to me.
Q. And then what would you do with it?
A. Again, just see if I can resolve it, or see what the issue is.
Q. So in this case, what happened once you became aware of this claim?
A. I don't think I did anything on it. It was more to Paul, Paul doing probably something on it. But I don't -- I don't remember doing anything on this one.
Q. Okay. So you didn't contact Mojave about it?
A. No.
Q. Do you know if Whiting-Turner responded to the







notice of claim?
A. I don't remember if we did.
Q. Would that be --
A. I would have to say yes. We respond to anything that we get.
Q. Would that be something that Paul would know the specifics of, though?
A. Yes.
Q. Did you speak to the owner about the claim being asserted by Cashman?
A. Yes.
Q. When did that occur?
A. I don't remember an exact date.
Q. And if you can give a time, an estimation of when that would have happened.
A. We would have -- as soon as we usually received something like this, we would have forwarded this on to them.
Q. So you would have forwarded it to the owner?
A. Right.
Q. Do you recall specifically speaking with any owner's rep about Cashman's claim?
A. No.
Q. Do you recall any of the owner's reps asking you about Cashman's claim?

A. Yes.
Q. Can you tell me the substance of that communication?
A. Just basically what was going on, what happened.
Q. And what did you tell them?
A. I don't remember exactly.
Q. What did you know about the claim at that time to tell them?
A. That somehow Cashman didn't get the actual money for the generator; or payment, whatever.
Q. Uh-huh. And did the owner look to Whiting-Turner for resolution of Cashman's claim?
A. Yeah.
Q. And what was the, I guess, course of action? Or what was discussed with the owner about trying to resolve the claim?
A. That we were just -- I mean, I -- I can't remember what exactly it was. It was really just getting our lawyer people involved.
Q. Do you know if the owner took any action in response to Cashman's claim?
A. No.
Q. Do you know if Whiting-Turner notified the surety on the payment bond about Cashman's claim?
A. I'm sure somebody with Whiting-Turner did.







Q. And who do you think would know that?
A. Paul.
Q. Do you know what Whiting-Turner's obligations are to the sureties under the payment bond?
A. No.
Q. Who at Whiting-Turner would know that?
A. Paul.
MS. LLOYD: Okay, Exhibit 4.
(Exhibit 4 was marked for identification.)
BY MS. LLOYD:
Q. If you can take a minute to look at that.
Are you familiar with this document?
A. Yes.
Q. Can you recall when you first became aware of it?
A. No. I mean, usually soon after it's posted we get it.
Q. So if a lien's recorded on a project and served on Whiting-Turner, and since you're the project manager, what happens?
A. Well, I get it. And, again, I usually try to resolve it -- I usually try to resolve it.
Q. Do you know what you did in response to Cashman's lien?
A. No. I mean, I might -- I probably talked to







Mojave.
Q. And who at Mojave would you have talked to?
A. Brian Bugni -- Bugni -- Bugni.
Q. Do you recall talking to Brian about the lien?
A. Not specifically. I don't remember.
Q. Okay. Do you know if Whiting-Turner responded to the lien in any way?
A. I'm sure we did, but I don't know what -- I can't remember what it is we would have done.
Q. And who do you think at Whiting-Turner would know?
A. Paul.
Q. So do you know what action -- well, if any -- Whiting-Turner took in response to Cashman's lien?
A. No. We might have spoken to our lawyer.
Q. Did you speak with the owner about Cashman's lien on the Project?
A. Yes. They -- they actually got a copy as well.
Q. Right. Can you describe to me what the owner and Whiting-Turner spoke about in response to Cashman's lien?
A. Just as much as we know, which was more hearsay than anything, of what really happened and how we got to this point.
Q. Okay. Can you describe what you know at that







time?
A. Just that we had paid Mojave, Mojave had paid their vendor, and then from the vendor to Cashman it went south. So --
Q. Do you know when the communications with the owner would have taken place?
A. As soon as we probably got some kind of a notice like this.
Q. Okay. And do you know what the owner's response to Whiting-Turner was about the lien?
A. He would have just expected us to resolve it.
Q. And if you couldn't resolve it, what would he have expected -- and "he," are we talking about David Phillips?
A. Yes.
Q. What would David, Mr. Phillips, have expected Whiting-Turner to do if it couldn't be resolved?
A. I don't know.
Q. Who would make those decisions at Whiting-Turner?
A. Paul. It's a case by case.
Q. Meaning? What do you mean?
A. Well, it's not -- there's not always the same resolution for every issue that arises.
Q. Uh-huh.

A. So it's not just a, This is how you resolve it every time. But that would be a Paul decision.
Q. So just to go back for a second. When Whiting-Turner paid Mojave for this equipment, Whiting-Turner did so without reliance on releases from Mojave subs or suppliers?
A. We typically get conditionals, and then we'll follow up with unconditionals.
Q. So in this case do you know what occurred when the payment for the generator was made?
A. Not exactly.
Q. Does Whiting-Turner have records of what occurred when the payment for the generator was made?
A. No. All we would have is us giving -- you know, giving them the check, the payment. Actually, the payment probably goes straight to them in the mail, to Mojave. I'd have to check.
Q. Would Whiting-Turner have the releases that were submitted by Mojave to get that particular payment?
A. Yes. When they submit their pay application they submit their conditionals.
Q. So if Mojave was billing for the generator on its pay apps, they would then submit conditionals from that pay app --
A. Correct.







Q. -- from whatever equipment suppliers --
A. Yes.
Q. -- were on this pay app?
Okay. And then how would you follow up for unconditionals?
A. Typically with the next pay application; they submit their unconditionals.
Q. Okay. Who at Whiting-Turner is responsible for coordinating, I guess, the payments or the receipt of the pay application, the releases, that type of thing?
A. A cost -- usually a cost -- one of our cost persons, I guess.
Q. Do you know who did it on this Project?
A. Yeah, it's Daniel Payne.
Q. How do you spell his last name?
A. P-a-y-n-e.
Q. So he would be responsible for coordinating the release and the payments, the payment applications?
A. Yes.
Q. Can you tell me who Lorie Tooley is?
A. She was a temp secretary.
Q. Did she work with Daniel Payne?
A. Yeah, she would help him.
Q. Is she still employed by Whiting-Turner?
A. No.







Q. Is Daniel Payne still employed by Whiting-Turner?
A. No.
Q. So does Whiting-Turner keep records of the release and the pay apps and subsequent payments?
A. Yes.
Q. So Whiting-Turner would have a record of when those releases were submitted by Mojave and then the payment was made on the generator?
A. Yes.
Q. What's the current status of the Project?
A. It's complete.
Q. Okay. And it's occupied?
A. Yes.
Q. And what's the completion date?
A. It was February 14th, 2012.
Q. And is there a permanent Certificate of Occupancy on the project?
A. Yes.
Q. And has Whiting-Turner been paid in full on the Project?
A. No.
Q. Why not?
A. This is one of the issues -- reasons.
Q. This lawsuit?







A. Uh-huh.
Q. So the owner -- the owner is withholding payment from Whiting-Turner?
A. Yes.
Q. And is it retention?
A. It's retention and cost of work.
Q. "Cost of work," what do you mean? Oh, the cost of Cashman's?
A. Well, a portion of it, yeah.
Q. Okay. So can you tell me what's being withheld?
A. I wouldn't know off the top of my head.
Q. Is Whiting-Turner withholding retention from Mojave, then?
A. No.
Q. So Mojave has been paid in full on the Project?
A. Yes.
Q. Do you know why Whiting-Turner paid Mojave in full if Whiting-Turner hasn't been paid in full? Due to this particular issue, the Cashman lawsuit?
A. Just Paul negotiated with Troy.
Q. And then the owner that's withholding the payment would be the owner on the contract, the OH --
A. Yes.
Q. -- Las Vegas.
So the City isn't involved in that process at

all?
A. No.
Q. So, to the City, is the Project complete?
A. Yes.
Q. Does the original owner of the Project have any current involvement with the Project?
A. I'm sorry, say that again.
Q. Does the original owner, QH, have any involvement with the Project now that it's been deeded over to the City?
A. Yes. There's still punch-list work that we're working on.
Q. Okay. So the owner, QH, is coordinating the punch-list work?
A. Somewhat.
Q. Or do you work with the City on that now?
A. Yes.
Q. So is the retention being withheld because the punch-list work isn't completed?
A. No.
Q. The retention is being withheld because of this pending claim?
A. Yes.
Q. There's no other reason for the retention to be withheld?







A. No.
Q. Can you tell me about the current status of the generators?
A. As far as?
Q. Are they operating as anticipated?
A. Not without this last piece. They're operational, but they're not 100 percent.
Q. So when you say "they're operational," how are they operating? Like, are they operating to code?
A. No. You know what? I don't -- I don't know that information.
Q. Who would know that information at Whiting-Turner?
A. Probably Dave Lee.
Q. But the issue with the generators didn't prevent you from getting a permanent Certificate of Occupancy?
A. No.
Q. So was it considered a life/safety issue?
A. No.
MS. BRISCOE: I'll object to that as to form, calls for speculation.
BY MS. LLOYD:
Q. What kind of issue would you consider it, then?
A. I wouldn't know.
Q. Okay. So is the retention being withheld







related to the generators not being complete --
A. Yes.
Q. -- or Cashman's claim on the Project? Is it -- because I want to make sure I'm clear on that because I was kind of lumping -- I think I was lumping the two together.
So if you can specify: Is it due to the lawsuit, the claim for the monies owed, or is it due to the fact that the generator system is not complete?
A. It's due to the generator not being 100 percent complete.
Q. So the owner doesn't really care about the lawsuit?
A. No. Well, I don't know.
Q. Well, I mean, as far as withholding your payment, they don't care about the lawsuit, they're more concerned with the fact that the generator is not complete?
A. Yes.
MS. LLOYD: Okay, let's take a break real quick.
(Recess taken.)
MS. LLOYD: We'll go back on the record.
BY MS. LLOYD:
Q. Have you worked with Cashman directly before on projects?







A. No.
Q. Has Whiting-Turner -- are you aware if Whiting-Turner has worked with Cashman directly?
A. No.
Q. Have you ever encountered an issue like the one here --
A. No.
Q. -- before? And I guess by "issue," if I define it where a vendor failed to pay another vendor by absconding with the money.
A. No.
Q. And just to clarify one more thing: If Whiting-Turner was asking for unconditionals from a subcontractor, does that mean that the payment had already been made for that equipment if they were asking for unconditionals from specific vendors to that subcontractor?
A. Typically.
Q. Okay. And what would be the best way to determine that?
A. When we have it in our hand.
Q. Okay. So just to your records, Whiting-Turner's records?
A. Yeah.
MS. LLOYD: Okay, I think I'm done.

Do you have any questions, Shemilly?

MS. BRISCOE: Nope.

THE REPORTER: Would you like a copy?

MS. BRISCOE: Yes.

(The deposition concluded at 2:51 p.m.)

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CERTIFICATE OF DEPONENT

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* * * * *

I, NANCY BRISENO-RIVERA, deponent herein, do hereby certify and declare that the within and foregoing transcription to be my deposition in said action; that I have read, corrected and do hereby affix my signature to said deposition, under penalty of perjury.

NANCY BRISENO-RIVERA, Deponent Date







CERTIFICATE OF REPORTER

STATE OF NEVADA )
)SS:
COUNTY OF CLARK )

I, Jean M. Dahlberg, a duly commissioned and licensed Court Reporter, Clark County, State of Nevada, do hereby certify: That I reported the taking of the deposition of the deponent, Nancy Briseno-Rivera, the Person Most Knowledgeable for Whiting-Turner Contracting Company, commencing on Thursday, October 4, 2012, at 1:41 p.m.

That prior to being examined, the deponent was, by me, duly sworn to testify to the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true and accurate transcription of said shorthand notes.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of an attorney or counsel involved in said action, nor a person financially interested in the action.

IN WITNESS HEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this 8th day of October, 2012.

JEAN M. DAHLBERG, RPR, CCR NO. 759, CSR 11715

Exhibit "1" of Transcript

SUBCONTRACT

THE WHITING-TURNER CONTRACTING COMPANY

Address Reply to: 6720 Via Austi Parkway, Suite 300
Las Vegas, NV 89119

Phone: 702-650-0700
Fax: 702-650-2650

SUBCONTRACT NO. 12600-26A

SUBCONTRACT FOR: Electrical, Fire Alarm, and Low Voltage

SUBCONTRACTOR: Majave Electric (License # 19512)
Address: 3755 W. Haeland Avenue
Las Vegas, NV 89118
(P) 702-798-2979
(F) 702-798-7912
Remittance Address: Same as above

OWNER: OH Las Vegas, LLC
50 Public Square, Suite 1005
Cleveland, OH 44113

PROJECT: City of Las Vegas New City Hall
495 Main Street
Las Vegas, NV 89101

This agreement, made this 11th day of February, 2010, by and between Majave Electric hereinafter called the Subcontractor, and THE WHITING-TURNER CONTRACTING COMPANY, of Baltimore, Maryland, with its principal office located at 300 East Joppa Road, Baltimore, Maryland, a body corporate of the State of Maryland, hereinafter called the Contractor,

WITNESSETH, that the Subcontractor and Contractor for the consideration hereinafter named, agree as follows:

ARTICLE 1 DEFINITIONS

(a) As used herein, the following terms shall have the meanings indicated:

"Architect" or "Engineer" means the architect or engineer directing the work as agent of the Owner, or any other person authorized by the General Contract to direct or pass upon any matter or thing connected with the performance of the General Contract.

"Contract Documents" means (a) the General Contract, (b) all general, supplementary and other conditions applicable to the Project, (c) the Drawings and Specifications, and (d) all bulletins and addenda issued in connection with the Project.

"Drawings and Specifications" means the drawings and specifications described in Article 2 hereof, and all addenda and/or revisions thereto.

"General Contract" means the contract executed or to be executed by the Owner and the Contractor in connection with the construction of the Project and any amendments thereto.

SCI

Rev. 12/08

Initialed by: Contractor: _____ Subcontractor: _____

MOJ00001

EXHIBIT NO: 6
WITNESS: RIVERA
DATE: 10/4/12
J. DAHLBERG, RPR, CCR 759, CSR 11715

Where the contract entered into between Owner and Contractor is a Construction Management Agreement, the term "Contractor" shall be deemed to mean "Construction Manager".

"Subcontract" means this document and all of the Contract Documents which shall be made a part of this Subcontract and are incorporated herein by reference.

(b) Where the term "Contractor" is used in the Specifications, insofar as it has application to the work required to be done by the Subcontractor as provided herein, it shall be deemed for the purposes hereof to refer to the Subcontractor. The term "Contractor" or "General Contractor" wherever used in the Contract Documents shall be deemed to make reference to the Subcontractor insofar as it has application to the work covered by this Subcontract. The term "Subcontractor" may be referred to as "it" whether Subcontractor is incorporated or not.

ARTICLE 2. SCOPE OF WORK–The work to be performed and materials to be furnished by the Subcontractor are as specified in Article 3 hereof and in accordance with Drawings and Specifications prepared by DMA Architecture dated Checklist C Document Log dated 11-24-09 and as set forth in Exhibit B.

ARTICLE 3. PROVISION OF LABOR AND MATERIALS.

(a) The Subcontractor agrees to furnish and pay for all labor and supervision, tools, apparatus, supplies, equipment, and services, and also to furnish, deliver, install, and pay for all materials necessary for the performance and completion of the work described under the Scope of Work, free from all claims and liens of materialmen, suppliers, laborers, truckers, subcontractors, and others making claims through the Subcontractor. All such work shall be done to the satisfaction of the Owner, the Architect and/or Engineer and the Contractor in accordance with the Contract Documents. Subcontractor agrees to submit daily work reports and monthly progress reports and schedule updates upon request by the Contractor. The Subcontractor agrees that with respect to the Scope of Work hereunder it will stand in the Contractor's shoes with respect to the Contractor's obligations to the Owner under the Contract Documents and will perform all work and obligations as set forth in the Contract Documents to the satisfaction of the Owner. At all times that Subcontractor has personnel at the Project site, it shall also have present an authorized representative of Subcontractor who shall supervise and direct Subcontractor's personnel and be responsible for their actions. Such representative shall be authorized to act on behalf of the Subcontractor and communications to such representative shall be binding upon Subcontractor.

(b) In the event any deviations from the Contract Documents are incorporated in any shop drawings of or by the Subcontractor, such deviations and the reasons therefore shall be fully explained in writing by separate letter to the Contractor and Owner at the time the shop drawings are submitted to the Contractor and Owner. Failure to so specify and explain any such deviation will automatically void any inadvertent approval of the same by the Contractor, Architect, Engineer and/or Owner.

(c) The Subcontractor represents and warrants that it is an expert in the particular line or lines of work hereby contracted to be done and that it is competent to know whether the materials, methods and apparatus specified for this work are sufficient and suitable to secure the results contemplated by the Contract Documents. The Subcontractor shall be responsible for fulfilling the requirements of the Contract Documents. Subcontractor agrees to cooperate in carrying out Contractor's quality assurance program including, but not limited to, furnishing necessary documentation and facilitating inspections and quality checks.

(d) In the event that Subcontractor employs union labor the Subcontractor agrees to be bound by the terms and provisions of the agreement establishing the Impartial Jurisdictional Disputes Board, any such successor Board, or any subsequent plan(s) agreed to by employers and the unions affiliated with the Building and Construction Trades Department, AFL-CIO, for the settlement of jurisdictional disputes. The Subcontractor also agrees that any assignments of disputed work shall be made in accordance with any agreement of record between the disputing trades or any published decision of record compiled and published by the Building and Construction Trades Department, AFL-CIO in Agreements and Decisions Rendered Affecting the Building Industry.

ARTICLE 4. DILIGENT PERFORMANCE.

(a) Subcontractor agrees to commence, pursue diligently and complete the work in such sequence and order and according to such schedules as Contractor shall establish from time to time during the course of the work, and shall perform the work so as not to delay any other trades or contractors, time being of the essence of this Subcontract. Any Artists' dates furnished by the Subcontractor and approved by Contractor and Owner for delivery of materials, samples, shop drawings, etc., shall become a part of this Subcontract. Subcontractor shall furnish information requested by the Contractor in connection with monitoring and updating the Project schedule and shall immediately notify Contractor in writing of any interruption of the work or late delivery which causes or may cause a delay in Subcontractor's performance. No extension of completion date shall be permitted unless approved in writing by the Contractor and Owner, and Subcontractor shall be responsible for any losses or penalties incurred by Contractor as a result of delays in completing Subcontractor's work. If Contractor determines that the Subcontractor is behind schedule or will not be able to maintain the schedule, Subcontractor shall submit a remedial plan to recover, shall work overtime, shift work, or work in an altered sequence, if deemed necessary in the judgment of the Contractor to maintain the progress of the work. Any such overtime, acceleration, shift or altered sequence work required to maintain progress or to complete the work on a timely basis shall be at Subcontractor's expense and shall not entitle Subcontractor to an extension of time or additional compensation. Contractor may supplement Subcontractor's forces, at Subcontractor's expense, if deemed necessary by the Contractor to maintain the Project schedule. Subcontractor shall be liable to the Contractor for any delay or damages, including consequential or liquidated damages, threatened or assessed against the Contractor to the extent caused by the Subcontractor.

(b) To the fullest extent permitted by applicable law, Contractor shall have the right at any time to delay or

suspend the work or any part thereof without incurring liability therefore. An extension of time shall be the sole and exclusive remedy of Subcontractor for any delays or suspensions suffered by Subcontractor but only to the extent that a time extension is obtained from the Owner, and Subcontractor shall have no right to seek or recover from Contractor any damages or losses, whether direct or indirect, arising from or related to any delay or acceleration to overcome delay, and/or the impact or effect of such delays on the Work.

(c) Subcontractor shall cooperate fully with Contractor in providing promptly any information requested by Contractor in connection with preparation of schedules for the Project, including, but not limited to, detailed information concerning the sequence, beginning and ending dates of activities, cost breakdowns related to such activities, and any information requested for Critical Path Method scheduling used for the Project. The costs of all such activities on the part of Subcontractor are included in the Subcontract Amount.

(d) In the event of any dispute under this Subcontract or as to the work to be performed, Subcontractor shall continue to diligently perform the work as directed by Contractor without interruption, deficiency or delay.

ARTICLE 5. PAYMENT.

(a) Payment of amounts due under the Subcontract, shall be made as follows: The Contractor shall pay to the Subcontractor an amount equal to ninety percent (90%) or such higher percentage as required by applicable law of the value of the Work performed by the Subcontractor as determined by the Architect and approved by the Contractor during any calendar month within fifteen (15) days after payment therefor has been received by the Contractor from the Owner, or within such shorter period specified by applicable law, statute or regulation. The Contractor shall be under no obligation to make any payment to the Subcontractor except to the extent that the Contractor has received funds from the Owner for the work invoiced by the Subcontractor; that is to say, the Subcontractor shall not be entitled to payment if for any reason, the Owner fails to pay the Contractor in accordance with the General Contract, such payment from the Owner being a condition precedent to any obligation of Contractor to Subcontractor. Retainage and any other balance of the Contract Amount shall be payable fifteen (15) days or within such shorter period specified by applicable law, after the work under this Subcontract has been completed and accepted by the Owner, Architect, and Contractor and following approval by the Architect of the final application for payment and settlement of all claims, if any, under this Agreement, provided that Subcontractor has fully performed all of its obligations hereunder. The Contractor is hereby authorized to deduct and offset from any payment an amount equal to any and all sums or obligations owing by the Subcontractor to the Contractor and costs necessary to complete the work to be performed under this Subcontract, and any and all claims liquidated or unliquidated, by the Contractor against the Subcontractor, arising hereunder, under any other contract or agreement between the Subcontractor and the Contractor or from any other liability or obligation of the Subcontractor to the Contractor whether under this Subcontract or otherwise.

(b) The Subcontractor agrees to submit to the Contractor applications for payment by the 25th of each month, or at such other time as provided in the Contract Documents so as to enable the Contractor to timely apply to the Owner for payment. As a condition precedent to the payment of any application, the Subcontractor shall (1) provide waivers of mechanics lien rights and claim releases in the form required by Contractor by Subcontractor and all persons supplying labor or materials to the Subcontractor on the Project through the period covered by the application; or (2) submit such other evidence as the Contractor may require that charges for all labor and material have been paid. Any payments made by Contractor to Subcontractor are to be held in trust by Subcontractor for the payment of any lower tier Subcontractor or supplier. The Contractor shall have the right to contact Subcontractor's suppliers and Subcontractors of any tier, direct or indirect, to determine the current status of indebtedness and Subcontractor authorizes them to provide such information. Contractor in its discretion may make checks payable jointly to Subcontractor and the supplier or subcontractor or directly to the supplier or subcontractor for the account of the Subcontractor.

(c) Payment by the Contractor to the Subcontractor or for its account shall not be deemed to be an admission or approval by the Contractor of the sufficiency of the work covered by the payment.

(d) Notwithstanding any other provisions of this Agreement, Contractor shall be under no obligation to make any payment to the Subcontractor under any provision hereof except to the extent that Contractor has received funds from Owner, payment by Owner being a condition precedent to payment of the Subcontractor. Notwithstanding the foregoing, nothing in this Subcontract shall be construed to prohibit Subcontractor from pursuing its rights, if any, to a mechanic's lien or statutory bond claim in the event that non-payment of the Subcontractor was caused by the failure of the Owner to pay Contractor amounts legally due. Subcontractor further agrees that, prior to exercising its rights or filing any claims, if any, against the Contractor or any surety for non-payment caused by the failure of the Owner to pay Contractor amounts legally due, Subcontractor shall first timely exercise and exhaust any rights and remedies that may exist with respect to enforcing a mechanic's lien on the Project.

(e) Contractor may apply any payments otherwise due Subcontractor hereunder to any other indebtedness, liability or obligation of Subcontractor to Contractor whether under this Subcontract or any other agreement or circumstance.

ARTICLE 6. ADDITIONAL OR OMITTED WORK.

(a) In the event that the Contractor directs Subcontractor to perform additional work, Subcontractor agrees that it will promptly perform and diligently complete such work whether or not Contractor and Subcontractor have agreed on the cost of such work. Subcontractor shall submit to Contractor a lump sum proposal for such work, which proposal shall include a detailed cost breakdown for each component of the work, indicating both quantities and unit prices, and such proposal shall be submitted to Contractor not later than 7 days after Contractor directs Subcontractor to perform extra or additional work or such lesser period if required by the Contract between Owner and Contractor. If a lump sum price or unit price for the additional work cannot be agreed upon, or Subcontractor fails to submit such proposal within 7 days after Contractor directs Subcontractor to perform extra or additional work, Subcontractor agrees to do the work on the basis of its actual cost plus percentage fees for overhead and profit as set forth in Article 10. The Contractor shall not be liable for payment for any additional work performed by the Subcontractor unless such work is first expressly authorized by the Contractor in writing and payment is made by the Owner to the Contractor for such

extra work, payment by Owner to Contractor being a condition precedent for Contractor to pay Subcontractor for such work. Both authorization in writing by the Contractor and actual payment by the Owner to the Contractor for such extra work shall be conditions precedent to Contractor's obligation to pay Subcontractor for such additional work. Any additional compensation or time to be given to Subcontractor shall be set forth in a contract supplement and shall constitute a full and final equitable adjustment of compensation, time or any other alleged entitlement, known or unknown, arising in connection with the facts and circumstances described in and which gave rise to such contract supplement and Subcontractor waives all damages, direct, indirect and consequential, relating to such facts and circumstances, including, but not limited to, impact, reduced productivity, interference by other trades, lack of coordination of the work by Contractor, inefficiencies, acceleration, delays, extended overhead, diminished bonding capacity or lack thereof.

(b) In the event that the Subcontractor performs any such authorized additional work on any basis, it shall furnish each day to the representative of the Contractor, duplicate payroll sheets, timesheets, material tickets, equipment charges, and a statement or slips for all other charges, relating to each thereof and securing on each thereof the signature of the duly authorized representative of the Contractor. Such signed copies of payroll sheets, timesheets, material tickets, statements and slips shall accompany the application for payment.

(c) Should the Contractor during the execution of this Contract require the Subcontractor to omit any work embraced within the terms of this Subcontract, said omission being for the account of the Owner, the Contractor, or any other subcontractor on the work, the Subcontractor agrees to omit such work and the Contractor will deduct from any amounts due the Subcontractor the value of such omitted work as reasonably determined by Contractor.

5.1(d) In the event of any dispute, controversy or claim for additional compensation or time extensions, except for payment for extra or additional work expressly directed by Contractor in accordance with Section 6 (a) of this Subcontract, the compensation for which shall be fully and finally governed by Section 6 (a) of this Subcontract and for which no further claim can or shall be made, notice in writing shall be given to the Contractor no later than seven (7) days following the occurrence on which such claim is based, unless the notice provision in the General Contract between the Owner and Contractor is less than seven (7) days, in which case Subcontractor shall give notice to Contractor within 2 days less than the time required for Contractor to give notice to the Owner according to the notice provision in the General Contract. Such notice shall describe the dispute, controversy or claim in detail so as to allow Contractor to review its merits. Such notice shall also provide detailed information to substantiate such claim including supporting documentation and calculations, and including any information requested by Contractor. Any claim not presented within such time period shall be deemed waived by Subcontractor.

(e) If the Subcontractor shall make any claim against the Contractor for extra work or additional compensation for which the Owner or its agents may be liable, the Contractor may present such claim or claims to the Architect and/or Owner for determination and decision provided (1) such claim is not, in the judgment of the Contractor, made in bad faith, (2) Subcontractor has given notice in accordance with Article 6 (d) and in the form required by the General Contract, and has presented the claim to Contractor within the time required by Article 6 (d); (3) Subcontractor has been requested in writing that Contractor present the claim and has agreed in writing, on terms satisfactory to Contractor, to pay all costs of Contractor in presenting and pursuing such claim; Further, if Contractor requires that Subcontractor execute a liquidating agreement or similar agreement on terms satisfactory to Contractor further memorializing the understanding of the parties in connection with the presentation of such claims Subcontractor shall execute such agreement as a precondition for Contractor to submit such claim. Presentation of the claim by Contractor shall not be construed as an acknowledgment of the validity thereof or a waiver of any right of the Contractor, and such action shall be without prejudice to its rights. If the claim is presented by the Contractor to the Architect and the Owner, the decision of the Architect and/or Owner shall be final and binding upon the Subcontractor to the same extent and purpose that it is final and binding on the Contractor.

(f) No additional time or compensation will be allowed for weather delays or difficulties or inconveniences arising from mud, dust, water, ice, snow, wind, heat or cold or similar natural or physical conditions unless permitted under the General Contract and a claim therefore is made as set forth in Section 6(e). Contractor assumes no responsibility for material received, unloaded or stored for or by Subcontractor. Materials, tools, supplies, equipment, etc., belonging to or leased by Subcontractor are its responsibility and no claim for missing or stolen property will be allowed. Contractor shall not be required to provide hoisting facilities or temporary power, water or heat unless otherwise provided herein.

(g) Contractor may direct Subcontractor to work overtime or premium time and Subcontractor shall comply with such directions. If approved in advance in writing by Contractor's authorized representative, Subcontractor may be reimbursed for such work but only for the difference between regular time and overtime for direct payroll cost and the related payroll taxes, insurance, and benefits, and shall not be entitled to any additional compensation for overhead or profit or for inefficiencies or declines in productivity or other impacts. Subcontractor shall be responsible for the costs of overtime work caused by failure of Subcontractor to provide sufficient manpower, materials, progress of the Work, or otherwise meet its obligations hereunder.

## ARTICLE 7. DEFAULT.

(a) In the event the Subcontractor shall, in the judgment of the Contractor, (1) become unable to fulfill its financial obligations, become insolvent, or file or have filed against it any petition in bankruptcy, make an assignment for the benefit of creditors, or commence or have commenced against it or enter into any other proceeding or arrangement for relief of debtors, reorganization or deferral or discharge of debts, (2) fail to pay when due, for materials, supplies, labor, taxes, or other items purchased or used in connection with the work, (3) fail to pursue the work in accordance with this Subcontract and the schedules established by the Contractor, (4) fail to supply sufficiency of properly skilled supervisors, workmen, or of materials, tools, equipment, or supplies of the proper quality (including failure occasioned by a strike, picketing, boycott, or other cessation of work by Subcontractor's employees), (5) interfere with or disrupt, or threaten to interfere with or disrupt the operations of the Contractor, the Owner, or any other laborer, tradesmen, supplier, subcontractor or other person working on the job, whether by reason of any labor dispute, picketing, boycotting, or by any other reason, (6) violate any applicable federal, state, or local laws or

violations, (7) advise Contractor or demonstrate to Contractor that Subcontractor will be unable to timely and adequately perform any of its obligations under this Subcontract, or (8) commit any other breach of this Subcontract, then any such event shall immediately with no further action or notice required on the part of the Contractor, constitute a default by the Subcontractor under this Subcontract, and any such event shall be deemed to be a breach of this Subcontract. The Contractor will give the Subcontractor written notice of default. Upon receipt of such notice, Subcontractor shall have two (2) days in which to cure any such default provided, however, that if, in the judgment of the Contractor, such default cannot be cured within a two (2) day period after such notice, or Subcontractor has advised Contractor or Contractor has otherwise determined that Subcontractor is unable to cure or remedy said default, the Contractor will notify the Subcontractor of default but the Subcontractor will not have any right to cure such default and the Subcontractor may be terminated immediately. In the event of a default for which there is no right to cure as provided hereinabove, or in the event of the expiration of the 2-day cure period set forth hereinabove without all such defaults having been fully cured, the Contractor may terminate this Subcontract, take possession of all or any materials, labor and items wherever located, supplies, equipment and tools pertaining to the Project, whether on the Project site, in the Subcontractor's premises, or in transit, and may make independent arrangements for completion of the work. Subcontractor grants to Contractor a right of entry into any premises owned or leased by Subcontractor for the foregoing purposes. The amount of completion cost, as well as any other costs, damages, or expenses, including Contractor's legal fees and expense, incurred as a result of such default shall be charged against any unpaid balance due to the Subcontractor under this Agreement or under any other agreement between Contractor and Subcontractor, and if said total costs, damages or expenses shall exceed the balance due, the Subcontractor agrees to pay the amount of said excess immediately upon demand of the Contractor. The materials, supplies, equipment and tools taken by the Contractor may be used in completing the Project and may be incorporated into the improvements being constructed. With respect to any of such items incorporated into the Project, or consumed in the job, the net reasonable value of the same as of the date of taking shall be taken into account in the calculation of the aforesaid total completion costs, damages, and expenses. With respect to any such items which are not so incorporated or consumed, or which have a salvage value, the Contractor may, at its option (1) assume title to the same or any part of the same, as of the date of default and take into account the net reasonable value thereof as of the date of taking in the calculation of the total completion cost, damages, and expenses or (2) return the same to Subcontractor and take into account the net reasonable value of the use thereof by Contractor in the calculation of the said total completion cost, damages, and expenses.

(b) In addition to, and not in substitution of, the remedies herein above specified, Contractor may immediately, in the event of default or failure of Subcontractor to perform its obligations hereunder, provide or arrange for such workmen and materials necessary to continue and complete the work contracted for hereunder for the account of the Subcontractor and at Subcontractor's cost and expense; and apply any and all funds due or to become due to the Subcontractor thereto, all without terminating, rescinding or voiding this Subcontract or releasing the Subcontractor from any liability hereunder or from any damages caused by Subcontractor's failure to perform.

(c) In the event of a default by the Subcontractor under this Subcontract all sums and obligations owing to the Contractor by the Subcontractor in any right or capacity, whether under this Subcontract or otherwise, immediately shall become due and payable to the Contractor.

(d) In the event the Contractor does not terminate this Subcontract, but assents to delayed completion of the work by the Subcontractor, such assent shall not be construed as a waiver of the Subcontractor's obligation to reimburse the Contractor for any costs, damages, or expenses incurred as a result of such delay; and all such costs, damages, and expenses shall be paid or reimbursed to Contractor upon demand.

(e) In the event that Contractor wrongfully exercises any of its rights under this Article 6, Subcontractor's sole and exclusive remedy shall be payment of the Subcontract Amount for the portion of the Subcontract performed by Subcontractor, and Subcontractor hereby waives any and all other rights, claims and remedies under this Subcontract and/or at law.

ARTICLE 8: RELEASES OF CLAIMS AND WAIVER OF LIENS.

Subcontractor agrees to provide to Contractor and to provide and obtain from its subcontractors and suppliers of all tiers, executed releases of claims and/or waivers of liens and lien rights in the form required by Contractor and at such times as may be requested by Contractor. Subcontractor shall hold all monies paid by Contractor in trust for the payment of lower tier subcontractors and suppliers, promptly apply all payments made hereunder to Subcontractor's cost for labor and materials for the Project, and shall further take any and all necessary actions to keep the Project free and clear of all claims for liens and any and all claims against Contractor or Owner or any bonds posted by either of them in connection with the Project. In the event that any person furnishing labor or materials to the Subcontractor files a notice of intent to place a lien on the Project or files a lien on the Project or files a notice of claim or makes a claim against the Contractor or Owner or any bonds posted by either of them in connection with the Project, Subcontractor shall promptly but in no event later than any time required for a release bond to be posted under the General Contract take all necessary steps to have such notice or lien or claim withdrawn, including, if requested by Contractor, the posting of a bond. In the event that Subcontractor does not fulfill its obligations under this Article 8, Contractor may take all actions which it deems reasonable or necessary to protect the Project from liens and claims and the costs of any such actions (including the cost of posting a release bond and attorney's fees) shall be deducted from amounts payable by Contractor to Subcontractor under this Agreement or any other agreement or circumstances Subcontractor shall remain liable in the event that monies payable to it are insufficient to pay any damages or expenses arising from such liens.

ARTICLE 9: MISCELLANEOUS.

(a) The Subcontractor shall not sublet, assign or transfer this Contract or any part thereof, or the money due or to become due under it, without the written consent of Contractor, and any assignment or transfer without such consent shall be void. Subcontractor hereby assigns to Contractor, upon termination of this Subcontract for any reason prior to its complete performance, all of subcontractor's rights in and to any agreements or purchase orders for labor or

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materials, equipment or services related to the Project, as well as shop drawings, plans, specifications, or millies documents prepared by or on behalf of the Subcontractor and such assignment shall create no rights in any other person unless accepted by Contractor. Contractor may assign this Subcontract, including but not limited to the Owner, the Owner's lender, or other entities as required by the Owner, to another contractor upon termination of the General Contract, or to any other persons or entities as required by the General Contract.

(b) The Subcontractor shall not cause any unnecessary interference with or delay to the Contractor or to other subcontractors on said Project and shall repair promptly and be responsible for all damage done to the work of the Contractor or other subcontractors by Subcontractor, its agents, employees, subcontractors, or suppliers. Subcontractor shall be directly responsible to the Contractor or other subcontractors whose work is so damaged. The Contractor shall be responsible to the Subcontractor for physical damage to Subcontractor's work only if such damage is directly and proximately caused by the sole negligence of the Contractor.

(c) The Subcontractor shall clean up and remove daily from the job site dirt, trash and debris arising from its work as directed by the Contractor. In the event the Subcontractor fails to clean up and remove such dirt, trash and debris, the Contractor may, at its discretion, arrange for the same at Subcontractor's expense.

(d) To the fullest extent permitted by applicable law, Subcontractor agrees to defend, indemnify and hold harmless the Contractor and/or Owner, their officers, directors, agents and employees, from and against any and all claims, suits, liens, judgments, damages, losses and expenses, including, but not limited to, attorney's fees, arising in whole or in part and in any manner from the acts or omissions of the Subcontractor, its officers, directors, agents, employees or subcontractors, in the performance of this Contract, regardless of whether such loss, claim, suit, judgment damage, loss or expense is caused in part by a party indemnified hereunder. Nothing herein shall be construed to require Subcontractor to indemnify Contractor and Owner and/or their respective officers, directors, agents and employees from the sole negligence of Contractor or Owner, and/or their respective officers, directors, agents and employees. The Subcontractor shall defend and bear all costs of defending any actions or proceedings brought against the Contractor and/or Owner, their officers, directors, agents and employees, arising in whole or in part but of any such acts or omissions; provided, however, that the Contractor and/or Owner shall have the right to approve counsel to conduct such defense. Nothing herein shall be construed to create an indemnity obligation prohibited by applicable law or to waive Subcontractor's rights against any other subcontractor or supplier which may have contributed to causing the injury or damage. In claims against any person or entity indemnified under this Section by an employee of the Subcontractor or Sub-Subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation in amount or types of damages, compensation or benefits payable by or for the Subcontractor or Sub-Subcontractors under workers' compensation acts, disability benefits, acts or other employee benefit acts;

(e) Subcontractor acknowledges that, before executing this Agreement, it has carefully examined this Agreement, the Contract Documents and the Project site, has made such investigation of the Work required to be done and the material required to be furnished and, based upon such examination and investigation, Subcontractor represents that it fully understands and can perform all requirements of the Contract Documents.

(f) With regard to the subject matter of this Subcontract: (1) Subcontractor shall have no greater rights and/or remedies against Contractor with respect to any matter (including, but not limited to, omissions, alterations, extra work and additional compensation) than Contractor has against Owner pursuant to the Contract Documents; (2) Subcontractor assumes all obligations, duties and responsibilities by which Contractor is bound to Owner pursuant to the Contract Documents; (3) Subcontractor shall be bound to Contractor to the same extent that Contractor is bound to Owner by all of the terms, provisions and conditions set forth in the Contract Documents; and (4) Owner shall have all rights and remedies against Subcontractor that Owner has against Contractor pursuant to the Contract Documents.

(g) The Contractor shall have the right at any time, and for any or no reason, including for convenience, to terminate this Subcontract and require the Subcontractor to cease work thereon. The Subcontractor, in such event, shall be entitled to further payment only as provided in Article 5. The Subcontractor agrees to be bound by any and all provisions in the General Contract respecting renegotiation as well as termination for any reason.

(h) Subcontractor agrees to clearly note on each payment check to, and related invoice of, its subcontractors and suppliers which exceed One Thousand Dollars ($1,000.00), as being for work or materials provided pursuant to this Agreement for this Project by them, all to be subject to Contractor's inspection upon request. Subcontractor also agrees to submit promptly to Contractor, upon request, the name, address and telephone number of each subcontractor or supplier of any tier to Subcontractor for labor, materials, or equipment used on this Project. Contractor may contact any such subcontractors and suppliers and Subcontractor authorizes them to provide Contractor with any requested information.

(i) The Subcontractor warrants its workmanship and materials furnished against any defects, faults or damages; his/she therefrom during the period of construction, and for a period of one year from the date of final completion of the Project (or for such longer period of time as may be required herein or by the Contract Document(s). The Subcontractor shall remedy such defective workmanship, materials, or damages at the request of the Contractor, at times convenient to the Owner and to the satisfaction of Owner, Architect and Contractor.

(j) Subcontractor shall comply with all applicable federal, state, and local laws and regulations by which it is bound and shall perform this Subcontract in strict conformity with applicable laws, codes, ordinances, rules, regulations and requirements of Federal, State, County and Municipal authorities and of the National Board of Fire Underwriters and any local Fire Underwriters, and any local fire insurance exchange now or hereafter in effect. In the event of any discrepancy between the present requirements of such laws or authorities and the provisions of this Subcontract, the former shall govern, and the Subcontractor shall perform the work as required thereby at no extra cost. Should the Subcontractor incur additional costs because of any future change in such requirements, additional compensation under shall be subject to Articles 5 and 6 hereof. If the Subcontractor performs any work or is otherwise in violation of any such laws, codes, ordinances, rules, regulations or requirements, it shall bear all costs arising or resulting therefrom.

(k) Subcontractor shall be represented on the job site during the course of its work by qualified, full-time supervisors acceptable to Contractor. The Contractor shall have the right to require at any or all progress meetings

whether called by the Owner, the Contractor, or others, the presence or representative of the Subcontractor authorized to act in its behalf. All work hereunder shall be performed by persons well qualified and experienced in the kind of work to be performed and licensed as required by law. Subcontractor shall enforce discipline and good order among its employees, suppliers, and subcontractors engaged in the work. Contractor may require Subcontractor to remove from the project any such employees, suppliers, or subcontractors or others employed on the work that Contractor may deem incompetent, improper, or in hindrance to progress of any work on the Project, whereupon any such employee, supplier, or subcontractor shall be so removed and shall not again be employed on any part of the work without written consent of the Contractor.

(l) The Subcontractor agrees that it shall not engage in discriminatory employment practices in violation of any Federal, State, or local law, or Owner requirements regarding employment discrimination, including any order or regulation of any agency authorized to enforce any such law. To the extent applicable, the Subcontractor agrees to comply with Title VII of the Civil Rights Act of 1964, Executive Order 11246, and all additional orders, regulations, amendments, etc., pertaining thereto, including certification of non-segregated facilities. The Subcontractor agrees to furnish such additional information, certifications, and policies as may be required by the Contract Documents. The Subcontractor agrees to comply with all applicable rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Rehabilitation Act of 1973, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, and the Americans With Disabilities Act of 1990.

(m) Subcontractor shall comply with all applicable federal, state and local laws, regulations and orders relating to occupational safety and health, and related procedures established by Contractor and shall, to the extent permitted by law, indemnify and hold Contractor and Owner, their directors, officers, agents and employees harmless from any and all liability, public or private, penalties, contractual or otherwise, losses, damages, costs, attorney's fees, expenses, causes of action, claims or judgments resulting from a claim filed by anyone in connection with the aforementioned acts or any rule, regulation or order promulgated thereunder, arising out of this Agreement or any subcontract hereunder. Subcontractor further agrees in the event of a claim of violation of any such laws, regulations, orders or procedures arising out of or in any way connected with the performance of this Agreement, Contractor may immediately take whatever action is deemed necessary by Contractor to remedy the claim of violation. Any and all costs or expenses paid or incurred by Contractor in taking such action shall be borne by Subcontractor, and may be deducted by Contractor from any payments due Subcontractor. Subcontractor shall have the primary responsibility to safeguard and protect its employees on the Project from injuries as well as any other persons or property which could be affected by Subcontractor's operations on the Project. In addition but not in substitution for Subcontractor's primary responsibility for safety, the Subcontractor agrees to (1) comply with all safety rules and regulations and work practices and procedures established by the Contractor and/or the Owner; (2) take all necessary steps to promote safety and health on the job site; (3) cooperate with Contractor and other contractors in preventing and eliminating safety and health hazards; (4) train, instruct and provide adequate supervision to assure that its employees are aware of, and comply with, applicable Federal and State safety and health laws, standards, regulations and rules, safe and healthful work practices and all applicable safety rules, regulations, and work practices and procedures of the Contractor; (5) not create any hazards or expose any of its employees, employees of the Contractor or employees of contractors to any hazards; (6) immediately abate all hazards within its control regardless of whether it created such hazard; and (7) where the Subcontractor is aware of the existence of a hazard not within its control, notify the Contractor of the hazard as well as warn exposed persons to avoid the hazard.

(n) In the event of variations, conflicts, ambiguities or inconsistencies between or among the terms, provisions or conditions of this Subcontract and any other Contract Documents, the terms, provisions and conditions which grant greater rights or remedies to Contractor or impose higher standards with regard to the obligations, responsibilities and scope of work of the Subcontractor shall control. Notwithstanding any other provisions of this Subcontract or of the Contract Documents, no provision hereof shall be construed to permit Subcontractor to pursue against the Contractor rights and remedies available to the Owner against the Contractor in the General Contract unless such rights and remedies are specifically and explicitly made available to the Subcontractor herein. In particular, disputes hereunder shall not be resolved by arbitration, but rather shall be resolved by litigation unless Contractor directs Subcontractor in writing to arbitrate a specific dispute. In the event that arbitration is provided in the General Contract for disputes between Owner and Contractor or Contractor otherwise chooses, at its sole discretion, to submit a matter to arbitration, Subcontractor agrees, upon request of Contractor, to submit any disputes as determined by Contractor in its sole discretion, to arbitration, and, if necessary, consolidation of said disputes with any arbitration or administrative proceedings between Contractor and Owner or any other party.

(o) The Subcontractor agrees to provide and furnish prior to commencing work, certificates in duplicate of insurance covering its work under this Contract for Worker's Compensation, General Liability Insurance to include Bodily Injury and Property Damage Insurance, and other insurance with limits and coverages as set forth in the Contract Documents or in Exhibit A attached hereto whichever is greater. All policies of insurance shall be in "occurrence" form and with companies and in amounts acceptable to the Contractor, and shall not be subject to modifications or cancellation during the term of the work hereunder without thirty (30) days prior written notice to the Contractor by certified or registered mail. Subcontractor will not change or terminate said policies without the written consent of the Contractor. The Subcontractor accepts exclusive liability for contribution for, or premiums for Unemployment Compensation, Social Security Withholding Tax and Worker's Compensation.

(p) The Subcontractor agrees to furnish a bond guaranteeing its performance of this Subcontract and the payment of its subcontractors and suppliers, if so requested by the Contractor, in amount and form and with such surety as are acceptable to the Contractor. The cost of the bond shall be paid by Subcontractor unless otherwise provided herein. Subcontractor shall be deemed not to have provided a bond meeting the requirements of this Subcontract in the event that the bond is conditioned upon the payment of monies due Subcontractor hereunder to an escrow agent or other third party who will disburse payment to subcontractors, material suppliers or other creditors of the Subcontractor.

(q) The Subcontractor understands and agrees that it shall not deal directly with representatives of the Owner, but shall handle all matters connected with this Subcontract, the work, or the furnishing of the materials or payment therefor, exclusively through the Contractor, unless otherwise directed in writing by the Contractor.



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(r) This Subcontract shall be governed by the laws of the State of Maryland, without regard to principles of conflict of laws. Any action or suit arising hereunder shall be brought in the jurisdiction where Contractor's principal office is located without regard to principles of conflict of laws or forum non conveniens. In the event of litigation between them, Contractor and Subcontractor waive trial by jury. If requested by Contractor, Subcontractor agrees to submit any dispute under this Subcontract to arbitration under the Construction Industry Rules of the American Arbitration Association, or pursuant to any Arbitration procedure and rules governing the General Contract, if any.

(s) Neither party hereto may waive or release any of its rights under this Agreement except in writing. The waiver by either party hereto of any breach of any provision of this Subcontract shall not be construed as, or constitute, a continuing waiver, or a waiver of any other breach of any provision of this Subcontract.

(t) If any provision of this Agreement is held by a Court of competent jurisdiction or Arbitrator(s) to be invalid or unenforceable, whether in whole or in part, such provision shall be ineffective only to that extent without invalidating or rendering unenforceable any valid portions of the provision and/or any other provision of this Subcontract.

(u) The Parties agree that they have both had the opportunity to obtain the assistance of counsel in reviewing the terms of this Subcontract prior to execution, and as such this Subcontract shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

(v) Owner shall be considered a third party beneficiary of all rights under the Contract, but not the obligations. Subcontractor shall have no rights or claims directly against Owner except to the extent of any mechanic's lien rights available by statute. All other legal or equitable claims by Subcontractor, including claims against Owner of quantum meruit or unjust enrichment, are hereby waived and released. This Subcontract and the exhibits attached hereto and incorporated by reference herein contain the entire agreement of the parties with respect to the subject matter of this Agreement, and supersede all prior negotiations, agreements and understandings with respect thereto. This Subcontract may be amended only in writing signed by both Contractor and Subcontractor.

ARTICLE 10. SUBCONTRACT AMOUNT—The Contractor agrees to pay the Subcontractor for the performance of its work hereunder the following sum or sums, which shall unless otherwise specified, include all taxes, insurance premiums, charges for permits and all other fees and charges, and shall be firm and binding on the Subcontractor for the work and not conditioned upon a firm completion date or on any labor increases or material escalation costs which might occur during the course of construction: TEN MILLION NINE HUNDRED NINETY-SIX THOUSAND SIX HUNDRED SIXTY-NINE DOLLARS ---------- $10,996,669

Percentage fees for overhead and profit for extra work, subject to the provisions of Article 6 hereof, shall be: 10% for work performed by Subcontractor's own forces and 5% for work performed by its subcontractors and suppliers. Subcontractor shall likewise be entitled to 10% for work performed by their own forces and 5% for work performed by their contractors and suppliers. No fee will be allowed on overtime premiums. Such percentages include all office overhead and supervision above the foremen level.

ARTICLE 11. CONTRACT ALTERATIONS AND OMISSIONS—Any terms and conditions, to the extent inserted or added as part of an exhibit hereto by Contractor into this Subcontract, are hereby acknowledged by both parties to form a part of this Subcontract. In the event any terms and conditions are inserted or added as part of an exhibit hereto by Subcontractor, such terms and conditions shall only become part of this Subcontract if, and only if, each such term or condition is initialed by both Parties. In the event of conflict between any such properly added terms and conditions, and the standard terms in this Subcontract, the added terms and conditions shall prevail. In the event any such changes to this Subcontract form, including alterations and omissions noted thereon, are inconsistent with the requirements of the second sentence of Article 3(a), the requirements of the second sentence of Article 3 (a) shall prevail in all respects.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

SUBCONTRACTOR:
Mohave Electric

BY: _____
SIGNATURE
Troy Nelson, President
PRINTED NAME AND TITLE
DATE: 2/11/10

WITNESS: _____

CONTRACTOR:
THE WHITING-TURNER CONTRACTING COMPANY

BY: _____
SIGNATURE
Paul Schmith, Vice President
PRINTED NAME AND TITLE
DATE: 2/11/10

WITNESS: _____

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Initialed by: Contractor _____ Subcontractor _____

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## LIST OF EXHIBITS

The Exhibits listed below are hereby incorporated into this Subcontract:

Exhibit A – Insurance
Exhibit B – Scope of Work
Exhibit C – Document Log dated "11/24/09"
Exhibit D – Project Schedule dated "12/17/09"
Exhibit E – High Rise Fire Protection Report dated "09/04/09"
Exhibit F – Geotechnical Reports:
- Geotechnical Results Report dated 10/03/2008
- RV Tee Lateral Load Analysis dated 07/20/2009
- Asphalt Pavement Design Am 1 dated 02/06/2009
- Permanent Dewatering System Evaluation dated 06/18/2009
- Environmental Sampling Results dated 07/20/2009
- Environmental Sampling Results Borehole B7 dated 07/20/2009
- R-Value Report dated 11/10/09
- R-Value NDOT Approval Letter dated 11/25/09

Exhibit G – Asbestos Survey dated 10/25/2007
Exhibit H – Block C Asbestos Survey dated 12/18/09
Exhibit I – Project Manual:
- LEED Program
- Site Specific Safety Program
- Staging and Logistics
- Project Specific Quality Control Program
- WT Procedures and Standard Forms
- Diversity Supplier Information

Exhibit K – Labor Rates
Exhibit L – Work Completion Agreement – Pending
Exhibit M – Letter of Assent – Pending

EXHIBIT A

INSURANCE

GENERAL INSURANCE REQUIREMENTS

1. Prior to commencement of any Work on the Project, Subcontractor shall, at its own expense, maintain, during the term of this Subcontract and any extensions thereof, the following insurance in the forms and with limits to satisfy both the requirements listed on this Exhibit A and those specified by the Subcontract and/or any other applicable Contract Documents.

All insurance policies must be from insurers authorized to conduct business within the state(s) where the project(s) is located. The insurance companies must also have a Best's Rating of at least "A-" and a financial size of "Class VII" or better. Subcontractor shall disclose and shall be responsible for payment of any deductibles or self insured retentions under these policies.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE

This insurance will pay the subcontractor's obligations under statutorily mandated Worker's compensation statutes, including federal benefits under the U.S. Longshore and Harbor Workers Compensation Act, the Federal Employers' Liability Act and the Jones Act, covering all employees who perform any of the obligations of the Subcontractor under this Subcontract.

Employers liability coverage shall provide limits of at least $500,000 each accident for bodily injury and $500,000 each employee for disease. The policy limit for disease shall be at least $500,000.

For Connecticut projects: Subcontractor hereby agrees that Whiting-Turner is reimbursing Subcontractor a sufficient amount as payment for the Workers Compensation Premium for its workers on this Project.

COMMERCIAL GENERAL LIABILITY INSURANCE

This insurance must be written on an "occurrence" basis, responding to claims arising out of occurrences which take place during the policy period. The commercial general liability form should provide limits of at least the following:

| | |
|---|---|
| $1,000,000 | each occurrence for bodily injury and property damage |
| $1,000,000 | each incident for personal and advertising injury |
| $2,000,000 | products-completed operations aggregate |
| $2,000,000 | general aggregate |

The general aggregate limit shall apply separately to each project. The products and completed operations coverage is to be maintained for a period of at least two years following the completion of the work. The Whiting-Turner Contracting Company is to be included as an additional insured.

The contractual liability coverage shall include protection for the subcontractor from claims arising out of the liability assumed under the indemnification provisions of the Subcontract. There shall be no separate exclusion for liability arising out of explosion, collapse and underground hazards (XCU) or subsidence, if the scope of subcontractor's work involves digging, excavation, grading, or use of explosives.

BUSINESS AUTOMOBILE LIABILITY INSURANCE

This insurance shall apply to any auto, including all owned, hired and non-owned vehicles, in a combined single limit of at least $1,000,000 each accident. For those subcontractors subject to the Motor Carrier Act of 1980, the Motor Carrier Act endorsement # MCS-90 should be attached to the policy, with a primary limit of at least $1,000,000 each accident.

Any statutorily required "No-Fault" benefits and uninsured/underinsured motorists coverage should be included. Any deductible under this policy must be disclosed and will be fully assumed by the subcontractor.

UMBRELLA EXCESS LIABILITY INSURANCE

This insurance must provide coverage in excess of the limits of employers' liability, commercial general liability and business automobile liability. The policy should provide for a limit of at least $5,000,000 each occurrence and a $5,000,000 aggregate and include coverage as broad as the primary insurance.

CERTIFICATES OF INSURANCE/ADDITIONAL INSURED REQUIREMENTS

Prior to commencing work and throughout the Subcontract term and any extensions thereof, as a material term of the Subcontract, Subcontractor shall provide Whiting-Turner with certificates of insurance using the ACORD form or its equivalent executed by a duly authorized representative of each insurer and with copies of any necessary riders or endorsements attached, in a form reasonably acceptable to Whiting-Turner, evidencing that Subcontractor's insurance coverage is in compliance with the insurance requirements set forth in this Exhibit A and in the Contract Documents.

All insurance policies shall be endorsed to provide at least 30 days prior written notice to Whiting-Turner of cancellation, non-renewal, or material change of any insurance provided pursuant to this Exhibit A. The following wording (or similar wording) endeavor to" and "but failure to mail such notice shall impose no obligation of liability of any kind upon the company, its agents or representatives." in the Certificate of Insurance or elsewhere shall not relieve the Subcontractor or Insurer of this notice obligation.

Whiting-Turner, the Owner and other entities as may be reasonably requested shall be named as an additional insured under the Commercial General Liability, Auto Liability and Umbrella Excess Liability policies of insurance, and special policies, listed below if applicable, per standard ISO endorsement forms 2010 (07/04) for ongoing operations and 2037 (07/04) for products/completed operations, or their equivalent. Coverage's shall be maintained by Subcontractor for itself and for the additional insureds for a period of at least two years following the completion of the work or for such longer period as required by the Contract Documents. Such insurance shall include cross-liability coverage as provided under standard ISO forms separation of insured clause. It is expressly agreed and understood by and between Subcontractor and Whiting-Turner that the insurance afforded the additional insureds shall be the primary insurance and that any other insurance carried by Whiting-Turner shall be excess of all other insurance carried by the Subcontractor and shall not contribute with the Subcontractor's insurance. Subcontractor further agrees to provide endorsements of its insurance policies which shall state the foregoing and to provide the following language on its insurance certificate to acknowledge compliance with these requirements; however, Subcontractor's failure to provide such endorsements or acknowledgement shall not affect Subcontractor's agreement hereunder:

*"Whiting-Turner, the Owner and (other requested entities) are Additional Insured's under these liability insurance policies on a primary and non-contributory basis and such coverage shall comply with the provisions of standard ISO endorsement forms CG 2010 (07/04) for ongoing operations and CG 2037 (07/04) for completed operations, or their equivalent. A waiver of subrogation in favor of the above-listed parties shall apply to all policies required under this Subcontract."*

WAIVER OF SUBROGATION

Subcontractor hereby waives all rights of subrogation against Owner, Whiting-Turner, the Architect and its consultants, and any of Subcontractor's sub-contractors and consultants, and their respective trustees, directors, officers, employees and agents for recovery of damages to the extent those damages are covered by any insurance policies the Subcontractor is required to maintain as set forth herein. Subcontractor agrees to obtain, at its own cost, and deliver to Whiting-Turner copies of any endorsements necessary to provide such a waiver under the applicable insurance coverage.

SPECIAL COVERAGE – IF APPLICABLE

1. Mold/Fungi – If the scope of Subcontractor's work involves the construction of the building envelope (skin, windows, roof, flashings, etc), plumbing systems or HVAC systems or could cause or contribute to mold formation or the development of "mold", "fungi" or "bacteria", the Subcontractor's general liability policy shall not contain any exclusion for such exposures. If Subcontractor's general liability policy excludes such coverage, then Contractor may require the Subcontractor to carry Pollution Liability Insurance with mold specifically endorsed as a pollutant.

2. Pollution – If the scope of services or work under this Subcontract could result in a potential environmental hazard, including but not limited to, transportation, handling or abatement of hazardous substances, or involve work such as demolition, earthwork, or utilities that could result in a potential environmental exposure, Subcontractor shall purchase and maintain Pollution Liability Insurance which shall be on an occurrence basis with a limit as required by contractor, which shall be not less than $2,000,000 per claim. If Subcontractor can only provide this insurance on a "claims made" basis, such policy shall provide an "additional reporting period" endorsement providing coverage for at least two years beyond project completion or such longer period of time as specified in the contract documents.

3. Blasting – If the scope of the Subcontractor's work involves any blasting operations, Subcontractor agrees to provide specific evidence, to the satisfaction of Contractor, that the insurance policy covers such operations.

4. Professional Liability – If the scope of Subcontractor's work involves the performance of any design/engineering as part of its scope of work, and Subcontractor's general liability policy excludes such coverage, Subcontractor and engineers working under the Subcontractor shall each have Professional Liability coverage with limits as required by Contractor, which shall not be less than: $2M per claim or the value of the Subcontract, whichever is greater. Unless otherwise agreed to by contractor, this policy shall provide an "additional reporting period" endorsement providing coverage for at least two years beyond project completion or such longer period of time as specified in the contract documents.

## EXHIBIT B

## SCOPE OF WORK

The work to be performed and materials to be furnished by the Subcontractor, as specified in Article 3 hereof and in accordance with Drawings and Specifications prepared by MA Architects (refer to Drawing and Specification Log) and Whiting-Turner's direction, are outlined as follows:

***01 GENERAL REQUIREMENTS***

1. The scope of work shall conform to plans and specifications and is to include all design services, labor, supervision, insurance, bonds, taxes, material, fabrication, delivery, installation, tools, trucking, equipment, layout, shop drawings, submittals, unloading, scaffolding, ladders, hoisting, transportation, permits, engineering, necessary drafting reproduction, (as established by Contractor), incidentals, support functions and other items or services necessary for, related to, and reasonably incidental to the proper execution and completion of the work.

2. Subcontractor shall provide all submittals six (6) Original copies, coordination drawings, shop drawings, pertinent manufacturers data, MSDS sheets (for ALL material), mock-ups, samples, etc. built (in reproducible form), procurement log (tied into schedule), etc. required to complete the work as specified by the Contract Documents. Submittals shall be coordinated to allow ample time for review, approval, fabrication and delivery prior to and in accordance with the construction schedule. All submittal data shall be received within fifteen (15) days of notice to proceed and/or contract date, whichever is sooner. Failure to provide such information in the time frame specified could result in consequential damages and/or default.

3. Prior to the commencement of work, Subcontractor shall furnish a certificate of insurance naming "The Whiting-Turner Contracting Company"; "Live work, LLC"; "QH Las Vegas, LLC"; "PO Las Vegas, LLC"; Forest City Commercial Construction Co, Inc"; "Forest City Enterprises, Inc. and their subsidiaries and affiliates"; "The City of Las Vegas"; "Pikus Manfredi Architects"; and "MA Architecture", as additional insured. The coverage's shall meet or exceed those specified in Whiting-Turner's Exhibit A. Subcontractor shall require each sub-subcontractor to have the insurance coverage required by Exhibit A. Subcontractor shall furnish Whiting-Turner evidence thereof before each sub-subcontractor commences any work.

4. Subcontractor shall submit schedule of values for approval prior to issuance of first invoice. This schedule of values will be used for progress billings.

5. Original invoices are to be submitted by the 1st of each month for work completed through the end of the month. Invoices to be notarized and submitted on Whiting-Turner's modified AIA G702 and G703 forms. No FAX copies shall be accepted. *"Pencil Draw" copy due no later than the 25th of the month. Releases of liens are to be provided with each invoice.* Union subcontractors shall submit monthly verification of current trust fund payment. If invoices are not received by the due date, that invoice shall not be processed till the next billing cycle. In addition, each subcontractor shall submit monthly certified payroll including the zip code of the employee's residence.

6. Subcontractors shall be responsible for their own worker transportation and parking. Subcontractor shall abide by the parking rules established by Whiting-Turner. Further, On-Site Parking is not guaranteed. Be advised that public roadways may be the only parking available.

7. Subcontractor shall perform daily and final clean up of debris for all work performed under this contract. In order to meet the jobsite cleanliness guidelines set forth by Whiting-Turner, Dumpsters will be provided by Whiting-Turner. This clean up shall be performed often enough to ensure no other trades are hampered by debris and/or debris causes a safety situation. Should subcontractor fail to clean work areas on a daily basis, Whiting-Turner will issue one final written notice only, giving the subcontractor 24 hours notice to correct the problem. Failure to meet the requirements within the 24 hours provided shall constitute immediate default of contract. The area will then be cleaned by alternate methods and all costs will be forwarded to subcontractor. Should the area be occupied by multiple subcontractors, the cost shall be pro-rated based on manpower on project site.

8. Subcontractor shall provide all hoisting and rigging for work under this subcontract. All hoisting and scaffolding to be in accordance with OSHA regulations, local and state agencies. All materials delivered F.O.B. jobsite shall be off-loaded by subcontractor to a designated staging point. Forty-eight (48) hour advance notice to general contractor is required.

9. Subcontractors shall clean and remove any mud, dirt, and/or debris tracked onto private and/or public roadways during construction operations or deliveries on a daily basis. Should subcontractor fail to so clean per these requirements, the area will be cleaned by alternate methods and all associated costs will be back-charged to subcontractor. Subcontractor shall follow the requirements of the Project SWPPP program.

10. Subcontractor is made aware that there is no storage space available on site. Subcontractor shall schedule delivery of materials and equipment with Whiting-Turner superintendent, this will allow scheduling crane and material hoist time for subcontractor's use. Lay down areas will be coordinated with Whiting-Turner Superintendent.

11. Whiting-Turner shall not be responsible for any security losses, theft, or damage of subcontractor's equipment or materials on or off the site.

12. Subcontractor shall be responsible for all safety barricades, temporary protection, flagmen, etc. for work performed under this subcontract. Subcontractor shall specifically provide perimeter protection to areas of work in which falls can occur (i.e. trenches, building edge, slab openings, elevator shafts, and any other open penetrations where a safety hazard could exist).

13. Subcontractor is aware that other contractors will be working in close proximity. Subcontractor is responsible for cooperating and coordinating the work with Whiting-Turner and other subcontractors to avoid unnecessary conflicts and delays.

14. Subcontractor shall be issued a copy of the proposed construction schedule realizing some activities may be performed in altered sequences as construction areas are made available.

15. *NOTE: Schedule dates and durations are of the essence. Subcontractor agrees to work overtime, shifts, nights and/or weekends as required to meet this schedule. This subcontractor shall coordinate directly with all other subcontractors as necessary to complete and maintain this schedule. Subcontractor recognizes that delays of his work activities directly affecting other trades may result in assessment of liquidated damages/consequential damages. Three-week schedules will be reviewed at progress meetings and agreement with these constitutes subcontractor acceptance. Changes to schedule will be issued with a Change Request Authorization. Subcontractor shall review and acknowledge the schedule at this time. These schedules are binding and shall be adhered to under this subcontract.

16. Subcontractor understands and agrees that all punch list work and project close-out documentation shall be completed and approved by the Owner, Architect, Engineer, and General Contractor by the date of final completion, which shall be no later than ten (10) calendar days after the date of substantial completion. Any uncompleted punch list items after this date will be completed by Whiting-Turner and back charged to appropriate subcontractor and/or vendor. Final invoices will not be processed until final completion of the work and certification of same by General Contractor, Owner, Architect, and Engineer.

17. Subcontractor shall furnish all required closeout documents. Closeout documents to consist of 6 three ring binders with operation and maintenance manuals and as-built drawings. Binders to include: table of contents, dividers, etc. As-builts to consist 1 set of reproducible and 3 set of blueline. Closeout documents on electronic media are also required.

18. Subcontractor shall submit, upon award of subcontract, manpower loading for all activities. These activities shall be broken down to day-to-day, week-to-week activities and meet the attached proposed schedule.

19. Progress meetings will be held a minimum of once a week at Contractor's field office. ALL Subcontractors (Superintendent/field foremen) are required to attend meetings to adequately control the flow of work. Failure to attend these meetings will be considered a breach of this subcontract.

Any items (schedule, pricing, submittals, etc.) discussed within the meeting will be adhered to by this subcontractor whether this subcontractor is in attendance or not. Minutes will be issued each week for previous week. Attendance is required whether subcontractor is on site or not.

20. Subcontractor understands that Whiting-Turner will be establishing break areas and guidelines for all subcontractors regarding food. At no time will beverages or food be allowed in or around any critical building system areas, i.e., mechanical rooms, power plant, electrical distribution areas, etc.

21. Visitors/Vendors shall not be allowed on site.

22. Subcontractor is aware temporary power is available at building are for small hand tools only. Any additional power necessary for welding, etc. will not be available.

23. Subcontractor is responsible for coordinating all necessary testing and inspections directly with inspections agency or local authorities. Be advised that any failed inspections of work can result in payment of re-inspection by Subcontractor. Any delays caused by lack of coordination by the Subcontractor will be the responsibility of the Subcontractor.

24. Subcontractor shall be issued one (1) full set of drawings and specifications with contract award, any additional sets must be purchased by Subcontractor. Further, for change order pricing, only one (1) set of documents will be provided and any additional sets needed will be purchased directly by this subcontractor.

25. Whiting-Turner shall provide initial building and overall site control. Subcontractor is responsible for its' own layout, field verification and engineering. Any additional layout required for this scope of work shall be the responsibility of this subcontractor. This subcontractor shall provide detailed layout of all equipment, materials, etc. Subcontractor shall verify all benchmarks and control lines before initiating work.

26. Subcontractor shall provide Whiting-Turner daily field reports complete with number of men (by classification), hours of work, areas of work, and a brief description of work performed. Subcontractor shall update weekly as-built drawings and make available to Whiting-Turner superintendents for their review. Failure to provide daily field reports and weekly as-builts will hold up monthly payment until both are up to date and correct.

27. Safety meetings will be held minimum of once a week. All subcontractor's superintendents, foremen and employees on this project are responsible for attendance. Subcontractors must hold their own safety meetings and forward a copy of the minutes to Whiting-Turner. A copy of this subcontractor's weekly safety meeting minutes must be submitted to Whiting-Turner weekly. Subcontractor shall provide a copy of their Safety Program to Whiting-Turner before initiating any work.

28. Subcontractor understands and acknowledges that all equipment inside of the building must run on clean fuels and/or have exhaust scrubbers that meet or exceed OSHA standards for interior emissions.

29. The general building permit will be provided by others; all other permits, fees, licenses, etc. that are required for performing this scope of work shall be responsibility of this subcontractor.

30. Prior to submission of first invoice, Subcontractor shall supply complete list of all suppliers, vendors, manufacturers, etc. Complete with addresses, phone numbers and contact person. Further, this list is to include weights of materials, values of materials, and location of manufacturing of materials as required for the project LEED certification application(s).

31. Subcontractor acknowledges he (subcontractor) has visited the site and is fully aware of site conditions, existing building conditions, existing site conditions, staging area, access, parking requirements, etc. Subcontractor accepts the existing conditions and has included any and all item(s) to complete this scope of work.

32. This subcontractor is responsible for all work until the owner, architect, and general contractor gives written acceptance of the work.

33. Subcontractor is responsible for all items discussed and reviewed during the scope review meeting held prior to award.

34. Subcontractor is warned that any damage to existing facilities, new construction, or appurtenances will result in back charges for repairs. Subcontractor shall and will respect work done by others.

35. Subcontractor shall provide core drilling, cutting, and patching as required to perform work. This includes restoration of surfaces to original condition if required. Cutting shall be performed as to minimize patching.

36. Subcontractor acknowledges receipt of all documents associated with this contract (i.e. listed).

37. Subcontractor understands that there will be no compensation for extra work done without written authorization from Whiting-Turner. In the event this subcontractor proceeds with changes in the work upon verbal direction, by whomsoever given, it shall constitute a waiver by subcontractor of any claim for an increase in the contract sum or extension of the contract time.

38. Subcontractor understands that all additional work performed must have a Change Request/Authorization (CR/A) number assigned. Only a Project Manager or Project Engineer can issue a CR/A number. Superintendents are not authorized to issue CR/A numbers.

39. Subcontractor understands tickets for extra work will NOT be considered, unless signed by an authorized Whiting-Turner representative and MUST have a CR/A number assigned and backed up by a written summary of all associated costs within five (5) calendar days of the performance of such work.

40. Subcontractor understands that all warranties shall be specified commencing on the date of substantial completion and/or the formal date of the Notice of Completion (as defined by the general contractor). In addition, the warranty covered under this subcontract shall be in accordance with Article 9(i).

41. Subcontractor shall comply with all Whiting-Turner and Owner Quality Control Program requirements for work performed under this subcontract. Subcontractor shall comply with the LEED compliance plan and the project waste management plan.

42. Subcontractor shall not start any work without verifying existing conditions. If Subcontractor fails to verify (i.e. survey, etc.) existing conditions and installs his (this subcontractor's) work, all costs associated will be at this Subcontractor's expense.

43. Where furnishing and installation of work is indicated by separate parties, include the following:
- Furnishing Party – Delivery to the jobsite including freight, insurance, and taxes.
- Installing Party – Receiving, detailed inventory (once item(s) are signed for, the installing party accepts total responsibility for those item(s)), unloading, storage, handling and installation.
- Forty-eight (48) hour advanced notice to Whiting-Turner is required for all jobsite deliveries.

44. Subcontractor shall submit all pricing for changes within five (5) calendar days from the date subcontractor receives documents, unless mutually agreed otherwise. All pricing must be accompanied by a detailed breakdown of the costs. LUMP SUM PRICING WILL NOT BE ACCEPTED. Non-response within the required time frame will be considered as the Subcontractor's agreement to accept Whiting-Turner's assigned value for the change, NO EXCEPTIONS.

45. Subcontractor acknowledges that the contract documents have been fully reviewed and are in compliance with all local codes and governmental regulations. In the event that any part of the work is not in compliance, subcontractor shall notify Whiting-Turner immediately.

46. Subcontractor includes excavation, trenching, backfilling and compaction as required for work performed under this subcontract. Spoils not used for backfill shall be properly disposed of off-site. Stockpiling will not be allowed. Subcontractors shall be responsible for mucking and pumping of their own excavations. Subcontractor includes all imported fill as necessary for backfill (refer to soils report).

47. Subcontractor shall familiarize themselves with details of work to be performed by other trades and take necessary action to integrate and coordinate this scope of work with other trades.

48. All rubbish resulting from the work herein specified shall be removed from the premises to the proper trash bins, by the responsible trade, as soon as it accumulates.

49. Subcontractor shall provide necessary traffic control, flagmen, delineators, signage, etc. as necessary when subcontractor's work impacts on-site or off-site vehicular or pedestrian traffic flow.

50. Subcontractor is made aware that this project has a diversity program. It is this subcontractors responsibility to make opportunities available for these firms. Subcontractor shall be expected to utilize MBE / WBE / DBE vendors and suppliers where possible and provide backup of efforts made to obtain diversity and a monthly report on actual cost expended.

51. Subcontractor is made aware that this project will fall under prevailing wages requirements. As such, subcontractor shall be required to submit certified payroll for duration of the project. Subcontractor shall submit all payroll for the month by the 5th day of the following month.

52. Subcontractor is made aware that this project is to follow the Leadership in Energy and Environmental Design (LEED) construction criteria based on LEED for New Construction, Version 2.2. The project goal is to obtain a LEED Silver rating. Subcontractors shall be required to fully comply with the LEED requirements for this project.

53. Subcontractor must provide a LEED submittal form for each product used or installed on-site. This submittal shall contain the manufacturer's location, location of product extraction or harvest, cost of material, post-consumer and pre-industrial recycle content (including) product data to verify, and MSDS if applicable along with other data as requested. All subcontractors shall comply with the specified LEED requirements identified in the specifications for which they are responsible. Strict adherence to the specifications is required, as varying products or materials could result in the project failing to get the desired certifications.

54. Subcontractor must be in compliance with Whiting-Turner's Indoor Air Quality (IAQ) Plan per LEED-NC Version 2.2 Credit EQ-P1. This includes protecting absorptive materials from moisture damage, and meeting or exceeding the SMACNA IAQ Guidelines of Occupied Buildings under construction, 1995, Chapter 3.

55. Whiting-Turner will provide co-mingle recycling bins for use by the Subcontractor. Recycled waste materials shall include, but are not limited to, all wood products, cardboard, paper, metal, gypsum, carpet, paint, glass, rigid foam insulation and plastic. Separate bins will be provided for concrete and CMU recycling. Subcontractor must remain in compliance of the Whiting-Turner's Construction Waste Management plan per LEED-NC Version 2.2 Credit MR 2.2.

56. Subcontractor shall submit the VOC content of all paints, coatings, adhesives and sealants used inside the building (defined as inside the weatherproofing system and applied on-site) to allowable standards provided by LEED-NC Version 2.2 Credits EQ 4.2.

57. Subcontractor understands that all floors may be worked on simultaneously. Subcontractor shall be responsible for having sufficient manpower to complete work concurrently, in multiple areas as required. Subcontractor shall include any and all necessary remobilizations required to successfully complete this work.

58. Change order Pricing and Processing.

Definitions.

A. Overhead: Any office labor, management labor, estimating, secretarial, accounting, etc, above working foreman. Materials considered overhead are items such as but not limited to copy machines, phones, fax machines and all items associated with office work.

B. Profit: Fee for work performed as percentage of cost of work. No fee shall be attributed to overhead.

C. Small tools: (Value less than $300.00) shall be considered overhead unless specific tasks require equipment / tools be purchased to accomplish such work at which time they will become property of the Owner.

E. Insurance:
Liability insurance, health insurance for office staff, automobile and equipment insurance, theft insurance, builder risk insurance shall be considered overhead.

F. Bond Cost: Shall be attributed to the change order pricing based on submitted bond rate at bid submission and contract award.

55. Labor

A. Final bids should contemplate that a contractor doing work onsite, as a subcontractor being utilized to do work onsite, must be party to a local labor agreement with the construction union that represents the trade(s) that it will employ on this project. Such labor agreement must contain a no strike clause applicable to the project and a method for adjusting employee work disputes without work disruption. Any exceptions to this requirement must be specifically approved in writing by Paul Schmitt, Whiting-Turner prior to final bid submittal.

B. Final bids should contemplate that any party working onsite (either as a contractor or subcontractor) who has a collective bargaining relationship with a labor organization is responsible for all costs and contingencies associated with that relationship including any costs related to or resulting from contract terms or contract renegotiations between it and the relevant labor organization. By way of example only, these costs could include wage and benefit adjustments as a result of renegotiations, expenses of further negotiations, or other costs required by any negotiated work practices with the relevant labor organization.

C. Final bids should contemplate that a Project Labor Agreement applicable to this project may be agreed to with unions in the Southern Nevada Building Trades Council, and if such agreement is in place, contractors on this project including trades represented by that Council will be expected to sign the agreement. If such an agreement is negotiated it may include hiring priorities for candidates in certain city Wards of highest unemployment. It will not adjust the current wage and benefit packages paid to employees under current collective bargaining agreements. It may also contain a work stoppage commitment whereby the employees agree to work and the contractors agree not to lock out, during any future labor negotiations provided the contractors agree to make good faith efforts to reach a new collective bargaining agreement. Details on that status of these matters may be obtained by contacting Paul Schmitt, Whiting-Turner prior to final bid submittal.

D. Final bids should contemplate that if a Project Labor Agreement is not agreed to that all contractors must nevertheless make every reasonable effort to interview all hire candidates for this project who reside in the area of highest unemployment, Wards 1, 3 and 5 of the City of Las Vegas and that such employees within will be monitored throughout the project. The geographical boundaries of the Wards are available from the City.

## 56 SPECIFIC SCOPE OF WORK

1. The scope of work shall conform to plans and specifications and is to include furnishing material, fabrication, layout, shop drawings, submittals, necessary drawing reproduction, delivery, scaffolding, ladders, hoisting, bracing, cutting, patching, installation, tools, trucking, transportation, permits, equipment, labor, supervision, insurance, taxes, incidentals, engineering and supervision necessary for or related to proper execution and completion of the Electrical scope of work whether temporary or permanent, including other sections as they apply to this work in accordance with all drawings, specifications, addenda, general conditions, requirements, and other related documents listed or included herein.

2. Subcontractor understands this specific scope of work is meant only to assist the subcontractor. Subcontractor is ultimately responsible for all Electrical of the project plans and specifications.

3. Subcontractor understands this project is registered under LEED version 2.2 and is pursuing a LEED Silver Certification. Subcontractor further understands all requirements in providing materials, certifications, installation methods, and procedures required by LEED version 2.2 and agrees to actively pursue all available credits. Subcontractor has included all costs associated with achieving these credits. In the event achievement of a LEED credit is in jeopardy due to this Subcontractor's negligence, Subcontractor shall be responsible for all costs associated with the remediation necessary to achieve said credit.

4. Subcontractor has reviewed the documentation requirements as detailed in the contract documents and has included all costs associated with timely submission of all documents.

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5. Subcontractor's systems, materials, equipment, and installation methods shall be in accordance with all LUHS requirements of the Contract Documents, including but not limited to: pre-approved pest/rodent control, building commissioning, construction waste management, recycled content, regional materials, low emitting materials, FSC certified woods, no urea-formaldehyde products, construction indoor air quality management, etc.

6. Subcontractor must keep trash and debris before placing in Willing Turn or trash dumpsters as noted in the LUHS recycling plan for ground and recycling of all debris. This includes zapping (on a monthly basis) of all recyclable material/trash material and/or equipment installed to date relative to project totals.

7. Subcontractor anticipates the bearing clay and soil conditions as indicated in the attached Geotechnical Report.

8. Subcontractor shall include all costs required to meet the attached project schedule.

9. Subcontractor must provide barricades as necessary to prevent construction debris and or activities from endangering the building during installation of work performed under this Subcontract. Subcontractor shall obtain all hot work permits and provide all fire watch for its own welding and cutting operations.

10. Subcontractor shall provide all shoring and bracing required for future installations including engineering, governing agency approvals, shoring materials and placement, daily shoring observations and shoring plan(s) as this Subcontract. Subcontractor agrees to multiple shoring mobilizations if required. Shoring and bracing shall remain in place until the structure can be supported as designed.

11. Subcontractor's Proposal is based on the current OSHA Standards of Fall Protection. This will be 100% Tilt-up project. It is understood that the safety rails provided by the Contractor are not to be utilized as a fall protection.

12. Subcontractor shall provide protection when working near, below or above project holes, points, edges that may be a hazard to this scope of work.

13. Subcontractor shall be responsible for all roofing and patching cost of penetrating material within the building work covered under this Subcontract and/or flashing any damages caused by this Subcontractor. Subcontractor understands that this non-roofing Subcontractor will be the only one allowed to perform patchwork due to warranty issues. All costs for patchwork for work covered under this Subcontract will be forwarded to this Subcontractor.

14. Subcontractor shall include all task lighting required for work covered under this Subcontract.

15. Subcontractor shall verify all benchmarks, layout, subcontractor provided surveying approved shop drawings, etc. prior to commencement of installation. Subcontractor shall coordinate this Subcontractor's work that interfaces with this Subcontractor's work including, but not limited to, embeds, openings, penetrations, electrical, scheduling support, lighting and controls, supply side ductwork, etc. Subcontractor shall assist and enforce all coordination between Subcontractors.

16. Subcontractor must provide a prior 48 hour written notice and coordination to Contractor stating that the Subcontractor will be using a crane under the crane pad on first, second shift, third shift and or overtime. In the event of crane shared use, all paperwork for shared use of other Subcontractor's cranes shall be the responsibility of this Subcontractor and this Subcontractor will be liable for any damages/accidents arising from such use. Contractor shall not be responsible for any damages/accidents arising from such use. Subcontractor understands, that due to its own negligence, any costs associated with loss of swing/crane delays, crane repairs, additional crane mobilizations and demobilizations, third, second, third shift and or overtime to maintain the project schedule of other trades will be the responsibility of this Subcontractor.

17. Subcontractor understands and shall include all cost to meet the provisions stated in the attached High Fire Risk Protection Report for City of Las Vegas New City Hall for this scope of work.

18. Subcontractor understands that all seismic connections and plans will be a deferred submittal to the City of Las Vegas Building Department and any and all costs associated with these will be the



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responsibility of this Subcontractor including, but not limited to, engineering and producing these submittals, sealing by a registered Nevada Structural Engineer, submitting to the Building Department, and being responsible for the permit once approved by the Building Department.

19. Subcontractor shall provide a complete building electrical system including, but not limited to, panel boards, switchgear, transformers, equipment, disconnect switches, motor controllers, light fixtures, devices, trim, assembly, service, grounding & bonding, lighting control equipment, emergency generators, automatic transfer switches, Bus-ways, conduit, raceways, wiring, cabling, fittings, hangers, supports, etc. for the Cashless Departments.

20. Subcontractor shall provide sufficient manpower to perform the work as scheduled with a core team and all laborers to run lighting concurrently.

21. Subcontractor shall coordinate with the mechanical, plumbing, fire sprinkler, elevator, fire alarm, security, audio/visual, and telecommunications subcontractors for power hookup, start up, and testing to ensure these systems are complete and fully functional.

22. Subcontractor shall coordinate electrical installation and termination with all contract documents of all disciplines.

23. Subcontractor shall ensure all code required clearances are met for installation of all equipment. Subcontractor shall submit all equipment prior to installation and inform Whiting-Turner in writing of any conflicts.

24. Subcontractor shall be responsible for electrical utility fees to the NV Energy employees.

25. Subcontractor has included all pipe/ conduit supports as it relates to his scope of work.

26. Subcontractor has reviewed and included fixtures as specified in Specification Attachment A- Fixture Schedule, and Specification Attachment B- Fixture Cut sheets. Alternates 7 and 8 are not listed in the Specification Table of Contents.

27. Subcontractor shall provide excavation, trenching, backfilling, compacting, import and export as required to perform the scope of work.

28. Subcontractor shall furnish and install all concrete encased duct banks for work performed under this Subcontract. Concrete encasement shall be colored as required by local code.

29. Subcontractor shall coordinate with Nevada Energy during the layout and installation of primary electrical service equipment.

30. Subcontractor shall furnish, install, and maintain a complete temporary power system. Subcontractor shall furnish and install spider boxes in a manner allowing one spider box per every 1,000 foot length of the building. The temporary power centers shall be mounted on a galvalyte or equipment and shall be outfitted as required by construction officials. Subcontractor shall also provide temporary power for the material hoist and office trailers.

31. Subcontractor shall furnish, install, and maintain a complete temporary lighting system. Temporary lighting shall be a minimum of five foot candles at all areas and shall comply with OSHA requirements. Subcontractor shall provide removal of the temporary lighting systems as directed by Whiting-Turner.

32. Subcontractor shall provide temporary power for the construction of the elevator scope of work and shall coordinate with the elevator subcontractor for power requirements. Temporary power shall be provided to allow for all elevators to be worked on simultaneously.

33. Subcontractor shall provide temporary power, temporary site lighting, engineering, and permit drawings for the office trailer yard including final connections to Whiting-Turner trailer and owner trailer. Subcontractor shall fully fit all excavation, trenching, backfill, housekeeping pads, conduit above ceilings for power and data connections for conference rooms, exit signs, conduits for telephone/data. All temporary power shall be run underground. Reference site logistics plan for office trailer size and locations.



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MOJ00019

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44. Subcontractor shall take off all existing onsite electrical prior to demolition by others including, but not limited to, signs, panels, light poles, etc. Subcontractor shall visit existing project site to determine extent of electrical take off.

45. Subcontractor shall provide all empty and spare conduits with pull string and proper identification per the Contract Documents.

46. Subcontractor shall furnish and install electrical trim for any fixture or specialty devices.

47. Subcontractor shall furnish and install a complete lightning protection system per the Contract Documents.

48. Subcontractor shall furnish and install a complete transient voltage surge suppression system per the Contract Documents.

49. Subcontractor shall furnish and install all lighting fixtures and lamps per the contract documents and shall coordinate fixture counts between the lighting electrical and architectural drawings. All lighting fixtures shall be lamped and operational prior to final testing and certificate of occupancy.

50. Subcontractor shall ensure all lighting ballasts are in compliance with CBEC requirements for light pollution reduction.

51. Subcontractor shall coordinate with the framing Subcontractor and the Acoustical Ceiling Subcontractor for all required framing and support wire for lighting fixtures. Support wire shall be furnished and installed by Others, with final connections to light fixtures by this Subcontractor.

52. Subcontractor shall provide power connections for all mechanical and fire suppression equipment.

53. Subcontractor shall furnish and install a complete alarm system as per Section of Work including, but not limited to, generator set, diesel fuel storage tanks, plumbing piping, plumbing fixtures, and all miscellaneous for testing and refueling for owner furnished. Subcontractor shall provide any and all necessary for testing or systems.

54. Subcontractor shall coordinate with the Architectural Door Subcontractor and Motorized Overhead Door Subcontractor for power requirements and locations.

55. Subcontractor shall provide power and lighting connections for all elevators and escalators, the Elevator Subcontractor for these connections.

56. Subcontractor shall furnish and install all conduits with pull string and proper identification for the complete Gunnabo, or similar queuing system throughout the Development Services Center (DSC).

57. Subcontractor shall furnish and install all conduits with pull string and proper identification for the complete SIRR, or similar voting system throughout the Council Chambers. Voting System has been purchased by the City and will be delivered to this Subcontractor for installation.

58. Subcontractor shall install all electrical hand dryers including, but not limited to, all blocking, wiring connections, mounting fixtures, etc.

59. Subcontractor shall provide power connections for all variable frequency drives (VFD) and motor starters.

60. Subcontractor shall furnish and install a complete central plumbing and mechanical lighting control system including, but not limited to, panels, transformers, relays, computer interwarts, devices, wiring, software, training, programming, commissioning, etc. as required per the Contract Documents.

61. Subcontractor shall furnish and install weatherproof GFI receptacles within 25 feet of all mechanical equipment areas indicated on the Contract Documents.

62. Subcontractor shall furnish and install all enclosed switches, fuses, and circuit breakers per the Contract Documents.

63. Subcontractor shall furnish and install all seismic restraints, vibration isolation, and sound isolation for all equipment and components of the electrical system as required per the Contract Documents.



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MOJ00020

54. Subcontractor shall furnish and install all sleeves and block-outs for penetrations through concrete and CMU and provide markings during concrete pours to ensure sleeves and block-outs are installed correctly.

55. Subcontractor shall install all conduits and raceways in strict accordance to the specifications. No flexibles shall be allowed (unless MC cable shall only be used in locations per the specifications. Conduits and raceways shall be installed square to building lines in a neat, orderly, and professional workmanlike manner.

56. Subcontractor shall install conduit in concrete walls and CMU assemblies, where possible, to avoid surface mount installations.

57. Subcontractor shall coordinate all core penetrations with the Rough Subcontractor, so that penetrations are properly sealed during roof installation.

58. Subcontractor shall furnish, install, and terminate all wire ends per the Contract Documents.

59. Subcontractor shall furnish and install all the siding, fire sealing, and fire caulking for work performed under this Subcontract.

60. Subcontractor shall furnish and install all required penetrations at sound-rated walls.

61. Subcontractor shall furnish all access panels required for electrical work to the Framing/Drywall Subcontractor before walls and soffits are installed. Lockable access panels shall be furnished for areas accessible to the general public. Fire-rated access panels shall be furnished for locations in fire-rated partitions. Locations shall be detailed on this subcontractor's shop drawings for coordination & layout with the Framing/Drywall Subcontractor.

62. Subcontractor shall coordinate roofing penetrations with all trades and notify Whiting-Turner of any conflicts.

63. Subcontractor shall furnish and install all recessed power and data in the UPS interrupted Kiosk.

64. Subcontractor shall furnish and install all electrical identification per the Contract Documents.

65. Subcontractor shall provide all testing and start up procedures per the contract documents. Subcontractor shall furnish all test reports, starting reports, and manufacturer certificates as required by the Contract Documents.

66. Subcontractor shall coordinate layout and dimensions of all required concrete housekeeping pads. Housekeeping pads shall be by others.

67. Subcontractor has include all material and labor necessary for all installation and connections to all mechanical furniture, millwork, and pendant chandelier cabling as it applies to this scope of work.

68. Subcontractor shall provide manpower, materials, equipment, tools, ladders, instruments, etc. as needed with the compliance of the building electrical system commissioning. The Independent Commissioning Agent services will be provided by the Owner.

69. Subcontractor shall ensure the entire electrical system is in compliance with the smoke management requirements of the Contract Documents, and provide new power during smoke management testing procedures.

70. Subcontractor shall provide manpower during life safety testing, final inspections, and owner training as required by Whiting-Turner.

Fire Alarm

71. Subcontractor shall coordinate with the mechanical, electrical, fire sprinkler, HVAC controls, and elevator subcontractors for all the work required to provide a complete and operational fire alarm system.

72. Subcontractor shall provide shop/record drawings of the entire fire alarm system. Subcontractor shall be responsible for submittals of the fire alarm drawings to the Las Vegas Fire Department. Subcontractor shall be responsible for coordinating with the Las Vegas Fire Department to obtain the required approval for the fire alarm system. All permit and review fees associated with this work shall



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for the responsibility of this subcontractor. All work shall conform to the latest edition of the protection report and amendments by the governing agencies. Governing agencies include, but are not limited to, Las Vegas Building Department, Las Vegas Fire Department, and Nevada State Fire Marshall.

73. Subcontractor shall install all conduits and raceways in strict accordance to the specifications. No deviations shall be allowed, and MC cable shall only be used in locations per the specifications. Conduits and raceways shall be installed square to building lines in a neat, orderly and professional workmanlike manner.

74. Subcontractor shall locate conduit in exterior walls, where possible, to avoid surface-mount installations.

75. Subcontractor shall furnish and install all transponders, network fire alarm control panels, building graphics panel, and network fire alarm master control panels.

76. Subcontractor shall furnish and install all required fire alarm devices, smoke detectors, heat detectors, remote LED, and pull stations, with all final terminations by this subcontractor.

77. Subcontractor shall furnish all duct smoke detectors to the mechanical subcontractor. Mechanical subcontractor shall provide installation of duct detectors. Duct terminations shall be by the fire alarm subcontractor.

78. Subcontractor shall provide control relay modules to override the building management system upon activation of the smoke control system.

79. Subcontractor shall furnish and install all fire alarm monitoring modules required including, but not limited to, the pump controls, emergency generator status and controls for unlocking stairway and exit doors.

80. Subcontractor shall coordinate with the smoke partition subcontractor for fire alarm tie-ins.

81. Subcontractor shall make all fire alarm connections for the elevator recall system.

82. Subcontractor shall furnish and install all switches including, but not limited to, tamper switches, flow switches, and pressure switches, with all final terminations by this subcontractor.

83. Subcontractor shall provide final terminations and control wiring for all fire dampers, smoke dampers and fire/smoke dampers. Dampers shall be furnished and installed by the mechanical subcontractor.

84. Subcontractor shall furnish and install all fire alarm identification per the contract documents and applicable codes.

85. Subcontractor shall provide all access panels required for fire alarm work to the framing/drywall subcontractor before walls and ceilings are installed. Detailed locations & layout shall be coordinated with the framing/drywall subcontractor.

86. Subcontractor shall provide and maintain temporary protection of all smoke detectors until system is complete and ready for testing.

87. Subcontractor shall furnish and install all fire sealing/fire caulking/fire caulking for work performed under this subcontract.

88. Subcontractor shall install and wire all magnetic door hold open devices. Magnetic door hold open devices shall be furnished by the door subcontractor.

89. Subcontractor shall furnish and install control relays to override the individual system in event of alarm as required by the contract documents.

90. Subcontractor shall include all costs associated with testing of systems. Subcontractor shall include an allowance of $10,000 for overtime testing. This allowance shall only be used at the direction of Whiting-Turner and shall be authorized by Time and Material tickets to cover the premium portion of the overtime work. Unused portions of the allowance will be deducted from subcontract amount at project completion. No overhead or fee will be allowed for work authorized under this allowance.

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91. Subcontractor shall ensure the entire fire alarm system is in compliance with the smoke management requirements of the contract documents and provide manpower during smoke management testing procedures.

92. Subcontractor shall provide complete programming of the fire alarm system.

93. Subcontractor shall provide manpower during fire life safety testing, final inspections, third party testing, LEED Commissioning, and training as required by Architect/Owner.

94. Subcontractor shall coordinate with the Las Vegas Building Department & Fire Department for the testing of all fire alarm systems. Subcontractor shall provide contractor with copies of all such test results.

Communications

95. Subcontractor shall furnish and install all conduits, wire, receptacles, terminations, cable trays, equipment, racks, devices, network patch panels, Wireless LAN outlets, and proper identification for a full and complete Tele/Data Communications system.

96. Subcontractor shall furnish and install all conduits, wire, devices necessary for the complete installation of the lighting control system.

97. Subcontractor has included all material and labor necessary for the installation and connections to all modular furniture, millwork, and counter electrical outlets as applicable to the scope of work.

98. Subcontractor shall furnish and install all conduits, boxes, and pull string required for the photovoltaic systems at the roof and plaza levels. All conduits at the roof level to be capped/watertight for future installation of photovoltaic system.

99. Subcontractor shall furnish and install all conduits, J-boxes, pull string, and power required for the Satellite systems.

100. Subcontractor shall furnish and install all IT Communications racks.

101. Subcontractor shall furnish and install all conduits, J-boxes, and pull cable necessary for the complete installation of the Q-tronic finance counters on the 3rd floor.

KCLV TV STUDIO

102. Subcontractor shall furnish and install all KCLV cable trays.

103. Subcontractor shall furnish and install conduit for all Level Media Trunk Line Feed Systems.

104. Subcontractor shall furnish and install conduit for all Interior Media Trunk Line Feed Systems.

105. Subcontractor shall furnish and install conduit, J-boxes, and pull string for all KCLV equipment, theatrical lighting, dimmers, etc.

106. Subcontractor shall furnish and install plumber Cyclotronix Curtain Control with power.

Audio Visual Audiovisual- Conduit/Pull String

107. Subcontractor shall furnish and install all conduits, J-boxes, pull string and proper identification for the complete Audio/Visual system including, but not limited to, the Council chambers, lobby, pre-function areas, conference rooms, training rooms, and offices.

108. Subcontractor shall furnish and install all conduits, J-boxes, and pull string for the assisted listening system in the Council Chambers.

Security/Surveillance- Conduit/ Pull String

109. Subcontractor shall furnish and install all conduits with pull string and proper identification for the complete Security & Surveillance system including, but not limited to, panic buttons, surveillance equipment, cameras, card key enabling hardware and card key pads.

110. Subcontractor shall furnish and install all conducting, J-boxes, and pull string necessary for the complete installation of the land based panic buttons.



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Fire Protection/Public Annunciation system

1. Subcontractor shall furnish and install a complete turn key fire protection public annunciation system throughout the buildings. System shall include, but not be limited to, complete engineered design, amplifiers, antenna, repeaters, transmitters, receivers, signal boosters, decouplers, cabling, portable radios, testing, etc. per the contract documents and the Las Vegas Fire Department Guidelines.

Site Electrical

2. Subcontractor shall furnish and install all conduit, wire, lighting fixtures, control, site lighting, street lights, signal lights/pedestrian poles, light poles, light pole bases, signage, generators, transformers, panels, and other equipment as required per the site electrical scope of work.

3. Subcontractor shall be responsible for all conduit, wire, pull cables, pull boxes, electrical manholes, poles, bases, and fixtures as required by the Civil Drawings.

4. Subcontractor shall coordinate with adjacent trades prior to installing, roughing in, and installation of equipment/fixtures.

5. Subcontractor shall furnish and install all conduit, wiring, light poles, light pole bases, signage, and fixtures as shown in the contract documents for the exterior canopy.

6. Subcontractor shall furnish and install all E.M.S.T. conduit, wire, and mark as detailed in details 6/E7 and sheets C1.03, C2.03, C3.04, and C3.05.

All

7. Subcontractor shall provide a three dimensional Electronic Fabrication model of the contract documents in a computer program that is based on the concept / principles of Building Information Modeling (BIM) and Virtual Design and Construction (VDC).
The model must be an accurate representation of all elements in contract documents (i.e. ductwork, equipment supports, flanges, diffusers, valves, gauges, etc.) like at the same level of detail and precision required for shop drawings. A matrix showing specific model requirements shall be issued as an added part to this scope of work.

8. Whiting-Turner will provide this subcontractor with a base model that has been created by the design team in Revit 2009. Subcontractor shall use the base model as the background for all fabrication models.

9. Subcontractor shall provide the fabrication model in native application only Navisworks Manage 2009 (.nwf) format.

10. System model shall be a solid or surface model (not wire frame) when viewed in Navisworks Manage 2009.

11. The fabrication models shall be prepared using software that allows 2-D drawing sheets to be extracted from the model so that production of these sheets do not require special background CAD effort. The system models and any drawings produced from the coordination process will be stated as shop drawings and are to be used for coordination purposes only. All subcontractors are still responsible for verifying that their systems are being installed per the contract documents/RFI changes, etc.

12. During coordination, the Model Coordination Process will be as follows:

13. Subcontractor shall identify conflicts between their fabrication model and has the right to resolve with Whiting-Turner and design team prior to the coordination meetings.

14. Subcontractor shall identify any required penetrations to architectural and structural elements for their work and correct any clashes within their own system prior to the coordination meetings.

15. Subcontractor shall provide fabrication model to Whiting-Turner. Whiting-Turner will integrate fabrication model with base model in Navisworks to create a Coordination Model prior to each coordination meeting.

16. All modeling subcontractors and Whiting-Turner shall meet, review, and resolve clashes / conflicts within the combined coordination model on a weekly basis.

17. Subcontractor shall make changes to their fabrication model per resolutions from each coordination meeting.

Step 6. Modeling subcontractor and Whiting-Turner shall repeat Steps 3 through 5 until all clashes / conflicts have been resolved in coordination model.



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Contractor _____ Subcontractor _____

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118. Subcontractor shall remove all temporary protection, plastic, boxes, etc. from fixtures and equipment after substantial completion and prior to building turnover.

119. Subcontractor shall provide termination of all 120V power to HVAC controls equipment. HVAC Controls Contractor shall be responsible for all low voltage terminations, wiring etc.

120. Subcontractor shall furnish and install the LDP or VESCO lighting system in the Grotto Shaft Glass Wall.

121. Subcontractor understands this specific scope of work is meant only to assist the subcontractor. Subcontractor is ultimately responsible for all Electrical on the project plans and specifications.

Alternate 1- Audio Visual/ Audio-Visual- Fill Out

122. Subcontractor shall furnish, and install all labor and material necessary for the installation of a complete and workable system for the audio/ visual components in the building lobbies/ conference rooms, offices, and council chambers per the contract documents including, but not limited to, all brackets, video projection, video cassette, recessed projector screens, surface mount projector screens, equipment racks, flat panel displays, ceiling mount microphones, surface mount microphones, recessed speakers, flat mount speakers, projection screen controls/ switches, control touch panels, television reception panels, control keypad panels, ladder racks, cables, CATV equipment/ connections, fixtures, teleconferencing units, receivers, transmitters, inputs, jackable cables, TIE lines, video equipment, processors, tuners, subwoofers, scalers, amplifiers, projectors, audio systems, etc.

123. Subcontractor shall furnish and install all labor and material necessary for the installation of a complete and workable audio/visual system in the pre-function, council chambers, side rooms, security rooms, conference rooms, etc. This work shall include, but not be limited to, all digital signage panels, wireless antennas, induction loop, broadcast PTZ cameras, AV input panels, interface systems, presentation cabinets, microphones, flat panel displays, equipment, racks, speakers, touch panel displays, voting system & controls, CPU, projections panels, feed panels, etc.

124. Subcontractor shall be responsible for coordinating the installation of all necessary strap backing for the scope of work. Shop drawings shall be submitted in advance and coordinated with the framing and drywall subcontractor. In the event subcontractor fails to do so all costs associated with installing the backing shall be paid by this subcontractor.

125. Subcontractor shall furnish and install all mounting brackets, all conduit, back boxes, support systems, etc. necessary for the complete installation of the audio video/visual systems.

126. Subcontractor shall furnish and install all wiring, equipment, fixtures, panels, terminations, and proper identification for the complete Audio/Visual system including, but not limited to, the council chambers, lobby, pre-function areas, conference rooms, training rooms, and offices.

Alternate 2- Security/Surveillance- Fill Out

127. Subcontractor shall furnish and install all wiring, equipment, panels, and devices for the installation of a complete and workable system including, but not limited to, all CCTV equipment, fixed cameras, pan tilt zoom (PTZ) cameras, camera housings/ mounts, magnetic door contacts, equipment racks, Intercoms, card readers, communication panels, glass break, security keypads, monitors, motion detectors, panic buttons, request to exit buttons, pole mount cameras/ mounting adapters, camera enclosures, etc.

128. Subcontractor to provide identification for the complete Security & Surveillance system including but not limited to panic buttons, surveillance equipment, cameras, card key enabling hardware, and card key pads.

129. Subcontractor shall install all fiber optic cable in inner ducts as noted in the contract documents.



MOJ00025

1.10 Subcontractor shall coordinate installation with adjacent trades, Building Owner and is responsible to ensure this coordination takes place prior to installation

1.11 Subcontractor shall furnish and install all equipment, pipe runs, keyboards, etc, as security

1.12 Subcontractor shall include all tasks and interfacing with Fire Alarm, HVAC, and other applicable systems as required by governing codes.

1.13 Subcontractor shall provide training and familiarization of equipment installed under this scope of work to the engineering, security, and maintenance staff. This training shall include two sessions, each session to be videorecorded on DVD, and include a presentation and walk through of the systems.

1.14 Subcontractor shall furnish 15% equipment attic stock to the owner prior to final completion.

1.15 Should there be any discrepancies between the contract documents, the more stringent detail/requirement supersedes and this subcontractor shall furnish and install per this requirement.

1.16 Subcontractor is expected to utilize MBE / WBE / DBE vendors and suppliers where possible. Subcontractor has committed to using MBE / WBE / DBE vendors and suppliers and their approximate contract values/percentages listed below for this project at no additional cost to Contractor.

| | | | |
|---|---|---|---|
| Supplier / Vendor / Scope | Swingear & Commodities | Anticipated $ | % of Contract 20% |
| Supplier / Vendor / Scope | Pipefitter | Anticipated $ | % of Contract 5% |
| Supplier / Vendor / Scope | Conductor | Anticipated $ | % of Contract 15% |

1.17 Subcontractor shall adhere to the following submittal schedule:

| Description | Allotted Time for Submittal | Submittal Due Date |
|---|---|---|
| Shop Drawings | 2 Weeks | Thursday, February 25, 2016 |
| Manpower Loaded Schedule | 4 Weeks | Thursday, March 10, 2016 |
| Electrical Shop Drawings | 8 Weeks | Thursday, April 8, 2016 |
| Product Data | 4 Weeks | Thursday, March 11, 2016 |
| Emergency Generator Shop Drawings & Product Data | Weeks | |
| Fire Alarm Shop Drawings | 8 Weeks | Thursday, April 8, 2016 |
| Fire Alarm Control Panels and Displays Product Data | 12 Weeks | Thursday, May 6, 2016 |
| Closeout Documents | 4 Weeks | 4 Weeks |

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MO.J00026

138. See attached Exhibit B.1 for unit pricing rates to be used at Contractor's discretion for change order pricing. These prices include furnishing all labor, material, and equipment necessary for a complete installation.

139. See below breakdown for contract schedule of values:

| | |
|---|---|
| Core & Shell Riser Equipment/ Feeders | $1,417,704 |
| Core & Shell Mechanical Equipment Wiring | $501,167 |
| Core & Shell Lightning Protection | $74,235 |
| Core & Shell Emergency Generator | $917,433 |
| UPS System | $297,659 |
| Core & Shell Lighting & Branch | $574,205 |
| Core & Shell Devices & Branch | $91,734 |
| Exterior Glass Fin LED Lighting | By Others |
| Interiors Lighting & Branch | $2,152,122 |
| Interiors Devices & Branch | $912,335 |
| Studio Power & Lighting | $33,326 |
| Cellular Conduit/ Pull String | Incl. In Base |
| Site Vault System Conduit/ Pull String | Incl. In Base |
| LED Communications Support | Incl. In Base |
| COMMUNICATIONS & SECURITY | |
| Lighting Control Systems | $6,598 |
| Communications Raceway | $653,518 |
| Communications Cabling | $998,672 |
| Communications Stations | Incl. In Base |
| Building A/V systems Conduit, Pull String | $682,859 |
| Chambers A/V systems Conduit, Pull String | $42,210 |
| Chambers Assisted Listening System | $43,868 |
| Recessed Projection Screens | $60,229 |

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MOJ00027

| | |
|---|---|
| Roof & Plaza Flexible Conduit | $34,710 |
| Satellite System Conduit | $17,125 |
| SECTION 10 SAFETY & SECURITY | |
| Security Surveillance Conduit, J-Box, Pull String | $101,813 |
| Card Key Pad Conduit, J-Box, Pull String | $12,600 |
| Card Key Hardware Conduit, J-Box, Pull String | $3,500 |
| Public Radio Conduit J-Box, Pull Strings | $6,084 |
| Fire Alarm System | $1,017,764 |
| AUDIO VISUAL | |
| Site Electrical (footnote $2500 to install under curb) | $627,830 |
| Dark Fiber Conduit (ATT Conduit) | Incl above |
| Hoisting | Incl above |
| Clean Up | Incl above |
| Off-Site Parking | Incl above |
| first response system | Incl Above |
| 100% Payment & Performance Bond | $70,374 |
| Lobby Glass Wall Lighting | Incl Vesco Bid |
| Temp Power/Lay Down/ Trailer Setup | $150,000 |
| MBE/WBE/DBE Participation | 40% |
| BID TOTALS | $3,960,662 |
| | |
| Vesco Lighting System at Grand Stair Glass Walls | Incl above |
| LEDs at Glass Rails, Add Required by PAT | Incl above |
| Testing | Incl above |
| Install of Vesco System already purchased by City | Incl above |
| Lighting for Wall Art | Incl above |
| Dark Fiber and Site checked on Civil Drawings | Incl above |
| Fire Response System | Incl above |
| Q-Matic/ Fire Sprinkler Conduit | Incl above |

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SC18

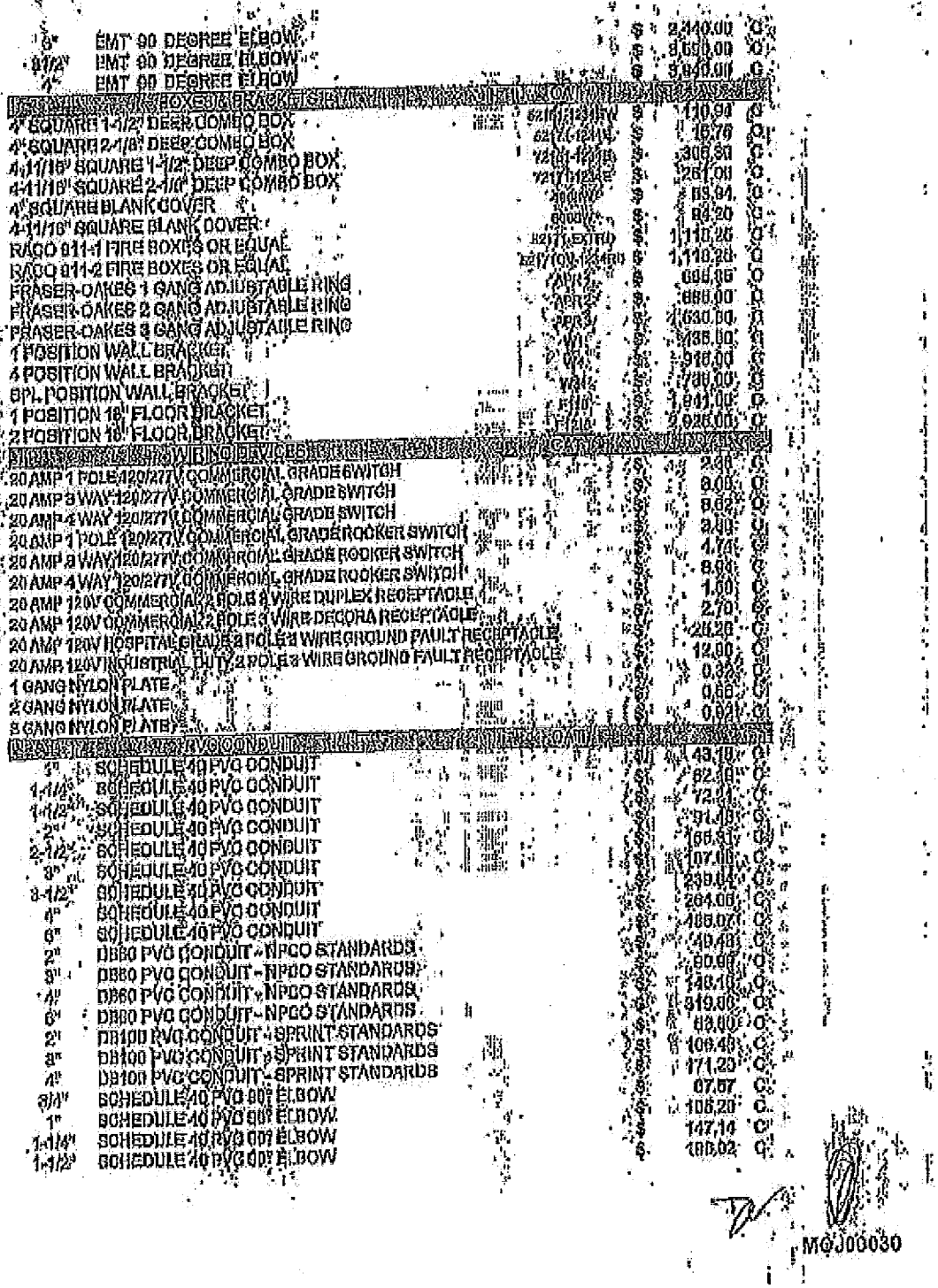
Initialed by Owner / Subcontractor

MOJ00028

EXHIBIT 0.1 - UNIT PRICING

| | | | | | | |
|---|---|---|---|---|---|---|
| 3/4" | EMT | | | $ | 46.86 | C |
| 1" | EMT | | | $ | 78.02 | C |
| 1 1/4" | EMT | | | $ | 121.77 | C |
| 1 1/2" | EMT | | | $ | 147.60 | C |
| 2" | EMT | | | $ | 191.77 | C |
| 2 1/2" | EMT | | | $ | 268.74 | C |
| 3" | EMT | | | $ | 360.61 | C |
| 3 1/2" | EMT | | | $ | 534.00 | C |
| 4" | EMT | | | $ | 640.74 | C |
| 3/4" | SET SCREW | STEEL | CONNECTOR INSULATED | $ | 38.18 | C |
| 1" | SET SCREW | STEEL | CONNECTOR INSULATED | $ | 54.74 | C |
| 1 1/4" | SET SCREW | STEEL | CONNECTOR INSULATED | $ | 105.82 | C |
| 1 1/2" | SET SCREW | STEEL | CONNECTOR INSULATED | $ | 144.93 | C |
| 2" | SET SCREW | STEEL | CONNECTOR INSULATED | $ | 209.20 | C |
| 2 1/2" | SET SCREW | STEEL | CONNECTOR INSULATED | $ | 399.40 | C |
| 3" | SET SCREW | STEEL | CONNECTOR INSULATED | $ | 1,262.77 | C |
| 3 1/2" | SET SCREW | STEEL | CONNECTOR INSULATED | $ | 1,270.02 | C |
| 4" | SET SCREW | STEEL | CONNECTOR INSULATED | $ | 1,462.64 | C |
| 1/2" | SET SCREW | STEEL | COUPLING | $ | 16.20 | C |
| 3/4" | SET SCREW | STEEL | COUPLING | $ | 30.60 | C |
| 1" | SET SCREW | STEEL | COUPLING | $ | 49.02 | C |
| 1 1/4" | SET SCREW | STEEL | COUPLING | $ | 109.68 | C |
| 1 1/2" | SET SCREW | STEEL | COUPLING | $ | 168.61 | C |
| 2" | SET SCREW | STEEL | COUPLING | $ | 218.99 | C |
| 2 1/2" | SET SCREW | STEEL | COUPLING | $ | 466.81 | C |
| 3" | SET SCREW | STEEL | COUPLING | $ | 630.99 | C |
| 3 1/2" | SET SCREW | STEEL | COUPLING | $ | 818.65 | C |
| 4" | SET SCREW | STEEL | COUPLING | $ | 717.82 | C |
| 1/2" | COMPRESSION | STEEL | CONNECTOR INSULATED | $ | 36.86 | C |
| 3/4" | COMPRESSION | STEEL | CONNECTOR INSULATED | $ | 49.86 | C |
| 1" | COMPRESSION | STEEL | CONNECTOR INSULATED | $ | 74.87 | C |
| 1 1/4" | COMPRESSION | STEEL | CONNECTOR INSULATED | $ | 172.01 | C |
| 1 1/2" | COMPRESSION | STEEL | CONNECTOR INSULATED | $ | 284.03 | C |
| 2" | COMPRESSION | STEEL | CONNECTOR INSULATED | $ | 441.66 | C |
| 2 1/2" | COMPRESSION | STEEL | CONNECTOR INSULATED | $ | 1,269.78 | C |
| 3" | COMPRESSION | STEEL | CONNECTOR INSULATED | $ | 1,630.06 | C |
| 3 1/2" | COMPRESSION | STEEL | CONNECTOR INSULATED | $ | 2,364.11 | C |
| 4" | COMPRESSION | STEEL | CONNECTOR INSULATED | $ | 2,487.12 | C |
| 1/2" | COMPRESSION | STEEL | COUPLING | $ | 27.39 | C |
| 3/4" | COMPRESSION | STEEL | COUPLING | $ | 51.00 | C |
| 1" | COMPRESSION | STEEL | COUPLING | $ | 78.07 | C |
| 1 1/4" | COMPRESSION | STEEL | COUPLING | $ | 141.62 | C |
| 1 1/2" | COMPRESSION | STEEL | COUPLING | $ | 208.00 | C |
| 2" | COMPRESSION | STEEL | COUPLING | $ | 280.26 | C |
| 2 1/2" | COMPRESSION | STEEL | COUPLING | $ | 1,070.93 | C |
| 3" | COMPRESSION | STEEL | COUPLING | $ | 1,385.76 | C |
| 3 1/2" | COMPRESSION | STEEL | COUPLING | $ | 2,092.11 | C |
| 4" | COMPRESSION | STEEL | COUPLING | $ | 2,197.91 | C |
| 3/4" | EMT 90 DEGREE | ELBOW | | $ | 211.00 | C |
| 1" | EMT 90 DEGREE | ELBOW | | $ | 328.00 | C |
| 1 1/4" | EMT 90 DEGREE | ELBOW | | $ | 440.00 | C |
| 1 1/2" | EMT 90 DEGREE | ELBOW | | $ | 504.00 | C |
| 2" | EMT 90 DEGREE | ELBOW | | $ | 680.00 | C |
| 2 1/2" | EMT 90 DEGREE | ELBOW | | $ | 1,614.00 | C |

MDJ00029



| | | | | | |
|---|---|---|---|---|---|
| 3" | EMT 90 DEGREE ELBOW | | | $ 2,140.00 | C |
| 3-1/2" | EMT 90 DEGREE ELBOW | | | $ 3,650.00 | C |
| 4" | EMT 90 DEGREE ELBOW | | | $ 3,940.00 | C |
| | BOXES & BRACKETS | | | | |
| 4" SQUARE 1-1/2" DEEP COMBO BOX | | 5216/1-1/2"RW | $ | 110.94 | C |
| 4" SQUARE 2-1/8" DEEP COMBO BOX | | 5216/2-1/2"RW | $ | 16.76 | C |
| 4-11/16" SQUARE 1-1/2" DEEP COMBO BOX | | 721/1-1/2"RW | $ | 306.50 | C |
| 4-11/16" SQUARE 2-1/8" DEEP COMBO BOX | | 721/2-1/2"RW | $ | 261.01 | C |
| 4" SQUARE BLANK COVER | | 5000/C | $ | 89.94 | C |
| 4-11/16" SQUARE BLANK COVER | | 5000/C | $ | 84.20 | C |
| RACO 911-1 FIRE BOXES OR EQUAL | | 5211 EXTRD | $ | 1,110.26 | C |
| RACO 911-2 FIRE BOXES OR EQUAL | | 5211/2-1/2"RW | $ | 1,110.26 | C |
| FRASER-OAKES 1 GANG ADJUSTABLE RING | | APR1 | $ | 884.00 | C |
| FRASER-OAKES 2 GANG ADJUSTABLE RING | | APR2 | $ | 886.00 | C |
| FRASER-OAKES 3 GANG ADJUSTABLE RING | | APR3 | $ | 1,630.00 | C |
| 1 POSITION WALL BRACKET | | W1 | $ | 135.00 | C |
| 4 POSITION WALL BRACKET | | W4 | $ | 918.00 | C |
| 6PL POSITION WALL BRACKET | | W6 | $ | 780.00 | C |
| 1 POSITION 18" FLOOR BRACKET | | F18 | $ | 1,941.00 | C |
| 2 POSITION 18" FLOOR BRACKET | | F18 | $ | 2,926.00 | C |
| | WIRING DEVICES | | | CAT# | |
| 20 AMP 1 POLE 120/277V COMMERCIAL GRADE SWITCH | | | $ | 2.46 | C |
| 20 AMP 3 WAY 120/277V COMMERCIAL GRADE SWITCH | | | $ | 9.00 | C |
| 20 AMP 4 WAY 120/277V COMMERCIAL GRADE SWITCH | | | $ | 9.62 | C |
| 20 AMP 1 POLE 120/277V COMMERCIAL GRADE ROCKER SWITCH | | | $ | 3.00 | C |
| 20 AMP 3 WAY 120/277V COMMERCIAL GRADE ROCKER SWITCH | | | $ | 4.74 | C |
| 20 AMP 4 WAY 120/277V COMMERCIAL GRADE ROCKER SWITCH | | | $ | 8.98 | C |
| 20 AMP 120V COMMERCIAL 2 POLE 3 WIRE DUPLEX RECEPTACLE | | | $ | 1.60 | C |
| 20 AMP 120V COMMERCIAL 2 POLE 3 WIRE DECORA RECEPTACLE | | | $ | 2.70 | C |
| 20 AMP 120V HOSPITAL GRADE 2 POLE 3 WIRE GROUND FAULT RECEPTACLE | | | $ | 26.26 | C |
| 20 AMP 120V INDUSTRIAL DUTY 2 POLE 3 WIRE GROUND FAULT RECEPTACLE | | | $ | 12.00 | C |
| 1 GANG NYLON PLATE | | | $ | 0.32 | C |
| 2 GANG NYLON PLATE | | | $ | 0.66 | C |
| 3 GANG NYLON PLATE | | | $ | 0.921 | C |
| | PVC CONDUIT | | | | |
| 1" | SCHEDULE 40 PVC CONDUIT | | $ | 43.19 | C |
| 1-1/4" | SCHEDULE 40 PVC CONDUIT | | $ | 62.80 | C |
| 1-1/2" | SCHEDULE 40 PVC CONDUIT | | $ | 72.11 | C |
| 2" | SCHEDULE 40 PVC CONDUIT | | $ | 91.49 | C |
| 2-1/2" | SCHEDULE 40 PVC CONDUIT | | $ | 166.51 | C |
| 3" | SCHEDULE 40 PVC CONDUIT | | $ | 107.06 | C |
| 3-1/2" | SCHEDULE 40 PVC CONDUIT | | $ | 239.04 | C |
| 4" | SCHEDULE 40 PVC CONDUIT | | $ | 264.06 | C |
| 6" | SCHEDULE 40 PVC CONDUIT | | $ | 486.07 | C |
| 2" | DB60 PVC CONDUIT - NPCO STANDARDS | | $ | 49.48 | C |
| 3" | DB60 PVC CONDUIT - NPCO STANDARDS | | $ | 90.00 | C |
| 4" | DB60 PVC CONDUIT - NPCO STANDARDS | | $ | 146.10 | C |
| 6" | DB60 PVC CONDUIT - NPCO STANDARDS | | $ | 319.00 | C |
| 2" | DB100 PVC CONDUIT - SPRINT STANDARDS | | $ | 83.00 | C |
| 3" | DB100 PVC CONDUIT - SPRINT STANDARDS | | $ | 109.49 | C |
| 4" | DB100 PVC CONDUIT - SPRINT STANDARDS | | $ | 171.23 | C |
| 3/4" | SCHEDULE 40 PVC 90° ELBOW | | $ | 67.67 | C |
| 1" | SCHEDULE 40 PVC 90° ELBOW | | $ | 108.20 | C |
| 1-1/4" | SCHEDULE 40 PVC 90° ELBOW | | $ | 147.14 | C |
| 1-1/2" | SCHEDULE 40 PVC 90° ELBOW | | $ | 186.02 | C |

MOJ00030

| | | | | |
|---|---|---|---|---|
| 2" | SCHEDULE 40 PVC 90° ELBOW | $ | 278.91 | C |
| 2-1/2" | SCHEDULE 40 PVC 90° ELBOW | $ | 609.62 | C |
| 3" | SCHEDULE 40 PVC 90° ELBOW | $ | 807.33 | C |
| 3-1/2" | SCHEDULE 40 PVC 90° ELBOW | $ | 1,188.28 | C |
| 4" | SCHEDULE 40 PVC 90° ELBOW | $ | 1,456.88 | C |
| 6" | SCHEDULE 40 PVC 90° ELBOW | $ | 4,978.81 | C |
| 1 GALLON | PVC CEMENT | $ | 4,787.50 | C |
| 1 QUART | PVC CEMENT | $ | 1,283.28 | C |
| 1 PINT | PVC CEMENT | $ | 736.01 | C |
| 1 QUART | EMPTY CAN | $ | 361.98 | C |
| 1 | DAUBBER (TO APPLY GLUE) | $ | 162.90 | C |
| | ALUMINUM WIRE | | 1 GALLON | |
| #1/0 | XHHW ALUMINUM WIRE | $ | 791.66 | M |
| #2/0 | XHHW ALUMINUM WIRE | $ | 928.60 | M |
| #3/0 | XHHW ALUMINUM WIRE | $ | 1,029.80 | M |
| #4/0 | XHHW ALUMINUM WIRE | $ | 1,146.40 | M |
| 250 | XHHW ALUMINUM WIRE | $ | 1,496.64 | M |
| 300 | XHHW ALUMINUM WIRE | $ | 1,620.20 | M |
| 350 | XHHW ALUMINUM WIRE | $ | 1,863.80 | M |
| 400 | XHHW ALUMINUM WIRE | $ | 2,295.16 | M |
| 500 | XHHW ALUMINUM WIRE | $ | 2,631.12 | M |
| 600 | XHHW ALUMINUM WIRE | $ | 3,208.22 | M |
| 700 | XHHW ALUMINUM WIRE | $ | 3,701.08 | M |
| 750 | XHHW ALUMINUM WIRE | $ | 3,740.42 | M |

MOJ00031

EXHIBIT K

City of Las Vegas New City Hall

Labor Rates

Trade: Electrical

Fill out separate form for each labor trade used. Attach additional sheets if necessary.

| Description | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Apprentice | | | | | | | | | | | | | | |
| Straight Time | 34 | 1 | 2 | 5.6 | 1 | 3 | N/A | N/A | 50 | 9 | 2 | 2 | N/A | 60 |
| Time & Half | 50 | 3 | 4 | 8.5 | 1 | 4 | N/A | N/A | 50 | 13 | 3 | 3 | N/A | 90 |
| Double Time | 67 | 4 | 5 | 11 | 1 | 6 | N/A | N/A | 1 | 17 | 4 | 4 | N/A | 120 |
| Journeyman | | | | | | | | | | | | | | |
| Straight Time | 41 | 2 | 3 | 5.6 | 1 | 3 | N/A | N/A | 50 | 9 | 2 | 2 | N/A | 69 |
| Time & Half | 61 | 4 | 5 | 8.5 | 1 | 4 | N/A | N/A | 50 | 13 | 3 | 3 | N/A | 103 |
| Double Time | 82 | 6 | 7 | 11 | 1 | 6 | N/A | N/A | 1 | 17 | 4 | 4 | N/A | 138 |
| Foreman | | | | | | | | | | | | | | |
| Straight Time | 45 | 4 | 4 | 5.6 | 1 | 3 | N/A | N/A | 50 | 9 | 2 | 2 | N/A | 75 |
| Time & Half | 68 | 6 | 6 | 8.5 | 1 | 4 | N/A | N/A | 50 | 13 | 3 | 3 | N/A | 112 |
| Double Time | 91 | 8 | 8 | 11 | 1 | 6 | N/A | N/A | 1 | 17 | 4 | 4 | N/A | 150 |
| Superintendent | | | | | | | | | | | | | | |
| Straight Time | 50 | 4 | 4 | 5.6 | 1 | 3 | N/A | N/A | 50 | 9 | 2 | 2 | N/A | 81 |
| Time & Half | 75 | 7 | 7 | 8.5 | 1 | 4 | N/A | N/A | 50 | 13 | 3 | 3 | N/A | 122 |
| Double Time | 100 | 9 | 9 | 11 | 1 | 6 | N/A | N/A | 1 | 17 | 4 | 4 | N/A | 162 |

# EXHIBIT 5

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

CASHMAN EQUIPMENT COMPANY, a Nevada corporation,

Plaintiff,

vs.

CAM CONSULTING, INC., a Nevada corporation; ANGELO CARVALHO, an individual; JANEL RENNIE aka JANEL CARVALHO, an individual; WEST EDNA ASSOCIATES, LTD., dba MOJAVE ELECTRIC, a Nevada corporation; WESTERN SURETY COMPANY, a surety; THE WHITING TURNER CONTRACTING COMPANY, a Maryland corporation; FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a surety; DOES 1 through 10, inclusive; and ROE CORPORATIONS 1 through 10, inclusive,

Defendants.

AND ALL RELATED MATTERS.

CASE NO. A642583

CONDENSED

DEPOSITION OF BRIAN BUGNI
Taken on Thursday, January 10, 2013
At 11:00 a.m.
At 6725 Via Austi Parkway, Suite 290
Las Vegas, Nevada

REPORTED BY: CHRISTY LYN DeJONKER, CCR NO. 691

APPEARANCES:
For the Plaintiff:
JENNIFER R. LLOYD, ESQ.
Pezzillo Lloyd
6725 Via Austi Parkway
Suite 290
Las Vegas, Nevada 89119

For the Defendants:

BRIAN W. BOSCHEE, ESQ.
Cotton, Driggs, Walch,
Holley, Woloson & Thompson
400 South Fourth Street
Third Floor
Las Vegas, Nevada 89101

INDEX

WITNESS: BRIAN BUGNI


| | Examination | Further Examination |
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| By Ms. Lloyd: | 4 | 89 |
| By Mr. Boschee: | 87 | |




EXHIBITS


| Exhibit No. | Description | Page |
|---|---|---|
| 1 | Application for payment | 10 |
| 2 | Payment Bond | 21 |
| 3 | Mojave Electric Purchase Order | 26 |
| 4 | Consultant Agreement | 32 |
| 5 | Contract Agreement | 33 |
| 6 | Contract Agreement | 41 |
| 7 | Consultant Agreement | 46 |
| 8 | Copies of Checks | 49 |
| 9 | Unconditional Waiver and Release | 50 |
| 10 | Copies of Checks | 52 |
| 11 | Contract Status Inquiry | 76 |




(Prior to the commencement of the deposition, all of the parties present agreed to waive statements by the court reporter, pursuant to Rule 30(b)(4) of NRCP.)

Thereupon --

BRIAN BUGNI,

was called as a witness, and having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MS. LLOYD:

Q. We are here today, Cashman Equipment versus CAM Consulting, Case No. A642583. I am Jennifer Lloyd, plaintiff's attorney. And we are here for the deposition of the person most knowledgeable of West Edna Associates, Ltd. So we will start with can you state your name for the record.

A. Brian Bugni.

Q. Can you spell your last name.

A. B-U-G-N-I.

Q. Okay. And you are here as the person most knowledgeable for West Edna Associates?

A. Yes.

Q. We will go over that in just a second.

Have you ever had your deposition taken before?

A. Yes.



Q. How many times?

A. I think once probably 14 years ago.

Q. Okay. Then we will go over the rules really quick as a refresher. It's questions and answers. I need verbal responses to all of the questions that I ask, not just a nod of the head. The court reporter is going to be taking down everything we say. So it's important that we don't talk at the same time, so if you let me finish and I'll let you finish so she can make an accurate record.

You can take a break at any time except for when a question is pending. I would ask that you answer the question prior to taking a break. If you don't understand a question or it's not clear what I am asking, just tell me and I'll try to rephrase it so it's understandable so we can get your best testimony here today. Your testimony is under oath just like it would be in a court of law.

Is there any reason why you cannot give your full and complete, truthful testimony here today?

A. No.

Q. What did you do to prepare for your deposition today?

A. I mean, not that much.

Q. Do you want to -- I don't want to get into

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privileged communications with your attorney, but just generally what you did to prepare.
A. Just reviewed some of the information that you had requested on the notice for the person most knowledgeable.
Q. So documents that have already been produced by your counsel in this case?
A. Well, I just looked in our accounting system, I didn't review any court documents.
Q. Okay. Did you speak with anyone besides your attorney concerning your deposition today?
A. No.
Q. What is the highest level of education you have obtained?
A. Master's degree.
Q. In what subject?
A. Accounting.
Q. And where did you graduate from?
A. For that, Western New England College.
Q. When was that?
A. 1987, I think.
Q. Prior to that, did you get your undergraduate degree?
A. Yes.
Q. Where did you obtain that?

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A. The University of North Carolina.
Q. When did you graduate from there?
A. That was '85.
Q. And do you hold any professional licenses?
A. No.
Q. Then I have to ask this. It doesn't mean anything. Have you been convicted of any crime within the last ten years?
A. No.
Q. Can you tell me about your current employment?
A. I have been with Mojave Electric for -- going on 16 years in June.
Q. Oh, wow. What is your position there?
A. Vice president of finance.
Q. And how long have you held that position?
A. I think since about 2002.
Q. And prior to that, what was your position at Mojave?
A. The title was controller.
Q. Can you describe what your job duties are as a vice president of finance.
A. Maintaining all the financial information, accounts receivable, accounts payable, maintaining the office staff.

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Q. All of the office staff?
A. Yes.
Q. Let's go over the PMK notice really briefly. You want to take a look at this. I am assuming that is what you were referring to earlier.
A. Yes.
Q. So if you just want to confirm that you are the PMK for West Edna Associates on all of the items that are listed on this notice?
A. Yes, I am.
Q. That is the amended notice of deposition dated November 8th, 2012. The project we are here today on is the new Las Vegas City Hall. So I'm probably just going to say project. And when I say "project," that is what I am referring to, just so we are on the same page.
Can you describe to me Mojave's scope of work on the project.
A. It was the electrical installation on this project.
Q. All of it?
A. Yes.
Q. And was it done in phases?
A. Could you clarify --
Q. Was your contract from Whiting Turner one

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large, lump sum contract, or was it done in different like, you know, I don't know, rough and -- or I don't know how they broke it up, but was it broken up in separate contracts?
A. No. We actually had two contracts from Whiting Turner on that project.
Q. What were those two separate contracts?
A. One was the main building and then the second was for the underground work.
Q. So the underground would have been completed first, or no?
A. The contract is still open at this time.
Q. Were they issued at the same time?
A. Approximately the same time.
Q. Then what was your role in reference to this project?
A. Just all financial matters on the contract.
Q. So do you deal with all payments, receipt of payments, issuing payments?
A. Yes.
Q. Do you have day-to-day involvement in the project?
A. No.
Q. Are you responsible for preparing the payment applications?

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A. In our accounting system, yes.
Q. So do you determine percentage completion, or do you fill in the schedule of values, or how is that completed?
A. That is completed with the project manager on the job.
Q. Do you know offhand what your total contract value was with the two contracts?
A. No, I don't.
Q. And then do you know what the value was related to the equipment supplied by Cashman?
A. Through CAM?
Q. Uh-huh.
A. That was a ballpark of a little over 750,000.
(Exhibit 1 marked.)
BY MS. LLOYD:
Q. We will mark Exhibit 1. You want to take a look at these. They were disclosed in this order. Are you familiar with these documents?
A. Yes.
Q. And can you describe to me what they are?
A. They are the ATA billing formats for the multi billings to Whiting Turner.
Q. This appears to contain three subsequent months. Is that how it looks to you?

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A. Yes.
Q. So it's a period ending January 2011, February 2011 and March 2011. Are these complete payment applications?
A. Typically we provide a conditional release and a copy of our union letter.
Q. Would this be the full schedule of values for the project?
A. No. There is more line items on it because it should be a total at the bottom.
Q. Okay. So can you take a look at the schedule of values included with each of those and tell me where the equipment that was supplied by Cashman is, if you see it?
A. I am not sure exactly where it's broken out on here.
Q. Is it line 4, line 5, emergency generator and UPS system?
A. I would assume it is, but I can't verify that.
Q. How would you be able to verify what those items refer to?
A. I would have to talk to our project manager just to see how they derive the schedule of values.
Q. Okay. Do you know when Mojave received

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payment for the equipment that was supplied by Cashman to the project, the generator equipment?
A. If I remember correctly, it was in the April time period.
Q. So on here, say, for January, on the emergency generator line item, when it says this period, 200,000, does that mean you are billing 200,000 for the emergency generator in January?
A. Yes.
Q. When would you receive payment for your January payout?
A. Typically we should have received that probably the first part of March.
Q. Okay. Then if you go to February, it looks like it was billed out, is that another 520,000 --
A. Yes.
Q. -- on the generator? And then 50,000 more on the UPS?
A. Correct.
Q. So when would you have received payment for the February payment application?
A. Typically that should be the first part of April also.
Q. Okay. And then on the March lines 4 and 5, you billed out another 89,700 it looks like?

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A. Yes.
Q. So when would you receive payment for the March payment application?
A. That should be probably the first part of May.
Q. Okay. And I could not locate copies of those payments. Do you know if you have disclosed copies of those payments to your counsel?
A. I am assuming we have.
MR. BOSCHEE: Just so I am clear on this, the payments from Whiting to you guys for this?
MS. LLOYD: For the equipment.
MR. BOSCHEE: Okay. I'll say that I haven't seen them, but we will go back and look. And if we haven't disclosed them, we will get them to you. But I don't believe I have seen them.
BY MS. LLOYD:
Q. So on a job like this when you have the equipment, assuming that the generator and the UPS line items are referring to the equipment supplied by Cashman, how do you coordinate payment of your vendors?
A. Typically we will get a notice from Whiting Turner that they have a check ready. Then they will give a checklist of items that they need to release that payment to Mojave.

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Q. And then how does that work with -- when do you pay your vendors for the equipment?
A. Typically we have to pay vendors first. You get the appropriate releases from each supplier and their subtiered suppliers. And then I take all the releases over to Whiting Turner and pick up payment.
Q. So were you required to provide conditionals prior to getting these payments? Conditional releases.
A. Mojave provided a conditional release to Whiting Turner with the billing.
Q. Did Whiting Turner require you to provide a conditional release from, say, CAM or even downstream or Cashman --
A. No.
Q. -- prior to issuing the payment for the equipment?
A. No. They would have the check ready, and I would have to go get unconditional releases.
Q. Upon payment of the vendors? Maybe you can describe the whole process to me. So you billed for the generator equipment here, and say you have received most of the payment for it. So you are determining you are going to pay your vendors. So what happens once you -- or how do you get the check from Whiting Turner?
A. Okay. Typically we would get an e-mail from

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their accounting person that would say, We have a check for X dollars ready for this time frame. We need current a union letter; we need unconditional releases from the following suppliers. So we would then collect all that paperwork, unconditional releases from all suppliers or subcontractors, get union letters, you know. At different times they may, just depending on insurance, renewals will last for new insurance certificates. But typically it's usually just union letters and supplier releases.
Q. So are you getting unconditionals through the pay up period that you are being paid for?
A. Yes.
Q. So would you pay your vendors prior to receiving the payment from Whiting Turner?
A. Yes.
Q. And is that what happened with CAM?
A. What do you mean?
Q. With the payments to CAM for this equipment, did you pay them prior to your getting paid for the equipment?
A. Right. We paid CAM to get the releases from MC Fan, all of his suppliers.
Q. So did you pay him prior to getting payment from Whiting Turner for that equipment?

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A. I believe we did, to get the releases, yes.
Q. And as far as you know, has Mojave been paid in full for the equipment that was supplied?
A. Yes.
Q. And so you billed out the equipment at 100 percent?
A. Yes.
Q. Is that because it's 100 percent complete?
A. Yes. This project is 100 percent complete.
Q. And the equipment is at 100 percent, meaning you have supplied 100 percent of what you were contracted to supply?
A. Could you clarify?
Q. So you supplied the generator and the UPS system. Those had certain requirements, I am guessing, that come along with the whole package. It's like a package of equipment.
A. Well, we didn't supply the generator and UPS.
Q. Well, it was part of your contract with Whiting Turner to supply those items?
A. Yes.
Q. And you procured them from the vendor?
A. Correct.
Q. So you were ultimately responsible for installing them and supplying them and getting them

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working?
A. No, that was through CAM. CAM directed their suppliers to do this.
Q. But it was part of your contract. CAM didn't contract with Whiting Turner to supply that equipment?
A. Correct.
Q. You contracted with Whiting Turner to supply that equipment?
A. Yes.
Q. So if your contract is 100 percent, that means your work supplying that equipment is complete, right?
MR. BOSCHEE: Objection. That may call for a legal conclusion, but go ahead.
THE WITNESS: I would say no.
BY MS. LLOYD:
Q. What is not complete?
A. Cashman didn't complete all their contracted work.
Q. Cashman or CAM didn't complete?
A. Cashman.
Q. Well, who did you contract with?
A. CAM.
Q. So then who was responsible to do that work for you?

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A. CAM.
Q. Did CAM complete the work?
A. It wasn't CAM's work. I mean, it was items provided by Cashman.
Q. Well, who was your contract with?
A. Ours is with CAM.
Q. And what was that contract for?
A. Managing the installation of the generator and UPS.
Q. So you paid them not 800,000-some dollars to manage the installation of the UPS?
A. I am not sure of the question you are asking.
Q. You paid him 900,000 just to manage the installation, or was that to manage the installation and supply the equipment?
A. To manage and supply the equipment.
Q. So then as to you CAM was responsible to supply the equipment to the project and get it in working order, right?
A. Simplistically, yes.
Q. What do you mean "simplistically"?
A. Well, we had CAM as a minority contractor directing and coordinating all this work. I mean, I can't sit here and say that CAM was providing the generator themselves.

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Q. But that is what he agreed to provide with Mojave, wasn't it?
A. Yes.
Q. So then he was contractually responsible for doing that, right?
A. Yes.
Q. So has Mojave -- just to clarify, Mojave has been paid in full on this project?
A. Yes.
Q. And the generator equipment, that is all closed out?
A. No.
Q. How is it not closed out?
A. There is items that were not provided under the contract.
Q. So how did Mojave bill 100 percent and get paid in full if there are items that aren't complete?
A. Because it was billed by Cashman through CAM for 100 percent of the work that they had on their contract.
Q. Right. What I am saying is if you are saying the work isn't complete, why did Whiting Turner pay you for the work if it's not complete? Pay Mojave.
A. Because right now for the work that is complete Mojave has gone out and provided bonds for the

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mechanic's lien and the PLC codes --
Q. So even --
A. -- that have been provided at this time, along with other items that weren't provided.
Q. So are there still items that Mojave is responsible to complete related to the generator equipment?
A. I don't understand the question.
Q. Is Mojave still responsible to Whiting Turner to complete certain items related to the generator equipment on the project?
A. By bond obligation, yes.
Q. Well, is Whiting Turner looking to you to get the codes or expecting you are going to get the codes? I don't know what is left to do.
A. I don't know what Whiting Turner is thinking, but that is why we had to place a bond for the PLC codes.
Q. Did Mojave obtain a payment bond for this project?
A. Yes, we did.
Q. Was that required by Whiting Turner?
A. Yes.
Q. Okay.
(Exhibit 2 marked.)

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BY MS. LLOYD:
Q. Can you take a look at this document and see if you recognize it.
A. It appears to be the payment bond that was required by Whiting Turner for this project.
Q. Did Whiting Turner make a claim on this bond?
A. Not to my knowledge.
Q. Were there any claims on this bond?
A. Not to my knowledge.
Q. Who would know if there were?
A. Probably our bonding company.
Q. So no one at Mojave would know if there were claims made on your payment bond posted for this project?
A. Not at this time.
Q. Do you know what the purpose of the payment bond is?
A. Simplistically for an owner or general contractor to be protected from a subcontractor or, you know, a subtiered supplier that if something happens to that company during the course of construction that there is an avenue that the owner has protection against, you know, other individuals not being paid on the project.
Q. Do you know if Cashman has made a claim on

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this bond?
A. I don't know.
Q. Can you tell me who Chris Myers is?
A. He was our project manager on this project.
Q. So was he in charge of Mojave's work on the entire project?
A. Yes.
Q. Both contracts?
A. Yes.
Q. And did he have daily involvement, then?
A. Yes.
Q. Can you generally just describe what his responsibilities would be with your subcontractors or vendors on the project?
A. Just coordination of delivering of materials, making sure that deadlines are met. Just making sure that the correct products have been delivered to the job site.
Q. And who does he report to?
A. Our vice president of construction.
Q. And who is that?
A. Gary Rich.
Q. When we talk about generator systems and UPS, do you know what I am referring to in reference to this project?

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A. Just generically. I mean, not an in-depth knowledge of -- I mean, I wouldn't be able to take a schematic and talk about the generator or UPS system.
Q. But generally this is what was supplied by CAM and supplied by Cashman, or do you need me to identify the equipment?
A. No. I mean, if we are talking in general terms.
Q. Okay. Do you know how Mojave solicited bids for the equipment?
A. Our typical stance is we'll just contact different suppliers and just get bids from each one on -- for that line item or, you know, a different group of items.
Q. Do you do that prior to getting awarded the contract, or do you do that after being awarded the contract?
A. Typically it's done prior to awarding the contract. It's usually done prior to bid time.
Q. And then that is how you comprise your bid to give to the general contractor?
A. Yes.
Q. Okay. Do you know the other suppliers or subcontractors that may have provided bids for this generator or equipment on this project?

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A. I am not sure of all of them.
Q. Do you know any of them?
A. One guess would be -- a common name is Rocky Mountain.
Q. And then did CAM provide a bid to supply the generator or equipment?
A. I am not sure of that.
Q. Do you know how Mojave determined who it was going to purchase the equipment from?
A. How do you mean?
Q. Well, assuming you got a bid from Cashman and other vendors, then how did you determine -- how did Mojave determine who they were going to purchase the equipment from?
A. Typically it's who has the lowest price and most complete package.
Q. And when you obtain those bids, do you provide them to the general contractor or the owner at any time?
A. I am not sure if we do.
Q. Who at Mojave would know that?
A. Our vice president of buyout.
Q. Who is that?
A. Pete Fergen.
Q. And so do you know in this specific instance

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how Cashman was chosen to supply the equipment?
A. I mean, I would assume that they were the lowest bidder on the project.
Q. But you don't have direct knowledge?
A. No.
Q. Do you know why Mojave didn't just buy directly from Cashman?
A. The owner had a requirement for minority participation.
Q. So when did Mojave determine that this equipment should be supplied through a minority or disadvantaged business --
A. I am not sure of that date.
Q. Do you know if it was before or after you had solicited the bids for the equipment?
A. I am not sure.
Q. Who would know that?
A. Pete Fergen.
Q. Is that typically determined prior to getting bids for equipment, or is it different for each project?
A. For what item are we talking about?
Q. Having to supply a certain amount of -- or utilize a certain amount of disadvantaged business entities. How does Mojave typically determine, you

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know, I guess who or what or how that requirement is going to be met?
A. I am assuming it's typically in the bid package that comes out from the general contractor.
Q. When does Mojave determine which line items, I guess, are going to be supplied through a disadvantaged business entity?
A. Again, it's based off the bid. I mean, there are some businesses that are minority or disadvantaged businesses that are direct with Mojave.
Q. Like Nedco?
A. Yes.
Q. So I guess I am trying to get an idea. Cashman bid to Mojave directly. At what point did Mojave determine they didn't want to purchase from Cashman; they wanted to purchase that through the DBE, disadvantaged business entity?
A. I am not sure of that exact date.
Q. And do you know what your percentage was with Whiting Turner, what utilization you had to do for a DBE on this project?
A. I am not sure of that number.
(Exhibit 3 marked.)
BY MS. LLOYD:
Q. Can you take a look at this and tell me if

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you recognize this document?
A. Yes, I do.
Q. Can you tell me what it is?
A. This is our large purchase order to CAM Consulting.
Q. What do you mean "large purchase order"?
A. That is just our terminology for -- I mean, how we track more of the larger expenditures on a project.
Q. So because it's over a certain amount?
A. Yes. It's tracked in our management report for the job just to have a rough idea of contract amount with the supplier, dollars spent today, what is remaining on the contract.
Q. So this was issued -- can you tell me who it was issued to?
A. It looks like CAM Consulting. And there's -- I guess CEO of Cashman Equipment.
Q. Do you know why it was issued that way?
A. For minority participation.
Q. What does that mean, CAM Consulting, in care of Cashman Equipment?
A. I am not sure.
Q. Who decided how it would be issued?
A. This was issued by Pete Bergen.

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Q. Do you know how CAM came to be the DBE that you bought this equipment from?
A. I believe he contacted Mojave and had done work with other general contractors.
Q. Do you know who else he had worked for?
A. I believe he has worked for Martin Harris and Premier Mechanical.
Q. Do you know if he spoke with Troy Nelson?
A. Yes.
Q. And who is Troy Nelson?
A. The president and one of the owners of Mojave Electric or West End Associates, Ltd.
Q. How did Angelo get a meeting with Troy Nelson?
A. I'm not sure.
Q. Like, did he just walk in off the street?
A. He may have made a phone call to Troy and just introduced himself as a minority contractor.
Q. And are you usually, like, looking for minority contractors often, or how does that whole process work?
A. Typically I would assume that with this bid certain -- I mean, individuals know the bid is out there, and they will monitor who gets a project and then contact the awarded subcontractor or supplier and

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try and get a contract that way, I am assuming.
Q. So in one of the responses to the interrogatories, Mojave stated that they checked with other contractors about CAM. Do you know who it was checked with, I guess?
A. Is that -- I mean, are you asking the companies that --
Q. It just stated that he had met with Troy Nelson and that he checked with other contractors about him.
A. That is the Martin Harris and the Premier Mechanical, that I know of.
Q. So did Troy actually speak with Martin Harris and Premier Mechanical about Angelo and CAM?
A. Yes.
Q. What was CAM's first project with Mojave?
A. I am not sure of the sequence order. We had two other projects with CAM.
Q. In addition to this project?
A. Yes.
Q. So three projects total. So when you determined that you were going to work with him, is there a process you go through to check him out prior to contracting with him?
A. Could you clarify what --

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Q. Well, you are paying him large amounts of money. Do you check his credit? Do you check his business status, you know? Is there any, I guess, checking done before you decide that you are going to contract with him?
A. There isn't any credit checks done. There was a check done on his DBE status.
Q. So you verified his DBE?
A. Yes.
Q. But you didn't check his credit?
A. No.
Q. And did he have a contractor's license?
A. I am not sure.
Q. Mojave didn't check to see if he had a contractor's license?
A. I am not sure if somebody else did or didn't.
Q. Did you verify how long he had been in business?
A. I did not.
Q. Do you think anyone else at Mojave did?
A. I am not sure.
Q. Who would be responsible for something like that?
A. Probably Pete Fergen would have been the one.
Q. Does CAM actually perform any work?

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A. Could you clarify that?
Q. What did you hire him to do? What did you hire CAM Consulting to do?
A. Just the managing and coordination for whatever task he is hired for.
Q. Does he actually do this? Does he do anything?
A. He does the managing and coordination.
Q. So if I look through your job file, would I find documents from CAM on this project related to the work he performed?
A. I am not sure.
Q. I mean, what does that mean, "management and coordination"?
A. It's more or less if -- let's just say we had a light fixture order with him. He would be given, Here's the fixtures we need, here's the deadline they have to be there, and he coordinates all those items.
Q. But in this instance wasn't Mojave dealing with Cashman directly on this generator equipment?
A. Not to my knowledge. The only dealing I had was through CAM.
Q. What dealings did you have through CAM?
A. Just on payments. That is all I really had with CAM.

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Q. So for actual work that was performed, you know, the actual supplying of the equipment, the ordering of the equipment, those items, do you know if CAM or Angelo had a role in that?
A. Just the coordination of getting the materials, getting whatever subcontractors or suppliers we had to get the items to the job site.
Q. Hadn't Mojave already determined to buy the equipment from Cashman?
A. I'm not sure.
Q. So it was up to CAM to choose who was going to supply the equipment, the generator equipment?
A. I'm not sure.
Q. Who would know about that?
A. Pete Fergen.
(Exhibit 4 marked.)
BY MS. LLOYD:
Q. Can you take a look at this document for me.
A. Okay.
Q. Are you familiar with this document?
A. Yes.
Q. Mojave's interrogatory response No. 5 and 7 state that this document is -- it memorializes the scope of work that CAM had on this project; is that correct? And the response actually cites this and the

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subsequent exhibit as --
A. Yes, it does.
MR. BOSCHEE: Since you cited it and then we reference it in the interrogatory response, do we just want to put the next one --
MS. LLOYD: Together? We can. I don't know that they really actually go together.
MR. BOSCHEE: I don't know either, but when you ask about the total scope of work --
MS. LLOYD: So the interrogatory response cites Mojave 185 to 208, which you can see at the bottom. The document starts with Mojave 185 and then continues. And the document I just provided goes to 208.
(Exhibit 5 marked.)
BY MS. LLOYD:
Q. So are these for the work CAM performed on the new City Hall project?
A. No.
Q. Okay. So what are these for?
A. These refer to separate projects.
Q. Okay. Let's start with No. 4. Can you tell me what this is?
A. This is a contract for the NV Energy project.
Q. And this is issued by Mojave to CAM as your

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subcontractor?
A. Yes.
Q. So can you tell me what CAM's scope of work was for Mojave on this project?
A. Reading off of page 2 it includes supply and install a turnkey telecommunication system that's called for in the contract documents dated July 16, 2010.
Q. So do you need a license, a contractor's license, to install a telecommunication system like that?
MR. BOSCHEE: Object to form. May call for a legal conclusion, but if you know, you can answer.
THE WITNESS: I don't know.
BY MS. LLOYD:
Q. Did CAM perform that work?
A. Can you clarify it? I'm sorry.
Q. So CAM was contracted to supply and install a turnkey telecommunication system. Did CAM do that?
A. Can you clarify that again, because I am not sure what you are asking.
Q. Well, Mojave hired CAM -- if I am understanding the document right. Mojave hired CAM as a subcontractor to install a turnkey telecommunication system as described in paragraph 1.1. Did CAM perform

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that work?
A. Are you asking self-performed?
Q. Did they perform that work? It's not a trick question. I promise.
A. I'm not sure what work. Are you talking about the work there? They were hired to do it and then they hired someone to perform that work.
Q. Who did they hire to perform that work?
A. Our low-voltage systems division.
Q. Does that have a separate corporation?
A. No. It's just more or less a division under the West End Associates, Ltd, d/b/a Mojave Electric.
Q. So Mojave hired CAM to hire Mojave to perform the work?
A. Mojave Systems.
Q. But it's the same corporation, so essentially you hired CAM to hire Mojave?
A. Yes.
Q. And is there a separate contract between CAM and Mojave for the work Mojave --
A. I would assume there is.
Q. Have you seen it?
A. I mean, I haven't looked for it. We got so many projects. I couldn't tell you the exact contracts that are there or not there.

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Q. Do you want to look through all these pages? Because I don't know if they are all contract pages or something else. If you want to tell me at the end if any of the documents that are in here in this exhibit clarify that relationship?
A. I mean, this is just the agreement between Mojave and CAM.
Q. So Bates 199, the last page of it, what is that?
A. That is an invoice from CAM to Mojave Electric.
Q. Under this agreement?
A. Yes.
Q. And then what is the previous page?
A. More or less the same thing, just for the January time period.
Q. Okay. So there is no document in here that shows Mojave billing CAM?
A. No.
Q. Did Mojave bill CAM?
A. Yes.
Q. Okay. And do you know what Mojave agreed to pay CAM and then what CAM agreed to pay Mojave for this work?
A. Well, for this contract, it was for $350,470.

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Q. And then do you know what CAM subcontracted with Mojave to do the work?
A. I believe it was probably that dollar amount less -- I think it was a 3 percent fee for CAM.
Q. So why did you use CAM on this project?
A. Again, it was a minority participation.
Q. Required by Clark County?
A. I am not sure whether it was NV Energy or Clark County, but there was minority participation desired on this project.
Q. So did the prime contractor know that you inserted him in the middle of yourself?
A. I am not sure.
Q. Okay. So did he complete his work on this project?
A. The work was completed by Mojave Systems.
Q. Was he around until the end of the project?
A. I think the final bid of the project was when -- I mean, it was after the April 2011 time period when --
Q. He still owed the money and skipped town?
A. Yes.
Q. So page 198, it states that -- it says 82 percent. Does that refer to percentage complete?
A. Yes.

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Q. So there would have been a subsequent payment for 18 percent?
A. Normally there would have been.
Q. So what happened to that payment, I guess?
A. Well, that is when CAM more or less disappeared, so we had Mojave Systems finish it.
Q. And then kept the money?
A. Well, not really kept the money. We had to do his management for him.
Q. Well, did he really do any management on the project?
A. Yes.
Q. Describe to me what he would do on a daily basis on this job.
A. I couldn't tell you. You'd have to get our project manager. But this project manager is no longer with the company.
Q. Who was the project manager on this job?
A. Mark Foster.
Q. So he wasn't just inserted in to meet the DBE requirement. He actually had a role on the project?
A. Yes. The managing/coordination for the low-voltage installation.
Q. Okay. Let's look at No. 5. Can you describe to me what that is?

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A. This is an agreement between Mojave Electric and CAM Consulting for the Las Vegas Metro Police headquarters tenant improvement.
Q. So this is a -- Mojave hired CAM, correct?
A. Yes.
Q. And what did Mojave hire CAM to do on this project?
A. As referenced in paragraph 1.12, supply the consulting services and contract the following systems for access control, paging, multimedia and security systems.
Q. Okay. And then the price for that work, is that contained in Article 5?
A. Yes, it is.
Q. Okay. And did CAM complete its work on this project?
A. No, this was during the same time frame when CAM disappeared. So he had completed a portion of it and Mojave had to step in and coordinate for the rest.
Q. Okay. And on this project CAM hired -- CAM hired the outlets specified?
A. Yes.
Q. In 1.1, Stanley Well & Sling?
A. Correct.
Q. And did you tell CAM who to hire to complete this work? Is that why it's specified in the agreement?
A. That is what I would assume.
Q. Okay. Who was the project manager on this job?
A. Debbie Corwin.
Q. Is she still with the company?
A. Yes.
Q. And so do you know if Angelo had a role on this project?
A. Probably the same as the other ones.
Q. And do you know if there was a DBE requirement on this project?
A. Yes, there was.
Q. And is that why he was used?
A. Yes.
Q. So he was used for a total of three projects?
A. Yes.
Q. Just to make sure, the City Hall, the Metro, and the NV energy?
A. Yes.
Q. So was CAM paid any payments on the Metro contract?
A. I am not sure. I would have to double-check on that.

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Q. Okay. And then do you know if he was paid any payments on the NV Energy?
A. Yes.
(Exhibit 6 marked.)
BY MS. LLOYD:
Q. Take a look at this document. Do you recognize it?
A. Yes.
Q. Can you tell me what it is?
A. It's a contract between Mojave Electric and CAM Consulting on the Las Vegas Metropolitan Police headquarters, DI.
Q. So did you issue two separate contracts to CAM?
A. Yes.
Q. So this one paperwork is for the 1.1, but it's a different scope of work from the other that we just looked at?
A. Yes.
Q. And what was -- I don't really understand the scope of work. Can you tell me what he was to do or CAM was to do on this project? On this contract.
A. Just reading the paragraphs, the subcontractor is required to supply a job site or job site specific safety program within 30 days of the

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contract, two days prior to having a person on the job site. This is an M3 dimensional coordinated project, and it appears for a Q-Matic quote. And electrical contractor is to install conduit and wire in standard boxes for subcontractor.
Q. So did he subcontract to someone else to do anything on this contract, or were these actually his duties?
A. I am not sure on this one.
Q. Did he perform this work?
A. Just by looking at the subcontract number, it would -- it appears that it is for a low-voltage work, which might have been my systems department again, but I am not 100 percent sure on that.
Q. The date of this agreement is July 20, 2011, which is after the April date you referenced earlier where he skipped town. So do you know if this was ever actually signed, or if he ever did any of this work?
A. I am not sure on this one.
Q. Can you look to the back and tell me what those invoices are for starting --
A. It looks like an invoice from --
Q. -- around 280.
A. 289 maybe.
Q. 282, 281.

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A. 281 is a change order.
Q. So you issued a change order under the contract. So I am assuming that means it was --
A. And the same thing for 282.
Q. So what does that mean if you issue a change order on a contract? That there is a contract?
MR. BOSCHEE: Can we go off the record for a second?
(Off-record discussion held.)
BY MS. LLOYD:
Q. We started off at Mojave 271. Can you see the numbers at the bottom?
A. Yes.
Q. So this document appears to be a CAM agreement, correct?
A. Yes.
Q. Not a Mojave agreement. Have you seen this document before?
A. No, I haven't.
Q. Because you produced it. I mean, it was in your possession. I don't know if that --
A. Okay.
Q. So I am not sure why, but -- so can you talk to what this agreement is, or do you not have any knowledge of it?

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A. I don't. I mean, this is an agreement from CAM to Q-Matic.
Q. If you look at Article 1.1, it looks like it contains the same scope of work as the Mojave to CAM contract we were just looking at, the earlier part of this exhibit. Yes?
A. Yes.
Q. Okay. But you don't have any knowledge about what this agreement was for?
A. I mean, just reading it, I mean, it's to Q-Matic.
Q. Do you know why Mojave would have a copy of this agreement if it was between CAM and Q-Matic?
A. An assumption would be that CAM needed help with the contract and they basically took a copy of our contract.
Q. With their logo on the front. It looks very similar to your contract.
A. Well, ours is just an Excel format, so I am assuming they just gave it to Angelo and just had him change --
Q. Okay. So neither one of these documents are executed. Do you know if you have executed copies?
A. I don't know.
Q. Do you know if this work was performed?

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A. I would have to assume that it was.
Q. Okay. So then if we look again starting at 281 with the purchase order changes that were issued by Mojave to CAM, would those have been in reference to Mojave 262, the contract beginning at the beginning of this exhibit?
A. Yes. I am assuming it was additional work that was required.
Q. At the bottom of that page where it says, Please acknowledge, who's supposed to sign that?
A. The subcontractor.
Q. Is that Angelo's signature?
A. I am not sure. I don't know what Angelo's signature looks like.
Q. Because I am going to represent to you that in July I am pretty sure he was gone, July of 2011. So who would have signed this document for CAM?
A. I would assume that if this was additional work for Q-Matic, that they had someone from Q-Matic come in and sign that, because at the top it says to CAM.
Q. In care of Q-Matic?
A. Yes. Because they weren't able to find Angelo to sign it, they just had somebody come in and sign.

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Q. And then the documents following that, can you tell me what those --
A. Starting with 283?
Q. Uh-huh.
A. Looks like invoices from Q-Matic.
Q. Related to the work they did?
A. Yes.
Q. Or related to these change orders maybe?
A. They would have to be a combination of both because the two change orders total a little over 9,300 and the subtotal is almost at 11,000.
Q. So Q-Matic was able to complete the work without CAM?
A. Yes.
Q. And does that still account for your DBE requirement on that project?
A. I would assume that portion would be no with CAM being gone.
(Exhibit 7 marked.)
BY MS. LLOYD:
Q. Can you take a look at this and tell me what this is.
A. An agreement between CAM and Stanley Convergent Security Tools on the Las Vegas Metropolitan Police Headquarters tenant improvement.

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Q. Was this to complete the work from the contract we looked at earlier? I think it was Exhibit 5 between Mojave and CAM.
A. Yes.
Q. Do you know why Mojave would have a copy of this agreement?
A. I am not sure.
Q. Then if you can take a look starting at Mojave 218 and describe to me what all the supporting documents are.
A. Okay. 218 is a listing for our LPO or large purchase order just tracking of invoices charged against the LPO.
Q. So is this a Mojave -- you produced this document. You write in it or someone from Mojave writes in it?
A. Yes. 219 is a change order; 220 is also a change order; 221 is also a change order; 222 is also a change order; 223 is also a change order; 224 is also a change order; 225 is also a change order; 226 is also a change order; 227 is also a change order.
Q. Let me stop you there. Most of these change orders appear to be unsigned. Is that normal?
A. Typically we will get a signature on them.
Q. Okay.

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A. Then 228 is an invoice from Stanley.
Q. And is that -- it looks like it's an invoice to Mojave directly.
A. I don't know if they just billed us because this was the time that CAM had disappeared and we had to start paying for CAM.
Q. So did you just take over the scope that he was supposed to be performing?
A. Basically.
Q. Okay. Then if you can, tell me the rest of the documents essentially represent that.
A. They are just invoices from Stanley Sling and Well Equipment Company. And the last invoice is just a billing from CAM, which appears to be for well equipment.
Q. Do you know if that was paid to CAM?
A. I am not sure.
Q. So when it's stamped "processed," does that mean it was paid?
A. It was entered into our system, in our accounting system.
Q. So is there -- do you ever put a date on an invoice that shows when it was paid?
A. No.
(Exhibit 8 marked.)

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BY MS. LLOYD:
Q. Can you take a look at these?
A. They are checks from Mojave to CAM.
Q. Is there any marking on the check itself that shows what it's a payment for? So if we start with the first page, Cashman 438, the check is for 19,989.84. Is there a reference on here of what that is for?
A. It would be on the check stub, but not on this portion of the check itself.
Q. Okay. Do you have records in your system of what these payments would be for?
A. Yes.
Q. Have those been produced to date to know what these different payments were in reference to? So if you want to look through, do you know offhand what these payments are in reference to if we go check by check?
A. I mean, I couldn't tell you what each check was for.
Q. But you have records to know what each check was paying?
A. Yes.
Q. Can you provide those records?
A. Yes.
Q. Okay. Then if you want to keep that exhibit

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handy.
(Exhibit 9 marked.)
BY MS. LLOYD:
Q. And do you recognize this document?
A. It's an unconditional progress release from CAM to Mojave on the City Hall project.
Q. And CAM received payment $901,388.93?
A. Yes.
Q. Do you know what that was payment for?
A. I would have to pull the -- I think three invoices are referenced on the release to know exactly what it's paying.
Q. Okay. Because I don't believe I have records of that, so could you provide it?
A. Sure.
Q. Okay. Did CAM have a role on the City Hall project besides the generator and UPS equipment?
A. I am not sure.
Q. You don't know if they were supplying other equipment?
A. I am not sure, because I mean, a lot of the projects mixed together were -- like on the Las Vegas Metropolitan Police Headquarters TI, I mean, they had different facets on that one.
Q. So it's possible that CAM was supplying other

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equipment to the City Hall?
A. I'm not sure.
Q. Okay. But those invoice numbers would tell you what this payment was for?
A. Yes.
Q. Okay. And is this notary -- does this notary work for Mojave?
A. Not anymore, but yes, at the time.
Q. She did?
A. Yes.
Q. Did you prepare this release for CAM Consulting?
A. Not to my knowledge.
Q. So did anyone at Mojave prepare it?
A. I don't know. I mean, I know I didn't.
Q. Okay. And then if you want to take a look at the previous exhibit. Do you know what checks this release was exchanged for?
A. Without having a detail in front of me, I would assume it was the last two checks, possibly. Because it looks like those two checks totaled the 901,000.
Q. So at the time that Mojave issued these checks, had Mojave been paid for the equipment from Whiting Turner?

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A. I don't think we had.
Q. Okay. But you have records of when you received payment and you are going to provide that?
A. Yes.
Q. Okay.
(Exhibit 10 marked.)
BY MS. LLOYD:
Q. Can you take a look at these documents?
A. Okay.
Q. Do you recognize these?
A. Yes.
Q. Can you tell me what they are?
A. They are checks from CAM to Mojave.
Q. And do you know what they are paying?
A. They are paying Mojave for the work on the NV Energy project.
Q. That was the first contract we discussed where Mojave hired CAM, then CAM hired Mojave?
A. Correct.
Q. Did Mojave submit invoices to CAM?
A. Yes.
Q. And do you have copies of those invoices?
A. I am assuming we do.
Q. Can you provide those?
A. Yes.

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Q. Okay. And were these given to CAM at the same time he received the other checks?
A. I remember we paid them -- the first check on NV Energy was given to CAM the month prior. And it was our -- I think the first payment on that project and he didn't bring a check to us. So when he came to pick up the second check, he paid us for the first check, and then the second check on NV Energy.
Q. Okay. So did you require him to do that in order to issue subsequent payments to him?
A. Could you clarify?
Q. So you paid him the month before and then he didn't pay Mojave. So were you concerned because he didn't pay Mojave the month before?
A. Well, I contacted him, and that's when I left him voicemails. And I got an e-mail from him saying that he was out of the country and he would be back on this date to square everything up.
Q. Okay. At that point were you concerned that there might be issues with him issuing payment?
A. Not really.
Q. Okay. So when he came to pick up the other checks you required that he pay for the previous month and that month?
A. Correct.

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Q. On the NV Energy?
A. Correct.
Q. And did you require that before you paid him on the City Hall project? Like, did you require him to square up everything with Mojave before you were going to give him any more money?
A. No, just on the NV Energy project.
Q. So was the NV Energy handled at a different time as the City Hall payment, or were those handled at the same time?
A. Just timing bit that they were both paid at the same time, so they were handled at the same time.
Q. So he came to Mojave's offices?
A. Yes.
Q. Is that normal course of dealing for your suppliers? They come to your offices to exchange releases for payments?
A. Yes.
Q. And so you didn't have any concerns paying him and then waiting for him to pay Mojave for the work that Mojave was doing on the NV Energy project?
A. Not on the first time.
Q. Why didn't you have any concerns, I guess, if he was out of the country and didn't issue payment like you thought he was going to issue payment?

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A. Just because we had more work with him on NV Energy, so I knew he would have to get it straightened out.
Q. How do you mean -- because if he was out of the country, he wasn't really doing anything on the project.
A. Well, I don't know if he was or not. I am just saying, that is what the response I received was.
Q. So what was your agreement with him on the NV Energy project about the payments? Did you have an agreement?
A. It was basically to bring in a check and it would be exchanged check for check and release. And we made an error on the first payment. That wasn't done by my accounting staff. So then when the second check was ready, that is why I told him he was coming in with two checks to get NV Energy current on all payments.
Q. So did you believe he had the funds to cover these checks in his account before depositing your funds?
A. Yes.
Q. So you believed he had the funds to cover your check before he put your check in the bank, if that makes sense? So he didn't need to get paid from Mojave to pay Mojave? You thought he had the money to

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pay Mojave?
A. No. My assumption was he got our check and we got his, and he needed ours --
Q. To pay yours?
A. Yes.
Q. So did you deposit his checks right away, or did you wait for your check to clear, your check to him to clear?
A. No. Typically it was the -- I think this one was late in the day that he came in and it was done the next day. But he knew I wasn't waiting on him; that these checks were going in.
Q. How did he know?
A. Because I told him, We are depositing the checks.
Q. What was his response?
A. He was fine with it. Because he had our payment.
Q. And he had the City Hall payment --
A. Yes.
Q. -- at the same time?
So to go back a little bit to the generator equipment, we had talked earlier about who was to do certain things on the project. So can you describe to me what your understanding of Cashman's scope of work

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is on behalf of Mojave? I guess, what Mojave's understanding of what Cashman's scope of work was on the City Hall project?
A. Just my understanding was that they were to provide the complete generator and complete UPS on the project.
Q. Do you know what that entails?
A. Not every detail. When I say "generator," I am not sure of every component that makes it a generator.
Q. Do you know when that scope of work would start? Like, when the first work would be done?
A. I wouldn't.
Q. Do you -- does it include the preparation of submittal from Mojave?
A. Yes, it would.
Q. So that would be Cashman's responsibility, or would that be CAM's responsibility?
A. Well, for us it would be CAM's responsibility to tell them that we need submittals, and then they would -- it would go to Cashman to get the submittal.
Q. But essentially providing this generator and UPS system includes preparing submittals when they are needed to give to the general contractor for approval?
A. Yes.

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Q. And do you know if Cashman provided those submittals?
A. I am not sure.
Q. Do you know what the purpose of the submittals are?
A. I mean, simplistically so the owner and general contractor know that what was on the contract is being installed. So if there is a substitution being made, if you spec'd out a Type A fixture made by a specific requirement, we say we can get this one less expensive, can we substitute it. It's just so that what is on the contract documents are installed.
Q. So you wait for the owner approval before you actually issue the go-ahead and order the equipment?
A. I think more the general contractor.
Q. And then does Mojave issue a release once they have the approvals to the supplier to go ahead and order the equipment, that everything looks good, or how does that process work?
A. It would be dictated by the schedule of the project. The project manager would release it. I am just saying, if day one we got the project and there is a 90-day late time on a generator and it's a 91-day project, I can't wait until day 90 to say, okay, we'll order a generator. It would have been released on day

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one with a scheduled delivery date.
Q. Okay. So obviously all of that is included in Cashman's scope of work, the ordering of the equipment and all of that coordination?
A. Through CAM, yes.
Q. And then did Cashman complete all of the work required of it prior to Angelo's bad check?
A. No.
Q. What did Cashman not do prior to Angelo's bad check?
A. The items that I am aware of that Cashman hadn't provided was batteries for the UPS.
Q. Was that requested prior to Angelo's bad check?
A. I am not sure. I think it was -- I think it was --
Q. Because I am kind of wanting to start with, you know, before the bad check and then after the bad check. So if we deal with before the bad check, was Cashman doing everything it was required to do before the bad check?
A. No.
Q. So what items didn't it do before the bad check?
A. The batteries for the UPS, the startup of the

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generator, providing the PLC codes. And then this would come after, but just warranty work on the generator or the UPS.
Q. So Mojave asked for the PLC codes to be installed prior to Angelo's bad check?
A. I am not sure. That would be the project manager.
Q. Okay. So you are not sure if these items were not completed by Cashman before or after the bad check?
A. I would have to say before because Cashman billed 100 percent of the contract.
Q. Well, Cashman didn't bill it; CAM billed it?
A. Right. Cashman billed to CAM, and CAM billed to Mojave for this work.
Q. Do you know how the installation of the generator is scheduled?
A. No.
Q. So you don't know at what point the batteries would be required as opposed to deliver the generator as opposed to the PLC codes?
A. No.
Q. So you don't know if the PLC codes would be installed immediately upon delivery or if that is something that happens later?

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A. I wouldn't know.
Q. So you don't really know whether they were on schedule completing the work prior to Angelo's bad check?
A. I wouldn't know. But that wasn't the question that you asked.
Q. Well, I did. I asked were they completing their work as required prior to CAM or Angelo issuing that check that ended up being bad?
A. But I am saying from my perspective, on an accounting perspective when you bill 100 percent of the contract you are saying all of the work is done. And I understand warranty work, you know, wouldn't be done until after the project is complete.
Q. Well, who decides when your supplier can bill 100 percent? Does your supplier decide when they can bill 100 percent, or does Mojave decide when they can bill 100 percent?
A. The project manager approves the percentage.
Q. So Mojave's project manager approved a billing of 100 percent?
A. Yes.
Q. And then it was up to him to coordinate when those items were completed?
A. I am not sure what he was thinking on that.





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Q. So if he allowed 100 percent billing, but say part of the work couldn't be done for, I don't know, six months because it requires a certain sequencing, Mojave made that decision to allow that to happen?
A. Yes.
Q. Okay. Do you know about the delivery of the equipment to the site?
A. No.
Q. Who would be the best person at Mojave to know about the delivery and the installation of the equipment?
A. Chris Myers, the project manager.
Q. And then do you know anything about the problems with the installation or if there were problems with the installation?
A. No.
Q. That would be Chris?
A. Chris also.
Q. Do you know when Cashman was last on the project or performing work for the project?
A. I don't know that. Chris would know that.
Q. Do you know what work was completed by other contractors on the generator equipment?
A. Roughly the startup work was done by other subcontractors, and then Mojave had to go out and

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purchase the batteries for the UPS.
Q. Do you know what the startup work entails on the generators?
A. No.
Q. Would Chris --
A. Yes.
Q. -- know more fully what was done by those other subcontractors?
A. Yes.
Q. And then I recall seeing something in an e-mail from you about self-insurance, Cashman having self-insurance. Do you know what that was referring to?
A. Yes, because I talked to Keith and Shane asking them if they had insurance for covering this type of transaction.
Q. What type of transaction?
A. Well, where they are paid. They take a postdated check and then CAM doesn't come through and pay basically on a promissory note.
Q. Do you have insurance? Does Mojave have insurance for that?
A. Well, we have directors, you know, and owner's insurance, employee insurance in case there is a theft of some type.

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Q. But is there an insurance that would insure you against a bad check from -- say, if Whiting Turner gave you a bad check, do you have insurance to cover that?
A. I don't think -- I am not sure. I would have to get our insurance agent and ask him specifically, again the specifics of it.
Q. So why did you think that Cashman would have insurance?
A. Just against the theft or fraud.
Q. So were you just kind of assuming they should have a policy like that, or did you have direct knowledge? Did you see a policy?
A. No. I asked Keith and he said they had one, but they were self-insured and they didn't want to go against themselves for the payment.
Q. As part of this litigation, does Mojave have an agreement with Whiting Turner concerning Cashman's claims?
A. I am not sure what you mean by an "agreement."
Q. Mojave had a requirement to keep their project free of liens and resolve claims by its lower-tiered suppliers; is that right?
A. Yes.

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Q. So when Cashman's claim came up, did Whiting Turner come to Mojave and say anything?
A. No. Actually, Mojave reacted first.
Q. And did what?
A. Went out and posted a mechanic's lien bond.
Q. And then what was done subsequent? Was there an agreement reached with Whiting Turner about the defense of Cashman's claim?
A. I am not sure of all the legal aspects of it.
Q. Who would know about that?
A. Probably our law firm.
Q. I mean, who at Mojave would know about it? Someone had to authorize it and understand what was going on, on Mojave's behalf.
A. I would assume that would be Troy.
Q. Were you in the room when the checks were all exchanged concerning this equipment?
A. Between CAM and Mojave, yes.
Q. And then was Cashman also on site?
A. Cashman was on site also. And that is when checks were exchanged in our sales conference room.
Q. So you were all in the room together?
A. I don't remember me sitting in that exchange with CAM. I mean, that is almost two years ago.
Q. So did you recall -- I mean, did you recall

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seeing CAM give Cashman the check?
A. I don't remember.
Q. Okay. And did you see if the check was given in exchange for the release?
A. I did see that, but I mean, I saw the release after they left.
Q. Okay. And do you know why you required an unconditional release?
A. Because Cashman was being paid 100 percent on the project.
Q. But wouldn't a conditional release serve the same purpose if payment is issued?
MR. BOSCHEE: Object to form. That may call for a legal conclusion, but you can answer if you can.
THE WITNESS: To me it's just industry standard. For me to go pick up a check at a general contractors, I have to come in with an unconditional progress or final, depending on what the check is for.
BY MS. LLOYD:
Q. So if the check to you from your general contractor bounces, is that unconditional release -- do you consider it still to be a valid release?
A. Well, I have a bad check I could take to the DA's office to collect on.
Q. Right, but say they disappear; do you

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consider that to still be a valid release if the check doesn't clear?
A. I haven't thought about that.
Q. Do you know why Mojave didn't issue a joint check to CAM and Cashman for this equipment?
A. Just for the minority participation. Just because I couldn't issue a joint check to CAM and Cashman.
Q. Why?
A. My understanding is that with the DB program, payments have to go to the DB, and then the DB disburses them.
Q. Where did you -- have you seen that requirement in writing anywhere?
A. Just talking with different contractors across the country, electrical contractors.
Q. So did Whiting Turner say you can't issue a joint check?
A. No.
Q. Wouldn't it have been safer to issue a joint check?
A. Well, first of all, I didn't have a joint-check agreement with CAM and Cashman.
Q. But Cashman requested a joint check, didn't they?

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A. They called into the office asking for a joint check and my response to my accounts payable is we can't do it because of the minority participation. I have to have a check going to CAM.
Q. But you don't really have that requirement anywhere in writing from Whiting Turner that you couldn't issue a joint check; you just chose not to issue a joint check?
A. Yes, but that was also the agreement with CAM.
Q. What was the agreement with CAM?
A. How they were handling payment.
Q. What do you mean?
A. That this was set up before when CAM and Cashman met to decide how payments were going to go.
Q. Who decided it?
A. Keith and Angelo met. And actually Cashman reduced the percentage from -- I think on this one it was from 1 percent down to a half a percent.
Q. But I still don't understand if Cashman requested a joint check, what did you mean? That there was an agreement prior that there wouldn't be a joint check?
A. No. That is how it was explained to Keith and Angelo, that the pay would go to CAM, and then CAM

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would distribute funds.
Q. Who explained that?
A. Pete Fergen with Keith and Angelo.
Q. Pete Fergen said, Mojave won't issue a joint check?
A. I don't know if Pete said those words specifically.
Q. What did you mean, then, by what you said?
A. I am just saying that they met with CAM and Cashman on how payments were going to flow. And I just have to show a check that is made to CAM, and CAM solely, for that amount.
Q. Does Mojave ever issue joint checks?
A. I typically try not to.
Q. Why?
A. To me they are just more of a headache to deal with.
Q. If you are concerned that a sub isn't going to pay a supplier, isn't it safer to issue a joint check?
A. No. I view it as if I get an unconditional from that supplier, then I know they are paid, then I can issue a check to that individual.
Q. But if the check exchange for the unconditional doesn't clear the bank, the unconditional

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isn't valid anymore under the law.
MR. BOSCHEE: Okay. I am going to have to object to that since you put "under the law" at the end of your question, but answer if you can.
THE WITNESS: You will have to clarify that statement.
BY MS. LLOYD:
Q. So if you were to issue a check, wouldn't it be safer to issue a joint check to the supplier and the sub, and get releases from both; that way you know you're paying and your funds are good and those releases are good.
A. Possibly if the minority participation isn't involved, but not with the minority participation.
Q. And just to clarify, you don't have anything in writing from Whiting Turner on this project that says you can't issue a joint check?
A. No.
Q. And can you tell me where you get that requirement from? Is it some other handbook? Is it some regulation somewhere, some guideline?
A. I believe it's a federal regulation.
Q. That says you can't issue joint checks?
A. I am not sure if it says -- if it says you cannot issue a joint check.

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Q. But that is why you don't issue joint checks?
A. In this instance, yes.
Q. And then just to clarify, you weren't sure who -- if CAM provided materials from anyone else on this project. You said Chris Myers would know that?
A. Yeah, I am not sure.
Q. And then can you describe to me the basis for Mojave's allegation in its counterclaim that CAM was Cashman's agent?
A. Could you clarify? I am not sure what you are asking.
Q. In your counterclaim against Cashman in this case, Mojave states that CAM was Cashman's agent. Do you know the factual basis for that claim?
A. I don't know the legal -- the legal facts for that.
Q. Why does Mojave think that?
A. Because we contracted with CAM, and then CAM went out and contracted with Cashman.
Q. Doesn't that just make CAM your subcontractor and Cashman CAM's subcontractor?
A. I am not sure how the legal terms work.
Q. And didn't Mojave introduce CAM and Angelo to Cashman?
A. I am not sure.

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Q. You referred to a meeting between Pete and Keith and Angelo. So do you know how CAM came to be Mojave's subcontractor on this project?
A. Again, looking for the minority participation.
Q. So did Mojave after meeting CAM introduce CAM to Cashman?
A. I am assuming we did then.
Q. Okay. And then do you consider there to be a contract between Mojave and Cashman?
A. No.
Q. So in CAM's failure to complete the work, do you consider CAM to have breached its contract with you, Mojave?
A. I haven't really thought about it in those terms.
Q. So if you incurred damages because CAM didn't complete the generator startup, Mojave would pursue those damages against CAM, its subcontractor?
MR. BOSCHEE: Calls for a legal conclusion, but go ahead and answer if you can.
THE WITNESS: I'm not sure.
BY MS. LLOYD:
Q. And then can you tell me the basis for the allegation in your counterclaim that Mojave relied upon

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the unconditional provided by Cashman? How did -- what did Mojave do in reliance upon that unconditional?
A. Could you clarify that? Because I am not understanding what you mean.
Q. Mojave included in their counterclaim an allegation that they relied upon the unconditional release provided by Cashman. Can you tell me how Mojave relied upon it?
A. Because Mojave paid CAM and CAM paid Cashman. And then we got the unconditional release and then CAM and Cashman struck a separate deal between the two.
Q. What do you mean they struck a separate deal?
A. By Cashman taking a postdated check. To me it becomes a promissory note. I mean, basically Cashman loaned CAM the money to be repaid in a certain number of days.
Q. So you have personal knowledge of that agreement?
A. No, I am just saying that Cashman took a postdated check.
Q. So you are assuming that is what that meant?
A. Yes.
Q. So what if Shane didn't know the check was postdated when he took the check?
MR. BOSCHEE: Objection. Calls for

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speculation.
MS. LLOYD: Well, he is speculating right now.
BY MS. LLOYD:
Q. Then what do you think about that?
A. But he did; he knew.
Q. How did he know it was postdated?
A. Because he held the check. And in fact, Keith went over to Pete Forgen's house on a Saturday night after picking up the check looking for payment. And then I got an e-mail over the weekend from Pete asking me why we didn't pay Cashman, why Cashman wasn't paid by CAM. And I told them they were. And Shane told me, No, I just deposited the check. I just haven't told everybody yet.
Q. Okay. Give me time frame here.
A. I am not sure of the exact dates, but Cashman received the check from CAM. Shane sat on the check. This may have been -- and I am not sure. It may be a Wednesday that they came to, or a Thursday. But on a Saturday night Keith went to Pete's personal residence looking -- asking him why they weren't paid for the generator, the 755,000. Pete told him he thought he was already paid, and that is when Pete sent me an e-mail.

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And on Monday morning I got on the phone with Shane immediately and I said, What is going on with this? Because Keith went to Pete's house on Saturday night asking why Cashman wasn't paid. And I said, And you have been paid. And he said, Yeah. I have held the check. I just didn't tell anybody. I have now deposited it and I will let everybody know I was paid on the job.
Q. So I don't know why that infers to there was an agreement. I don't know.
A. Well, if you take a postdated check and you hold it for the time period, to me it's a verbal agreement.
Q. But you aren't aware of any agreement?
A. No.
Q. You are just assuming there is an agreement?
A. Yes.
Q. So Mojave has claimed damages against Cashman for the startup cost. Are you aware of that?
A. Yes.
Q. What is the basis of claiming the damages against Cashman?
MR. BOSCHEE: Object to the extent it calls for a legal conclusion. I am going to object.

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BY MS. LLOYD:
Q. Well, the factual basis.
A. I am not sure of the legal basis for this.
Q. Well, you told me you don't have a contract with Cashman. You testified you don't have a contract with Cashman, right?
A. Correct.
Q. Are you aware of another reason why Cashman should have to pay you for the startup costs?
MR. BOSCHEE: Same objection.
THE WITNESS: I am not sure of the legal terms.
(Whereupon, a recess was taken.)
(Exhibit 11 marked.)
BY MS. LLOYD:
Q. Are you familiar with this document?
A. I think. I don't think I have seen this before, though.
Q. No. Do you know what it is?
A. I am assuming it's our bonding company contacting Whiting Turner.
Q. Like in response to a claim?
A. Or else just to release retention possibly. I am not sure exactly, but I know when we had to get retention release there had to be a release of a

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consent of surety. Well, no, I got my dates mixed up when the retention got paid.
Q. When were you paid out on --
A. That is what I am trying to remember. I would have to go back and look. I can't remember if it was around this time frame or if it was 2012.
Q. That you were complete and paid out on the project?
A. Yeah.
Q. Okay. And then can you tell me what Mojave did in response to Cashman's lien claim?
A. We filed a bond to basically remove the lien off the property and put it onto a mechanic's lien bond.
Q. Did you contact Cashman concerning the lien?
A. I don't remember if I did or not.
Q. Do you know if anyone else at Mojave contacted Cashman about the lien?
A. I am not sure.
Q. Did you try to talk to Cashman about the claim or what it was based on?
A. I know Cashman came into our office maybe the -- I think August of 2010 or 2011 time period. I forget which one.
Q. Whenever the payment was --

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A. Yeah.
Q. And did what?
A. They basically asked us for a check for 755,000.
Q. And what was Mojave's response?
A. Our response was we already paid CAM and Cashman had already been paid.
Q. But Cashman hadn't been paid; CAM had been paid, right?
A. Well, I mean, I just know a check went to Cashman and we got our release.
Q. And did Mojave consider contacting Cashman about doing the startup work separately?
A. We asked Cashman to do the startup work, to provide the batteries, and every time it was rejected.
Q. Were you offering payment in exchange for the services?
A. No.
Q. Why not?
A. Because our stance was Cashman had already been paid and that was part of the contract.
Q. So you'd rather pay someone else to do the work than pay Cashman to do the work?
A. Cashman refused to do the work, period.
Q. But you weren't offering payment for the

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work, right?
A. Correct.
Q. But you had to pay someone else to do the work?
A. Correct.
Q. So didn't anyone at Mojave consider talking to Cashman about negotiating the claim considering what happened?
A. I am not sure what you mean by "negotiate the claim."
Q. Talking to Cashman. If you were going to pay, say, Gonsalves to come out and do work, you could have paid Cashman to do the same work, right?
A. Yeah.
Q. Was that ever a consideration?
A. No. Because my understanding was Cashman refused to go out to the project unless they were paid the 755,000.
Q. If Mojave didn't get paid on a project, would they keep working?
A. Yes.
Q. Even if they were told they were not going to get paid?
A. I have never known us not to finish a project.

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Q. Even if you don't get paid?
A. Yes.
Q. Has a check ever bounced to you in exchange for a payment application?
A. I mean, on smaller work, yes.
Q. So if Mojave is told they are not going to get paid, they continue to work on a project?
A. Depending on when we are told we are not getting paid.
Q. Okay.
A. I mean if we sign a contract. And a general expects us to go out and do work and for no payment -- I mean, if they say from day one, Here's a $10 million contract; we're not going to pay you a penny to do this work, well, of course we are not going to go out and do it. But if we are in the middle of something -- I mean, there is always disputes on change orders.
Q. But this was a failure of payment for the entire amount to Cashman. They didn't get paid a penny for this work.
A. I disagree with that statement.
Q. Well, I mean, Angelo -- I think we can agree that Angelo took the money. He got the money and instead of paying Cashman he took the money. That is what the records show.

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A. Yes.
Q. So Cashman didn't get paid a penny on the project.
A. But that was -- to me that was Cashman's choice by taking a postdated check. That was their risk of them getting paid on a project.
Q. Well, I mean, I guess it's neither here nor there. They didn't get a penny and they supplied that equipment to the project. So I'm sure you can understand their frustration.
A. Yes and no.
Q. Do you still not check disadvantaged business entities when you contract with them? Do you have the same process in place now that you had when you first contracted with CAM?
A. I don't think we made any real changes.
Q. So you don't check to make sure that they are solvent or they can manage these type of funds when you are giving them large payments and expecting them to pay --
A. Well, in hindsight we may change the process of how we do something for future. But I mean, we will cross that bridge when we get to the next DB.
Q. Since this project you haven't had other contracts that require you to use DBE?

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A. Like I said before, we may have had some requirements, but it might have been with, let's say, a Nedco.
Q. Like a real company?
A. A Nedco or via Hampton. If we can get their requirement that way, we will do it that way also.
Q. Instead of having like this person who just kind of gets inserted the middle, but really doesn't have a function or a company, really? I mean, they have a company, but I wouldn't call it a legitimate company.
A. I am not going to comment on that statement.
Q. Okay. And then were you aware that Cashman made a bond claim on Whiting Turner's payment performance bond?
A. No, I am not. I thought our mechanic's lien bond took care of Cashman's claim.
Q. Okay. And then were you aware there was a meeting between Cashman and Mojave at some point after Angelo's check failed to clear?
A. Right. That is what we were talking about before.
Q. Were you part of that meeting?
A. I was in that meeting, yes.
Q. Who was at that meeting?

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A. Troy, myself from Mojave, and I am trying to remember from Cashman's side. I think it was Keith. I think it was Mike, Joel. There may have been one other person from Cashman.
Q. Where did that meeting take place?
A. In our office, our main conference room.
Q. What was the purpose of that meeting?
A. I wasn't sure. Cashman wanted to come over and talk about what was owed on the project.
Q. And so what was the substance? Like, what did you guys talk about?
A. I said -- to me the gist was Cashman just basically came over and asked us what we were doing to collect the funds for Cashman. And I mean, our statement to Cashman was we weren't the damaged party, so we cannot get any information on Angelo. I mean, Cashman was the one that was going to have to go out and pursue, you know, all the information that they needed.
Q. And was there anything else discussed at the meeting?
A. I mean, it was just I am sure talking about that project to other projects.
Q. And then how kind of was it left? How was the City Hall project left at that meeting?

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A. I think it was Mike and I -- I won't swear to it, but I thought Mike made the statement, If you want to pay us the 755 again, then we will take it. Otherwise, we are filing a lien on the project and in two or three months we will be paid in full.
Q. And then what was, I guess, Mojave's response? Was there a response?
A. My response was I wanted to know who you can get to collect a lien in two or three months because it's impossible.
Q. Was there anything else talked about in the meeting in reference to the equipment or Angelo?
A. I think Cashman provided bank statements from Angelo, because we had asked them for that also, just trying to help us try and track him down.
Q. Were you looking after Angelo's payment -- you didn't pay them. Were you looking for Angelo? Did you try to go out and find him, or anyone from Mojave try to locate him?
A. Yeah. I mean, we tried to contact him on cell phone. I even went on the Internet and did some searches on Angelo. And I gave Shane his address, because I didn't know if he had this as a residence for him. I said, I'm not sure if it's a valid address on him or not, but I think that is the one Shane went out

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to in the middle of May to meet Angelo to get the second check. That is when I said to Shane, You are lucky you got that second check because the first one you don't have a leg to stand on.
Q. Yeah. He's probably lucky he didn't get harmed at that point. Shane I mean, not Angelo.
So do you recall anything else happening after those communications between Mojave and Cashman?
A. I think maybe Joel may have called once or twice and said, Have you guys made any headway on it? I mean, we looked where we could, but I mean, we could only pursue it so far because, again, we weren't the party that was damaged.
Q. Well, kind of. I mean, at this point --
A. At this point we are.
Q. So you weren't able to locate Angelo, or you never spoke with him after that payment didn't clear?
A. I may have gotten him one day when Shane called me and said the third check didn't clear. I mean, you got the, I am headed out of the country and I will get it taken care of.
Q. So then after the payment on the City Hall project, all those payments like April of 2011, did you make any other payments to Angelo after that point or to CAM?

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A. No.
Q. And then is that sort of when all his work on these other contracts stopped too?
A. Pretty much that's when everything -- that is when CAM basically disappeared.
Q. Did you guys ever send him a correspondence about failing to complete his duties on the contract or anything like that?
A. I don't think we did. I guess we just thought it was such a blatant item that he was gone.
Q. Can you think of anything else that you would testify to at trial that we haven't discussed here today?
A. In regards to what?
Q. The case, the claims, Mojave's claims against Cashman, Cashman's claims on the project.
A. At this time, I mean, I couldn't think of anything else.
Q. And then is Mojave released as to the City Hall project? Is all the work done? You don't have any more work on the project?
A. We don't have any work. There's still a dispute on the underground portion of the contract.
Q. But not on the portion that included the generators?

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A. Correct. That contract is closed completely. The underground is the only item that still has an open item on it.
Q. Do you have any knowledge as to whether Whiting Turner has been paid by the owner for the generator equipment?
A. I don't have any knowledge of that.
Q. Or if there is negotiations between Whiting Turner and the owner about the generator equipment?
A. I am not privileged to that information.
MS. LLOYD: I think we are done.
MR. BOSCHEE: I do have just one or two clarification questions, because I wasn't clear on something. I made a note about it.
EXAMINATION
BY MR. BOSCHEE:
Q. You testified a little bit earlier about the day that the checks were exchanged in your conference room. You were there, it sounds like for part of it, but not for all of it. Is that accurate? Or who was in the conference room during this check exchange in April?
A. The first check exchange between Mojave and CAM was in my office with Francis, my accounts payable person, Angelo and myself. Because just with him not

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paying us, I didn't want to bring that up. So I wanted that handled between us. And then Angelo and Francis went in and I assume it was Shane that was in there, but I am not sure who was there from Cashman.
Q. Some representative from Cashman went into your conference room with Francis and CAM, and that's when they exchanged the checks?
A. Yes.
MS. LLOYD: And you were not there?
THE WITNESS: No.
BY MR. BOSCHEE:
Q. Did you guys ever accept a postdated check from CAM for the Mojave Systems portion of the work we talked about earlier?
A. No. I mean, we were -- we were behind on getting paid on that one.
Q. Right. But when you got the check, you got a contemporaneous check and deposited it at the same time they deposited your check, correct?
A. I think we deposited it the next day because I think Angelo came in probably about 4:30 or so in the afternoon and then just exchanged and took it at the end of the day.
Q. And there was nothing -- when CAM left your office, went to the conference room with Francis, and

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with somebody from Cashman, couldn't CAM have just signed Mojave's check over to Cashman right then and there and been done with it? Wouldn't that have gotten Cashman paid right then and there with funds you know were good?
A. Yes, but then Cashman would have owed CAM money.
Q. Cashman would have had to write a check --
A. That was offered originally to do it that way, but Cashman refused to do that also.
Q. Who was that offered by?
A. That was from Pete Fergen to Keith.
Q. Okay. And when did that happen?
A. I think at the start of the project.
MR. BOSCHEE: Okay. I just wanted to ask a couple of clarifications. I am done.
MS. LLOYD: Can I clarify, then?
FURTHER EXAMINATION
BY MS. LLOYD:
Q. Were you there when Pete talked to Keith about that agreement you just referred to?
A. No.
Q. So how do you know that that was offered?
A. That is what Pete told me.
Q. Okay. And then if we can go back really

quickly to Exhibit 10, the checks from CAM to Mojave, I think you testified you got these at the same time in that meeting?
A. Yes.
Q. Can you look at the dates on those checks?
A. One is the 27th and one is the 28th.
Q. Do you know what date that meeting occurred on?
A. I think it was the 26th. Like I said, it was late in the afternoon.
Q. So you accepted two postdated checks from CAM?
A. I am not sure if we did. I would have to go back and look at the exact days.
MS. LLOYD: Okay. That is it.
MR. BOSCHEE: And you have -- just for my clarification. You have got -- for all the checks we have looked at here, you have got something in your accounting or some paperwork matching up the checks to invoice numbers that you can provide to me and then we'll provide to Jennifer; is that right?
THE WITNESS: Yes.
MR. BOSCHEE: Okay.
(Thereupon, the deposition concluded at 1:20 p.m.)



CERTIFICATE OF DEPONENT

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* * * * *

I, Brian Bugni, deponent herein, do hereby certify and declare the within and foregoing transcription to be my deposition in said action; that I have read, corrected and do hereby affix my signature to said deposition under penalty of perjury.

BRIAN BUGNI, Deponent



CERTIFICATE OF REPORTER

STATE OF NEVADA )
) ss:
COUNTY OF CLARK )

I, Christy L. DeJonker, a duly commissioned Notary Public, Clark County, State of Nevada, do hereby certify: That I reported the deposition of Brian Bugni, commencing on Thursday, January 10, 2013, at 11:00 a.m.

That prior to being deposed, the witness was duly sworn by me to testify to the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript is a complete, true and accurate transcription of my said shorthand notes. That review of the transcript was requested.

I further certify that I am not a relative, employee or independent contractor of counsel of any of the parties; nor a relative, employee or independent contractor of the parties involved in said action; nor a person financially interested in the action; nor do I have any other relationship with any of the parties or with counsel of any of the parties involved in the action that may reasonably cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this 14th day of January, 2013.

CHRISTY LYN DeJONKER, CCR NO. 691

Exhibit "3" of Transcript

# PURCHASE ORDER

Mojave Electric, Inc.

3755 W. Haclenda Ave.
Las Vegas, NV 89118
(702) 798-2970
Fax (702) 739-1419

787810 GEN - 10010
P.O. NO. & JOB NO. MUST APPEAR ON ALL INVOICES, DEL. TICKETS AND BILLS OF LADINGS.

Date [illegible]

Page 1 of 1

Ship Via [illegible]

TO [illegible]

Job City of Las Vegas Water Cells - Portable No.

Ship To [illegible]

City LAS VEGAS State NV Zip

MUST NOTIFY 24 HOURS BEFORE DELIVERY
FOR EXACT MATERIAL DELIVERY LOCATION

F.O.B. Job Site ☐ Full Freight Allowed ☐ Freight Excluded ☐

| # | QUANTITY | TYPE | DESCRIPTION | PRICE | PER | TRADE DISC | EXTENSION NET |
|---|---|---|---|---|---|---|---|
| | | | Simplex Generator Packages as required for the Contract | | | | |
| | | | Specifications and Drawings dated November 26, 2018 | | | | |
| | | | including addendum 1 thru 4 and as directed by Project | | | | |
| | | | Manager to include but not be limited to the below | | | | |
| | | | listed materials | | | | |
| 1 | 1 | GENW | 500kW, 480/277V, 4P, 4W NSF Enclosed Generator | 1[illegible] E | | | $ [illegible] |
| 2 | 1 | SERVICE | Startup and Testing | [illegible] E | | | $ [illegible] |
| 3 | 1 | GENW | 750kW, 480/277V, 4P, 4W, NSF Enclosed Generator | [illegible] E | | | $ [illegible] |
| 4 | 1 | TRLR | 3000L CAPACITY, 2P, 4W, NSF Enclosed Generator | 2,500.00 E | | | $ [illegible] |
| 5 | 1 | ATSXI | 1200A, 480/277V, 3P, 4W, NSF Automatic Transfer Switch | 7,711.00 E | | | $ 7,711.00 |
| 6 | 1 | ATSXI | 1200A, 480/277V, 4P, 4W, NSF Automatic Transfer Switch | 10,647.00 E | | | $ 10,647.00 |
| 7 | 1 | ATSXI | 1000A, 480/277V, 4P, 4W, NSF Automatic Transfer Switch | 10,297.00 E | | | $ 10,297.00 |
| 8 | 1 | ATSXI | Remote Annunciator | [illegible] E | | | $ [illegible] |
| 9 | 1 | Spare | 250% Materials as called for in 563213-1.12 | 2,156.00 E | | | $ 2,156.00 |
| 10 | 1 | CSA | 3 year Maintenance Agreement | 1,800.00 E | | | $ 1,800.00 |
| 11 | 1 | Fuel | Diesel Fuel for Contractor's Use as required per Sp | [illegible] E | | | $ [illegible] |
| | | | [illegible] | | | | |
| | | | [illegible] | | | | |
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| | | | [illegible] | | | | |

PLAINTIFF'S DEPOSITION EXHIBIT 13

SHIP ALL MATERIAL ON THIS P.O. AFB FREIGHT IF POSSIBLE.
ALL MATERIAL TO INCLUDE ALL SALES TAXES IN THE LUMP SUM PRICE.
MARK ALL BOXES, ETC. WITH THE JOB NUMBER.

TERMS: 2% 25th PROX, INVOICES RECEIVED AFTER 25th CONSIDERED NEXT MONTH'S BUSINESS.

SUB TOTAL
TAX
CASH DISC

$ [illegible]

TOTAL PRICES FIRM

ACCEPTED FOR VENDOR

BY [illegible]

MOJAVE ELECTRIC, INC.

MO.T00035

[illegible] Mgr. of Project Development

JA 00001453

Mojave Electric, Inc.

[redacted]
3755 W. Hacienda Ave.
Las Vegas, NV 89118
(702) 798-2970
Fax (702) 739-1419

# PURCHASE ORDER

707510 CHG- 10610
P.O. NO. & JOB NO. MUST APPEAR ON ALL INVOICES, D/L TICKETS AND BILLS OF LADINGS.

Date 4/22/2016

Page 3 of 4

Ship Via DELIVER

TO [redacted]
ATTN: Angelo Carvalho / Keith Lamb
PHONE # 702-316-0003 / 702-798-5004
MUST NOTIFY 24 HOURS BEFORE DELIVERY FOR EXACT MATERIAL DELIVERY LOCATION

Job City of Las Vegas New City Hall No. 707510
Ship To [redacted]
City LAS VEGAS State Zip #
F.O.B. Job Site ☐ Full Freight Allowed ☐ Freight Excluded ☐

| # | QUANTITY | TYPE | DESCRIPTION | PRICE | PER | TRADE DISC | EXTENSION NET |
|---|---|---|---|---|---|---|---|
| | | | ALL PARTIES IN VOLVED IN THE PURCHASE ORDER | | | | |
| | | | TO BE TAKE RESPONSIBILITY TO INSURE MOJAVE'S PROJECT | | | | |
| | | | MANAGER IS NOTIFIED OF ALL BACK ORDERS AND SHIPPING | | | | |
| | | | SCHEDULES OF ALL EQUIPMENT IN WRITING IN A TIMELY FASHION | | | | |
| | | | SELLER'S INVOICE MUST COINCIDE WITH MOJAVE PURCHASE | | | | |
| | | | ORDER - ITEM #, DESCRIPTION, AND UNIT PRICE DESCRIPTION | | | | |
| | | | EQUIPMENT TO BE ON SITE 30 WEEKS AFTER THE RECEIPT OF APPROVED SUBMITTALS | | | | |
| | | | AND PROCESSED THRU PAGE BY MOJAVE ELECTRIC PROJECT MANAGER | | | | |
| | | | PAYMENT DUE 30 DAYS FROM THE DATE OF COMPLETION OF THE WORK AND/OR DELIVERY | | | | |
| | | | OF MATERIALS TO SUBMIT ALL COSTS RELATED TO THIS PURCHASE ORDER AND A JOB COST | | | | |
| | | | CHANGE ORDERS. ANY INVOICES SUBMITTED AFTER THE 30 DAYS WILL BE CONSIDERED WAIVED | | | | |
| | | | AND NOT PAYABLE BY MOJAVE ELECTRIC | | | | |
| | | | TERMS: THIS IS A PAID WHEN PAID PO - INVOICES ARE TO BE INTO MOJAVE NOT LATER THAN THE 10TH DAY OF THE | | | | |
| | | | FOLLOWING PROJECTED THRU THE END OF THE MONTH. | | | | |
| | | | SUBMITTALS - WHEN DELIVERED TO MOJAVE WILL BE REVIEWED BY SECTION, CORRECTED AND 5 HOUR TURNED | | | | |
| | | | AND DELIVERED TO OUR OFFICE WITHIN 10 DAYS OF RECEIPT. ALL SUBMITTALS SHOULD BE MADE IN | | | | |
| | | | THREE (3) SETS. | | | | |
| | | | All project drawings & specs shall be supplied and required by the subcontractor | | | | |
| | | | All required submittals & shop drawings to be supplied as required by Mojave Electric | | | | |
| | | | All required documentation from suppliers and manufacturers as needed for BIM Process | | | | |

ORDER PLEASE NOTE:

Initial, starting within ten (10) days a written progress report will be given to this office on the first and fifteenth of each month. Report is to include the delivery date for each item and any changes from the previous report. A detailed packing list is to be included with shipment and a copy attached to each invoice.

All invoices to be submitted, including Payment, Bond or certificate, to release the retention of Mojave Electric.

SHIP ALL MATERIAL ON THIS P.O. AFE FREIGHT IF POSSIBLE.
ALL MATERIAL TO INCLUDE ALL SALES TAXES IN THE LUMP SUM PRICE.
MARK ALL BOXES, ETC. WITH THE JOB NUMBER.

TERMS: 2% 25th PROX. INVOICES RECEIVED AFTER 25th CONSIDERED NEXT MONTH'S BUSINESS.

SUB TOTAL
TAX
CASH DISC
TOTAL PRICES FIRM

NO. 00036

ACCEPTED FOR VENDOR
BY [redacted]
Angelo Carvalho / Keith Lamb Consulting Division Engineer

MOJAVE ELECTRIC, INC.
BY [redacted]
Asst. VP Project Development

# EXHIBIT 6

DISTRICT COURT
CLARK COUNTY, NEVADA

| | |
|---|---|
| CASHMAN EQUIPMENT COMPANY, a a Nevada corporation, Plaintiff, vs. CAM CONSULTING INC., a Nevada corporation; ANGELO CARVALHO, an individual; JANEL RENNIE aka JANEL CARVALHO, an individual; WEST EDNA ASSOCIATES, LTD., dba MOJAVE ELECTRIC, a Nevada corporation; WESTERN SURETY COMPANY, a surety; THE WHITING TURNER CONTRACTING COMPANY, a Maryland corporation; FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a surety; DOES 1-10, inclusive; and ROE CORPORATIONS 1-10, inclusive; Defendants. AND ALL RELATED MATTERS. | CASE NO.: A642583<br>DEPT. NO.: 32<br>Consolidated with Case No.: A653029 |

DEPOSITION OF CHRISTOPHER MEIERS
Taken on Thursday, January 31, 2013
At 1:00 p.m.
6725 Via Austi Parkway, #290
Las Vegas, Nevada

Reported by: RENE' HANNAH, CCR #326

APPEARANCES:
For the Plaintiff: JENNIFER LLOYD, ESQ.
Pezzillo Lloyd
6725 Via Austi Parkway
Suite 290
Las Vegas, Nevada 89119
(702) 233-4225
jrobinson@pezzillolloyd.com

For the Defendant Mojave Electric:

SHEMILLY A. BRISCOE, ESQ.
Cotton, Driggs, Walch, Holley,
Woloson, Thompson
400 South Fourth Street
Third Floor
Las Vegas, Nevada 89101
(702) 791-0308

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Examination by: Direct Cross Re-direct Recross
Ms. Lloyd 3

EXHIBITS

Description Page
Plaintiff's
Exhibit 1 Whiting-Turner Subcontract 8
Exhibit 2 Application for Payment 9
Exhibit 3 CAM Consulting Invoice 13
Exhibit 4 Contract Supplement 39



(NRCP Rule 30(b)(4) was waived by the parties prior to commencement of the deposition.)

Thereupon,

CHRISTOPHER MEIERS,

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. LLOYD:

Q Hi.

A Hi.

Q My name is Jennifer Lloyd. We met earlier. We're here in the case Cashman Equipment versus CAM, et cetera, A642583. If you can go ahead and state your name for the record.

A Christopher Meiers.

Q And can you spell your last name?

A M-E-I-E-R-S.

Q Okay. Have you ever had your deposition taken before?

A No.

Q Okay. Let's go over a few of the ground rules. It's question and answer. We need verbal responses. The court reporter is taking down everything that we say, so it's important that we not speak at the same time so she can make an



accurate record. You can take a break at any time, except for when a question is pending I would ask that you answer the question and then take the break. Your testimony is under oath, just as it would be in a court of law. If you don't understand a question or you want me to clarify a question, please ask and I'll do the best to do so, because we want your best testimony here today. Is there any reason you can't give complete and truthful testimony today?

A No.

Q What did you do to prepare for your deposition?

A Met with Shemilly and Brian.

Q I don't want to get into any communications. Did you review any documents?

A No.

Q Or talk to anyone at Mojave?

A No.

Q Do you hold any professional licenses?

A State journeyman's license. Wisconsin.

Q In what area? Is that to a specific field?

A Electrical.

Q Were you a contractor in Wisconsin?



A No.

Q How long have you had that license in Wisconsin?

A Boy, oh, boy. Probably going on 16 years.

Q And what's the highest level of education you have achieved?

A Technical school.

Q And what technical school did you attend?

A Northeast Wisconsin Technical College.

Q And is that a specific type of degree?

A Degree, associates degree in electricity.

Q When did you graduate from there?

A 1990.

Q And then I have to ask this question, even though I don't like to. Have you been convicted of any crimes within the last ten years?

A No.

Q Okay. And where is your current employment at?

A Mojave Electric.

Q And how long have you been employed by Mojave?

A A little over 16 years.

Q And what's your current position?

A Project manager.

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Q Have you been a project manager the entire time you have been at Mojave?
A Yes.
Q Can you briefly describe your job duties as project manager?
A Tracking jobs, schedules, coordinating with my field staff, submitting pay applications.
Q Do you get assigned to one particular project?
A Multiple projects at the same time.
Q Sounds fun.
MS. BRISCOE: He wishes it was one.
THE WITNESS: I wish it was one, yes.
BY MS. LLOYD:
Q So today when I say project, I'm going to be referring to the New Las Vegas City Hall project, because that's the project that is at the center of this litigation. Can you describe what Mojave's scope of work was on the project?
A Electrical installation.
Q So the full electrical package, all the electrical work for the job?
A Correct.
Q And when I deposed Mr. Dugni he said it was under two contracts. Can you describe to me?

Page 7

A There was an underground contract for Nevada Power, and there was the regular building contract.
Q Okay. And what was your role on this project?
A Project manager.
Q So can you describe to me kind of your daily involvement with the project?
A Meet with my general foreman, discuss where he is with the project in relationship to the general contractor's schedule, make sure he's got all his material and the manpower that he requires to do the project, and solve any problems he may have on the job.
Q So are you the primary contact with the general contractor?
A Yes.
Q For Mojave? Okay. And when do you get involved with the project?
A As soon as my office tells me we have the job.
Q Okay. So once the contract is signed you would become involved, or do you become involved in the bidding, like in the bid process?
A More or less after the contract is signed

Page 8

and turned over to us, or a letter of intent.
Q And so who was involved in the bidding process?
A That would be our estimating department.
Q And for this project was it Pete Fergen?
A He's more of our purchasing department.
Q So for a job like this, I guess when you're bidding it can you describe to me, do you know how the bidding process works between the purchasing and the estimating?
A Actually, no.
Q Okay.
A I don't get involved in that end of it.
Q So once it comes to you it's kind of a complete bid package, you have all the schedule of values already set?
A I have to create the schedule of values.
Q Okay. So what I'm going to do is pull out the contract. We can mark it as Exhibit 1.
(Plaintiff's Exhibit 1 marked.)
BY MS. LLOYD:
Q If you would take a look at this document. Are you familiar with the document?
A Yes.
Q Okay. So when you said you create the

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schedule of values, do you create the schedule of values that's included with this contract, page 1143?
A No.
Q Who would create this schedule of values?
A Estimating.
Q So when you said you create one, when do you create it?
A I create the pay application schedule of values.
Q Do you use this to create it?
A As a reference guide.
Q How would it change, I guess from one to the other?
A My opinion of what something costs.
Q Okay. So then let's look at the pay aps, too.
(Plaintiff's Exhibit 2 marked.)
BY MS. LLOYD:
Q Now, this was produced in this order, which is why it's in this order, but you can tell me, because I don't think it's complete. So if you want to take a look at them, can you describe to me what they are?
A What they are as in the item numbers?

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Q Yeah. If you want to just tell me generally what they are.
A Line by line, or?
Q No, we just want to just start with there's three applications for payment, right?
A Uh-huh.
Q January, 2011, February, 2011, March, 2011.
A Okay.
Q Are these the complete applications for each those months?
A No.
Q Was the schedule of values larger than what's included here?
A Yes.
Q Okay. But the equipment that we're concerned with today is the generator equipment. That's included in these particular pages?
A Yes.
Q Okay. So when I talk about generator equipment I'm talking about the equipment that Cashman supplied. Are you familiar with what that the comprises?
A Generator, PSG, UPS, battery pack.
Q So you went over what that is. Okay. So

Page 11

if you can tell me on the schedule of values, and we'll start with the January 1, which is 2597, page 2597, where in the schedule of values does the equipment supplied by Cashman through CAM show up?
A Line item four.
Q Four, emergency generator?
A And five.
Q UPS system.
A Correct.
Q Okay. And do these schedule of values match the schedule of values that was included in the contract or did you change it, do you recall?
A It looks like it's been changed from what is in the contract.
Q And how would a change like that occur?
A Depends on what changes came out before the project started.
Q Do you recall in this instance what occurred?
A No.
Q Okay. And when you are given the project you already know what vendors are to be used for specific items?
A Not until I receive the large purchase orders.

Page 12

Q And who generates the large purchase orders?
A Our purchasing department.
Q Okay. So at the time you were given the project did you know that Cashman was going to be supplying the generator equipment?
A Not in the beginning.
Q When do you recall about when you realized that?
A About a month or two.
Q So lines four and five would represent the schedule of values for all of the equipment supplied by Cashman through CAM?
A Uh-huh.
Q And do you determine when to bill the specific items to Whiting-Turner?
A Yes.
Q So you determine what percentage complete Mojave was on the job for each particular pay up?
A Yes.
Q Okay. And do you then also have a role in approving the vendors' billings?
A Yes.
Q And how does that process work?
A The vendor sends the bill to our office,

Page 13

the bill goes into our accounts payable, they put it in my inbox, I double check it, make sure what they're billing is actually what they have provided.
Q Okay. And so for the generator equipment did you allow CAM to bill at a hundred percent for what was being supplied at some point?
A At the time, yes.
Q And was the work a hundred percent complete?
A No.
Q So how was the determination made to let CAM bill it out?
A Billing has to be turned in to the general contractor by the 25th of each month. And it has to be prorated to the end of month. So that's how it gets billed out a hundred percent. At the time there was only about two weeks' worth of work left on the generator, which would have put us at the end of the month.
Q Which month?
A I don't remember.
Q Okay. Let's take a look at CAM's invoice. Maybe that will help.
(Plaintiff's Exhibit 3 marked.)
BY MS. LLOYD:

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Q Are you familiar with this document?
A It doesn't have my signature, so. It looks familiar just because it says CAM Consulting on it, but when I approve an invoice my signature's on it.
Q Could it be the part that's sort of missing at the bottom, or no?
A It could be, because that's usually where I put my initials.
Q So after you sign off on it, then this goes back to your AP?
A Uh-huh.
Q And they make all the other markings?
A Correct.
Q So does this appear to be the invoicing for the generator equipment and UPS?
A Appears to be.
Q So can you describe to me the timeline on the generator equipment, or I guess when it was determined when it was billed, when it was approved, when it was paid?
A Not offhand.
Q Okay.
A Best of my knowledge, when they actually did the work was like December, 2010.

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Q Uh-huh. Let's, I'm getting a little bit ahead. So then can you describe from this invoice or your own knowledge what CAM's role was on the project?
A They're like any other distributor, as far as I'm concerned. Their name is on the large purchase order, and that's who our paperwork goes to to release whatever they are providing.
Q So what was CAM to provide on the?
A Generator, UPS, ATS switches.
Q So when does that work related to the, when would that work commence? When would that work begin?
A Prior to receiving the material?
Q Or I guess even just from the very beginning of the project, like submittals or release to purchase, or how does that whole process, do you coordinate that process?
A I do not coordinate the submittal process. That goes through our purchasing department.
Q Does that occur after the contract?
A Yes.
Q Who in purchasing is the one that would be?
A Pete Fergen.

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Q So would you consider the submittal process to be part of what the scope of work --
A Yes.
Q -- includes?
A Yes.
Q So CAM's work including doing the submittals, submitting them to Mojave for approval, making corrections if needed, and then what's the next step?
A Once they're approved, then there's no other contact until I'm ready to have the things released.
Q And how do you determine when that's going to happen?
A Usually they provide a lead time and I have to judge the lead time as to when the project is actually ready to receive the equipment.
Q So did you contact CAM about the lead time?
A No.
Q Who did you speak with about the lead time?
A That's part of the LPO.
Q The large purchase order?
A The LPO should, LPO usually has the lead

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time on it.
Q And who, did you say purchasing produces the large purchase order?
A Uh-huh.
Q So you're not involved until you need to order the equipment?
A Correct.
Q So when you needed this equipment to be ordered --
A Uh-huh.
Q -- who did you contact?
A We just have paperwork that releases it. I usually send it to my secretary and she sends the document over to CAM that says relays items one, two, three, four, whatever it may be. Whatever I'm ready for at the time.
Q So you communicated directly with CAM to purchase to start, to make the purchases?
A The paperwork.
Q And do you have a record of that communication?
A Not offhand. I don't remember.
Q Do you keep a record of it?
A Usually, yes.
Q Is it just a form letter, something you

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send out, or how does it look?
A If could be either an email that I send to my secretary, or a phone call.
Q And who was your secretary at this time on the project?
A Crystal DeSayers (sic).
Q I don't recall seeing anything like that to CAM, so I'm wondering if you would have a copy of it to provide to us.
A I don't know offhand.
Q Okay. Do you keep a job file with those type of correspondence?
A Usually.
MS. LLOYD: Shontilly, is it possible that he could do a search for the document?
MS. BRISCOE: Yeah, but we already produced the job file. If it was a phone call we wouldn't have a record.
MS. LLOYD: He said it would be an email --
THE WITNESS: Email or phone call, is what I said.
MS. LLOYD: Or a phone call.
MS. BRISCOE: I can ask, but I know we gave you the job file already. But I can ask Brian.

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MS. LLOYD: Yeah, because there aren't very many emails in the documents provided by Mojave, and there were a bunch of emails from Whiting-Turner to Mojave when you did the Whiting-Turner production, so I know we don't have all of the communication that's came out from Mojave on the job. So, just curious.
BY MS. LLOYD:
Q So after that point when do you contact CAM again, I guess, or when did you contact CAM again?
A I didn't have to because it was going through -- I knew where the equipment was coming from, which was Cashman.
Q Uh-huh.
A And I already had a relationship with Cashman.
Q So you were speaking with Cashman directly about the equipment?
A Correct.
Q So what did CAM or the principal of CAM, Angelo, did he have any role on this project?
A Not that I'm aware of.
Q So you aren't aware of him doing any work related to his?

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A Other than their name is on the large purchase order.
Q You didn't have any contact with him?
A Personally, no.
Q Do you know if anyone else, like your foreman or anyone else had contact with him on this project?
A I do not know.
Q Were there any scheduling issues related to when the equipment needed to be delivered?
A Yes.
Q And can you describe that to me?
A It was just a matter of having a clear spot for their semi to pull in. Their semi was delayed by three days.
Q Okay.
A Just because the street wasn't clear enough for them to bring the semi in and offload it.
Q So where did the semi go? Where was it waiting?
A I'm not sure. I know it was in town. I don't know exactly where it was staged.
Q And was there an extra cost or anything related to the semi not being able to deliver the equipment?

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A Yes.
Q And what happened with that?
A On the invoice, truck layover.
Q So that was an additional cost that wasn't anticipated under the original schedule of values?
A I would have to go back and look at it.
Q Okay. But that's what you recall that was for?
A Yes.
Q Okay. And who did you speak with about the truck layover?
A Cashman.
Q And can you tell me who at Cashman you spoke with?
A Kym Simons or Rob, I don't recall his last name.
Q So when you were scheduling the delivery and those things you were dealing with Cashman personnel directly?
A Yes.
Q So when the equipment was delivered is it immediately installed at that point or is there another staging period?
A Immediately placed in position.
Q And is there equipment required to do

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that, like a crane, or?
A Yes.
Q How does that whole process work?
A Yes. That, we schedule a crane. We have to schedule the truck for delivery, and then the crane offloads the generators and places, sets them in place. They don't stage it on-site.
Q So it's part of Mojave's scope to get the crane on-site to unload the generators and place them?
A I would have to go back and look at that particular scope or a contract to see who's contract it was in to provide a crane. I don't remember offhand if it was Mojave or if it was CAM, Cashman.
Q Oh, okay. And at that point was there issue with placing the generators?
A No.
Q Okay. Was there an issue with the equipment room?
A No.
Q Did it have to be modified at some point, something to do with access to the generator equipment, or?
A Nothing for the generator.
Q What was it related to?

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A It depends on which room you're talking about. I mean, there are several rooms that are involved with the generator.
Q Can you describe to me how it's set up and laid out?
A There is a UPS room, basically, that has the transfer switch, the battery racks and stores the batteries for the UPS. There's also a main electrical room for the PSG, which is the paralleling switchgear, and then there's another main electrical room that has all of our main gear.
Q Are those contiguous rooms, are they all connected?
A They're connected by doorways.
Q Okay. And was there any modification related to any of the equipment provided by CAM or Cashman?
A The design process before it was released and during the submittal process, the doors on the generator had to be made basically in half.
Q What was that related to?
A Just being the room available inside of the generator area.
Q Okay. Was that a change order?
A No. That was all in the design process.

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Q So how much contact do you think you had with Cashman personnel on this project?
A How much contact?
Q Yes.
A Not very much.
Q So you weren't involved in the submittal process, right?
A No.
Q And then after the release to order was sent and prior to the delivery, you know, was there any contact with Cashman?
A Yes.
Q And what was that related to?
A Just delivery, scheduling.
Q Making sure it's coming?
A Uh-huh.
Q Okay.
A Correct.
Q And who would you have spoken with at that point?
A Kym Simons.
Q Then who was on-site during the installation?
A Both Kym and Rob.
Q From Cashman?

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A Correct.
Q Then who was on-site from Mojave?
A Myself, Richard Christensen and numerous other electricians.
Q Was anyone from Whiting-Turner on-site?
A David Lee, Elliott Lloyd.
Q Was anyone from the owner on-site?
A I'm not sure.
Q Did you ever have an opportunity to meet the owner's representative on-site?
A No.
Q So after the equipment is delivered and placed in the side gate --
A Uh-huh.
Q -- what is left for CAM, Cashman to do under the contract?
A After it's delivered to the site they still have to put everything together, which is an exhaust system, and then start-up.
Q Okay. So what's the scheduling on those? Are those immediately done or is there some type of scheduled timeline for other work, or?
A Normally the exhaust system is installed immediately, and then there's a gap in time between that time and when we actually pull our cable and

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make our determinations and prepare for start-up.
Q So for this particular equipment can you give me what the schedule was to look like for after delivery to start-up?
A Cable would have been pulled to the generator. Cable would have been pulled to the PSG. Load bank testing the generator after all the cable was pulled. And after that it would have been UPS battery installation, wiring and bringing the UPS on-line.
Q And so was that supposed to happen over a number of weeks, months, or days?
A Usually it wouldn't take more than a couple months, especially with an installation that size.
Q Okay. So when was the work scheduled to be completed? Like for Mojave, when was it scheduled to be completed?
A May, 2011.
Q And so for all those items that you were mentioning all that work to be done after it was delivered --
A Uh-huh.
Q -- was CAM or Angelo involved with any of that work?

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A I wouldn't have contacted anybody until we were ready for start-up. Fuel and start-up.
Q So who did the exhaust system? Was that Mojave?
A No. That should have been Cashman.
Q Okay. So after it was delivered, what did Cashman do on-site?
A They installed one of the exhaust systems complete. The second exhaust system was not installed complete.
Q And when was that to be completed?
A They were going to come back at start-up because it wasn't going to take, supposedly take them long to do that.
Q So when were you ready for start-up?
A May.
Q And is that when the battery would have been delivered?
A It would have been after that.
Q Okay.
A Because there is a shelf life for batteries, so you don't order the batteries too far in advance; otherwise, the warranty on the batteries would be up.
Q So then when would they actually have been

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completed? When would that work, the work related to this generator have been complete? Say everything had gone as it was supposed to go.
MS. BRISCOE: Objection to form.
BY MS. LLOYD:
Q I guess I'm wondering because you kind of said, I believe you testified that essentially it would have been completed by May. That was what the schedule was to?
A I'm not positive what the schedule had.
Q Okay. But you testified that it should have been basically complete by May, that all of the installation and everything related to the generator, the start-up?
A I remember asking for load bank testing in May.
Q What's load bank testing?
A That's when you actually put a load on the generator and prepare it for start-up.
Q Who did you ask for load bank testing?
A Cashman.
Q Specifically?
A Kym Simons. And Rob.
Q And when in May was that?
A First or second week in May.

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Q And what was their response?
A We were coordinating where the cables would go, and that was about it. They were preparing for load bank testing.
Q And then what happened?
A I called for fuel. I told Cashman that they need to order fuel so that we could start it up and do the load bank testing. And that's when I was informed that they weren't going to be doing any more work.
Q Do you recall when that was?
A May.
Q Beginning, end?
A Middle.
Q So I keep going back. When would the battery have been delivered?
A Sometime after that.
Q Was that kind of a moving target, given when the completion was supposed to be, or?
A Correct.
Q And that battery is part of the large purchase order, correct?
A Correct.
Q So in May when you were informed they weren't going to do any more work, what was left to

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do?
A They had to go through and complete the installation on the exhaust system. They should have done the load bank testing. Fuel should have been delivered. And then they should have gone through all the wiring of the PSG to make sure any remote annunciators, any remote wiring between the generators and the PSG was correct. The program should have been loaded at that time and ready for start-up.
Q So when that wasn't going to be completed by Cashman, what action did you take?
A I had to hire other contractors to complete that work.
Q And who did you hire?
A Jentech and Hampton Tedder.
Q So what work did they complete?
A The installation of the exhaust, the checking of the wiring between the generator and the PSG, the load bank testing. They could not install the program.
Q And did they try to obtain the program?
A We tried, correct.
Q How did you try to obtain the program?
A We asked for the program from Cashman.

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Q Did you do anything else to try to obtain the program?
A Actually tried to call the manufacturer of the paralleling switchgear to see if we could get it from them, and we were denied it as well.
Q Did Jentech or Hampton Tedder take any action concerning the programming?
A No.
Q Did they try to obtain it?
A Not that I'm aware of.
Q So then what items are left incomplete at this point?
A The, after Jentech and after Hampton Tedder?
Q Yeah.
A Would have been the receipt and installation of the battery cabinets, along with the battery racks and batteries themselves.
Q And then that programming?
A The programming was still an issue.
Q So at this point what's left? At this time right now as we sit here, what's left incomplete?
A Program.
Q Who did the battery and all the items you

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just mentioned?
A We did the installation of the racks, the battery and the batteries and the interconnecting wiring, and then Gruber Services was hired to do the testing and start-up.
Q For the batteries?
A Correct. I'm not sure at this time if we had them work on the PSG or the generator.
Q Oh, to try to do the programming part?
A No, would have been more of the testing.
Q Oh, okay.
A More testing and start-up. Not positive.
Q And then you were involved in finding the contractors to do this work?
A No.
Q Who did that?
A Our purchasing department.
Q And so what's the current status of the generator equipment?
A All is complete, except for the programming because they need the codes to do the interface between the building automation system and the paralleling switchgear.
Q So it's operational?
A Correct.

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Q Did CAM perform any other work on this project?
A No.
Q Did they supply materials from any other suppliers?
A Not that I can recall.
Q Okay. Were you involved in the decision to require the generator equipment to be purchased through a specific business entity?
A No.
Q And I believe you testified previously that you're the person who decides what can be built and when it can be built for the equipment that's supplied on the project?
A Correct.
Q How did you determine when full payment should be released for this equipment?
A Because it is a progressive billing. We had to estimate where we were going to be at the end of that month to be able to bill out for that month.
Q So then Mojave gets the money and then pays, or to determine what you were going to include from the CAM billing and your billing, I guess?
A I don't understand your question.
Q I might be confused. Let's rephrase. CAM

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didn't get payment for the equipment until April, I think it was the end of April. So I'm just trying to get an idea, did you decide when to release that payment?
A No.
Q Okay. So how does that process work?
A After the invoice comes in and I review it, if everything looks okay I put my signature on it and I turn it back in to our accounts payable.
Q And your signature means what to your accounts payable?
A That I would agree with those amounts.
Q And that you would agree that it was complete?
A At the time of estimating at the end of the month, it should have been complete.
Q So I believe you just testified that there was going to be work done in May.
A Uh-huh.
Q And like I said, CAM was paid in full in April.
A I'm not knowledgeable on that. I don't pay them.
Q Well, because Mr. Bugni basically referred to you in saying that you determine when someone

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could bill a hundred percent.
A They turn in the bill, correct, and I sign off on it.
Q And when it would be paid?
A I don't determine when it gets paid.
Q Okay. Who determines when it gets paid?
A Our accounts payable.
Q That's Mr. Bugni?
A Yes.
Q Okay. So would you have approved a hundred percent payment of the billing before all the work was complete that was required to be complete with the large purchase order?
A If it was estimated that it was going to be done at the end of that month for my pay application, yes. I would have said it was going to be done, because I have to guess where we're going to be at the end of that month.
Q It looks like CAM submitted their bill in January for a hundred percent. It's dated January.
A Okay.
Q And so is that because of the way they were supplying the equipment in this case, or do you know how that would work? Because normally I think people bill a person in July for what they've

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completed. That's kind of what you're describing.
A Uh-huh.
Q So in this case that doesn't seem to be how it was done. Do you know why it was done this particular way?
A No.
Q Because he wasn't complete in January, right?
A No.
Q And he wasn't complete in February when the invoice was, I guess stamped received by Mojave, right?
A Correct.
Q But this is a complete billing for everything that he was doing for the generator equipment?
A I would have to look at the large purchase order to determine all of the line numbers that they have on here.
Q Okay. But if you had the large purchase order, you would be able to know if this was a complete billing?
A Yes.
Q Do you know when Mojave approximately billed a hundred percent for those generator line

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items to Whiting-Turner?
A Not offhand.
Q When did you consider your work complete on the generator line items?
A I'm not sure. I would have to go back and look at my pay applications.
Q Do you consider it to be complete right now?
A Right now? Yes.
Q Even though those certain items aren't done?
A The only item that is not done is the code for the interface between the building automation system and paralleling switchgear.
Q But your work is closed out on that item?
A Correct.
Q And so is Whiting-Turner looking to Mojave to get anything else concerning this code?
A At this time I'm not sure. I haven't been contacted to try to do any more myself.
Q When was your last, I guess contact concerning the code?
A I am not sure as of that time.
Q And when were you complete on the project?
A Would have been around February, 2012.

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Q Is that when the building was opened, if you recall?
A Yes, it was around then. Not sure on the exact date.
Q Did you do any work concerning the generator equipment after that point, did Mojave?
A No.
Q When did you first find out that Cashman hadn't received payment for the equipment?
A May.
Q And how did you find out?
A Through Kym Simms. As I stated earlier, it was when I requested them to fill it with fuel.
Q And were you part of determining how to respond to Cashman about the non-payment by CAM?
A No.
Q Did you speak with anyone from CAM after the non-payment, learning of the non-payment?
A No.
Q And I can't recall, I may have asked this before, but did you ever speak with Angelo Carvalho from CAM?
A No.
Q Is that unusual, to not speak with --
A No.

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Q -- the vendor on equipment like this?
A No.
Q Or is it just because you had Cashman and you know to speak with Cashman?
A Correct. Relationship with Cashman earlier, previously.
Q Had you ever worked with CAM prior to this project?
A No.
Q And then did you work with them on any other projects for Mojave?
A No.
(Plaintiff's Exhibit 4 marked.)
BY MS. LLOYD:
Q Can you take a look at this document? Can you tell me what it is?
A It is a contract supplement.
Q Issued by?
A Whiting-Turner.
Q To?
A Mojave Electric.
Q Have you seen it before?
A Yes.
Q And can you tell me what the line, third line item on the body, I think it's CRA?

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A To install a roll-up door on the back of the emergency room.
Q What was that related to?
A Access to the PSG.
Q That's the paralleling switchgear?
A Correct.
Q So that was a deductive change order?
A Correct.
Q Why?
A Because they had to install the roll-up door.
Q And they explained, or they said Mojave should have done it or known, or why was that a deductive?
A Because the paralleling switchgear was relocated in the room.
Q By?
A Mojave.
Q Oh, so that caused there to be an access issue?
A Correct.
Q Do you know when this work was done?
A Not positive.
Q And how typically are these issued after the issue arises, I guess?

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A It varies.
Q Okay. So it's dated March 23rd. Would there have been a corresponding document from Mojave to Whiting-Turner about that change or was this a Whiting-Turner change?
A There might have been a document, but I'm not positive.
Q Do you approve these?
A Yes, I look at the dollar amounts and then I turn it in to the vice president of construction, and then he signs off on it after he reviews it.
Q Okay. So when we were talking earlier about changes related to the electrical room, were you talking about this change or were you talking about a different change?
A Changes to the electrical room.
Q Well, one the rooms you mentioned that they had to modify the door size, I think you said, related to the generator.
A That wasn't related to the room itself.
Q Oh, it was the generator?
A That was the generator.
Q Okay.
A As I stated earlier, it was part of the design process.

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Q Okay. So this was a change to those rooms that occurred after?
A That was a change to the emergency electrical room.
Q And that was after delivery?
A Correct.
Q And that was because Mojave relocated the equipment inside the room?
A Correct.
Q Do you know what the reason was for relocating the equipment?
A Easier access of feeder cables.
Q So prior to the non-payment was Cashman performing all items that you wanted it to perform?
A Yes.
Q So they were doing the work that you anticipated prior to the issue of the non-payment with them?
A Yes.
Q Do you know when Cashman was last on the project?
A Not offhand.
MS. LLOYD: Let's take a break real quick.
(Recess taken.)
BY MS. LLOYD:

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Q Did you have any discussions with anyone at Cashman about the nonpayment of CAM?
A Keith Lozeau.
Q And what did you talk to Keith about?
A The only thing I talked to him about was when I requested things to be done, his responses were basically, we haven't been paid. That was it.
Q Do you know how many times you spoke with him?
A Not offhand. Maybe four, plus or minus.
Q And was that after Kym said we weren't going to do anything else?
A After.
Q Did Kym refer you to Keith?
A Yes.
Q And prior to that had you spoken with Keith at all about his project?
A Not that I recall.
Q Because I think that your primary contact was Kym?
A Kym. Just because I new Kym from other projects.
Q Okay. And after you became aware of the non-payment did you try to contact CAM?
A No.

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Q Do you know, are you aware if anyone from Mojave tried to contact CAM?
A I'm not aware.
Q And were you involved in deciding what to do about the non-payment on behalf of Mojave?
MS. BRISCOE: Objection. I think this was asked and answered already.
THE WITNESS: I don't understand what you're asking.
BY MS. LLOYD:
Q I'm sure after Mojave became aware of the non-payment, as Mr. Bugni testified, there was a meeting with Cashman. Were you at the meeting with Cashman personnel with Mr. Bugni, and I think possibly Mr. Nelson?
A No.
Q And then did Kym provide you with any information after the non-payment to try to assist you on the project?
A I don't recall.
Q And when was the start-up work completed?
A It wasn't till towards the end of the project.
Q Do you have like a timeline range?
A I would say November, 2012. Around there.

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I'm not positive on the date.
MS. LLOYD: I don't have anything further.
(Whereupon, proceedings were concluded at 2:05 p.m.)

* * * * *

CERTIFICATE OF DEPONENT

PAGE LINE CHANGE REASON

* * * * *

I, CHRISTOPHER MEIERS, deponent herein, do hereby certify and declare the within and foregoing transcription to be my deposition in said action; that I have read, corrected and do hereby affix my signature to said deposition.

CHRISTOPHER MEIERS, Deponent

STATE OF NEVADA )
SS:
COUNTY OF CLARK )

Subscribed and sworn to before me this _____ day of _____, 2013.

Notary Public



CERTIFICATE OF REPORTER

STATE OF NEVADA )
) ss:
COUNTY OF CLARK )

I, Rene' Hannah, Certified Court Reporter, do hereby certify:

That I reported the deposition of CHRISTOPHER MEIERS, commencing on Thursday, January 31, 2013, at 1:00 p.m.

That prior to being deposed, the witness was duly sworn by me to testify to the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript is a complete, true and accurate transcription of my said shorthand notes.

I further certify that I am not a relative or employee of counsel of any of the parties, nor a relative or employee of the parties involved in said action, nor a person financially interested in the action.

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this _____ day of _____, 2013.

RENE' R. HANNAH, CCR NO. 326

# EXHIBIT 7

DISTRICT COURT
CLARK COUNTY, NEVADA

CASHMAN EQUIPMENT COMPANY, a Nevada Corporation,

Plaintiff,

vs.

CAM CONSULTING, INC., a Nevada corporation; ANGELO CARVALHO, an individual; JANEL BENNET aka JANELL CARVALHO, an individual; WEST ZONA ASSOCIATES, LLC., dba MOJAVE ELECTRIC, a Nevada corporation; WESTERN SURETY COMPANY, a surety; THE HUNTING TURNER CONTRACTING COMPANY, a Maryland corporation; FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a surety; DOES 1-10, inclusive; and ROE CORPORATIONS 1-10, inclusive,

Defendants.

AND ALL RELATED MATTERS.

CASE NO.: A642583
DEPT NO.: 32

DEPOSITION OF PETER RODNEY FERGEN
PERSON MOST KNOWLEDGEABLE FOR
MOJAVE ELECTRIC

Taken on Tuesday, October 9, 2012
At 10:44 a.m.
At 6725 Via Austi Parkway, Suite 290
Las Vegas, Nevada

REPORTED BY: JEAN WHITMORE, RPR, CCR NO. 753, CSR 11715







APPEARANCES:

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EXHIBITS


| EXHIBIT | DESCRIPTION | PAGE |
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| 1 | Consultant Agreement, Bates MOJ00185 through MOJ00193 | 17 |
| 2 | Contract Agreement, Bates MOJ00200 through MOJ00208 | 26 |
| 3 | "Generator" "Transfer Switch" Bates MOJ00031 through MOJ00036; | 32 |
| 4 | Invoices, Bates CASH003 through CASH008 | 36 |
| 5 | E-mail from Peter Fergen to Carla Molera, Bates MOJ00140 | 43 |








LAS VEGAS, NEVADA, TUESDAY, OCTOBER 9, 2012

10:44 A.M.

-oOo-

Thereupon --

(In an off-the-record discussion held prior to the commencement of the proceedings, counsel agreed to waive the court reporter's requirements under Rule 30(b)(4) of the Nevada Rules of Civil Procedure.)

PETER RODNEY FERGEN,

having been first duly sworn to testify to the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

EXAMINATION

BY MS. LLOYD:

Q. Hi. My name is Jennifer Lloyd. I'm counsel for Cashman in this matter.

Can you go ahead and state your name for the record.

A. Peter Rodney Fergen.

Q. Can you spell your last name for the court reporter.

A. F, as in Frank, -e-r-g-e-n.

Q. Have you ever had your deposition taken before?

A. Yes.

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Q. Can you tell me when?
A. I'm going to say 2008.
Q. Just one other time?
A. Very in a formal setting, yes.
Q. And that was that in conjunction with?
A. An asbestos case.
Q. For Mojave?
A. No.
Q. What was it for?
A. A personal friend who died of it.
Q. So you're a little bit familiar with the deposition process. We'll just go over the ground rules.
It's question and answer; I'll ask the questions, and you can give the answers. Verbal responses are very important because the court reporter is taking down everything that we're saying; so a nod of the head, she can't really notate, and it needs to be yes or no.
A. No problem.
Q. It's also important that we not speak at the same time so she can make a clear record; so I would ask that you allow me to finish, and I'll allow you to finish.
We can take a break at any time except when a





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question is pending. I would ask that you answer the question that is pending, and then take the break.
If you don't understand a question or would like me to restate a question, please let me know. I'm here to get your best answers, so I want to make that as easy as possible for you.
Your testimony is under oath; it's the same oath that you would give in court.
And is there any reason why you cannot give complete and truthful testimony today?
A. None.
Q. Okay. What did you do to prepare for your deposition today?
A. Nothing.
Q. You didn't speak with anyone about the deposition?
A. A week ago I spoke to --
MR. HUSCHKA: But don't tell her about the substance of what you talked to Shemilly about.
THE WITNESS: Yes. I talked to Shemilly that we were -- you were having the deposition.
BY MS. LLOYD:
Q. And you didn't speak to anyone at Mojave about the deposition?
A. No.





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Q. Did you review any documents to prepare for the deposition today?
A. No.
Q. Do you hold any professional licenses?
A. None.
Q. And what's the highest level of education that you've attained?
A. Bachelor's.
Q. A bachelor's in what?
A. Business Administration.
Q. And where did you graduate --
A. My graduation was --
Q. -- for that degree?
A. -- at the University of Phoenix.
Q. And when did you attain your degree?
A. 1997.
Q. Have you been convicted of any crimes within the last ten years?
A. None.
Q. What's your current employment?
A. I'm the vice president of Mojave Electric.
Q. Vice president of any particular division?
A. Vice president of Project Development.
Q. Can you describe to me what you do in that position?





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A. Basically oversee what -- the estimate into project management, including purchasing -- engi- -- or purchasing, drawings, or redesign.
Q. And how long have you held that position with Mojave?
A. Ten years.
Q. Did you have any previous positions at Mojave?
A. Project coordinator, doing basically the same duties.
Q. And did you have any other positions with Mojave?
A. No.
Q. So how long have you been employed by Mojave, in total?
A. January 1996.
Q. So we're here today concerning the new Las Vegas City Hall Project, as I'm sure you're aware. So when I say the word "Project" today, I'm going to be referring to that particular Project.
A. Yes.
Q. So what was your role on that Project?
A. Same as basically every one. I took the drawings, I negotiated the contracts and purchase orders, performed the submittals, instigated the RFI -- which is Building Information Management -- which was a

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requirement for the contract, and turned it over to the project manager.

Q. So in that process, you go from the estimate and then you contact all the vendors, or were there vendors involved in that estimate process?

A. The vendors are involved -- the vendors are involved in bidding the Project.

Q. Okay.

A. I turn around and take the bid, and then write the purchase orders to the lowest responsible bid.

Q. Okay. So for the equipment supplied by Cashman to the Project, you were involved in procuring the bids from Cashman and other vendors for that equipment?

A. Actually, the bids were already done. I took the bids, looked at them, compared them to the drawings, and awarded it to Cashman.

Q. So you made the decision to award the contract to Cashman?

A. Yes.

Q. And what was that decision based on?

A. Bid and performance.

Q. Like your previous dealings with Cashman?

A. Yes.

Q. How many other projects did you work with Cashman on?





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A. I couldn't even fathom a guess; there's a lot of them.

Q. And had you always been satisfied with Cashman's performance?

A. Yes.

Q. I'm going to step back a second. Where did the generator system requirements come from?

A. Specifications were by the design team.

Q. And is that --

A. It was at bid time. It was by the design team at bid time, contracted by the owner or the architect. I don't recall who the engineer was on that team.

Q. Can you recall who else bid to supply that generator system?

A. Off the top of my head, no. But I would assume it would be Cummins and Sun-Tech, both local firms.

Q. Was Whiting-Turner involved at all in deciding who would supply the generator system?

A. No.

Q. Was the owner involved at all in that process?

A. No. Each specification listed various manufacturers that were allowed.

Q. And can you describe to me what that equipment package consists of?

A. The generator, automatic transfer switches and,





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in this scenario, the paralleling switching gear because there were multiple generators.

Q. So after you had Cashman's bid, did you negotiate the terms of the purchase?

A. Explain. What part?

Q. I guess, were there any changes made from the bidding process to the actual final purchase order?

A. There was a requirement on this job for minority participation. I specifically asked them if they could perform in the minority participation, and they said yes.

Q. What were the diversity requirements for this Project?

A. The percentages, I don't recall.

Q. Do you recall there being a particular percentage that you had to meet?

A. Yes.

Q. How did Whiting-Turner verify Bejavic's use of diversity vendors or contractors or subcontractors?

A. That was not something I did; that would be from the Project Manager.

Q. Is that -- who is the Project Manager on this?

A. Chris Holmes; H-o-l-m-e-s.

Q. So when you told Cashman that they had to -- I don't know, how did you, I guess, approach that issue





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with Cashman on minority participation?

A. Pretty much the way you just stated; we need to have minority participation. Can you perform? Can you do that?

Q. And what were your conversations with them about that?

A. Where whatsoever that they had somebody that they can do that with.

Q. And do you know who that somebody was?

A. I don't recall the name of the company that they said, but they were not certified, and I said that was not acceptable. And they asked me, and I said, Hell, there's another veteran that owns in here, and you can use them. And I gave him the card for CAM Consulting, and they said did we do a credit check? I said no. And they said they were going to do a credit check on them and they would let me know. And they then turned around and were dealing with them until I wrote the purchase order.

Q. And when you refer to the "they," at Cashman, who were you talking to about this minority?

A. Keith Tozzo.

MR. LLOYD: Let's take a break for a second.

(Pause in proceedings.)

///

BY MS. LLOYD:
Q. Okay. So just to go back for a second, you said you were talking with Keith Lorenz about the diversity requirement?
A. Yes.
Q. Is that who you first communicated the diversity requirement to?
A. Yes.
Q. Is that who you dealt with on the bid?
A. I don't recall whether it was -- the signature on the bottom of the bid was either Keith or Kim Symons. I don't recall that.
Q. Okay.
A. But it was -- when I was dealing with it, it was with Keith.
Q. And do you recall -- did you introduce Keith to Angelo personally?
A. Yes.
Q. And where did that meeting take place?
A. At our Front office sales area.
Q. And did you call Angelo to come to your office for that purpose?
A. Correct.
Q. What were your previous dealings with Angelo?
A. Previous to that, I don't recall whether it was







first -- that was the first project or the second project; we also had dealings with him on the Las Vegas Metro facility, and the bond/it purchase order on that job. And I don't recall what else in on there -- was on there. That's it.
Q. How did you first meet Angelo?
A. He came in with his -- all of his -- saying he was a minority force, and he was wanting to do business with us. So he came in, I got his cards, I got his letter from the Veterans Association. I called the Veterans Association and confirmed they were correct; they were right, and there was nothing wrong with that.
Q. That's the Veterans Association?
A. VA, which in that gives him his Veteran's -- Disabled Minority Veteran.
Q. He was a Disabled Minority Veteran?
A. Correct.
Q. And that is the Veterans Association? Is it a particular certification agency or --
A. Actually, I should correct it. It's the Veterans Administration, VA.
Q. So like the federal --
A. VA-hub.
Q. -- VA?
A. Federal.







Q. Did you understand from him to be active duty at that time?
A. He was in the Reserves, from what he told me.
Q. So he just came into your office as unsolicited?
A. Yes, to the best of my recollection that was.
Q. Did that raise any red flags to you?
A. No, it happens all the time.
Q. So you get a lot of these diversity contractors or --
A. We get a lot of people coming in -- any time we've got major projects, we get a lot of people coming in trying to get a piece of the business.
Q. Okay. And approximately how many of those -- well, I'm just going to lump them all together just for purposes of the deposition, so HUB, VBE, disabled -- as just diversity contractors, just so we all know what we're talking about. But how many of those do you deal with on a regular basis?
A. Two majors --
Q. Okay.
A. -- and that's Codale Electric Supply -- actually, now their minority is Codale Energy Services and Supplies, LLC. And the other one is EXCEL Supply; one of them being Hispanic, the other one being American Indian.







Q. And so on a project like this, why wouldn't you use Codale or EXCEL?
A. I actually use both of them. But it helped for the disabled veteran because it's a government project. Disabled Vet worked with that position.
Q. Okay.
A. And I gave -- actually gave Cashman the choice to run it through Codale.
Q. And when you say you gave them the choice, I mean, how does that work?
A. I says -- you've got -- when their -- when the company that they had was not certified as a woman-owned business, I says, We do have other certified, and it was -- I says you can do with Consulting or you can do Codale. I says, Or you can do EXCEL; but that wasn't really -- wasn't an option even thought of.
Q. So did they -- you already had their pricing on the -- for the package at that time?
A. Correct.
Q. So then did you add a percentage --
A. No.
Q. -- for the --
So then you expected them to deduct the percentage --
A. Correct.

Q. -- for whatever percentage the City contractor --
A. Whatever they negotiated.
Q. Okay.
A. And I should stand corrected and go back for a second. We also used a women-owned business, which was Hampton-Saddler Electric out of Southern California.
Q. So besides calling the VA, did you do any other reference checking for CAM Consulting?
A. No, Sir.
Q. So talking about the other projects that you worked with CAM on, I think you mentioned the Metro?
A. Metro, correct.
Q. And there was also NV Energy?
A. I forgot about NV Energy. Yes, that would be the fifth one.
Q. And were there any others?
A. Not that I recall.
MR. LLOYD: Then let's take a look at the NV Energy agreement, which will be Exhibit 1.
(Exhibit 1 was marked for identification.)
BY MR. LLOYD:
Q. If you can take a look at that agreement. Are you familiar with it?
A. Yes.







Q. Can you tell us what it is?
A. It's basically the low-voltage contractor was -- CAM Consulting contracted with the low-voltage contractor to install the low-voltage system for that, being telephone data.
Q. So who was the low-voltage contractor?
A. Mojave Systems.
Q. Just so I understand, Mojave Electric subcontracted to the prime --
A. (Witness shakes head.)
Q. -- and then Mojave contracted with CAM?
A. Correct.
Q. And then CAM contracted with --
A. Mojave Systems.
Q. What is Mojave Systems?
A. A low-voltage division.
Q. Of?
A. Standalone for Mojave Electric.
Q. Standalone --
A. To be honest, I can't -- I'm not -- I don't know the breakdown of the corporation.
Q. Okay. So on this contract, what was CAM contracted to do?
A. They were doing the low voltage, and they actually did do some of the design and drawing on it.







Q. Angelo did some of the design and drawing?
A. Yes. And created the submittals, et cetera.
Q. Do you know if you need to have a license to do this work?
A. The portion that he was doing, no.
Q. Well --
A. All he was doing -- all he was doing was basically the submittal process and processing the paperwork.
Q. Okay. But what did he subcontract to do?
A. As far as?
Q. I mean, what is the scope of work included here?
A. He had a subcontractor doing the low-voltage portion, being telephone data.
Q. That wasn't what I asked.
What did he subcontract? What did he agree to do in this contract?
A. The low voltage.
Q. The installation?
A. If that's what you're -- yes.
Q. Do you need to have a contractor's license in the state of Nevada to do the installation of the low-voltage system?
MR. ROSCHEE: Objection. If he knows. It may call for a legal conclusion.







But if you know, go ahead, Sir.
THE WITNESS: I don't know. I don't deal with the Contractors Board.
BY MR. LLOYD:
Q. So then he subcontracted to Mojave Systems to do the installation?
A. Yes.
Q. Okay. So that was his fee on this project, do you recall?
A. I'd have to go back into the paperwork. I do not know.
Q. Okay. Can you tell me in here if the amount of the subcontract is listed, because I --
A. Yes, checked. Article V, 5.1.
Q. So his price was $350,470?
A. When I wrote it, yes. I do not know anything about change orders up or down.
Q. Then do you recall what Mojave Systems's contract was on this project?
A. Again, I -- no, I do not remember.
Q. Would you have been responsible for arranging that subcontract?
A. Yes.
Q. Would there have been a separate contract between CAM and Mojave Systems?

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A. Yes.
Q. Did you prepare that contract?
A. Again, I don't remember.
Q. Okay.
A. There's some of them where CAM actually took our contract and actually rewrote it.
Q. I saw that, actually. It looked very familiar.
But there would have been a separate contract between UNI and Mojave Systems?
A. Yes. And that's typical for everybody. In fact, my purchasing -- purchase orders, et cetera, many of my vendors just basically take my PO and write it, so that way all of my terms get passed on to the next level.
Q. Right, okay. And so on this NV Energy project, you said that Angelo did some work?
A. Yes. He processed the submittals.
Q. Did he have that same role on the City Hall Project?
A. Yes.
Q. And so can you describe what that is, processing submittals?
A. Basically getting all the information for the material that's going to be supplied, putting it in the proper format by specification, and then turning that in





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to us to turn into the prime contract.
Q. So, I didn't see any communications with Angelo in the disclosures that were made by your counsel in this case, so did he -- I mean, was it a large role that he played in developing that?
A. Not so me.
Q. Because the majority of the communications seem to be between Cashman and Mojave directly. Is that how you recall it?
A. Depends on whether you're talking before the problem or after the problem.
Q. Well, let's start with before the problem.
A. Before the problem was basically Cashman would bring in the submittals to us, and with a copy that was given to CAM.
Q. So then did Angelo do anything with the submittals?
A. I do not know.
Q. Okay. Are you familiar with the status of payments on the NV Energy project?
A. No.
Q. Were you concerned at all when you were contracting with CAM about paying him these sums of money and ensuring that he was going to then pay, in this instance, Mojave Systems?





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A. No.
Q. Okay. Why is that?
THE WITNESS: Okay. You'll have to explain to me, if I'm outside -- or can we talk a second?
MR. BOUCHER: You have to answer the question. If it's not clear --
THE WITNESS: Well, I did. I said no.
Oh, you said why.
MR. BOUCHER: Yeah.
THE WITNESS: Because I basically told them they have come to our front desk -- and it's real simple. He who has the gold pays the bill. It was real simple. You have CAM Consulting -- and I don't know what Cashman -- and this was typical to all of them -- I don't know what Cashman negotiated as their fees. I says, We give a check to CAM, you come in with whatever you've agreed for their fee, give them the fee check, have CAM sign the check over to you. There's no risk, no problem.
BY MS. LLOYD:
Q. And that was -- you're referring to the Cashman --
A. Yeah. That's typical for all of them.
Q. So on this, for the NV Energy contract, you weren't concerned because --





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A. We paid the bills and the work was -- we knew the work was done, and we'd get a release.
Q. So when you were exchanging payment for the NV Energy -- I don't think I understood exactly what you were saying, so maybe if you can help me.
A. Okay. As we did the contracts, we said, The way -- and I've got to back up a step -- remember back, I said, Did I do a credit check? No -- I never do. I don't do a credit check on anybody that we do. They don't get paid until the work is done.
The -- Cashman asked if we had done it, and I said no, and they were going to do their own credit check. And at that time I told them, and I questioned it, I says, Why -- the easiest way to do it is you come into our office with your check to CAM for his fee or whatever agreement you guys have made. We give CAM the check, he signs it, gives it to you, you give him the check for his fee. There's no risk, no worries.
But they did their own credit check, their own account, everything else on it. We did the same thing for NV Energy, we did the same thing for North Las Vegas -- or the police department. Except the police department actually happened -- some of the payments were after the CAM debacle.
Q. So how did you handle those payments?

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A. We paid directly to the supplier, because we could not contact CAM.

Q. And did you -- did Mojave Systems also do work under CAM on the Metro project?

A. Not to the best of my knowledge, they did not.

Q. So CAM was just an intermediary between Mojave and some other suppliers on that project?

A. Correct.

Q. Do you recall who these suppliers were?

A. Only one that comes to my mind is Stanley and -- I don't remember the other one. I thought it was Stiles, but I'm not positive.

Q. So when you're talking about the exchange of payments, for instance on the NV Energy, Mojave was keeping a check to CAM and then CAM was sending a check over to Mojave Systems? Is that --

A. Actually, from --

Q. -- what you're representing?

A. Actually, what happened there was they would -- we'd give the check to CAM, and CAM would give us a check.

Q. Right.

A. And again, right then and there. Again, it was a different scenario, because, again, they wouldn't get another check until we were paid.





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Q. So you weren't concerned in writing a check to him and then having him write a check back to you?

A. No. Not at that time.

Q. Even though you hadn't checked on him to make sure that he wasn't, you know, some type of -- I don't know, a notarious character?

A. Hindsight is different. But again, a lot of things have changed since this.

Q. Okay. Then let's take a look at the other subcontract agreement.

MS. LLOYD: We'll mark this as Number 2.

(Exhibit 2 was marked for identification.)

BY MS. LLOYD:

Q. Can you take a look at this one.

Are you familiar with this document?

A. Uh-huh.

Q. And did you prepare this contract?

A. Yes.

Q. And you prepared the other contract as well that we just looked at?

A. Uh-huh, yes.

Q. And can you describe to me what CAM's role was on this project?

A. It's basically supplying the security and -- well, basically, all regards of security on that





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project.

Q. Okay. And then CAM had different subcontractors and suppliers?

A. Correct.

Q. Do you know if all payments have been issued on this project?

A. I don't take care of that part of the business.

Q. Who would be responsible on these two projects -- the Nevada Energy and the Metro -- to know about status of payments or payments that were issued?

A. Brian Pugh, our CFO.

Q. And did CAM perform its work on the Metro projects?

A. They did not complete their work.

Q. Okay. What did he not complete?

A. Well, this project was finished after City Hall.

Q. So what happened, I guess, in that scenario?

A. We tried contacting him, and I don't recall how it came about, but basically started paying the suppliers direct.

Q. So what did you do with CAM's fee?

A. I don't -- again, I can't answer that.

Q. Okay. Did he just stop communicating with you? Angelo.

A. Yes.





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Q. Do you recall when he stopped communicating with Mojave?

A. It's a long time ago. No, I do not.

Q. Who was the project manager on the Metro project?

A. Metro was Debbie Corwin.

Q. So would she have been more familiar with the communications with Angelo on that project?

A. Not -- no, probably not. At that time it would have been probably with Brian would -- because it would pertain to bills.

Q. On the Metro project, did CAM have any particular duties like you mentioned before, like submittals? Or did he perform any -- Angelo perform any work on this project?

A. Again, that one I don't recall. I don't remember.

Q. Okay.

A. That was a lot more convoluted.

Q. What do you mean?

A. Well, City Hall went to hell as a handbasket, so this one was following behind, so I don't remember what he did or didn't do anymore.

Q. And so besides these two projects, were there any other projects that Mojave worked with CAM on?

A. Are you talking about NV Energy and --
Q. NV Energy and Metro.
A. -- Metro? Other than City Hall, that's it.
Q. So for the City Hall project, who did Mojave contract with for the generator equipment?
A. CAM Consulting.
Q. Okay.
A. Who, in turn, contracted with Cashman Equipment.
Q. Okay.
A. And then that case was purchase orders. No.
Q. There was no sub?
A. I don't remember. I didn't pull the files.
Q. So did Mojave take any action on any of these projects to ensure that CAM was going to pay its lower-tiered suppliers?
A. You'd have to ask Brian.
Q. Was anyone at Mojave concerned about issuing payments to CAM that were this large and ensuring that the payments were made to the other vendors as appropriate?
A. Certainly to payments, it would have to go to Brian.
Q. So after you located -- or I guess CAM located you -- and the decision was made to use CAM, was that your decision alone for the Metro --







A. Yes.
Q. -- and the energy project?
A. Sorry.
Q. That's okay.
Was anyone concerned? I mean, was anyone else at Mojave concerned about using CAM given that you had, you know, dealt with him before?
A. No.
Q. So after that initial meeting where you introduced Keith to Angelo, did you have any other discussions with Keith about Angelo or CAM?
A. Not until they did their -- whatever happened with the payment.
Q. During that initial meeting, or when you first talked to Keith about CAM, did you talk to him about how you were handling the payments, how Mojave was handling the payments when it was using CAM?
A. Exactly as I was -- explained it earlier. I said, basically, was: You bring in your check, he brings in his check; and when Mojave gives it to him, you take that check and give him his fee.
Q. Okay. But you weren't involved in the actual payment process?
A. None.
Q. So would you have had any role in deciding







whether or not Mojave was going to issue a joint check for that purchase?
A. I didn't -- I do not.
Q. Is that -- can you tell me who would make that decision?
A. Brian. But I'll elaborate one little bit.
Q. Okay.
A. Issuing a joint check would annihilate and eliminate the benefit of a minority participant.
Q. How is that?
A. Because then he's not a minority participant; he's a joint-check person and who's controlling the minority.
Q. What do you mean, "who's controlling the minority"?
A. Minority business is a standalone entity. You can't joint check it; otherwise, then you start getting questions from the general contractors on their participation. We don't joint -- we don't joint check anyhow, what I'm being told.
Q. You mean like ever?
A. We've hardly ever and that's -- but again, that's something Brian can go through. He does donate all the bills.
Q. Where does your understanding of a joint







check -- I guess, did you use the word "annihilate" -- or how did you phrase it?
A. Let's just say eliminate.
Q. So where does your understanding of that come from, that if you joint check with a diversity contractor that it would somehow --
A. History.
Q. Can you give me -- can you elaborate on that?
A. I've been in business 35 years; it's been a long time. It basically is, way back in time with the City of Los Angeles, they said you cannot joint check a minority.
Q. The City of Los Angeles said that?
A. Mm-hmh.
Q. So, then, did you have any reason to believe that that was the case on this project?
A. I don't -- like I said, that's just my understanding. I'm old. I've been in this business for a long time.
Q. I feel like I have, but I don't think I have.
Let's just take a look really quick at the purchase order.
MS. BLOYD: Mark this as 3.
(Exhibit 3 was marked for identification.)
THE WITNESS: You're missing the first two

pages.
BY MS. LLOYD:
Q. I see -- yeah, I'll follow up on that.
But, okay, can you tell me what this is?
A. These are general terms and conditions for all generator contracts -- generator subcontracts -- or purchase orders, not contracts. Purchase orders.
Q. And where are the first two pages? Are they the ones that are illegible?
A. No. They're the ones that will actually describe the material that is being purchased.
Q. And did you go off of the Cashman bid documents to prepare that, or did you prepare that separate from --
A. I take what they've done, and I go off the contract drawings and specifications, the drawings will specifically call out a specific generator's size, voltage, amperage, and I'll make sure that is tied in to what we're supplying.
Q. So at the point that the purchase order is issued, are all the items that are to be supplied already set?
A. Yes.
Q. So you've already reviewed Cashman's submittals on the Project?







A. No. I submitted -- I reviewed their bid in making sure that their billing material matches my billing material off the contract.
Q. Okay. So then you know this and then the submittals are prepared?
A. Correct.
MS. LLOYD: Okay. Then let's go off. Let's take a break. I'll get the first two pages, and we'll go over this too.
(Recess taken.)
BY MS. LLOYD:
Q. Can you take a look at that?
A. It matches.
Q. Are those the first two pages --
A. Yes.
Q. -- that you're referring to?
A. Correct.
MR. BASCHER: So we just went to add those to Exhibit 3?
MS. LLOYD: Yeah, we can just add those to Exhibit 3.
Sorry, this is the best copy that I have.
BY MS. LLOYD:
Q. So the first two pages, can you describe what their purpose is?







A. They are basically the translation of the drawings and specifications to the purchase order, basically supplying this material for -- with the terms and conditions for that Project.
Q. And who was this purchase order issued to?
A. This is to CAM Consulting, care of Cashman.
Q. And what does that mean, "CAM Consulting, care of Cashman"?
A. It's going to Cash -- it's going to CAM Consulting with the directive that they're purchasing it from Cashman Equipment. That was by the request of Cashman.
Q. Who at Cashman requested that?
A. Keith was my only contact; so where it came from, I don't know. But it came to me through Keith.
Q. That it be made out this particular way?
A. Yes.
Q. Okay. And then who signed the purchase order?
A. That is Angelo's signature.
Q. And then you signed on behalf of Nojaval
A. Correct.
Q. So did you look to CAM to perform under this purchase order?
A. I looked to CAM basically -- yes. Legally, yes, they have to perform. But again, most of the material







came through Cashman.
Q. Okay. So you know if there were any changes or additions to this purchase order?
A. What I do not know.
Q. What would be who?
A. What would be -- that would be Chris Moore.
(Discussion held off the record.)
MS. LLOYD: I'll mark this as Exhibit 4.
(Exhibit 4 was marked for identification.)
BY MS. LLOYD:
Q. Are you familiar with this document?
A. I would not see an invoice, no.
Q. You would not, okay. Just put it to the side.
So after the initial bidding and taking the bid and making it into the contracts and those things that you described that you do at the beginning of the Project, do you have any role during the -- like, while the Project is ongoing?
A. Little to none. Basically, in this Project, was just the -- because my department also controls the BIM modeling, which is basically the construction of the Project on paper. We did that portion of it to make sure that everything fit where it's supposed to go. So I have that interface; but basically that's between the Project superintendent or them -- Mojave Mold and my

project manager, Chris Molaro.
Q. Okay. So but for City Hall was there a point in which you got back involved with the Project?
A. Yes.
Q. And what point was that?
A. When Cashman would not perform on completing their project.
Q. Okay. Well, wasn't it CAM that wasn't performing to complete the Project?
A. Correct.
Q. So were you involved with trying to locate Angelo at any point? Or how did it work? What happened? How did you get notified of what happened?
A. Well, I don't recall how I got notified. I remember Keith calling me and asking me for contact information, anything I had for CAM, because they had not been paid and they needed to get ahold of him. And I gave him anything anything that I had as far as I recall addresses, phone numbers, et cetera. And then I don't know what had happened after that.
Then I had to get back involved in trying to get the batteries for the UPS system to finish the project, tried chasing down the software for the paralleling switching -- switch gear, and then by buying the fuel for the tanks.







Q. So what was the outcome of your efforts, I guess, on going those lines?
A. The software, we never got; and I guess that's still a bone of contention, or up for litigation, whatever you want to call it. I don't know what has happened. I know we haven't gotten it. The generators, we got the fuel, we took care of that, and we contracted to get people to start the generators.
Q. Who did you contract with to start the generators?
A. Off the top of my head, I'm not sure if it was Cummins or Gen-Tech, one of the two.
Q. Was you the responsible for contacting whoever it was that --
A. I got -- I contact -- I gave the contact information to Chris Molaro and requested quotations.
Q. You requested quotes to do the remainder of the work?
A. Yes. Actually, I shouldn't say "remainder"; it was going through to confirm there was nothing wrong with the equipment, to go through, to start it up.
Q. Then who did the start-up?
A. They also worked in start-up.
Q. That was --
A. There would -- I don't remember all the parties







involved. There was multiple people.
Q. Okay. So what efforts did you take to get the equipment, I guess, started up?
A. Well, like I says, I requested quotes, I found the people that had the ability to do it -- and I forget -- a piece of equipment to the UPS system. We had a manufacturer from another location come in for the UPS. We had a company here for both verification, testing of the wiring, and making sure that there was nothing wrong with the equipment before it was turned on.
Q. And you don't recall who did that work?
A. I'd have to research it.
Q. Okay. Who supplied the -- do you recall who supplied the UPS system?
A. CAM/Cashman.
Q. Well, you said you had to -- it was missing or --
A. No. No. No. The batteries were missing.
Q. The batteries were missing. Do you recall who supplied the batteries?
A. I bought them from Cadale.
Q. Did you undertake any efforts to locate Angelo after the payment issue was brought to your attention?
A. Other than giving the information to Keith, no.







Q. And did anyone at Mojave locate -- I mean, take efforts to locate him?
A. I can't answer for anybody else.
Q. Are you aware of the current status of the generator equipment on the Project?
A. Only by hearsay.
Q. Who would be most familiar at Mojave with the current status?
A. Chris Molaro.
Q. Do you still put bid outs to Cashman for equipment on projects?
A. I just did one about three weeks ago requesting if they would bid to us; they did bid to us. But we weren't -- we were not awarded the contract, so I don't know if they would follow through with it or not.
Q. What would you have done if Cashman couldn't have located a diversity contractor to supply through?
MR. BOSCHEE: Objection; calls for speculation. Answer if you can.
THE WITNESS: I would have found another supplier.
BY MS. LLOYD:
Q. Instead of Cashman?
A. Yes.
Q. And --

A. The general contractor explained that minority participation was required.

Q. Who did the general contractor explain that to at Mojave?

A. I don't know; it was passed to me by the project manager, Chris Molaro.

Q. And how did -- did you take the decision that this equipment should come through a minority or a diversity contractor?

A. No -- a lot of the material did. Like I says, I did light fixtures -- light fixtures came from Indco Supply, which is Indian owned, American Indian, and the switch gear, which is the most major big ticket item, would have came from Codale. Energy and the fire alarm system came from Hampton-Tedder Electric.

Q. So what percentage of the contract are you aware -- what percentage under the theme -- supplied their diversity contract?

A. The total percentages, no.

Q. And you said Chris Molaro made the decision about which items were to be practiced through diversity, or --

A. No. He just gave me the requirements that they had to be. It was a big percentage, and I don't recall what the percentage was.







Q. Okay. So would it surprise you to know that Whiting-Turner -- the project manager of Whiting-Turner testified that there was no percentage required on this project; that they wanted it, but they didn't place a hard-number requirement on it?

A. Yeah, it would surprise me.

MR. ESCHBERG: I'll place a limited objection that I don't know that that's completely my understanding of what they testified to; but I wasn't there, so --

THE WITNESS: I would be surprised.

BY MS. LLOYD:

Q. Okay. Is it typical on jobs like this that there is a percentage requirement -- you know, public works jobs or, I guess, public component jobs, that there is a particular percentage required?

A. Yes.

Q. So on the -- for instance, the Mateo job, was there a percentage communicated to you that was required for diversity contractors?

A. Again, that was another one through the project manager that we had a percentage to meet. I don't recall; it was way too long ago.

Q. So it's part of your job, then, to decide how to make -- how to meet that percentage?







A. Yes.

MS. LLOYD: Are we on 5?

THE REPORTER: Yes.

(Exhibit 5 was marked for identification.)

BY MS. LLOYD:

Q. Are you familiar with this document?

A. Yes.

Q. Can you tell me what you meant by your statement in your e-mail, "saddying up the legal waters"?

A. We were supposed to terminate -- to have somebody -- if we were going to have Hampton-Tedder terminated under -- it should be done under a separate contract, because that should not be something that would be billable to Cashman's --

Q. Well --

A. -- or CAM.

Q. I was going to say -- so you had Hampton-Tedder perform work to start up the equipment?

A. Correct.

Q. So you were trying to make sure that the work they completed was just work that CAM was supposed to have completed?

A. Correct.

Q. Do you know if Hampton-Tedder ended up doing the termination?







A. I do not know.

Q. Are you familiar with any issues with the equipment that Mojave encountered?

A. I do not recall. I don't -- again, there was stuff going back and forth continuous. I don't know what was finished. I know the generators are running.

Q. And -- okay, let's go back for a second.

So were you aware of any, like, I guess, deficiencies in the equipment supplied by Cashman?

A. Them?

Q. Uh-huh.

A. Well, the batteries were missing, the UPS.

Q. Well, I mean -- I guess, mechanical issues, problems with, like --

A. I don't know.

Q. -- defective issues with the equipment. I mean, portions of it wouldn't have been supplied until later; correct? Or no?

A. Again, I would only be able to speculate. I don't know. I know what was there, what was not. Like I says, the only thing I know is the project manager got me involved in chasing down the batteries for the UPS system, chasing down people to make sure that everything would have been ready to fire the generator, which is something that would have been done

by CAM or Cashman coming out to the job to make sure that everything was correct before they fired the generators.

Q. So are you familiar with the installation, like, process for this equipment, this type of package that you procured?

A. Yes.

Q. So it wouldn't all occur at the same time?

A. Everything should have been completed before they got there. So basically our wires should have been terminated, and then they would have been -- they would have gone through whether it had been verify coolants, verify there's nothing happened while it was sitting there, et cetera. That's just -- that's normal business. When they go to do a start-up, it has -- there's specific things they have to go through to make sure that the equipment is there to start up. If you let some -- let a vehicle sit for 10 months, you're not going to just go in there and turn it on it --

Q. And I guess I was kind of --

A. -- it's been sitting there.

Q. That's kind of what I'm getting at. So Cashman delivers the equipment to the project --

A. Correct.

Q. -- and then there's other things that have to







Q. Oh, okay. So are you aware of any problems that Mojave's had with diversity contractors in the past?

A. None.

Q. And the arrangements that you had with CAM on the NV Energy project, is that something that Mojave does often with a diversity contractor, and then subcontracting back to Mojave Systems?

A. No, we don't do it that often; but it does happen.

MS. LLOYD: Okay, let's take a break. I think we're just about done.

(Recess taken.)

MS. LLOYD: Back on for just a second.

BY MS. LLOYD:

Q. I think I started going over it, but I don't think I finished. The submittal process, are you involved in the submittal process?

A. Yes.

Q. So after you've issued the purchase order -- how do you get to the submittal process, or how does it work?

A. They have the specifications in the plans. They create the submittals for their product line by specification, give it to me. I, in turn, put it in the book with the rest of -- with everybody's, and turn it







in to the general contractor.

Q. And then what is the approval process, or do you know how it works?

A. Unfortunately, sometime between 30 and 50 days we may get it back telling us what needs to be corrected, or if it's correct.

Q. And so do those communications, or the approvals, are those done by the owner? Owner representatives?

A. Usually general contractor. Well, it goes from me to the general, to the general to usually the architect's or owner's rep, to the engineer, and back down through the chain.

Q. And do you recall with this equipment if there were any issues that had to be addressed in that submittal process?

A. I do not.

Q. And --

A. I do recall one issue in the BIM modeling where they had to come out and modify the doors, because the doors would not open against the block wall.

Q. The doors for what?

A. The generator; there's twin generators.

Q. Okay.

A. Each generator had an enclosure on them, and

one -- that's the only one that really comes to mind, so we had to -- they modified the doors to open without hitting the rail.

Q. Okay. And so --

A. In other words, it went from one door to two doors.

Q. Okay. So with the submittals, did those come through CAM at that point, or were those really coming from Cashman directly to you?

A. Again, I don't recall. I'd have to look at the paperwork.

Q. The actual submittals themselves?

A. Actually, the transmittals.

Q. The transmittals? Okay.

A. If there were -- and again, it's been a long time. There's some cases where people just drop them off, some people e-mail them. I think Cashman's were pretty voluminous, so I don't believe they were e-mailed. With that said, now with interest you get a lot of different things, but I don't remember how these came through.

Q. Okay. And after the payment issue happened, do you recall communications with CAM concerning certain information that you needed?

A. I can answer that real simply as no. Because







when the payment issue came in, it was -- communications was shut down.

Q. So you don't recall CAM providing information to Mojave?

A. I do not.

MR. LLOYD: Okay, I think that'd it.

MR. ROSCHEE: I have no questions.

THE REPORTER: Would you like a copy?

MR. ROSCHEE: Yes.

(The deposition concluded at 11:53 a.m.)

-oOo-







CERTIFICATE OF DEPONENT

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* * * * *

I, PETER RODNEY FERGEN, deponent herein, do hereby certify and declare that the within and foregoing transcription to be my deposition in said action; that I have read, corrected and do hereby affix my signature to said deposition, under penalty of perjury.

PETER RODNEY FERGEN, Deponent Date







CERTIFICATE OF REPORTER

STATE OF NEVADA )
)ss:
COUNTY OF CLARK )

I, Joan M. Dahlberg, a duly commissioned and licensed Court Reporter, Clark County, State of Nevada, do hereby certify: That I reported the taking of the deposition of the deponent, Peter Rodney Fergen, commencing on Tuesday, October 9, 2012, at 10:44 a.m.

That prior to being examined, the deponent was, by me, duly sworn to testify to the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true and accurate transcription of said shorthand notes.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of an attorney or counsel involved in said action, nor a person financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this 14th day of October, 2012.

JOAN M. DAHLBERG, RPR, CCR NO. 798, CSR 11715

# EXHIBIT 8

Rating submitted to network. type text A+ A A



Assessor

# Michele W. Shafe, Assessor

## PARCEL OWNERSHIP HISTORY

Assessor Map | Aerial View | Comment Codes | Current Ownership | New Search

ASSESSOR DESCRIPTION
RCC. MAP FILE 117 PAGE 14 LOT 1
SC 34 TWP 20 RNG 61

| CURRENT PARCEL NO. | CURRENT OWNER | RECORDED DOCUMENT NO. | RECORDED DATE | VESTING | TAX DISTRICT | ESTIMATED SIZE |
|---|---|---|---|---|---|---|
| 139-34-201-022 | CITY OF LAS VEGAS Corporation SP 186-10 | 20120217-0001675 | 02/17/2012 | NO STATUS | 203 | 3.71 AC |

| PARCEL NO. | PRIOR OWNER(S) | RECORDED DOCUMENT NO. | RECORDED DATE | VESTING | TAX DISTRICT | ESTIMATED SIZE |
|---|---|---|---|---|---|---|
| 139-34-201-022 | P Q LAS VEGAS L L C | 20091210-0003323 | 12/10/2009 | NO STATUS | 203 | 2.71 AC |
| 139-34-201-022 | LIVEWORK L L C ET AL | 20070622-0004078 | 06/22/2007 | NO STATUS | 203 | 2.71 AC |
| 139-34-201-022 | LIVEWORK L L C ET AL | 20070622-0004078 | 06/22/2007 | NO STATUS | 203 | 3.44 AC |

Note: Only documents from September 15, 1999 through present are available for viewing.

NOTE: THIS RECORD IS FOR ASSESSMENT USE ONLY. NO LIABILITY IS ASSUMED AS TO THE ACCURACY OF THE DATA DELINEATED HEREON.

| GENERAL INFORMATION | |
|---|---|
| PARCEL NO. | 139-34-201-022 |
| OWNER AND MAILING ADDRESS | CITY OF LAS VEGAS<br>%OFFICES BUS DEV<br>%DIRECTOR<br>400 STEWART AVE 2ND FLR<br>LAS VEGAS NV 89101-2913 |
| LOCATION ADDRESS<br>CITY/UNINCORPORATED TOWN | 495 S MAIN ST<br>LAS VEGAS |
| ASSESSOR DESCRIPTION | PARCEL MAP FILE 117 PAGE 14<br>LOT 1<br><br><br>SEC 34 TWP 20 RNG 61 |
| RECORDED DOCUMENT NO. | * 201202171018?8 |
| RECORDED DATE | 02/17/2012 |
| VESTING | NO STATUS |
| COMMENTS | SP 186-10 |

*Note: Only documents from September 15, 1999 through present are available for viewing.

| ASSESSMENT INFORMATION AND SUPPLEMENTAL VALUE | |
|---|---|
| TAX DISTRICT | 203 |
| APPRAISAL YEAR | 2012 |
| FISCAL YEAR | 12-13 |
| SUPPLEMENTAL IMPROVEMENT VALUE | 0 |
| SUPPLEMENTAL IMPROVEMENT ACCOUNT NUMBER | N/A |

| REAL PROPERTY ASSESSED VALUE | | |
|---|---|---|
| FISCAL YEAR | 2011-12 | 2012-13 |
| LAND | 906970 | 743702 |
| IMPROVEMENTS | 0 | 0 |
| PERSONAL PROPERTY | 0 | 0 |
| EXEMPT | 0 | 743702 |
| GROSS ASSESSED (SUBTOTAL) | 906970 | 743702 |
| TAXABLE LAND+IMP (SUBTOTAL) | 2597057 | 2124863 |
| COMMON ELEMENT ALLOCATION ASSD | 0 | 0 |
| TOTAL ASSESSED VALUE | 906970 | 743702 |
| TOTAL TAXABLE VALUE | 2597057 | 2124863 |

| ESTIMATED LOT SIZE AND APPRAISAL INFORMATION | |
|---|---|
| ESTIMATED SIZE | 2.71 Acres |
| ORIGINAL CONST. YEAR | 0 |
| LAST SALE PRICE<br>MONTH/YEAR | 0 |
| LAND USE | 0-00 VACANT |

Inst #: 201202170001675
Fees: $0.00 N/C Fee: $0.00
RPTT: $0.00 Ex: #002
02/17/2012 11:10:14 AM
Receipt #: 1070223
Requestor:
FIRST AMERICAN TITLE HOWARD
Recorded By: KGR Pgs: 5
DEBBIE CONWAY
CLARK COUNTY RECORDER

Affix R.P.T.T.: $ Exempt 01

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:
City of Las Vegas
c/o Office of Business Development
400 Stewart Avenue, 2nd Floor
Las Vegas, Nevada 89101
Attn: Director

MAIL TAX STATEMENTS TO:
City of Las Vegas
c/o Office of Business Development
400 Stewart Avenue, 2nd Floor
Las Vegas, Nevada 89101
Attn: Director

APN#: 139-34-201-022
386052 565
(Space above line for Recorder's use only)

## GRANT, BARGAIN AND SALE DEED

PQ LAS VEGAS, LLC, a Delaware limited liability company, as "GRANTOR," do hereby Grant, Bargain, Sell and Convey to the CITY OF LAS VEGAS, NEVADA, a political subdivision of the State of Nevada, as "GRANTEE" the real property located in County of Clark, State of Nevada bounded and described as follows:

See Exhibit "A" attached hereto and incorporated hereto by this reference.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or otherwise appertaining.

SUBJECT TO:

1. General taxes for the current fiscal tax year not yet due and payable.
2. All matters of record.

*(Signature Page Follows)*

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on the date set forth below.

Dated as of February 16, 2012

"GRANTOR"

PQ LAS VEGAS, LLC,
a Delaware limited liability company

By: _____
Name: Dimitri Vazelakis
Title: Authorized Representative

Dimitri Vazelakis

STATE OF Nevada }
COUNTY OF Clark } ss.

This instrument was acknowledged before me on Dec. 14, 2009 by Dimitri Vazelakis Authorized Rep. of PQ Las Vegas, LLC, a Delaware limited liability company.

S. Renee Hoban
NOTARY PUBLIC

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
S. RENEE HOBAN
My Appointment Expires Oct. 26, 2010

S. Renee Hoban
Exp. 10-26-10

LV 410,070,2264v1 12-9-09

EXHIBIT A
Legal Description of Land

EXPLANATION
THIS DESCRIPTION DESCRIBES THE REMAINING BLOCK 6 OF CLARK'S LAS VEGAS TOWNSITE, CITY OF LAS VEGAS, NEVADA.

LEGAL DESCRIPTION
BEING A PORTION OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 34, TOWNSHIP 20 SOUTH, RANGE 61 EAST, M.D.M., IN THE CITY OF LAS VEGAS, CLARK COUNTY, NEVADA, BEING A PORTION OF LOTS 1 THROUGH 16 INCLUSIVE AND ALL OF LOTS 17 THROUGH 32 INCLUSIVE AND ALL OF THAT CERTAIN VACATED 20' ALLEY THAT LIES BETWEEN LEWIS AVENUE AND CLARK AVENUE WITHIN A PORTION OF BLOCK 6 AS SHOWN ON THE PLAT OF CLARK'S LAS VEGAS TOWNSITE, ON FILE IN BOOK 1, PAGE 37 OF PLATS OF CLARK COUNTY, NEVADA RECORDS AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE FOUND ALUMINUM CAP MARKING THE INTERSECTION OF MAIN STREET AND CLARK AVENUE ON THE NEVADA DEPARTMENT OF TRANSPORTATION "G" CENTERLINE; THENCE NORTH 27°64'11" EAST, ALONG SAID CENTERLINE, A DISTANCE OF 60.03 FEET; THENCE SOUTH 62°05'46" EAST, A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING, SAID POINT ALSO BEING ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF MAIN STREET;

THENCE NORTH 27°64'11" EAST, ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 360.72 FEET (360.00' RECORD) TO THE BEGINNING OF A 10.00 FOOT RADIUS TANGENT CURVE, CONCAVE SOUTHEASTERLY; THENCE NORTHEASTERLY ALONG SAID CURVE, HAVING A CENTRAL ANGLE OF 90°01'00", A CURVE LENGTH OF 15.71 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF LEWIS AVENUE; THENCE SOUTH 62°04'49" EAST, ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 276.19 FEET (276.00' RECORD) TO THE BEGINNING OF A 10.00 FOOT RADIUS TANGENT CURVE, CONCAVE SOUTHWESTERLY; THENCE SOUTHEASTERLY ALONG SAID CURVE, HAVING A CENTRAL ANGLE OF 90°59'04", A CURVE LENGTH OF 15.71 FEET TO A POINT ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF FIRST STREET; THENCE SOUTH 27°64'16" WEST, ALONG SAID NORTHWESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 360.62 FEET (360.00' RECORD) TO THE BEGINNING OF A 10.00 FOOT RADIUS TANGENT CURVE, CONCAVE NORTHWESTERLY; THENCE SOUTHWESTERLY ALONG SAID CURVE, HAVING A CENTRAL ANGLE OF 90°00'27", A CURVE LENGTH OF 15.70 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF CLARK AVENUE; THENCE NORTH 62°07'16" WEST, ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 276.10 FEET (276.00' RECORD) TO THE BEGINNING OF A 10.00 FOOT RADIUS TANGENT CURVE, CONCAVE NORTHEASTERLY; THENCE NORTHWESTERLY ALONG SAID CURVE, HAVING A CENTRAL ANGLE

90°01'28", A CURVE LENGTH OF 16.71 FEET TO THE POINT OF BEGINNING.

CONTAINING IN ALL 2.71 ACRES OF LAND.

BASIS OF BEARING

SOUTH 27°59'30" WEST, BEING THE CENTERLINE OF CASINO CENTER BOULEVARD BETWEEN STEWART AVENUE AND COOLIDGE AVENUE AS SHOWN BY THAT CERTAIN MAP IN FILE 07, PAGE 79 OF SURVEYS IN THE CLARK COUNTY RECORDER'S OFFICE, CLARK COUNTY, NEVADA.

MARK D. HERZIG
PROFESSIONAL LAND SURVEYOR
NEVADA LICENSE NO. 16002
POGGEMEYER DESIGN GROUP, INC.
9960 SMOKE RANCH ROAD, SUITE 110
LAS VEGAS, NEVADA 89149

07-14-07

ALSO DESCRIBED AS FOLLOWS:

LOT 1 AS SHOWN BY MAP THEREOF ON FILE IN FILE 117 OF PARCEL MAPS, PAGE 14, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

**STATE OF NEVADA**
**DECLARATION OF VALUE**

1. Assessor Parcel Number(s)
   a) 139-34-201-022
   b)
   c)
   d)

2. Type of Property
   a) ☐ Vacant Land  b) ☐ Single Fam. Res.
   c) ☐ Condo/Twnhse  d) ☐ 2-4 Plex
   e) ☐ Apt. Bldg.  f) ☒ Comm'l/Ind'l
   g) ☐ Agricultural  h) ☐ Mobile Home
   i) ☐ Other

FOR RECORDERS OPTIONAL USE ONLY
Book _____ Page: _____
Date of Recording: _____
Notes: _____

3. a) Total Value/Sales Price of Property: $N/A
   b) Deed in Lieu of Foreclosure Only (value of property) ($N/A)
   c) Transfer Tax Value: $N/A
   d) Real Property Transfer Tax Due: $N/A

4. If Exemption Claimed:
   a. Transfer Tax Exemption, per 375.090, Section: 2
   b. Explain reason for exemption: Transfer to a government entity.

6. Partial Interest: Percentage being transferred: _____ %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: _____ Capacity: Grantor
Signature: Elizabeth N Fretwell Capacity: Grantee

| SELLER (GRANTOR) INFORMATION (REQUIRED) Elizabeth N Fretwell | BUYER (GRANTEE) INFORMATION (REQUIRED) |
|---|---|
| Print Name: PQ Las Vegas, LLC | Print Name: City of Las Vegas, Nevada |
| Address: Terminal Tower, Ste. 1410, 50 Public Sq. | Address: 400 Stewart Avenue, 2nd Floor |
| City: Cleveland | City: Las Vegas |
| State: Ohio 44113 | State: Nevada Zip: 89101 |

APPROVED AS TO FORM:

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)
Print Name: First American Title File Number: 786452
Address: 2490 Paseo Verde Pkwy 2146578
City: Henderson State: NV Zip: 89074

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

LV 110.070.2014

# EXHIBIT 9

109502

# APPLICATION FOR CREDIT

CASHMAN DAY

3300 St Rose Pkwy, Henderson NV 89052
Phone: (800) 987-2326 ext 4603
Credit Dept Fax: (702) 633-4098

DAY Vitamin B | Dat Access Account

All terms of sale are for a period of 10 days. Customer shall pay interest on balances over 30 days. Customer shall pay all costs of collection including attorney's fees. Customer shall not return merchandise without prior authorization. Customer shall pay all costs of collection including attorney's fees.

## CUSTOMER INFORMATION

Applicant Name: Law Consulting Inc  Trade Name (if different):
Physical Address: 3874 Civic Center Dr #UV Las Vegas NV 89030 Clark
Billing Address:
Business #: (702) 825-9022  Cell #: (702) 324-0085  Fax #: (702) 825-9611  Business Start Date: 2009
Business Contact: Angelo Carvalho President  Phone #: (702) 324-0085  Email: angelouvada@aol.com
Billing Contact:  Title:  Phone #: ( )  Email:
Description of Business: Construction Consulting  Invoice Method: Regular Mail ☒ Email: angelouvada@aol.com
Type of Business: ☐ Sole Proprietorship ☒ Corporation ☐ General Partnership ☐ LLC ☐ Other

Name Authorized Users: Name: Angelo Carvalho  Name: Tawsh Carvalho  Name:

Has business or any principal ever declared bankruptcy? ☐ Yes ☒ No  Are there any outstanding taxes or judgments? ☐ Yes ☒ No
If yes, date filed:

Federal ID Number: 26-4320602  Sales Tax Exempt: ☐ Yes ☒ No  Number of Employees: 25  Resale #:

Bonding Company:  Contact Name:  Phone #: ( )

Insurance Company: Geovera Ins  Contact Name: Dandi Lee  Phone #: (760) 795-8720

## BANK / FINANCIAL REFERENCES

| Bank / Financial Co Reference | Checking | Savings | Loans |
|---|---|---|---|
| (1) Nevada State Bank | ☒ | ☐ | ☐ |
| (2) Wells Fargo Bank | ☒ | ☐ | ☐ |

| Trade References | Contact | Address | Phone # (702) | Acct |
|---|---|---|---|---|
| (1) Niagara Bottling Peter Fregoso | | 3225 E Hunter Ave #UV Las Vegas NV 89104 | | |
| (2) SRD Electric Dan Lee Blvd #UV Las Vegas NV 89119 | | South Rockwell | 798-8311 | 4108 |

## PERSONAL INFORMATION NECESSARY FOR CREDIT PURPOSES (REQUIRED BY LAW)

I hereby authorize the above business, employees, and/or agents, authorizing to verify all other personal credit profile and personal information with credit bureaus.

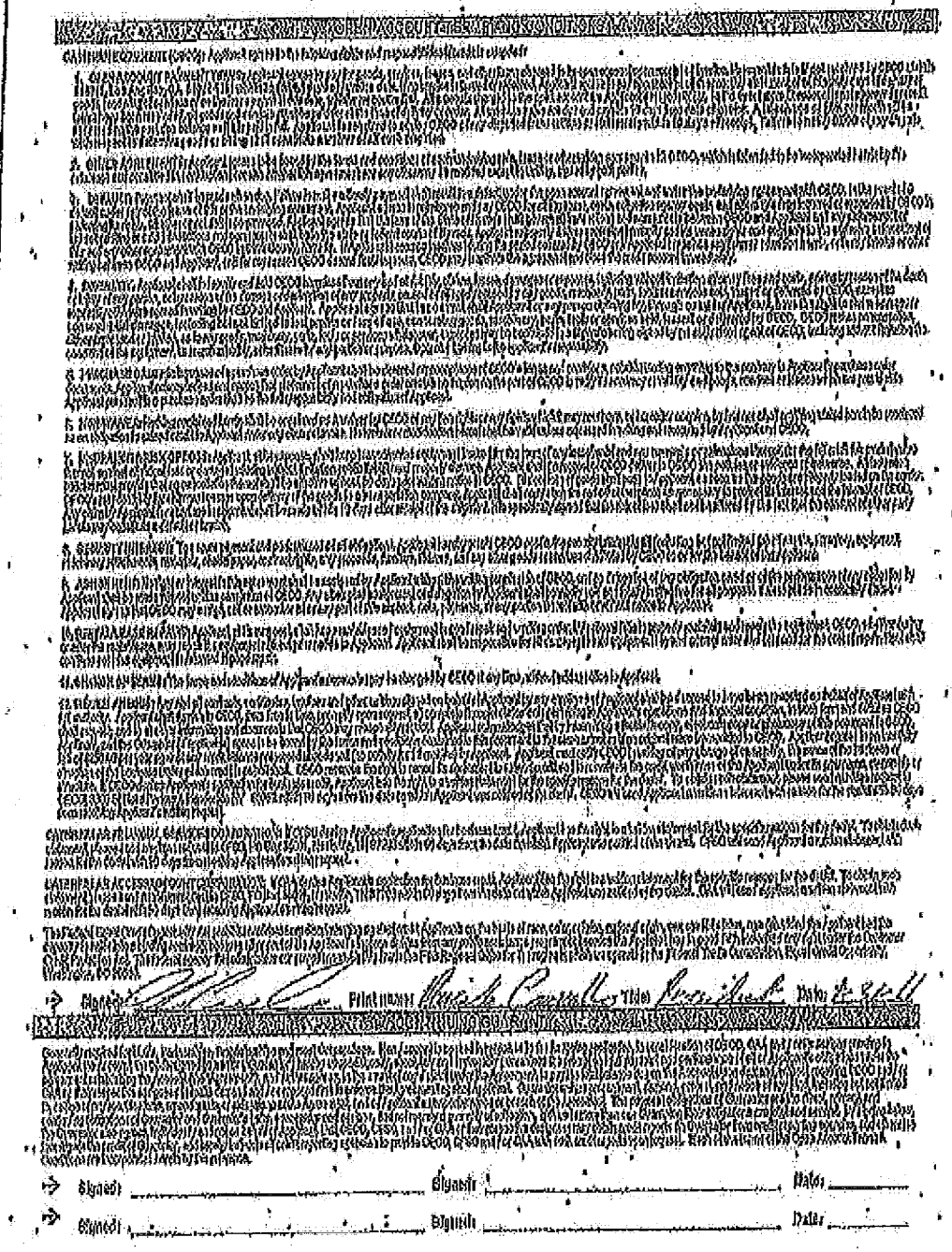
Name/Title (1): Angelo Carvalho President  Birthdate: 8-15-1967  SSN #: 1309
Home Address: 6316 Little Elm St #UV Las Vegas NV 89031  Phone #: (702) 324-0085  Percent of Ownership: 100%  Title as Owner:
Net Worth $:  Annual Income $:  Monthly House Payments $:  Signature:

Name/Title (1):  Birthdate:  SSN #:
Home Address:  Phone #: ( )  Percent of Ownership:  Title as Owner:
Net Worth $:  Annual Income $:  Monthly House Payments $:  Signature:

## TERMS OF ACCOUNT AND CONDITIONS OF SALE

[illegible]

CASH001



Signed: _____ Print name: _____ Title: _____ Date: _____

Signed: _____ Print name: _____ Title: _____ Date: _____

# EXHIBIT 10

SUPP
BRIAN W. BOSCHEE, ESQ.
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E-mail: bboschee@nevadafirm.com
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Facsimile: 702/791-1912

*Attorneys for Defendants West Edna, Ltd., dba Mojave Electric, Western Surety Company, The Whiting Turner Contracting Company and Fidelity and Deposit Company of Maryland, Travelers Casualty and Surety Company of America, Counterclaimant and Crossclaimant*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

CASHMAN EQUIPMENT COMPANY, a Nevada corporation,

Plaintiff,

v.

CAM CONSULTING, INC., a Nevada corporation; ANGELO CARVALHO, an individual; JANEL RENNIE aka JANEL CARVALHO, an individual; WEST EDNA ASSOCIATES, LTD. dba MOJAVE ELECTRIC, a Nevada corporation; WESTERN SURETY COMPANY, a surety; THE WHITING TURNER CONTRACTING COMPANY, a Maryland corporation; FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a surety; TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, a surety; DOES 1-10, inclusive; and ROE CORPORATIONS 1-10 inclusive;

Defendants,

AND RELATED MATTERS.

Case No.: A642583
Dept. No.: 32

(Consolidated with Case No. A653029)

**MOJAVE ELECTRIC, WESTERN SURETY COMPANY, THE WHITING TURNER CONTRACTING COMPANY, AND FIDELITY AND DEPOSIT COMPANY OF MARYLAND'S THIRD SUPPLEMENTAL DISCLOSURE OF DOCUMENTS PURSUANT TO NRCP 16.1**

MOJAVE ELECTRIC, WESTERN SURETY COMPANY, THE WHITING TURNER CONTRACTING COMPANY, AND FIDELITY AND DEPOSIT COMPANY OF MARYLAND (Defendants Mojave"), by and through their attorneys, Cotton, Driggs, Walch,

Holley, Woloson & Thompson, hereby submit the following supplemental disclosure of documents:

I.

**DOCUMENTS**

Pursuant to NRCP 16.1(a)(1)(B), Defendants Mojave previously produced a CD on November 15, 2012, (received by attorneys for Plaintiff on November 15, 2012 and mailed to other parties on same date) which contains the following documents: Bates numbered WTUR0000001-WTUR0015550.

1. Privilege Log to Whiting Turner Contracting's Supplemental Documents is attached hereto as Exhibit 1.

Any and all documents identified by all other parties.

Defendants Mojave reserve the right to supplement this list of documents during discovery.

Dated this 21st day of November, 2012.

COTTON, DRIGGS, WALCH,
HOLLEY, WOLOSON & THOMPSON

BRIAN W. BOSCHEE, ESQ.
Nevada Bar No. 7612
SHEMILLY A. BRISCOE, ESQ.
Nevada Bar No. 9985
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Las Vegas, Nevada 89101

*Attorneys for Defendants West Edna, Ltd., dba Mojave Electric, Western Surety Company, The Whiting Turner Contracting Company and Fidelity and Deposit Company of Maryland, Travelers Casualty and Surety Company of America, Counterclaimant and Crossclaimant*



15775-72/921428

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that, on the 21st day of November, 2012 and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing MOJAVE ELECTRIC, WESTERN SURETY COMPANY, THE WHITING TURNER CONTRACTING COMPANY, AND FIDELITY AND DEPOSIT COMPANY OF MARYLAND'S THIRD SUPPLEMENTAL DISCLOSURE OF DOCUMENTS PURSUANT TO NRCP 16.1, postage prepaid and addressed to:

Jennifer R. Lloyd, Esq.
Marisa L. Maskas, Esq.
PEZZILLO LLOYD
6725 Via Austi Parkway, Suite 290
Las Vegas, Nevada 89119
*Attorneys for Plaintiff*

Edward Coleman, Esq.
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Las Vegas, Nevada 89123
*Attorneys for Defendant Janel Rennie aka Janel Carvalho*

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777 N. Rainbow Blvd., Suite 270
Las Vegas, Nevada 89107
*Attorneys for Element Iron and Design*

An employee of Cotton, Driggs, Walch, Holley, Woloson & Thompson



15775-42/921428

# EXHIBIT 11

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CLERK OF THE COURT

ORDR
Jennifer R. Lloyd, Esq.
Nevada State Bar No. 9617
Marlen L. Maskas, Esq.
Nevada State Bar No. 10928
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*Cashman Equipment Company*

DISTRICT COURT

CLARK COUNTY, NEVADA

CASHMAN EQUIPMENT COMPANY, a Nevada corporation,

Plaintiff,

vs.

CAM CONSULTING INC., a Nevada corporation; ANGELO CARVALHO, an individual; JANEL RENNIE aka JANEL CARVALHO, an individual; WEST EDNA ASSOCIATES, LTD., dba MOJAVE ELECTRIC, a Nevada corporation; WESTERN SURETY COMPANY, a surety; THE WHITING TURNER CONTRACTING COMPANY, a Maryland corporation; FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a surety; DOES 1 - 10, inclusive; and ROE CORPORATIONS 1 - 10, inclusive;

Defendants.

AND ALL RELATED MATTERS.

CASE NO.: A642583
DEPT.: 32

Consolidated with Case No.: A653029

ORDER GRANTING PLAINTIFF'S MOTION TO AMEND COMPLAINT

Plaintiff, CASHMAN EQUIPMENT COMPANY's Motion to Amend Complaint, having been heard by the Court on December 21, 2012 at 9:00 a.m.; Jennifer R. Lloyd, Esq., appearing on

behalf of Plaintiff, CASHMAN EQUIPMENT COMPANY, and Brian Boschee, Esq., appearing on behalf of Defendants Whiting Turner Contracting, West Edna Associates, LTD., dba Mojave Electric LV, LLC, Western Surety Company and Fidelity and Deposit Company of Maryland. The Court having reviewed the Motion, Opposition and Reply, and having heard argument and being fully advised finds as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that CASHMAN EQUIPMENT COMPANY's Motion to Amend Complaint is GRANTED.

Dated this 7 day of January, 2013.

District Court Judge
ROB BARE
JUDGE, DISTRICT COURT, DEPARTMENT 32

Respectfully submitted by:

PEZZILLO LLOYD

Jennifer R. Lloyd, Esq.
Nevada Bar No. 9617
Marisa L. Maskas, Esq.
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