Principal, in this case Mojave, "shall promptly make payments to all persons supplying labor, material, rental equipment, supplies, or services in the performance of the said Contract and any and all modifications of said Contract that may hereafter be made, then this obligation shall be null and void; otherwise it remains in full force and effect." *See id.*

While Cashman would undoubtedly like this Court to skip the vital step of determining whether or not Cashman is owed any money by Mojave, who, per the terms of the bond, made payments to the people who supplied labor and materials to the Project or whether Cashman's mechanic's lien is valid, this Court simply has not made that determination yet. In fact, absent specific factual showings by Cashman, factual showings that have not, to this point, been made in this action, there is a very good chance that this Court will determine that Cashman's lien is **not** valid and that the non-CAM Defendants do **not** owe Cashman any damages. Thus, the instant Motion should be denied.

III. LEGAL ARGUMENT

A. NUMEROUS ISSUES OF FACT REMAIN AS TO WHETHER CASHMAN IS OWED ANY MONEY BY MOJAVE AND IF CASHMAN IS OWED SOMETHING, HOW MUCH SHOULD BE DEDUCTED FOR THE WORK CASHMAN ADMITS IT HAS NOT PERFORMED

Cashman's entire argument in support of the instant Motion is premised upon the contested facts that: a) Mojave failed to pay for the labor and materials provided for the Project; and b) that Cashman provided labor and materials in the amount of $755,893.89 for the Project. Both of those facts are simply untrue.

First, there is no dispute between the parties that Cashman failed to complete the work that CAM contracted with Cashman to provide. As the Court is well aware from prior briefing, Cashman has refused to provide batteries, coding information, and warranty work for the Project as a result of CAM's non-payment of Cashman. The value of the work that Cashman has refused to provide is both the subject of factual dispute and also Mojave's counterclaims, as Defendants was forced to attempt to complete Cashman's work with other contractors without success. Thus, even if the Court ultimately determines that Cashman is owed something in this action, there is no real dispute that it will **not** be owed the full $755,893.89. Until the Court determines:

JA 00001669

Docket 61715 Document 2015-18516

a) that Cashman is owed money by Mojave; and b) what that amount is, any decision as to the payment bond is premature. Thus, the granting of summary judgment as to that amount being owed out of the payment bond is unwarranted.

However, there's no real argument right now as to the amount of money owed to Cashman by Mojave, or Whiting, or the owners, or the sureties, because the Court has not determined that Cashman is owed anything by anyone other than CAM. The payment bond clearly states that:

> [i]f the Principal shall promptly make payments to all persons supplying labor, material, rental equipment, supplies or services in the performance of said Contract and any and all modifications of said Contract that may hereafter be made, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

See **Exhibit "E".**

In this case, Mojave was contractually obligated to tender payment to the entity that it had an agreement with to supply labor and materials, CAM. *See* **Exhibit "A."** By the same token, CAM had a contractual obligation with its supplier, Cashman. *See* **Exhibit "B."** There is no dispute in this case that Mojave tendered payment to CAM, and that Mojave, the Principal on the payment bond, "promptly made payments" to CAM for "supplying labor, material, rental equipment supplies or services." So, the question of fact and law with respect to this bond, and its verbiage, is precisely the same question that this Court will need to ultimately determine: is Cashman owed anything by any of the Defendants other than CAM, the party with whom Cashman had a contractual relationship and from whom Cashman accepted a post-dated check? Until the Court makes that determination, and Mojave is confident that the Court's answer to that pivotal question is going to be "no," then any determination as to this Motion, like the other motions as to the other bonds, is premature, and the Motion should be denied.

Additionally, there are questions of fact as to whether Cashman gave proper notice to be able to collect on this payment bond. There has been briefing in earlier motions as to whether NRS Chapter 339 applies to this Project. Although the Project has public and private

components,[3] the testimony from the owner's representative, David Phillips, was clear that the city of Las Vegas was involved from the outset and that it was always clear that the Project would ultimately belong to the city. A true and correct copy of David Phillips's deposition testimony from January 10, 2013, at pages 8, 9, 17, and 19, is attached hereto as **Exhibit "F"** and incorporated by reference. Further, the payment bond itself articulates that the contract between Mojave and Whiting was for "City of Las Vegas New City Hall." *See* **Exhibit "E"**. Finally, Mr. Phillips articulated that it was the city of Las Vegas that insisted on using a certain percentage of disadvantaged business owners on the Project. *See* **Exhibit "F"** at pages 19-20. Had the city not insisted on such a condition, CAM would have never been involved and the parties would likely not be here.

So, while Cashman has previously argued that Chapter 339 should not apply with respect to notice, because it was exclusively a private Project, the facts relating to the city of Las Vegas' involvement in the Project simply do not support that argument. The city dictated many of the terms required for the construction, including a percentage of the contractors that had to be disadvantaged business owners. The Project was ultimately going to be the city hall for the city of Las Vegas, and the city was involved with the ownership entities, per Mr. Phillips, from the outset of the Project. Thus, given that there is at least some public/private overlap as to the Project, NRS Chapter 339 should apply with respect to notice.

So, if Chapter 339 applies to the Project, NRS §339.035 allows any claimant who has provided labor, material or equipment to make a claim against the payment bond posted by a prime contractor, or other upstream contractor, if the claimant has not been paid within 90 days of the last time it performed work, or supplied materials or equipment on the project.[4]

---

[3] Whiting's contract was with Forest City, a private developer. However, Forest City's contract was with the City of Las Vegas (a public entity). The building belongs to the City.

[4] *See* NEV. REV. STAT. §339.035, which provides as follows: Actions on payment bonds by claimants.

1. Subject to the provisions of subsection 2, any claimant who has performed labor or furnished material in the prosecution of the work provided for in any contract for which a payment bond has been given pursuant to the provisions of subsection 1 of NRS 339.025, and who has not been paid in full before the expiration of 90 days after the date on which the claimant performed the last of such labor or furnished the last of such materials for which the claimant claims payment, may bring an action on such payment bond in his or her own name to recover any amount due the claimant for such labor or material, and may prosecute such action to final judgment and have execution on the judgment.

The language in NRS §339.035 states that any claimant who has a direct contractual relationship to a subcontractor may bring a claim. However, Cashman has been very clear in its arguments throughout this matter that it did not contract with subcontractor Mojave, but instead only with CAM, a third-tier minority subcontractor to Mojave. The contracts between CAM and Mojave and CAM and Cashman support that argument. *See* **Exhibits "A"** and **"B."**

As a result of CAM's involvement, the Prime Contractor, Whiting, did not have direct notice of the work being performed by Cashman. A true and correct copy of Nancy Briseno-Rivera's deposition testimony from November 28, 2012, at page 9, is attached hereto as **Exhibit "G"** and incorporated by reference. Nor did the owner's representative. *See* David Phillips's deposition testimony from January 10, 2013, at page 35, attached hereto as **Exhibit "F"**.

Moreover, in order to make a timely claim against the Payment Bond, NRS §339.035(2) requires sub-subcontractors and material suppliers that do not have contracts directly with the prime contractor to: (1) have sent a notice of furnishing labor, materials and/or equipment to prime contractor via certified mail within 30 days of first providing labor, materials or equipment on the project; and (2) send a notice of claim against the payment bond to the prime contractor at his place of business or residence via certified mail within 90 days from the last time they performed work, or provided equipment or materials.

In this case, there is no dispute that Cashman did not comply with those requirements. The equipment on the Project was shipped by Cashman in February of 2011. Cashman did not provide notice to Whiting until June 23, 2011, rather than May 2011, as mandated by Nevada

---------- (continued)

2. Any claimant who has a direct contractual relationship with any subcontractor of the contractor who gave such payment bond, but no contractual relationship, express or implied, with such contractor, may bring an action on the payment bond only:

(a) If the claimant has, within 30 days after furnishing the first of such materials or performing the first of such labor, served on the contractor a written notice which shall inform the latter of the nature of the materials being furnished or to be furnished, or the labor performed or to be performed, and identifying the person contracting for such labor or materials and the site for the performance of such labor or materials; and

(b) After giving written notice to such contractor within 90 days from the date on which the claimant performed the last of the labor or furnished the last of the materials for which the claimant claims payment. Each written notice shall state with substantial accuracy the amount claimed and the name of the person for whom the work was performed or the material supplied, and shall be served by being sent by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place in which the contractor maintains an office or conducts business, or at the residence of the contractor.

law.[5] In other filings, Cashman has pointed to email correspondence with Whiting's attorneys as somehow complying with the notice requirements, but the statute is very clear that the correspondence must be sent via "certified mail." *See* NRS §339.035(2). The reason for that requirement is pretty simple. As evidenced here, the timing and notice requirements of these statutes are firm and must be complied with, and in the absence of a returned receipt showing precisely when the notice was received by the prime contractor, in this case Whiting, a finder of fact is left to guess as to when such notice was sent and whether it was actually received. This is ultimately the same problem Cashman is going to have with respect to its mechanic's lien, because there is no dispute that it did **not** provide notice to the owner or the owner's representative via certified mail or Cashman would have a receipt showing when the owner receive the notice. But, much like the situation here, Cashman has no such receipt, and thus, per the clear wording of the statute, Cashman has not complied with its notice duty to Whiting and should not be allowed to recover on this bond.

IV. CONCLUSION

Based upon the foregoing, the instant Motion must be denied. First, until the Court determines whether or not Cashman is entitled to any money from any defendant other than CAM, or that Cashman's lien is valid, any finding as to any of the bonds is premature. Second, there are serious questions of fact with respect to: a) whether Cashman is owed **any** money that would be subject to this payment bond; b) if Cashman is owed money that should be paid out of this bond, how much Cashman is actually owed given that they did not complete their work; and

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///

///

[5] *See Garff v. J.R. Bradley Co.*, 84 Nev. 79, 82-83, 436 P.2d 428, 430-31 (1968) (citations omitted) (holding that the language of NRS §339.035 is mandatory in nature. This statute requires that "[t]he claimant must, within 30 days after furnishing the first of such materials or performing the first of such labor serve on the contractor a written notice of the nature of the materials furnished or labor performed, identifying the person contracting for the labor or materials, and the site of performance. The claimant must also, within 90 days after performing the last of the labor or furnishing the last of the material, give the contractor written notice of the amount claimed, and the name of the person for whom the work was performed or the material supplied . . . [A]wareness or knowledge [by a contractor of the identity of material suppliers to subcontractors] standing alone, does not erase the duty which the legislature has placed upon claimants to give the 30- and 90-day notices before becoming eligible to file suit on a payment bond.").

c) whether Cashman gave proper notice to be entitled to receive anything out of this bond. Given all of that, this Motion must be denied at this time.

Dated this 15 day of March, 2013.

COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON

BRIAN W. BOSCHEE, ESQ.
Nevada Bar No. 7612
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101

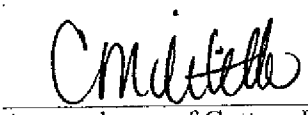
Attorneys for Defendants West Edna, Ltd., dba Mojave Electric, Western Surety Company, The Whiting Turner Contracting Company and Fidelity and Deposit Company of Maryland, Travelers Casualty and Surety Company of America, Counterclaimant and Crossclaimant

I HEREBY CERTIFY that, on the 15th day of March, 2013 and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AGAINST WEST EDNA ASSOCIATES LTD, DBA MOJAVE ELECTRIC AND WESTERN SURETY COMPANY ON THE PAYMENT BOND**, 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.
COLEMAN LAW ASSOCIATES
8275 S. Eastern, Suite 200
Las Vegas, Nevada 89123
Attorneys for Defendant Janel Rennie aka Janel Carvalho

Keen L. Ellsworth, Esq.
ELLSWORTH & BENNION, CHTD.
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

EXHIBIT A

Mojave Electric

"GENERATOR"
"TRANSFER SWITCH"
TERMS AND CONDITIONS

PURCHASE ORDER
767810 GEN 10010

TO: **CAM Consulting c/o Cashman Equipment**
ATTN: Angelo Carvalho / Keith Lozeau
PHONE: 702-325-9032 / 702-639-5018

April 23, 2010
3 of 4
SHIP VIA: DELIVER

JOB: **City of Las Vegas New City Hall**
SHIP TO: SHOP ATTN# 730101
CITY: LAS VEGAS

P.O. # AND JOB # MUST APPEAR ON ALL INVOICES, DELIVERY TICKETS AND BILLS OF LADING. SELLER'S INVOICES MUST COINCIDE WITH MOJAVE PURCHASE ORDER ITEM NUMBER, DESCRIPTION, UNIT PRICE BREAKDOWN

1 The bill of material as shown above is for reference only and the supplier guarantees a complete bill of material per plans, specifications and addenda.
2 Generator to include generator plant and all controls, batteries, battery charger, mounting base, control panel, auto required.
3 Retention of 10% will be held on purchase order until job is complete and we have received retention from owner.
4 This purchase order includes all fuel tanks, antifreeze and all other necessary items required for initial start up.
5 Seller agrees further to furnish personnel and necessary equipment to test and check out equipment and material as required by specifications at no extra cost to Mojave Electric, Inc.
6 Seller agrees to furnish warranties in duplicate.
7 Seller shall furnish the service of a qualified representative who shall instruct specific personnel as designated by the owner, in the operation and maintenance of the system on this purchase order.
8 Instructions shall be made as indicated when this system is complete and shall be the number of hours as indicated by the specifications and/or the time requested by the owner.
9 Manufacturer shall include certification of suitability for operation at the altitude of the jobsite.
10 Guarantees, warranties and maintenance manuals shall be per plans and specifications.
11 Testing and supervision per plans and specifications and addenda.
12 Testing shall be per all local requirements of the Fire Department, Building Department and Electrical Inspectors. Including load bank tests on the jobsite or factory if required.
13 Lifting angles with eye bolts shall be furnished if required by Project Manager. This is vendors responsibility to meet with the Project Manager.
14 Time is of the essence. Should Mojave Electric, Inc. incur additional costs due to negligence on the part of the vendor, these additional costs will be recovered from the vendor's accounts.
15 Include all automatic transfer switch per plans and specs, including all aux. contacts, verify all coil voltages with Mojave Electric's Project Manager.

16. All terminals on all breakers, switches, transformers, starters, panels, switchboards, etc., to have lugs suitable for copper or aluminum and shall be stamped AL/CU. All panel back boxes to be adequately sized to provide sufficient space for feeder and branch circuit conductors. All switchboards, transformers, motor control centers and panelboards to be supplied with size, type, quantity and location of lugs as noted in approved shop drawings. All breakers are to have adequate space provided in the lugs for the use of "pin terminals" as "Mac adapter" style cable terminators for use with aluminum wire. It is the responsibility of the vendor to set up a meeting with Mojave Electric's Project Manager to establish the correct cable size of both copper and aluminum wire.
17. All generators and automatic transfer switches are to be shipped on an open type of truck and rigged for as required by Project Manager at time of release. This is the vendors responsibility.
18. All panels to have identification plate of black Bakelite with 1/2" white letters unless noted otherwise.
19. Provide all additional equipment groundbars and equipment grounding lugs as required by contract specifications and plans. All neutral and ground lugs are to be factory mounted.
20. Provide all auxiliary contacts, relays, thermals, control devices, pilot lights, push buttons, HOA switches, etc. and interlocking for automatic transfer switches if required by approved shop drawings and plans and specifications.
21. Provide vibration dampers for the generator.
22. All automatic transfer switches and generators to be supplied will all lugs as required by approved shop drawings.
23. All invoices must be rendered in triplicate.
24. This purchase order number shall appear on all packages and all items shipped by vendor on this purchase order, plus on all invoices, shipping papers and all other correspondence.
25. Call 24 hours before delivery to 702-798-2970.

F.O.B. jobsite with full freight allowed, unloaded by Mojave Electric, Inc.

All material on this P.O. to ship to shop. Call 24 Hours before delivery to 702-798-2970.

_X_ FREIGHT INCLUDED
_____ FREIGHT EXCLUDED

SUB TOTAL:	$ 600,196.00
TAX 8.10%:	$ 48,615.88
SUB TOTAL:	$ 648,811.88
____% CASH DISCOUNT:	
TOTAL:	$ 648,811.88

ACCEPTED FOR VENDOR

BY: _____

Angelo Carvalho / Keith Lozeau

CAM Consulting c/o Cashman Equipment

MOJAVE ELECTRIC, INC.

BY: _____

Peter Fergen, VP Project Development

Terms: SEE PAGE 2 Invoices received after 20th considered next months business.

MOJ00034

EXHIBIT B

CASHMAN CAT

INVOICE

1.800.937.2328
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 #
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 #	JOB NUMBER	TYPE	FUNC	LOCATION	ST	PAGE
S1236701	02-01-11	109502	767810-GEN10010	00	E	815	4	2

REMITTANCE NUMBER	INVOICE DATE			SALESMAN			ACCOUNT NUMBER
S12367	02-01-11			10			206227

ORDER NUMBER	SHOP	EQUIPMENT NUMBER				ACCOUNT
AA	C32	JSJ01016			.0	10-081

FUEL	7611.75
SPARE PARTS	2353.17
SHUNT TRIP STATION	497.50
TRUCK LAV OVER	1741.25
CUST SRV AGRMT	7462.50

COD

TOTAL FOR PAYMENT THIS AMOUNT	598936.26
TOTAL AMOUNT PAID	

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 CPS

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 NO.	INVOICE DATE	CUSTOMER NO.
S1236601	02-01-11	109502
	AMOUNT	
	156627.92	

THANK YOU!

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

INVOICE NO.	INVOICE DATE	CUSTOMER NO.	CUSTOMER ORDER NO.	ITEM	T	BRANCH	TERMS	SALES
S1236601	02-01-11	109502	767810-GEN10010	00	E	815	4	1
SHIP NO.	SHIP DATE							AMOUNT
S12366	02-01-11		10					206228.
WAREHOUSE	LOT NO.		SERIAL NO.					AMOUNT
XX	98AE500244	10-71N73354-01				.0		10-504

CUSTOMER CONTACT: ANGELO CARVALHO

1.0	EQUIPMENT SALE MISC UPS ID NO: 10-504 MODEL 98AE500244 SERIAL NO: 10-71N73354-01 400 KW, 277/480V, 3 PHASE W/BATTERIES MGE MODEL EPS6000 SHUNT TRIP STATION	156627.92

COD

THIS AMOUNT	156627.92
TAX AMOUNT	
FREIGHT AMOUNT	

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 CPS

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
		TOTAL AMOUNT
		329.71

THANK YOU!

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

INVOICE NUMBER	INVOICE DATE	CUSTOMER #	CUSTOMER ORDER NUMBER	COST CODE	TYPE	PLANT	ITEM	SUFFIX
S1238901	03-25-11	109502	767810GEN-10010	00	E	815	4	1
RECEIPT NUMBER	RECEIPT DATE							METER READING
S12389	03-25-11		10					208545
PAY TYPE								METER READING
AA		XXXXX					.0	MISC-PD

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

COD

PLEASE PAY THIS AMOUNT	329.71
CLAIM AMOUNT	
AMOUNT ENCLOSED	

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 C

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; 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 A653029)

DEPOSITION OF SHANE NORMAN
THURSDAY, AUGUST 16, 2012
9:43 A.M.
AT 400 SOUTH FOURTH STREET, THIRD FLOOR
LAS VEGAS, NEVADA

REPORTED BY: MICHELLE R. FERREYRA-MAREZ, CCR No. 876
JOB NO. 163701

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DEPOSITION OF SHANE NORMAN,
taken at 400 South Fourth Street, Third Floor,
Las Vegas, Nevada, on THURSDAY, AUGUST 16, 2012, at
9:43 a.m., before Michelle R. Ferreyra-Marez, Certified
Court Reporter, in and for the State of Nevada

APPEARANCES:

For the Plaintiff:
PEZZILLO ROBINSON
BY: JENNIFER R. ROBINSON, ESQ.
6725 Via Austi Parkway
Suite 290
Las Vegas, NV 89119
(702) 233-4225
(702) 233-4252 Fax
jrobinson@pezzillorobinson.com

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:
COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON
BY: BRIAN BOSCHEE, ESQ.
BY: SHEMILLY A. BRISCOE, ESQ.
400 South Fourt Street
Third Floor
Las Vegas, Nevada 89101
(702) 791-0308
(702) 791-1912 Fax
SBriscoe@nevadafirm.com

For Defendant Janel Rennie aka Janel Carvalho:
COLEMAN LAW ASSOCIATES
BY: EDWARD COLEMAN, ESQ.
6615 S. Eastern Avenue
Suite 108
Las Vegas, Nevada 89119
(702) 699-9000
(702) 699-9006 Fax
mail@coleman4law.com

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WITNESS: SHANE NORMAN

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7	90-day notice sent to Whiting Turner	91

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LAS VEGAS, NEVADA, THURSDAY, AUGUST 16, 2012;
9:43 A.M.
-000-

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

Whereupon,

SHANE NORMAN,

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 MR. BOSCHEE:

Q. Good morning, could you please state and spell your last name for the record?

A. Shane Norman, S-h-a-n-e, N-o-r-m-a-n.

Q. And you are appearing today pursuant to a request we made of your counsel for the person most knowledgeable from Cashman Equipment; is that correct?

A. That is true.

Q. My name is Brian Boschee. I'm counsel for a bunch of the defendants, particularly Mojave, Whiting Turner, in the litigation filed in District Court. Go ahead, I'm sorry.

A. Are you representing Mojave and Whiting Turner and Forest City?

Q. Well, Whiting Turner, Mojave --

MS. BRISCOE: Fidelity.

MR. BOSCHEE: Fidelity. I'm trying to think of all of the sureties.

MS. ROBINSON: All the sureties.

BY MR. BOSCHEE:

Q. All the sureties.

MS. BRISCOE: Not Forest City.

MR. BOSCHEE: No.

MS. ROBINSON: Forest City is out because of the lien release.

BY MR. BOSCHEE:

Q. Right. And I'm not representing CAM or the Carvalhos. They have separate counsel, Mr. Coleman.

A. Sure.

MR. COLEMAN: I represent Janel Rennie.

THE WITNESS: Okay.

MS. ROBINSON: But not Angelo Carvalho.

MR. COLEMAN: No.

MR. BOSCHEE: Right.

\\

Page 6

BY MR. BOSCHEE:
Q. And I'm here for the deposition today that is regarding the litigation that's been filed in the state court I'm sure you are fairly familiar with. Let me ask you right out of the gate, have you been deposed before?
A. No.
Q. I'm sorry. Let me give you a quick rundown of what we're going to do today. It's actually pretty simple. I'm assuming that you're represented by counsel, Ms. Robinson?
A. Yes.
Q. You may have gone through the ground rules with her before this, but let me just run through a few things. I'm going to ask you some questions. You are going to provide answers, and the court reporter is going to transcribe them. I don't want you to guess at anything. If there's something that you don't know or something you don't you understand, just tell me. There's a good chance that's going to happen. Just tell me, and I will do my best to clarify. And if you don't know, you don't know. That said, I am entitled to your best recollection of what you do remember about the events that we're going to talk about. So to the extent that you remember something, I am entitled to

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that. Do you understand that?
A. Uh-huh.
Q. The oath that you just took form the court reporter is the same oath that you would take in a court of law. I think actually you may have just taken last week in another hearing. It carries with it the same duties and penalties that the oath would take in court. Do you understand that?
A. Yes.
Q. I'm going to do my best to get a complete transcript of the proceedings today, so it's important that when I'm asking questions you not talk, and when you are answering my questions, I not interrupt you, because the court reporter can't transcribe us both talking at the same time. Okay?
Also, the court reporter needs audible answers so yes, no, or whatever. But like head nods and shaking your head no, she can't transcribe that so. Do you understand that?
A. Yeah.
Q. That ideally will give us a clear record.
Also, this is not meant to be an endurance contest by any stretch of the imagination. I'll do my best to get us out of here as efficiently as possible. But if you need to take a break, get some water, get

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something to drink, get a cookie, go to the restroom, whatever you need to do, just let me know and we will take a quick break and go off the record. I don't want you to, you know, be uncomfortable because we're putting you through the grinder here. This is not to be that. Okay? Do you understand?
A. Okay, yes. No water boarding. Got you.
Q. Exactly.
Are you currently taking any medication that will impede your ability to testify?
A. No.
Q. Is there any other reason why you wouldn't be able to give your best testimony today?
A. No.
Q. There's also going go to be times when counsel or the other, I don't know about Mr. Coleman, but your counsel may make an objection. I may make an objection if Mr. Coleman is asking questions. Let the objection play out. But unless your counsel instructs you not to answer, most likely we'll be making the objection for the record, and you will still have to answer the question after the objections are finished. Okay?
A. Okay.
Q. Cool. I think that's about the end of the introductory boring stuff.

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Did you do anything to prepare for the deposition this morning?
A. Not necessarily for this one, no.
Q. When you say "not necessarily for this one," did you review anything for anything else in the case?
A. Well, we were in court last week, and we have CAM/Angelo Carvalho stuff going on as well, so --
Q. Right. And just so -- I know what you are talking about, but I want to make sure that we have a clear record of what you are talking about. The proceeding in court last week was a prove-up hearing on some damages against CAM and Carvalho; correct?
A. Yes.
Q. And you reviewed some documents in conjunction with that hearing?
A. Uh-huh.
Q. What did you review?
A. Some documents, I mean, time lines, you know, looked at the invoices, that kind of thing.
Q. Do you remember specifically any other documents that you looked at?
A. I --I have a three ring binder with probably about 300 pages in it, so --
Q. Okay.
A. -- just thumbed through them all.

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Q. I'm sure the answer to this is yes because I've seen hundreds and hundreds of pages of documents for these. Of all the documents that you reviewed for that hearing and then I would assume kind of spill over into today, that's all stuff that's been produced in this litigation; correct?
A. Yes.
Q. Other than counsel, did you talk to anybody about the -- let's start with the prove-up hearing on Friday, did you talk to anyone about that?
A. My attorney.
Q. Other than your attorney?
A. No.
Q. Did you talk to anybody about your deposition today, about what -- you know, the subjects you were going to testify about or anything?
A. Yeah. Other than my attorney, no.
Q. Other than the documents you looked at for the prove-up hearing, did you look at anything else in preparation for the deposition today, in the last five days, I guess it has been?
A. No. I haven't reviewed the file.
Q. Well generally, what I'm going to be asking you about, I'm sure you know, is the questions about the City Hall project, generally --

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A. Sure.
Q. -- and kind of how this whole thing transpired. But first, I just want to get a little bit of background with Cashman. What is your position with Cashman?
A. My title is credit manager.
Q. I'm going to refer to your company as Cashman going forward so I don't have to say the whole thing out. How long have you been the credit manager?
A. Six and a half years.
Q. Did you have any positions with Cashman prior to that?
A. No.
Q. Did you work as a credit manager with any other company prior to coming to Cashman?
A. Yes.
Q. Who was that?
A. Komatsu Equipment Company. Spelled, K-o-m-a-t-s-u.
Q. How long did you work there?
A. Three years.
Q. How long -- and I'll say construction industry, generally, but you have been a credit manager in the construction industry, how long have you been in this field?

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A. Fifteen years.
Q. And briefly, I mean, real Reader's Digest, I mean, as brief as you can, give me your educational background.
A. I graduated in finance from Utah State University 15 years ago or so. I graduated from the graduate school of Credit and Finance Management at Dartmouth about two years ago. And I'm a certified credit executive, which is the highest of three certifications for credit managers.
Q. When did you get that certification?
A. At the same time I graduated from the graduate school.
Q. So within the last couple of years?
A. Yeah. It's probably been two years now.
Q. The specific date is not important. I just kind of want to get a general idea.
Walk me through, I have a pretty good idea, but, again, for the record and just so we're clear, what are your job responsibilities as a credit manager for Cashman?
A. Extending lines of credit, maintaining those lines of credit, collecting on receivables, reminding customers who forget or fail to pay us, working out complicated deals, including legal issues. I also

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provide or facilitate retail financing options for our customers who are purchasing our equipment.
Q. Okay.
A. Posting cash, a little bit of treasury management. I have also been on the strategic planning committee for our company.
Q. What is the strategic planning that you do with your company? What do you do in conjunction with that?
A. What our company is going to look like in ten years, what we want to be.
Q. How many people are on that committee?
A. The executive level, 10 or so.
Q. Including you?
A. Actually, I'm -- I'm not on that committee now. I was as of three months ago.
Q. Did you step down from the committee?
A. They decided to do it in a different fashion, the president, so I'm out. How's that?
Q. They decided to take the executive in a different direction?
A. Yes.
Q. I like that.
So over the entire six-plus years you have worked as a credit manager for Cashman, those job

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responsibilities have remained fairly static? They have been what you have done?
A. Yes.
Q. I guess -- I'm trying to think of a good way to say this. City Hall project, I'm going to refer to construction project. You understand what I'm saying when I say construction project?
A. Yes.
Q. How many projects like that have you been involved in in Las Vegas in the six and a half years with Cashman?
A. That's difficult to answer.
Q. Okay.
A. Every single one of our customers has anywhere between one and, I don't know, 100 jobs at any one given time. And we have 2000-plus active customers.
Q. Okay.
A. And so I'm involved in, you know, the credit and finance side of things, not necessarily associated with the job and project funding. For instance, like a Mojave or Whiting Turner, that I'm involved in entertaining the, you know, credit perils of our customers as opposed to their jobs. So a lot.
Q. Yes.
A. But -- but not directly so.

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Q. Let me see if I can clarify that. I think I know what you are saying, and I probably asked a bad question knowing what your company does, basically. But whereas a lot of contractors and subcontractors kind of deal project to project, you guys deal more with customers who are working on different projects all over the place. Is that a fair representation?
A. That is a fair statement.
Q. And many of those customers work on projects in Las Vegas; is that right?
A. Yes.
Q. How many -- well, has Mojave Electric been a customer of Cashman's?
A. Yes.
Q. On how many projects would you say?
A. I -- I -- I couldn't tell you. Mojave has been a long-standing prominent customer of ours on the power generation side of our business for a long time.
Q. Quite a few?
A. Yes.
Q. In fact, you have worked with Mojave Electric, I mean, from the finance and credit side a number of times in the last six and a half years; is that fair to say?
A. Oh, yes.

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Q. How about Whiting Turner?
A. Whiting Turner is a direct customer of ours as well, but not -- not anywhere to the Mojave volume levels.
Q. Fair to say that a company like Whiting Turner is maybe one step removed and you deal with more like the Mojaves and then they deal with Whiting more?
A. That is a fair statement, yes.
Q. And I'm going to ask -- we will get into more detail on this later, but how about CAM, before this project, have you ever dealt with them before?
A. No.
Q. How about Angelo Carvalho, have you ever dealt with any entities that he was involved in before?
A. No.
Q. Or him personally?
A. No.
Q. He had personally never been a customer?
A. No.
Q. And I'm paraphrasing a little bit, but obviously we had a situation with this project.
A. That's an understatement.
Q. I think that's a fair statement, but there was an issue where there was a payment made and then obviously you guys didn't get paid. Have you ever had

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that type of problem with Mojave on any other project in all the times they had been a customer of yours?
A. No.
Q. Were you having --
A. Well, let me -- let me -- let me restate that.
Q. Sure.
A. We have never had a Mojave check bounce.
Q. Okay.
A. Let's just say that, not clear the bank.
Q. How about a situation like this? And, again, very specifically like this where, you know, materials are supplied, Mojave pays somebody, and then you guys are left kind of holding the bill, has anything like that that you can recall ever happened?
A. With Mojave, no.
Q. How about Whiting Turner?
A. No.
Q. So with respect to a situation like what happened here, this is kind of the first time that that's ever happened with Mohave as a customer fair?
A. Fair.
Q. Now on this project, as I understand it, Cashman had a contract directly with CAM; is that right?
A. It -- that's not a clear and concise yes or no

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because that's debatable.
Q. Well, I guess I'll let you go ahead -- I'm not trying to trick you.
A. Right.
Q. Explain to me what your understanding of the relationship between Cashman and CAM and then ultimately Mojave was?
A. Initially, our quotes and the job that we quoted that we provided all the information was directly to Mojave. I don't know exactly how long that process was, but it was greater than six months.
Q. Okay.
A. In preparation for the project coming up. We obviously won the bid. I don't know at what point in time, but it is my understanding that just before invoicing CAM, Angelo Carvalho came up as a result of Mojave demanding that we utilize a disadvantaged business owner to route the transaction between us and Mojave due to federally mandated statutes of using disadvantage business owners or minority owned owners.
Q. Let me follow up on something. You just indicated that Mojave demanded that CAM be used.
A. (Witness nods.)
Q. What is your basis for that statement, that it was a Mojave demand?

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A. Mojave did not want us to invoice them directly. They wanted us to route it through another entity.
Q. Do you have any understanding, independent understanding, as to how CAM got involved in this project in the first place?
A. I do. Keith Lozeau, who also works for Cashman Equipment Company, was referred to him by someone at Mojave. I don't know who that is.
Q. So let me just clarify, because maybe I didn't understand what you said, and that's very likely. It's your understanding that CAM was referred to Mojave for use on this project?
MS. ROBINSON: I think that misstates. Objection.
BY MR. BOSCHEE:
Q. That's why I said -- I didn't understand what you said. Could you --
A. Let me -- let me -- let me clarify.
Q. Sure.
A. Mojave requested that we use a third-party disadvantaged business owner. They suggested CAM Consulting, as they had been using them themselves as well as a couple other vendors had been using them to deal with Mojave's project directly.

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Q. Okay.
A. So -- so, yes, Mojave referred CAM Consulting and introduced us. How's that?
Q. So, again, just trying to get to the bottom of this, it's your understanding that Mojave wanted to use CAM Consulting; correct?
A. Yes.
Q. And that the disadvantaged business owner that they wanted to use was CAM and they introduced CAM, I guess it was Keith, with your company?
A. Uh-huh.
Q. And that's how CAM got involved?
A. Yes.
Q. Do you know why Mojave or anyone on that project would have wanted to use a disadvantaged business owner?
A. I -- I don't know specifically why Mojave wanted to, but I do know there are federally mandated statutes of -- tied with monetary funds from the federal government that mandates a certain percentage of jobs to be done with disadvantaged business owners or minority owned businesses.
Q. So getting back to, I just want to clarify this. I don't want to beat a dead horse, but when you said that Mojave wanted to use a disadvantaged business

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owner, do you have any independent knowledge as to whether that was something that Mojave wanted to do or if that was something that somebody up the chain needed to do and requested of Mojave?
A. I don't have any direct knowledge of that.
Q. It's just when the need for disadvantaged business owner arose, from wherever it arose from wherever, Mojave recommended CAM and then they introduced CAM to you?
A. Yes.
Q. Again, that was the first time you had ever worked with CAM or Angelo Carvalho; correct?
A. Correct.
Q. You didn't play any part in the selection of CAM as the disadvantaged business owner?
A. I did not.
Q. With respect to the requirement for the disadvantaged business owner, did you guys have any role in that process at all, other than Mojave introduces CAM to you and then you guys use them? Did you interview CAM?
A. Keith Lozeau is more knowledgeable about that.
Q. Okay.
A. But, yes, Keith Lozeau did meet with Angelo Carvalho at one point in time.

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Q. Well, given that -- and maybe this would be something more directed to you as kind of the finance business guy --
A. Sure.
Q. -- given that you have a long-standing relationship with Mojave.
A. Uh-huh.
Q. And so I'm guessing you guys doing business and invoicing Mojave wasn't anything to give you any heartburn; correct?
A. No.
Q. But now you got this third party intermediary, this disadvantaged business owner kind of coming in the middle of that relationship, and you are going to be invoicing them. Did you have any -- did you run any kind of credit check on CAM?
A. I did.
Q. And what did that turn up?
A. Limited credit information.
Q. I'm not a credit guy. You are going to have to tell me what that means.
A. Well, I'm -- I'm likely not at liberty to discuss his credit --
Q. I understand.
A. -- powers.

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Q. I understand.
A. However, there was not much credit information where with -- to make a good credit decision based on that. I would liken it to -- his business credit was a fellow coming out of college. You have no real history.
Q. You hope not anyway.
A. Yeah.
Q. I think I did, unfortunately.
A. How about high school?
Q. But did you guys have any -- were there any criteria that you had or that Cashman had when looking at CAM as to, Okay. Yes, we're comfortable using -- you know, invoicing them and then getting paid ultimately by Mojave? Did you have any criteria that you were looking at and said, Yes, they are okay. Or No, they are not okay?
A. Yes, I do have criteria.
Q. What are they?
A. Well, they're written now, but before, it was just my experience. And again, it's -- the criteria is that you have a reasonable, acceptable set of credit information on your business that -- that would merit that type of transaction.
Q. Did CAM?

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A. No.
Q. Is the reason that that unwritten criteria became a written criteria? Is it at least in part due to this situation?
A. No.
Q. It was just something that you guys felt that it would probably be good to put on pen to paper?
A. Yeah.
Q. Given the paucity we will say of information, of credit information of CAM, did this cause you any concern about entering into this arrangement where you were invoicing them instead of Mojave?
A. Yes.
Q. Did you discussion those concerns with Mojave?
A. No. I discussed them with Keith, our liaison to Mojave.
Q. What was the substance of those conversations?
A. I'm concerned.
Q. I'm looking more for -- I kind of got that.
A. Yeah, I'm concerned. I mean, that was what it boiled down to, I'm concerned. But because of our long-standing relationship with Mojave and because the fact that we hadn't, like we mentioned before, hadn't had any other issues and the money was still coming from Mojave and the units were being delivered as we

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spoke and it was required of us to invoice them, we went ahead and did what we did.
Q. And maybe I'll end up having to talk to Keith about this at some point, but when you expressed your concern to Keith, what did he respond? I mean, what did he say? Did he just kind of blow it off and say, No. Mojave is a good customer. We can do this. Did he echo your concerns?
A. Yes, he echoed my concerns. However, again, it really fell back to the strength of our relationship and the credit promise of Mojave.
Q. Sure.
Did you or Keith ever have this conversation with Mojave that you know of where you discussed in particular your concerns with CAM's lack of credit to Mojave and a conversation along the lines of, I guess what I am looking for, Is there someone else we can use or some other disadvantaged business owner that we can use because we just don't have a lot of credit on these guys and we are not really comfortable with it? Did that conversation ever take place?
A. Not directly with Mojave that I had.
Q. Okay.
A. If Keith had it, that would be a different -- that would be a question for him. I don't

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know that he had that.
Q. Do you have an understanding as to whether a conversation along those lines took place?
A. I don't know.
Q. Keith would be the person that would have had that conversation?
A. Yes.
Q. Did you ever have any conversations with Mojave regarding -- I mean, obviously before the unfortunateness, we'll call it. But did you ever have any conversations with Mojave about the use of CAM on this project, you personally?
A. No.
Q. You have worked with disadvantaged business owners before, though; correct?
A. Yes.
Q. How often?
A. It's not a common occurrence, but it is often enough to where it does happen on an occasional basis. How's that for a lack of better specificity? It happens. And -- and -- and it does work.
Q. What types of projects generally have you guys worked with this type of minority contractor or disadvantaged business owner?
A. Federal projects often associated with the

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military or, you know, federally funded, you know, municipal projects, that kind of thing.
Q. Sure. Which again would make sense --
A. Yes.
Q. -- because those are where the requirements come from?
A. Yeah.
Q. Have you ever worked with a disadvantaged owner, minority contractor on a private project, not a Public Works or federal project?
A. Well, you should know that many of our contractors that are really good customers are already designated as minority contractors.
Q. Oh, okay.
A. They are owned by a woman or they're owned by a minority or they have been disadvantaged in some way, shape, or form.
Q. Okay.
A. So we deal with them on a regular basis.
Q. Okay.
A. And -- but not specifically for in behalf of this purpose here. Does that make sense?
Q. It does. You have customers that are deemed --
A. That are designated, yes.

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Q. -- disadvantaged business owners for other reasons, but not necessarily -- they're direct customers. You haven't used them in a situation like this, where an existing customer kind of pulls someone in --
A. Right.
Q. -- and slots them in?
Have you ever encountered this type of an issue, and, again, this type of issue what we are talking about in this lawsuit, with a disadvantaged business owner's failure to pay.
A. No, not that I can recall. And never of this -- definitely never this level of, I guess, high volume. How is that?
Q. Certainly nothing that resulted in litigation?
A. I wouldn't say that.
Q. Okay.
A. I wouldn't go that far. Again, we have quite a few customers; there are customers that don't pay us, for whatever reason. We do take them down the legal path.
Q. Okay.
A. And some of those customers are designated as minority owned, disadvantaged in some way, shape, or form.

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Q. But those would be, again, like we were just classifying, those are more of a direct relationship, not a situation like this?
A. Not -- not -- not one that was presented to us at the time of -- you know, that was inserted in kind of the last minute like this.
Q. So CAM enters the equation at the 11th hour. Obviously you guys had some dealings with them because you are invoicing them directly?
A. Uh-huh.
Q. How would you classify your dealing? Describe for me what your dealings were like with CAM.
A. Well, honestly, not that I haven't been honest previously, I guess, but --
Q. Thank you for clarifying that.
A. Our -- our -- now, we're talking about the truth. Our dealings with CAM were limited, because we mainly dealt with Mojave directly.
Q. Okay.
A. And Mojave, in my estimation, in my several phone calls and my contact with them, were basically -- her name was Francis at Mojave, Francis McCombs. And she was quite close with Angelo Carvalho, and she was the one that generally conversed with him.
Q. Okay.

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A. And -- yeah. So our dealings weren't necessarily directly with CAM. They were still primarily with Francis --
Q. Okay.
A. -- though we had the ability to talk to him, although he was difficult to get ahold of for some other reasons we can probably get into later.
Q. I will represent to you that he's still difficult to get ahold of in certain instances.
A. Well, I think when exactly where he is now.
Q. Well, actually, yes and no.
So how many direct interactions would you say you had with Angelo or anybody at CAM?
A. I met with him twice personally.
Q. Okay.
A. Most of the -- and -- and via phone was less than five times.
Q. What were the occasions that you had to meet with him personally?
A. Well, the first one was to exchange the check for release. And then the second one was at his home to have him write me another check as the first one was stop paid.
Q. Let's talk about that. I figured you were going to get into that. That's why I pulled that

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exhibit out.
MR. BOSCHEE: I'll mark this as Exhibit 1.
(Exhibit 1 marked.)
BY MR. BOSCHEE:
Q. Go ahead and take a look at that. I'll represent to you, this is a check in the amount of $755,893.89 dated April 29, 2011, looks like from CAM Consulting to Cashman Equipment. Do you recognize this check?
A. Yes.
Q. Let's talk about it for a second. You said just a few minutes ago that this was the check that you exchanged with Angelo for the unconditional lien release; correct?
A. Yes.
Q. We will look at that in a few minutes, but my question being the unconditional lien release was signed and notarized by you, I believe, on April 26th. Does that ring a bell?
A. Yes.
Q. And you provided that to Carvalho on -- was it on that date?
A. I don't know that it was the 26th exactly, but it is a couple of days before this --
Q. Okay.

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A. -- check.
Q. Well, I guess that's really my question. Carvalho gave you a postdated check; right?
A. Yes.
Q. Did he tell you why he needed to do that?
A. Well, to clarify, I did not realize that he had given me a postdated check.
Q. Oh, okay.
A. Not until subsequently. However, he did state that he wanted me to hold on to the check for two days to give it time to clear. Because in the past, with such big balances, his bank has held on to the funds and wouldn't release them to him. And frankly, that makes sense.
Q. It does. I understand that.
A. That's -- that's a common occurrence.
Q. Right.
Is it fairly common, I guess common is probably the wrong word, but would you say it's fairly common for you guys to get a check and then have someone ask you to hold it for a day or two for that reason?
A. It is some -- somewhat common.
Q. It didn't alarm you that Angelo asked you to hold on to this check for a couple days?

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A. No. He told me that there was nothing in his bank account, other than the check that he received -- was receiving from Mojave at the same time from the same meeting that I met him and that he has yet to deposit it, and then the bank would hold on to it and then it would take a day or two for the bank to release the funds or make -- or -- or -- I guess I don't know if release the funds is right, but to make them available. How's that?
Q. Yes. That's understandable.
A. And that is -- and that is a common occurrence.
Q. I understand what you're saying. A lot of banks -- I know Wells Fargo does the same thing. Or if you put too much money in the bank, they're only going to release a portion of it immediately --
A. Exactly.
Q. -- and make you sit for a couple of days.
Let me ask you this, though. Did it concern you that Angelo Carvalho told you when he got his check that this was the only money in CAM Consulting's bank account?
A. No.
Q. That didn't concern you?
A. No. And the reason why is because I knew

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Mojave was paying him a larger portion than what this check was and that he was solely a pass-through source. It didn't surprise me at all that he didn't really have any -- enough -- enough money to -- you know, for this check to clear, to clarify.

Q. What made you think Mojave was paying more than the $755,893?

A. Well, because there were several other vendors involved.

Q. Okay.

A. I wasn't the only vendor that met with him that day, from what I understand.

Q. So you understood that Mojave wrote CAM a larger check than this, and this was just him paying your portion of that?

A. Yes.

Q. Did Carvalho tell you that?

A. Yes.

Q. Off the top of your head, I mean, do you remember what other vendors were there that day?

A. I do. Well, I don't -- I can't vouch for them actually being there.

Q. I understand.

A. But I do know that he did write -- or -- or receive payment for two other vendors. One was QED,

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and the other one was -- I would be guessing. If I recollect correctly, it's Consolidated Electrical Systems, but --

Q. And if it's not, don't worry. I'm not going to impeach you with that of all things. That's fine.

A. That can be verified through Angelo Carvalho's bank statements.

Q. Sure.

So obviously this check has a stop payment on it --

A. Yes.

Q. -- correct?

Who requested that? How did this become a stop payment situation? Walk me through that process.

A. Well, I know for a fact that Angelo Carvalho did it, because he told me himself when I met with him the second time at his home.

Q. Why?

A. He said that Keith Lozeau had called him asking him for payment, who also, again, works for Cashman, and Keith did not realize that I had picked up this check.

Q. So Carvalho's story was that someone else at Cashman had asked him for payment and didn't realize that you had gotten this check, so he stopped payment

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on this check to give payment to Keith theoretically or to pay it some other way?

A. I -- I -- I don't know about the last part, but, yes, he was unsure of where his first check was is his story.

Q. Interesting. Okay. Mr. Carvalho is an interesting guy.

Do you have an understanding of when Mojave paid CAM?

A. Yes. That same day that CAM paid me.

Q. A few days earlier or a few days before the 29th --

A. Yes.

Q. -- or a couple of days?

And you said it's not uncommon for you guys to hold on to a check for a couple of days to let it clear a bank; correct?

A. For the bank to release the funds, yes.

Q. Well, yes, right. That's not uncommon?

A. It's not uncommon.

Q. Accepting a postdated check in a situation like this is not something that would necessarily cause you any angst?

MS. ROBINSON: I think that misstates previous testimony. Objection.

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THE WITNESS: Well --

BY MR. BOSCHEE:

Q. That's fine.

A. Again, I did not know it was a postdated check, so I didn't knowingly accept a postdated check. However, he did ask me to hold on to the check for a couple of days.

Q. You guys don't -- I mean, I say you guys, but Cashman, it's not a standard business practice to accept postdated checks, is it?

A. Not a standard. I -- I wouldn't -- I wouldn't say that, no.

Q. Okay.

A. We have lots of checks. I mean, most everybody pays us with checks, sending them directly to our lockbox. Those are obviously not postdated because those are automatically posted into our -- when we do accept payments from customers and sometimes on occasions, they ask us to hold on to the check for a couple days. It's not uncommon.

Q. So on the 26th or 27th of April, you have an understanding that Mojave has written a check to CAM, money is in the bank, Carvalho asks you to hold on to this particular check for a couple of days so the bank will release the funds?

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A. Right.
Q. And you say okay and only find out later that there's an issue; is that fair?
A. Yes.
Q. When did you guys -- when did you or when did someone else from Cashman actually take this check to the bank?
A. We didn't take it to the bank. We had a desktop deposit.
Q. Okay.
A. I believe it was either Friday -- Friday -- I think this April 29th, if I'm not mistaken, 2011, is a Friday. I think that's the date that we deposited it in our desktop deposit.
Q. Okay.
A. There was no taking it to the bank.
Q. I'm not readily familiar with that. I mean, I'm not as familiar as you are with desktop deposit, but typically my experience has been that when you do something on Friday like that, it hits the bank a lot of times on Monday. Is that your experience or does it usually hit that same day?
A. Well, and I don't mean to be nitpicky, but when you say "hit the bank," you need to clarify that.
Q. Sure.

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A. When does that hit -- are -- are you asking when does that hit Angelo's account?
Q. Yes. That's probably the better question.
A. I don't know the answer to that, but we generally receive funds and access to the funds the same day that we deposit it from our bank. Now, what day it's presented to Angelo Carvalho's bank is -- I don't know.
Q. Even in --
A. I believe it's the same day, actually, or a Saturday, but I don't think that it would be a Monday. But it depends upon the bank and it depends upon the type of transaction --
Q. Sure.
A. -- lots of things out of both our hands.
Q. One of those things being presumably the amount of the check. Would a check in this amount typically be available for you the same day?
A. Well, our bank releases all of our -- does not put a hold on any of our funds.
Q. Okay.
A. And this is a large check for us. But, again, in the whole scheme of things --
Q. I understand.
A. -- for us is not -- going through our bank

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account is not of super huge significance that the bank would put a hold on it.
Q. Right. I would imagine you have a revolving balance in your account of more than $700,000, I hope.
A. It's significantly more than that, yeah.
Q. So when were you notified that there was a problem? I mean, did the bank notify you or did Carvalho notify you?
A. No. Carvalho did not notify us. The bank notified us. And I don't know what -- this says 5/4 is the date.
Q. I have a date of 5/4, yes. That's why I asked.
A. Yeah. I don't know that we were notified that day, but that was the day that it was returned by our bank. And not necessarily -- when I say returned to us, that doesn't necessarily mean they notified us, but it was stamped returned. It was shortly thereafter, though.
Q. Did the bank just tell you there was insufficient funds to cover the check?
A. Yeah.
Q. Okay.
A. No. No. They just said it was -- right here, return reason, stop payment. Not insufficient funds.

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Q. That's fair with this particular check.
So you get the stop payment back from your bank. What do you do next? And I assume this is you handling this?
A. Yes. Well, I do have a staff and -- and, you know, they help me out. However, the first order of business was to try to contact Angelo to have him, you know, sort it out, and we were unable to.
Q. Okay.
A. In the first meeting that I exchanged the check, he mentioned that he was leaving the next day for Afghanistan on another military mission.
Q. Did you have an understanding of whether he was or was not actually in the military at that time?
A. At that point in time, I was under the impression that he was in the military because that's what he told me.
Q. Okay.
A. That he had -- and -- and the reason for that is it took a while for us to get this check after invoicing, which wasn't the plan --
Q. Okay.
A. -- because he was away on an assignment in the Middle East somewhere.
Q. Okay.

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A. And -- and that was told to us by Francis McCombs at Mojave.
Q. Okay.
A. And so when he finally came back into town is when we had that first meeting.
Q. Okay.
A. And then he stated in that meeting that he was going to be gone for another 45 days starting the day after.
Q. So then at that point he's back, but he's leaving again. You at this point know there's a problem?
A. Yes.
Q. What did you do? Or what was the next thing you did?
A. Well, we -- we attempted to get ahold of him on his e-mail address, because he was fairly good about returning emails, even in spite of him being overseas, allegedly, is what he told us. And we were unable to -- we tried phone calls, we tried him directly via e-mail, we tried Mojave. It wasn't working.
Q. Generally, when you have a creditor or situation like this that fails to fund --
A. Uh-huh.
Q. -- do you guys have a procedure for dealing

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with that?
A. Well, we contact the customer directly to try and make good on it.
Q. Sure. So that's the ideal situation. Then when you have a situation like that where the guy is off traversing whatever, do you have kind of a backup? Do you have another -- like a secondary, Okay. We can't get ahold of the customer. Now what?
A. As far as a written policy, no.
Q. But as the credit manager for Cashman, do you have something that you typically do when a situation arises like this?
A. Well, this is not a typical situation, to be honest with you. We don't have checks of this magnitude bounce that I can ever recall. Or bounce, I guess that's not the right word. Or stop payment. Become nonsufficient -- or non -- don't yield funds. How's that? That's probably the best word. That's what we did is we went after -- directly after Angelo Carvalho and tried to get Mojave to put a stop payment on their check to him.
Q. But by the time you did that, it was too late, wasn't it?
A. Yeah. They said it wasn't possible.
Q. Now in this second meeting with Carvalho --

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A. Uh-huh.
Q. -- did he do anything to try to make this good? I mean what --
A. Well --
Q. Because I have read somewhere, either in a declaration of yours or in something that you went with him to the bank. Was that during this meeting or a different meeting?
A. Well, I need to clarify quite a bit of that.
Q. Okay.
A. And -- and -- and if you don't mind, Jennifer -- she can obviously object to me saying more or less than I ought to, but we should probably back up to how I got the second meeting to happen.
Q. Sure.
A. So, again, not able to contact him, no this, no that, and that drags on for several weeks. I can't tell you exactly how many weeks it was afterwards. But in my research in trying to find him, I find him, I find his name listed with another company that was recently formed in California with another businessman who does glazing, which is glass buildings.
Q. Right.
A. And he has his own company, and they formed a -- a -- again, a disadvantaged business together with

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Angelo being one of the owners, with the idea that they could run federally -- you know, for the same purposes of this. I got ahold of several folks within that company who then finally referred me to the owner, of whom I spoke with who happened to be in Vegas, who happened to have just met with Angelo Carvalho the day before. And this is the same time when Angelo has gone dark and supposedly overseas.
So I meet -- I -- I go to his house the next morning, and about 8:00 o'clock or so I start knocking for about 20 minutes, and he finally answers the door. And he states that he had just got in at 1:00 or so in the morning at Nellis from another assignment overseas. He does make out another check at my behest, and this is when he tells me that he put the stop payment on it for whatever reason --
Q. Okay.
A. -- for the reason I mentioned prior. And he gives me another check, after a half hour of him humming. I then go down to Nevada State Bank, of which that's the bank that it was written on.
Q. Yes.
A. Yes. And ask them to make it a bank check so that the funds would be guaranteed to us, and they could take the funds out of his account immediately so

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we wouldn't have to deal with this again. They were unable to because the check -- and I don't have a copy of this check and I will tell you why in a minute. They were unable to because the check -- you see here on this check it says 7558, you know, 9389?

Q. Right.

A. He wrote the next check out the same way, but the bank said because it didn't say 755,893, they said that that check was no good. So I then went to a different Nevada State Bank, just to see how consistent they would be, and the next Nevada State Bank would not issue me a cashier's check or a bank check because they said there were nonsufficient funds in his account.

Q. Okay.

A. So I took the check back and met with him again. So I guess there were three meetings, but the two and three were the same, within an hour of each other.

Q. Yes.

A. And asked him to write me a check for what was left in the account, assuming that it might be off by 100 bucks or maybe a couple thousand or some odd thing. And -- and, you know, so I handed him back the check so he could write one and write it out correctly this time. And he called his bank. Again, it took him

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forever to do this. He called his bank and found out there was only $800 left in the account. At that point in time, I said I would walk -- because he said he didn't know what was going on. He called his banker to try to figure it out. He said he would go to the bank and go do this. So I insisted that I go with him to the bank. He says, Well, it's more complicated than that, blah, blah, blah, so why don't I just call you back in a half hour or so after I have met with him initially.

So I waited there nearby. I went to an IHOP and had a late breakfast. I -- while I waited for his call. He called and said someone had -- and I actually have the text. I'm more than happy to show you guys what he said. But he called the first time saying he's still trying to figure it out. And I should back up. I'm -- I'm having a hard time recollecting exactly. But I did receive a phone call from him, I have a voicemail from him, and I do have a text message from him. And I believe that shortly after I actually talked to him via phone, but I'm having a hard time separating what I gleaned from the text, the voice message, and when I actually talked to him on the phone.

Q. Sure.

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A. But the gist of it was there was no money in the account, which confirmed the 800 bucks. That the money had been switched over to a Wells Fargo account electronically, and he did not do it. He didn't know who did it. Somebody else got access to his bank account. And so after that phone conversation, text message, and voicemail that day, I have never had contact with him since --

Q. Okay.

A. -- despite efforts. How's that?

Q. Does Cashman as a business, do you guys have protections in place for situations like this?

A. We do as much as legally possible to protect ourselves in various different forms.

Q. Like what?

A. Well, mechanic's, preliminary notices, UCCs, credit agreements that hold folks -- or their feet to the fire.

Q. Okay.

A. But in the case of obvious fraud, then we're -- that -- that we have alleged and that is going to be hopefully proven in court on the Angelo Carvalho case directly, which is why he is on house arrest, it's, as you can imagine, somewhat difficult to --

Q. No, I understand that. I was looking more

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generally, kind of, you know.

A. One of the other things that we do is joint checks. And in this case, we requested a joint check from Francis because of the issues with getting ahold of CAM --

Q. Sure.

A. -- and she refused to do that, which is not abnormal for her to refuse to do a lot of things for us, just the way that Francis treated us at Mojave.

Q. Well, let's talk about that a little bit. You asked Mojave for a joint check; right?

A. Francis McCombs.

Q. And Francis wouldn't give you one?

A. Correct.

Q. Did she tell you why?

A. No. I -- I was not in that conversation. That was one of my staff, and it was a verbal conversation, not -- not email. So I -- unfortunately.

Q. Okay.

A. So I do not know why she said that.

Q. You said it was not uncommon for Francis to not give you a joint check?

A. No. Mojave has never given us a joint check, that I am aware of. I -- I guess I shouldn't say never, but not in the recent past that I -- that I'm

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aware of.
Q. Do you always request a joint check?
A. No.
Q. I was going to say, in situations where they're dealing with you as a customer, I wouldn't think it would be necessary.
A. No, we don't really have to have that. I mean, there's not a real good reason for it. But in this case, there was a very good reason.
Q. Well, when did you request the joint check?
A. Before we were paid -- or before we were attempted to be paid. How's that?
Q. Before that first meeting where he handed you the check?
A. Yes. Well, Francis had asked us to sign an unconditional release prior to actually having the money or the payment, which we objected to and said we'd only do it as long as we had the check.
Q. That's where I guess I'm having a little bit of disconnect. So Francis wants you guys to sign an unconditional final lien; correct?
A. Well, and -- and the reason was because Mojave was under the gun to get paid themselves, and Angelo was nowhere to be found, so he couldn't sign any releases himself. So they were having problems getting

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paid -- well, I guess I shouldn't state what I assume.
Q. Right.
A. But, generally, that's the reason for that, but --
Q. But they asked you for an unconditional final lien release, which you ultimately signed?
A. I -- I don't know if it was an unconditional final but an unconditional progress at the -- the least.
Q. And your position is, Well, we are not going to do that until we have a check; correct?
A. Correct.
Q. But Mojave refused to give you a joint check?
A. Yes. Francis McCombs at Mojave.
Q. Why did you issue the unconditional lien release when you didn't have a joint check that you had asked for?
A. Well, because I had this check.
Q. So you getting the check from CAM was enough for you to hand over the lien release?
A. Yes.
Q. That gave you enough comfort?
A. Yes.
Q. Why is that? Is it because you knew Mojave had tendered the funds?

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A. Yes.
Q. And you did that even though you had limited credit information on CAM and they asked you to hold the check for a couple of days?
A. Yes.
Q. You still did have any issue giving them the unconditional lien release?
A. Well, if -- if -- you may not be aware, and obviously you are fairly aware of what releases mean or don't mean, and -- and then there is always -- it's debatable and arguable, but from my understanding and education, that if a check does not clear, then the lien release becomes invalid.
Q. Okay.
A. So based on my -- and, again, you know, obviously you guys can debate that until kingdom come, but my education, that's what that tells me. So I am not as concerned about signing an unconditional release in accepting a check, because I believe, and that's what my education tells me, that if that check does not clear for whatever reason that my release I have given out is voided.
Q. Do you guys use conditional releases?
A. We use conditionals and unconditionals.
Q. Okay.

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A. Conditionals are used prior to receiving the check --
Q. Right.
A. -- so they know how much to write the check for, basically.
Q. Well, that was my question, I guess. Given that you weren't going to be able to put this money in your account for a handful of days, why didn't you give a conditional release pending the money actually hitting your bank account and then give the unconditional?
A. Because of the reason I previously stated. Generally, it's -- it's -- it's a swap check for a -- an unconditional final.
Q. I understand. But this was a little -- but this situation was a little bit unique in that you have got this kind of intermediary between you and your client that you hadn't really worked with before. Did you guys consider using a conditional lien release for that reason?
A. No. We based our -- our -- my assurances on your client's, you know, credit perils and the fact that they have never bounced a check to anybody. Therefore, there was no reason that their funds would not be good.

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Q. Now, you may not know the answer to the question, and if you don't that's fine. I would think you might, but do you guys have insurance for this type of thing?
A. Loss and fraud?
Q. Yes.
A. I believe we do have insurance for -- I don't know about fraud, but -- but loss, we are fully insured.
Q. So did you at any point alert your carrier about these events?
A. I don't know that we have.
Q. Okay.
A. Again, that's -- that's our CFO's responsibility.
Q. Who is your CFO?
A. His name is Lee Vanderpool. At the time it was Jim Moore.
Q. But as the finance guy, would they let you know if they -- in a situation like this where you've got a loss, and a good sized loss, you know, three quarter of a million dollar loss.
A. Very significant.
Q. Exactly. If they did contact your insurance carrier and there was some process going on there to

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try to recoup some or all of it, that's something they would let you know, wouldn't they?
A. Yes. And, therefore, again, I can't state for sure that we -- that we have filed a claim or not. I -- I -- to my knowledge, I don't believe we have.
Q. Okay. And --
A. And, again, you are saying a loss. I mean --
Q. This is a little bit different than a loss. I understand that.
A. This is -- yeah.
Q. This is fairly fairly darn variety fraud.
But that said, the best to your knowledge, whether a claim has been filed or not, your insurance carrier hasn't done anything with respect to this or you would probably know about that; right?
A. I -- I would -- again, I have -- I don't know. I don't know that we have filed a claim. I don't know that we have not filed a claim. If you are asking my best judgment, I don't believe we have filed one.
Q. I guess my last question, though, was more along the lines of you don't know if a claim was filed. But if a claim had been filed and the insurance carrier had done something, kicked some money in or something, that would be something, as a finance guy, you would get notice of, wouldn't you?

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A. Yes.
MR. BOSCHEE: Can we take a quick three-minute break?
MS. ROBINSON: Sure.
(A short break was taken.)
MR. BOSCHEE: Back on the record.
BY MR. BOSCHEE:
Q. You understand that you are still under oath?
A. I do.
MR. BOSCHEE: For the record, Mr. Coleman has decided to leave us, so he is no longer part of the deposition. And, therefore, I am guessing he will not be asking any questions at the conclusion of my questions.
BY MR. BOSCHEE:
Q. Back to Angelo, at this point, you know the money isn't in the bank account. It has been transferred to -- apparently by somebody to a Wells Fargo account. Did he tell you anything about that Wells Fargo account? Did he represent anything at that time about what that account was?
A. I -- I can read you the text.
Q. No. I mean, if you can recall, you recall. It's not --
A. Oh, no. I have been saving this text for a

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really long time. I would really like to get it off my phone.
Q. Okay.
A. All right. Here. Hang on a second. It's going to take a minute for me to find it. There it is. Okay. And I -- any news -- okay. May 19th, Could you meet at the bank in the morning? May 19th, Mojave didn't do anything wrong. It's on my end. There was a transfer into another bank, and I am waiting for an answer. I do know it is a Wells Fargo account. And then there's several texts from me trying to get more information after that and nothing.
Q. Nothing?
A. So that's the extent of what I know about the Wells Fargo account.
Q. And that was pretty much the last communication you had with him, the voicemail, the text, and then the brief conversation; correct?
A. Yes.
Q. Prior to filing the complaint, what steps did Cashman take to try to get this money back from Carvalho?
A. I filed a -- a -- a complaint. I don't know how I would classify it as a -- a complaint or a notice at the bad check division down in the basement of the

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courthouse over there.
Q. Okay.
A. And then put in the notices and whatnot and filed that there with the DA's office.
Q. We talked about it briefly in the last hour, but what has transpired with that effort from the bad check division?
A. Well, they went through the procedures and issued a -- a warrant, and he didn't show and one thing led to another. We confirmed several times that he was not in the military from a third-party source, and then Jennifer had something going on to where she would check periodically and then the -- the most recent one popped up that he was and -- rather he re-enlisted or however that works, but he was in New Jersey, was it?
MS. ROBINSON: I think so.
THE WITNESS: And she tracked down his commanding officer, and he was extradited -- I don't know if extradited is the right word, but he was sent here. And -- I don't know what all the proper legal words are, but from what I understand, he is now on house arrest.
BY MR. BOSCHEE:
Q. He came back on a bus as I understand it, which was probably a lot of fun.

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So the bad check division has followed through to the point where now he is on house arrest, and that's as far as it has gone with them, as far as you know?
A. I did testify in front of a grand jury a couple of weeks ago.
Q. Do you know what that proceeding was for?
A. For -- for -- in efforts to -- for the case.
Q. Let me clarify that. Was that an indictment hearing or was that a formal sentencing hearing, do you recall, do you know?
A. There wasn't any sentencing going on.
Q. Okay.
A. It was the grand jury doing -- I -- I don't know. I testified in front of them. I -- I just assumed that it was for the final purposes. I'm sure Jennifer can --
Q. Yes, it's fine. I'm not going to throw a bunch of legal terms at you. I mean, I may not even understand.
A. Oh, try me.
Q. But did it seem more of like a preliminary hearing or was it more on the merits?
MS. ROBINSON: I'm going to object. Asked and answered. It's a grand jury, so it's for the purposes

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of charging, I believe. I'm not going to testify to that.
BY MR. BOSCHEE:
Q. Well, that's what I was going to say. I don't know. Where I was going with that is do you know if he was actually formally at this point been charged?
A. I -- I don't know the answer to that.
Q. All you know is you testified before the grand jury and that was that?
A. Yeah.
Q. I want to go back to the City Hall project, and I'm going to recover some of the things we talked about a little bit. I'm going to try not to repeat myself, but I want to kind of establish a little bit of a timeline.
A. Yes.
Q. So you talked a little bit earlier about you did a credit check on CAM. Do you remember that?
A. I did.
Q. Okay.
A. I mean, I do remember.
Q. Well, I'm going to put a document in front of you and see if this refreshes your recollection.
A. I don't remember what I found.
MR. BOSCHEE: This will be Exhibit 2. I'll

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just throw Mr. Coleman's copy in the pile.
(Exhibit 2 marked.)
BY MR. BOSCHEE:
Q. Take a second and skim through this and the next page. Do you recognize this document?
A. I do.
Q. Is this the application that was submitted to you by CAM?
A. Yes.
Q. Would this have been the document that you would have reviewed? When I say you, you personally or someone on your staff with respect to determining CAM's credit worthiness?
A. Yes.
Q. Now, fairly standard practice to accept a credit application like this from a potential customer; correct?
A. Yes.
Q. And then typically, depending on what happens with your credit check, then you follow it up with sending out invoices to the new client; correct? Or to the, I guess, prospective client?
A. It -- I mean, I would follow up sending invoices for or -- or -- or goods and services if I -- I don't know. You probably ought to restate that

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question a little bit.
Q. Sure. An application for credit is given to you?
A. Right.
Q. You run the credit check; right?
A. Right.
Q. Whether, you know, assurances or good credit or otherwise, you determine to proceed forward with this potential customer? Let's assume that; correct?
A. Okay.
MS. ROBINSON: Can I object? Are you asking hypothetically or are you asking specifically about CAM?
MR. BOSCHEE: Hypothetically.
MS. ROBINSON: Okay.
BY MR. BOSCHEE:
Q. And after that, you would begin invoicing the client; correct?
A. If -- if -- if I -- yes. I mean, once -- once the account is established, then -- then providing goods and services followed up by invoices is generally how that works.
Q. Sure. Let me ask you this: Between the application for credit and the invoicing for goods and services when you set up the account as you said, is

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there any other documentation between you and the client, typically?
A. Well, yes. And it really depends upon what type of transactions we're doing.
Q. Sure. How about with this transaction, was there anything else between the application for credit and your invoicing CAM?
A. Well, there was quite a bit of documentation between us and Mojave leading up to this because those were -- that's -- that's the reason for the application.
Q. Sure.
A. So there was quite a bit of documentation, of which I'm pretty sure you guys have.
Q. Yes. And I guess that's what I'm -- and I'm not really talking about that. I know that there was a lot of communication and documentation between yourself and Mojave. I'm talking, Okay. Mojave -- you know, cat out of the bag. We need to use this disadvantaged owner. Here's CAM Consulting. You have CAM submit this credit application, they do, and then between this time and the time you start actually invoicing CAM, was there any other documentation that you recall entering into between Cashman and CAM?
A. As far as any more credit agreements or any

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more other agreements, not that I'm aware of.
Q. So basically this and then the invoices was the agreement that you had with CAM; right?
A. Again, I -- I mean, this -- this is the agreement I have with CAM and they signed, and really this is an application for credit and it lists terms and conditions. But as far as an agreement whether or not to bill or not to bill him was -- was a different decision. Does that make sense?
Q. It does. But I guess what I am asking is -- so let's follow up on that. It was a different decision. When you say that, what do you mean by that?
A. Well, what I mean by that, that -- that transaction was, you know, kind of a Mojave instigated -- our -- based on our relationship with Mojave to proceed with the, you know, the invoicing of CAM.
Q. Sure.
A. This -- this didn't really tell us that it's okay to invoice CAM, not necessarily. This is just -- how do you say, a formality.
Q. That --
A. So we can set the customer up in the system and bill it to the right name.
Q. I think we're talking around each other

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because I think we're basically saying the same thing. You've got a good relationship with Mojave, you haven't had any problems?
A. Well, I --
Q. Well, you haven't had problems like this?
A. None of this -- none of this magnitude.
Q. Haven't had a bounced check, I think was your testimony earlier?
A. Yes.
Q. CAM comes in, fills out the credit application. Based upon your relationship with Mojave and to some extent this credit application, you set CAM up in the system for an account; correct?
A. Well, define account.
Q. Well, you tell me what you did. You get the application for credit. How did you start invoicing that?
A. I would be happy to.
Q. Sure.
A. We set them up with an account number. We did not give them a charge account, meaning we're okay with collecting the money after the fact. We wanted our money as -- as close to delivery as possible.
Q. Right. Okay.
A. So --

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Q. We'll get into that, too. Because in this case, the money didn't come as close to delivery as I'm sure you guys would normally like. But there was no other paperwork filled out by CAM?
A. Not that I'm aware of.
Q. Before you started invoicing them?
A. I -- well, I mean, if there were any other purchase orders issued, I'm not aware of it.
Q. I understand that. But between you guys, they fill this out, you give them an account number, and you start invoicing them?
A. Right.
Q. Done. Okay.
Let's talk about the invoices and some of the timing issues that have flowed from that.
MR. BOSCHEE: We'll mark this as Exhibit -- collectively these documents as Exhibit 3.
(Exhibit 3 marked.)
BY MR. BOSCHEE:
Q. Take a second and skim through them if you want to. I think it's Cash 003 through Cash 00 -- I think we stopped at 8. It is some invoices and I want to say a couple of bills of lading. I'll tell you most of my questions will be about the invoices.
A. Okay.

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Q. Do you recognize these documents?
A. I do.
Q. The first two pages of this appear to be -- well, let me stop there. Let me ask you another question that just popped into my head.
For this project, did Cashman ever enter into a contract directly with Mojave?
A. We had quoted them, and they had accepted the quote.
Q. Right.
A. So I guess you could call that a contract of some sort.
Q. Written contract?
A. Yeah. I think there was written stuff signed by both parties.
Q. I guess what I am saying is you didn't have a contractor/subcontractor signed contract. You did this typical quote them, they accept kind of your standard practice with Mojave; correct?
A. Yes.
Q. I guess I'm wondering, there's not some written document out there between you and Mojave that I haven't seen in this litigation, is there?
A. Not that I am aware of.
Q. A subcontractor agreement or some type of a supply agreement or anything?
A. No. There's no master agreement that I am aware of.
Q. Let's take a look at the first invoice. It looks like it's dated February 1, 2011. And total amount of equipment, this one looks like it's $598,3 -- I'm sorry, $598,936.26; is that right?
A. That's what I read as well.
Q. And then the next invoice on CASH005, same date on the invoice, 2/1/11, and this is for $156,627.92. And then right after that, there's a, you know, smaller one it looks like from March for $329.71; is that right?
A. That's what I read.
Q. What was the scope of work that Cashman agreed to with respect to this project?
A. How -- what do you mean by that?
Q. Well, what were you guys doing? Were you supplying materials?
A. We supplied these items here. They are for backup electrical power sources and systems for obviously -- for the project.
Q. And I know there was some disagreement apparently last week and on Friday about this. Did the scope of your work, to your understanding, include

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installation of anything?
A. Yes. That was to be part of it, installation and startup.
Q. And that was part of what was billed for on these invoices.
A. Yes. Now -- now, keep in mind, the installation is not something that you just do in one day.
Q. I understand.
A. I mean, it happened from start to not quite finish.
Q. If you know, when did you start -- well, I'll represent to you the three invoices, the three sets of invoices that we just looked at, you know, we can break out the calculator if you want, but it totaled $755,893.89.
A. Yeah, it should.
Q. There aren't any other invoices for work or materials that you are aware of that were provided, are there?
A. Not that I'm aware of.
Q. I only ask that because that was the same amount that you were supposed to be paid; right?
A. Yes.
Q. When did you guys start delivering and

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installing equipment to this project, do you recall?
MS. ROBINSON: I'm going to object to the form of the question. If you can define what you mean by "install." Because I don't know that it's completely clear that we're all talking about the same --
MR. BOSCHEE: Well, he said install. That's why I used that word.
BY MR. BOSCHEE:
Q. I mean, I'll ask multiple questions, and maybe we can clear it up this way. When did you guys start supplying equipment for this project?
A. How about asking -- how about, when did you deliver the equipment?
Q. Fair enough. That was going to be my next question.
A. The answer is multiple dates, because there's multiple units here.
Q. Okay.
A. And I don't know the dates all specifically, though I think we probably have some documentation that will support those dates.
Q. Sure.
A. I know there's pictures and whatnot out there, but not all the stuff was delivered on the same date. And it was -- and delivery was -- yes. It was kind of

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a range of dates.
Q. And then --
A. These are -- these are very large units. They take cranes to, you know, drop them off and set them in the right place. And -- yeah. So this is kind of a big deal.
Q. I have been over there. This is a lot of big stuff.
And I understand we're dealing with a range of dates, but the equipment was delivered before you sent the invoice to CAM, wasn't it?
A. I don't know that that is entirely true, but I believe the major pieces were.
Q. And the reason I asked that, like is, for example, I'm not looking for a specific, you know, this piece was delivered on January 20th and this piece was delivered -- I truthfully don't care, but if you have got an invoice here that's sent out on 2/1/11, fair to say that most of the equipment, be it in December, January, was delivered by the time this invoice went out; correct?
A. I -- yes. I think that is accurate.
Q. And so the two sets of invoices go out on February 1st. Fair to assume that all that equipment was delivered. And then we have got this one kind of

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small -- smaller -- I'm guessing because it's only 329 bucks -- that was invoiced on March 25, 2011. Do you know what this is?
A. Well, I -- I can read what the invoice says. It says lugs, which are generally some type of bolts.
Q. Right. Well, let me ask you this: Did Cashman do any work on this project after -- I mean, work on the project, you know, on site? Did you guys do any work on the project after February 1, 2011, that you are aware of?
A. Oh, I don't -- I don't know for a fact.
Q. Okay.
A. I don't know that -- I don't know the answer to that. That would be a Keith question.
Q. Okay. Keith would be the guy to ask.
Other than these lug bolts, it doesn't appear any equipment was delivered to the project after February 1st of 2011; is that fair?
A. You know, I -- I -- I'm having a hard time with all the delivery stuff because I don't have all that stuff in front of me.
Q. Sure.
A. And I don't recollect when all the exact dates were. But suffice it to say, the major pieces were delivered prior to the invoice.

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Q. Prior to the invoice?
A. And that's part of the invoice practice for socs and all sorts of things. Things have to get delivered and accepted before you can invoice.
Q. Sure.
And things need to be delivered and accepted before you can invoice. And then you testified that installation was also part of the job. Was that done in conjunction with the delivery?
A. When you say "installation," are you meaning startup and making the whole system functionable and workable as per the specs?
Q. You tell me what your understanding of installation is.
A. Well, that -- the making of the entire system work and -- and functionable as per the specs, that is -- that dollar amount is included in this.
Q. What is the timing of that? Does it happen right around the same time that the equipment is delivered?
A. No.
Q. Or is there a fair gap?
A. There is a significant gap. Again, questions more likely for Keith --
Q. Sure.

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A. -- but I think I can answer a little bit, is there are certain points in that timeframe that we will go out there and do whatever for whatever. You know, because everything is a process and everything goes in stages.
Q. Right.
A. So, no, it's not just a we drop everything off, leave for six months, and then come back on a day, and turn on the switch.
Q. Okay.
A. I believe it's -- you know, it's an ongoing, but there's more that happens towards the end when everything is getting ready to start up.
Q. And, again, you may or may not know the answer to this. This may be another Keith question, but the installation is included in the invoicing, I think is what you said earlier; correct?
A. Well --
MS. ROBINSON: I'm going to object. Asked and answered.
THE WITNESS: Yeah.
BY MR. BOSCHEE:
Q. This is actually not -- I'm not trying to trick you. I have a follow-up question. I just want to make sure that's what your understanding is?

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A. Well, what I understand is -- is the startup is -- you know, the finishing off the process. I mean, whatever you want to call it, whether it's installation or -- the reason I hesitate using that word because it's -- obviously we were trying -- we were trying to sort that out last week. Everybody -- we were kind of trying to make sure we knew what that meant, and I don't know if it was clear. But, yes. The entire machinery that we have sold to them, we did include in this balance to be all functionable and workable according to all the codes and everything that needs to be done.
Q. Okay.
A. Codes of the city and state that require for occupancy.
Q. And we won't use the word "installation," but getting the equipment workable and operational, all of that would be done before you would invoice CAM, wouldn't it?
A. No.
Q. It wouldn't be?
A. No.
Q. So the equipment is delivered, the invoice is sent, but the startup, getting it functional that goes on past February 1, 2011?

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A. Yes. Significantly.
Q. So CAM at this point had been billed for it, it's been part of their bill, but their service hasn't been completed yet -- or the service hasn't been completed yet, is the better way to say it?
A. True.
Q. Do you know when -- and maybe this is a Keith question -- when's the last time that Cashman was on this project actually performing work?
A. Don't know.
Q. Do you have a general idea of March, April, earlier?
A. I -- I couldn't tell you. I really don't know.
Q. And the only reason they were out there until April is that's when things blew up?
A. Right.
Q. You guys didn't do any work after that, did you?
A. Again, I couldn't tell you. We didn't -- I mean, again, we have a -- well, had a better, let's say, relationship with Mojave. And so in spite of everything that happened, we were still contracting with them on some other jobs and some other work, and I don't know that we absolutely stopped everything at

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that point until at a later point in time. But, again, I don't know that we had people out there at this site subsequent to that either.
Q. So just so I have got my timeline correct, it looks like the majority of equipment was delivered prior to February of 2011, but you are not sure when the startup and all the workup was done, was completed and when you guys were actually off the project?
A. Well, that's -- that's not really a fair question.
Q. Okay.
A. I mean, you were talking about delivery --
Q. Sure.
A. -- so, yes.
Q. Delivery, we got that?
A. But as far as the startup and all the rest of that stuff, I -- I don't know how much of that was done prior to us exiting the premises or -- or not coming back. I don't know.
Q. Okay. That's fair.
A. But I do know that there is some left to do.
Q. Right. Yes. Talked about that last week. But Keith would be someone who would be a person with knowledge on that subject; correct?
A. Yes.

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Q. Now, the three invoices that we saw, we talked about this earlier. It's your understanding that Mojave cut a check for at least the amount of these three invoices, and your understanding it was actually more than that to CAM; correct?
A. Yes.
Q. And based upon that, you provided what we're going to look at next, this waiver and release upon final payment?
A. Well, the reason I know that that check was more is because I have seen his bank records, and we know for a fact that it was.
Q. You know now that it was?
A. Right.
Q. After the fact, you have seen --
A. Right. But -- but at the time I knew, too, because there was -- again, there was another couple of vendors involved.
Q. Sure. That makes sense.
A. Not that that really matters.
Q. I want to take a look at this and not spend too much time on this.
MR. BOSCHEE: This will be the next exhibit, whatever number we're on. I think we're on 4.
(Exhibit 4 marked.)

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BY MR. BOSCHEE:
Q. Take a quick look at this. And I'm guessing you have seen it before?
A. I have.
Q. Now, you testified earlier, if my recollection is correct, that you swapped this document with Carvalho for the check; correct?
A. Yes.
Q. And this was signed and notarized by somebody --
A. Debra Caldwell.
Q. -- on April 26, 2010; correct?
A. Yes. That's what it states.
Q. Does that refresh your recollection as to the date of the swap or it could have been that day or the day after?
A. Yeah. It could have been that day or the day after.
Q. We talked about your understanding of unconditional waiver and releases and that they can be -- that if the check bounces, you can terminate them or void them; correct?
A. Correct.
Q. And we talked about use potentially of a conditional waiver and release under different

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circumstances, do you recall that?
A. I do.
Q. Have you guys changed the way that you do things or your policy with respect to swapping unconditional lien releases for checks as a result of this incident or do you still do things the same way you have always done them?
A. No, we have not changed. We do -- we still do the things the same way we have always done them.
Q. Did you guys complete the work on this project?
A. I thought we just covered that.
Q. The work that you agreed to perform. The deliver, and then the startup and installation?
A. Well, yeah. We -- we just -- we just covered that and the fact that --
Q. Right.
A. -- yes, there's still something out there left to be done.
Q. Could you -- I asked the question and I just made a note of it. Do you know what's left to be completed, other than obviously the installation and the safety codes?
MS. ROBINSON: I'm going to object. Asked and answered. And I think he previously testified as to

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what you're asking.
THE WITNESS: Yeah.
BY MR. BOSCHEE:
Q. I don't think he did. I don't think he clarified. That's why I made a note of it. I don't think he clarified what still needs to be done. That's why I asked again. Again, I'm not trying to trick you.
A. I can answer that. I can simply state it's what we call a startup --
Q. Okay.
A. -- which basically is the final phase of -- of, you know, the -- the sale, making everything workable and functionable.
Q. Something just occurred to me that everybody in this room knows what you mean by startup, but someone else reading this transcript, maybe a judge or somebody, might not. What do you mean when you are talking about startup? Explain it very -- like I have never been in the construction field or never been to a job site. What do you mean by that?
A. Well, I'm going to let Keith answer that question.
Q. Okay.
A. Because, again, I'm -- I'm the person most knowledgeable about the deal in its entirety, but about

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the specifics and startup, I'm not a power generation person. I don't know what that all entails. But suffice it to say, to -- to make it workable and functionable according to all the -- the codes of the building codes.

Q. And I wasn't looking for the technical specs that Keith might be able to give me. I was looking for -- you've used the word "startup" a handful of times. I just wan to make sure the record is clear for a layperson reading it, what you mean by startup when you are referring to that, and I think you just answered it.

A. Yeah. And that process generally happens toward the latter part of the project.

Q. And some of that still needs to be completed; correct?

A. Yes.

Q. Now, at some point after all this unfortunateness happens, you guys did leave the project; correct, Cashman? You stopped working?

A. Again, I don't know -- I mean, we did not finish and complete.

Q. Right.

A. Everything that -- the startup, if that makes sense. I don't -- I don't know what point -- at what

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point that was or what that even actually means, but, yes, we did not come back and finish everything.

Q. And that may be a better question for Keith, but I just wanted to kind of get to my next thing.

Do you recall receiving a demand or any kind of communication from Mojave to come back and finish up what was still left to be done?

A. I believe you guys sent some legal correspondence demanding that we do that.

Q. Okay.

A. Do -- is that the case?

Q. Well, I'll represent to you that I think you got it from both Mojave and perhaps our office.

A. Okay.

Q. But you recall receiving a demand request from Mojave to finish up; right?

A. Yes.

Q. You didn't do that; right?

A. No.

Q. You didn't go back there after receiving that demand, did you?

A. Not that I am aware of, no.

Q. Do you recall in the demands that you received Mojave having issues with the quality or functioning of the materials that had been provided by Cashman?

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A. I don't -- I don't recall those documents stating anything like that. Not that they didn't, I just -- I just haven't seen them or reviewed them in the recent past.

Q. Do you ever recall, either from our office or directly from Mojave -- and this may come directly from Mojave -- requesting a repair of any of the materials, any of the equipment that Cashman had provided?

A. I don't recall.

Q. Would that be something that Keith might be better -- would he have handled that or would that be something that you dealt with?

A. No. That probably would have been him, but -- primarily. However, all it would take is simply reviewing the document, and I could answer the question.

Q. Well, let's talk about the -- at some point when the payment wasn't made, you guys decided that going the mechanic's lien route is what needed to happen; correct?

A. Yeah, absolutely.

Q. We will mark the next one in line. And, again, I suspect -- I don't know, but this may be -- you may or may not have any recollection of any of this.

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MR. BOSCHEE: This is Exhibit 5, I believe.

(Exhibit 5 marked.)

BY MR. BOSCHEE:

Q. Take a look at this document. It's entitled notice of right to lien. It's typically referred to as prelien notice. Do you recognize this document?

A. I do.

Q. It says it was prepared by CMA Forms Filing Service. Does that ring a bell?

A. Yes.

Q. Is that something that you guys use a lot?

A. Yes.

Q. This wasn't something that was prepared by -- and I don't want to know any communications, per se. This wasn't anything that was prepared by counsel, was it?

A. No.

Q. It's not something that you would typically hire your attorney to put together, is it?

A. As much as we love her, no. She's too expensive.

Q. Exactly. I was going to say that's not just a Jennifer issue.

To the best of your understanding and recollection, is this the only prelien notice that you

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guys provided to this project?
A. To my knowledge, yes.
Q. This was served, it looks like on the parties -- and if you look midway down the page, this might refresh your recollection -- served on the parties by mail on about April 20, 2011; is that correct?
A. That's what it states, yes.
Q. Why did you guys decide to do a prelien notice at this time before you had even gotten the check? What kind of spurred this on in your decision-making process?
A. The issues at hand.
Q. What issues were at hand at that point?
A. The nonpayment.
Q. The nonpayment -- explain yourself. I'm missing what you're --
A. We had not been paid yet.
Q. The invoices were a little old?
A. Yes. And Angelo was not present.
Q. When the rubber hit the road and Angelo finally showed up on the 27th-ish, give or take, 26th, 27th, and you swapped the check for the release, you didn't release the prelien notice or anything, did you? You kept it in place?

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A. Well, there's -- there's no -- I mean, it's a notice.
Q. I understand.
A. There's no release or anything required to these. It's just a notice.
Q. I guess what I am getting at is -- I understand what you are saying. You didn't send anything to any of the folks saying, Okay. We're paid, we're good, don't worry about it?
A. No. I mean, not in regards to --
Q. It's not something that you would typically do anyway, is it?
A. No, not like that.
Q. I'm going to show you the next one, which is the lien.
(Exhibit 6 marked.)
BY MR. BOSCHEE:
Q. I'm guessing you recognize this document?
A. I do.
Q. Is that your signature at the bottom of the page?
A. Yes.
Q. And on the next page?
A. Yes, indeed.
Q. Does this appear to be a true and correct copy

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of a mechanic's lien that you guys recorded?
A. Yeah.
Q. And this one, this one you did have counsel assist you with; is that correct?
A. Yes.
Q. I don't want to get into communications that you had with Jennifer at all. I really don't. Let me ask you this: Who determined the amount of the original contract in line 1? Was that you or your counsel?
A. I -- I sent her all the paperwork and -- and told her how much it was.
Q. So the determination of the amount of the lien was something that you guys determined and then --
A. Yes.
Q. -- forwarded on?
And that was based on the invoices we looked at --
A. Yes.
Q. -- about an hour ago; correct?
A. Yes.
Q. Materials supplied, that included the startup, whatever we want to call it, installation, startup, getting the stuff working; correct?
A. Yes.

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Q. Did you at that time have any reason to believe that that number was not accurate?
A. No.
Q. Sitting here right now, do you have any reason to believe that number might not be accurate?
A. No.
Q. You testified earlier that the startup, getting everything working, was part of what you invoiced for, and in particular, on February 1, 2011; correct?
A. Yes.
Q. That's part of what's in that invoicing? But it wasn't done yet because that happens as a process over the course of the project; correct?
A. Yes.
Q. And then you told me that there's still some of that that needs to be done because, you know, you guys just didn't finish it; correct, primarily because of what happened here?
A. Yes.
Q. So you would agree with me, wouldn't you, that the $755,893.89 includes at least some services, some startup services you guys haven't actually performed yet, wouldn't you?
A. Yes.

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Q. But you still included it in your notice of lien?
A. Yes.
Q. Do you have an intention to perform those services at some point?
A. Yes.
Q. When?
A. When we're paid.
Q. Okay.
A. Did you expect that?
Q. I did expect that.
And to the extent, if for whatever reason you guys don't get paid as a result of this lawsuit or hopefully for everybody Mr. Carvalho winning the lottery, those services aren't going to be performed until you actually get the money; right? You are not going to go back out there, other than what the court apparently ordered you to do on Friday, but you aren't going to go out there and perform additional services on this project, are you, until you get this money?
A. That is our plan, yes.
Q. Okay.
A. Unless other legal ramifications present themselves.
Q. I understand.

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Do you have anything else you want to tell me about the amount of the lien, the $755,893.89 that you believe, other than what we just talked about, you have no other issues with the amount, do you?
A. No. It's the sum of invoices that we have given.
Q. Well, around the same time, I think you guys served, if I'm not mistaken, a notice to the general contractor; correct? I'm going to show it to you. I'm just asking.
(Exhibit 7 marked.)
BY MR. BOSCHEE:
Q. I will represent to you that I'm fairly certain that that's Jennifer's signature on the bottom of the page, having seen it a couple of times, but have you seen this document before?
A. Yeah.
Q. Do you recognize it?
A. Uh-huh.
Q. This is a true and correct copy of the 90-day notice that was sent to Whiting Turner; is that right?
A. I believe so, yes.
Q. And was this notice sent in an effort to preserve a claim against Whiting surety?
A. Yes.

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Q. Date on the notice June 24, 2011, is that accurate, to the best of your knowledge?
A. Yes.
Q. No other notices were served before this date, were they?
A. I don't know that to be true.
Q. Have you seen any?
A. Not that I am aware of.
Q. In fact, this is the only 90 day notice to the general that you have ever actually seen; is that correct?
A. Yes.
Q. And -- disregard that. I was going to ask a bad question and I'm not going to.
A. Thank goodness.
Q. Exactly. I have asked plenty of bad ones already.
You have -- and, again, I'm going to try to steer this away from legal conclusions as best I can, but Cashman has brought a claim in this lawsuit for fraudulent transfer against Mojave. Do you have an understanding of that, that that claim has been asserted?
A. Yes.
Q. Factually, what is the basis, sitting here

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right now, your understanding, what factual basis do you have for asserting that claim?
A. Would you like me to answer that?
MS. ROBINSON: No. You can answer it to the best of your knowledge.
BY MR. BOSCHEE:
Q. To the best of your knowledge.
MS. ROBINSON: But if you don't have a clear understanding --
BY MR. BOSCHEE:
Q. And then I'll follow-up with some other questions as to elements if you don't.
A. There were checks cut back to Angelo Carvalho in significant amounts that we believe some of those funds should have been ours, if not all of them.
Q. Checks cut to Carvalho or checks from Carvalho?
A. Checks cut from Carvalho back to Mojave.
Q. Those were two checks, if memory serves; correct?
A. (Witness nods.)
Q. Right around the same dates we're talking about, end of April?
A. Yes, yes.
Q. What investigation have you done with respect

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to those checks and the job that they came from, if any?
A. I -- we were limited to what Mojave has supplied us.
Q. Do you have an understanding as to what job they relate to?
A. Again, our information directly comes from Mojave.
Q. What has Mojave told you about those checks?
A. They said they were in relation to something else.
Q. Another job?
A. Yes.
Q. Who told you that, Francis again?
A. No. That came from a -- I don't recall when we got that information. There was -- there was a meeting between our president and Keith Lozeau and an owner of Mojave. I forget what his name is right off the bat.
Q. Troy Nelson?
A. I believe it was with Troy and Brian Bugney (phonetic). There were several things that came out of that meeting. It could have been -- resulted from that meeting. There was also --
Q. While you have got that in your train of

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thought, what else came out of that meeting, if you recall?
A. That we didn't receive payment.
Q. Obviously.
A. So not much.
Q. I think we will all agree on that point, but anything else? What else did you guys talk about during that meeting?
A. I was not present. I was out on vacation, so I was not there.
Q. But you are fairly certain that these two checks came up in that meeting?
A. Yes.
Q. Have you personally had any conversations with anybody at Mojave about these two checks?
A. No, I have not.
Q. And the entire source of your information regarding these two checks and why they were paid comes from what you've gleaned from Mojave; correct?
A. Well, the way when about the checks is Angelo Carvalho's bank records.
Q. Right.
A. So that's -- that's where that is.
Q. So you get the bank records from Carvalho and you see these checks going back to Mojave and a red

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flag goes up. And so at some point, you or somebody else contacts Mojave and says, Hey, what's up with this?
A. Yeah. And we have not really gotten a clear response as to what it really is.
Q. When you say "we haven't got a clear detail," what response have you gotten?
A. Based on -- again, if my recollection serves me well, and it's secondhand.
Q. I understand. And Keith -- I maybe have to ask him about that.
A. No. It's Keith and my president --
Q. Sure.
A. -- that it was -- was not related to this job, which we don't entirely feel is true.
Q. Why not?
A. Well --
Q. I mean, what is the basis for your belief?
A. Again, the timing of the checks. I mean, that he wrote those checks upon receiving his check from Mojave.
Q. Okay.
A. All one check, from what I understand, in that -- in that instance, and he didn't have enough money to pay him until he got his check from Mojave,

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which was -- I mean, there's -- there's a -- there's a kind of a series of check that come into CAM prior to that. But this was the big one, and this is the time that he paid it back, which we feel was -- timing meant that that was really our money from Mojave.
Q. But you testified earlier that you have an understanding that Mojave wrote a check in the amount greater than the amount that was owed to Cashman to Carvalho at that point; right?
A. Yes.
Q. So at least theoretically, he could have had enough money to pay it back if there was money owed to Mojave. He could have paid both of you, theoretically; right?
A. Well, he should have been able to pay all of us theoretically, yes.
Q. This other job that Mojave articulated or told you or indicated that this money was for, have you guys looked into that job at all? Have you done any independent investigation?
A. We -- we don't know what job that is. We don't have any details that I'm aware of.
Q. Mojave never told you what job it was?
A. I -- I don't -- I don't know.
Q. Okay.

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A. Whether or not they told somebody else, I am not aware of, but I don't know.
Q. In your meetings with Carvalho, let's start there, meetings and telephone conversations?
A. Uh-huh.
Q. Did he ever explain what his relationship was with Mojave?
A. Other than he had been -- I mean, he actually showed me the checks that he had signed and sent to the two other vendors in the second deal, which meant that he was the disadvantaged business owner entity for several other vendors in relation to Mojave's dealings. But other than that, I don't know.
Q. So he showed you checks where he had kind of, where Carvalho and CAM --
A. I'm sorry, to clarify, copies of checks.
Q. Sure. Where he had been in this position before, where he had been the disadvantaged business owner used by Mojave on other projects; correct?
A. I don't know that they were other projects. I think this one was -- this project?
Q. This project?
A. Yes.
Q. Did you talk to anybody at Mojave about what their relationship was with CAM or Carvalho or why they

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wanted to use this particular entity?
A. No.
Q. Did Francis ever indicate anything other than she had a friendship with Carvalho?
A. She -- she was a point of contact and was able to talk to him on a regular basis and a fountain of information when it came to tracking him down.
Q. With respect to that, obviously you contacted Mojave when the funds didn't clear, and there was $800 left in the bank account; correct?
A. Yes.
Q. Did Francis or anyone else at Mojave offer any suggestions as to how to get to this guy or how to get funds out of this guy or what he had been doing?
A. Again, my perspective was, Hey, can we put a stop payment on the check? Let's see what we can do to get that done. I don't know that they offered any suggestions. I don't recollect them making any suggestions.
Q. Okay.
A. I would have -- anything.
Q. Help. I understand.
So you've also -- I think there's -- and I don't want to get into any legal terms, but there's this kind of idea in the allegations and some of the

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documents we've seen of kind of a conspiracy between Mojave and Angelo Carvalho and CAM with respect to this project; is that right? Is that your understanding?
A. Yeah. We -- we believe -- again, to restate, we believe that those funds that CAM wrote a check back to Mojave should -- should be ours.
Q. Okay.
A. And that's where we think the misdeeds are.
Q. But sitting here right now, you don't have any knowledge or understanding of any kind of special interpersonal relationship between Mojave and CAM or anybody at Mojave and Angelo Carvalho, do you?
A. I -- I do know that -- I forget. I don't know with which individual at Mojave it was. It wasn't Francis. It was -- I believe it was one of the owners --
Q. Okay.
A. -- had a relationship with him and he was the one that referred Keith, our guy, to CAM. And, in fact, when Keith did meet with CAM, it was at Mojave's office.
Q. You don't remember who that was?
A. I -- I don't recall. Keith would know.
Q. Okay. I'll ask Keith about that.
But, I mean, sitting here right now, your

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understanding -- again, for the limited purpose of the person most knowledgeable for the subjects listed --
A. Uh-huh.
Q. -- but sitting here right now, your basis for the conspiracy, fraudulent transfer type accusations, allegations that have been made --
A. Uh-huh.
Q. -- is really only those two checks being cut and the timing of them; isn't that right?
A. Yes.
Q. And you have done no other investigation as to why those checks were cut or the job that they were cut for?
A. No. I mean, again, we are limited to what Mojave is willing to provide, and we have not received any additional evidence on that.
Q. Sure.
MR. BOSCHEE: If I can take about two minutes, I want to go back over my notes. I think we're just about done.
MS. ROBINSON: Okay.
(A short break was taken.)
MR. BOSCHEE: Back on the record.
BY MR. BOSCHEE:
Q. You understand you are still under oath?

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A. I do.
Q. Couple of just cleanup that I probably know the answers to but you talked about the fact that you did not set up a charge account with CAM. Do you remember talking about that?
A. I did.
Q. What is a charge account?
A. Something where you buy now, pay later.
Q. And you buy now, pay later, how exactly is that different than the arrangement you did set up with CAM?
A. Well, we didn't never receive the money.
Q. I understand.
A. So it ended up being that way, but that's not the way it was intended.
Q. It was intended to be relatively immediate payment?
A. Yes.
Q. Why didn't you set up the charge account with CAM?
A. I didn't feel they had enough credit to open up a $755,000 line of credit for a brand new customer I have never heard of before with limited credit information.
Q. Sure. But setting up a charge account

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wouldn't have really benefited Cashman in this situation?
A. It -- it wouldn't have changed what the outcome would have -- well, would have, should have, could have, but it wouldn't have had any bearing on what happened.
Q. In an effort in trying to avoid another deposition and maybe get away with this with a subpoena, do you know who your insurance carrier is?
A. No.
Q. Okay.
A. Well, I mean I -- I know who our agent is, it's Jenkins Athens.
Q. But you don't know who you are insured with? Because we would send a subpoena to them asking them for the claim information, but if you don't know, you don't know.
A. If you would like a written statement from my CFO, we could do that.
Q. Or we could send something over.
MS. ROBINSON: Send a request over.
BY MR. BOSCHEE:
Q. We'll send a request over. I was just hoping you might know off the top of your head, so we could send a subpoena out to the insurance, but it's fine.

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That's not the end of the world either.
Other than that, the last question I always ask, and your counsel is almost certainly going to object because Brian always objects, are there any other topics that you are planning to testify about in this case that we have not discussed today at this deposition?
MS. ROBINSON: I'm going to object that that's not really a question, but go ahead.
THE WITNESS: I -- I -- I mean, I don't know. We just take it day by day.
BY MR. BOSCHEE:
Q. I understand that. But I guess what I am saying is are there any other areas of knowledge or information that you have that you are planning to relate to the Court or testify about at trial in this case that we have not discussed at this deposition today?
A. I think our deposition has been fairly full bodied, but I -- I don't know -- I don't know what else I could testify to. I mean, there's probably some little things here and there, but I don't -- I couldn't --
Q. But no major topic areas, though?
A. Well, we discussed the nonpayment and how that

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came about and that kind of stuff. So, I mean, there are probably a lot of other aspects to the case, but none that I'm --
Q. I just wanted to make sure --
A. Unless you have anything specifically you would like to add or whatever, but --
Q. No. We have gotten -- I mean, there are a lot of specific things that I may need information from other folks about, but I just wanted to make sure there was no other broad topics that you are like, Oh, well, actually, I know all this stuff about this other area. I just want to make sure we have covered everything.
A. Well, like I said, there's a lot of aspects to the case.
Q. Sure.
A. But I can't -- I can't say whether we have covered them all or not. I guess that's your opinion.
MR. BOSCHEE: Okay. I have no further questions. Your counsel may ask you questions, but I doubt it.
MS. ROBINSON: No questions.
MR. BOSCHEE: Okay.
(Thereupon, the deposition concluded at 11:52 a.m.)

CERTIFICATE OF DEPONENT

PAGE LINE CHANGE REASON

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*****

I, SHANE NORMAN, deponent herein, do hereby certify and declare under the penalty of perjury 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.

_____

SHANE NORMAN, Deponent

CERTIFICATE OF REPORTER

STATE OF NEVADA)

COUNTY OF CLARK)

I, Michelle R. Ferreyra-Marez, a Certified Court Reporter licensed by the State of Nevada, do hereby certify: That I reported the deposition of SHANE NORMAN, commencing on THURSDAY, AUGUST 16, 2012, at 9:43 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 stenographic notes into written form, and that the typewritten transcript is a complete, true and accurate transcription of my said stenographic notes, and that a request has been made to review the transcript.

I further certify that I am not a relative, employee or independent contractor of counsel or of any of the parties involved in the proceeding, nor a person financially interested in the proceeding, nor do I have any other relationship 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 30th day of August, 2012.

_____

MICHELLE R. FERREYRA-MAREZ, CCR No. 876

EXHIBIT D

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; TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, a surety; DOES 1-10, inclusive; and ROE CORPORATIONS 1-10, inclusive; Defendants.	Case No. A642583

DEPOSITION OF PERSON MOST KNOWLEDGEABLE OF
CASHMAN EQUIPMENT COMPANY
KEITH LOZEAU

Las Vegas, Nevada
Tuesday, September 4, 2012

REPORTED BY: Tammy M. Breed, CCR NO. 305
JOB NO.: 164929

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DEPOSITION OF PERSON MOST KNOWLEDGEABLE OF CASHMAN EQUIPMENT COMPANY, KEITH LOZEAU, taken at 400 South Fourth Street, Las Vegas, Nevada, on Tuesday, September 4, 2012, at 9:30 a.m., before Tammy M. Breed, Certified Court Reporter, in and for the State of Nevada.

APPEARANCES:

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Exhibit 3	Stop Payment on a check to Cashman Equipment in the amount of $755,893.89, Dated 4/29/11, Bates CASH014	35
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Las Vegas, Nevada; Tuesday, September 4, 2012
9:30 a.m.
-oOo-

Whereupon --

KEITH LOZEAU

having been first duly sworn to testify to the truth, was examined and testified as follows:

EXAMINATION

BY MR. BOSCHEE:

Q. Can you please state your full name for the record?
A. Keith Daniel Lozeau.
Q. You'd better spell the last name for the court reporter.
A. Yes, L-O-Z-E-A-U.
Q. You ever been deposed before, Keith?
A. No.
Q. This is the first time?
A. Yes, sir.
Q. Great. I'll run through a couple of ground rules with you. I'm sure you talked about this with your counsel but -- and you are represented by counsel, is that correct, Jennifer --
A. Uh-huh.
Q. -- Robinson's here?

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A. Yes.
Q. First, the oath you just took from the court reporter is the same oath you take in a court of law. It carries with it the same obligations and penalties that the oath would take in court. So I just want to make sure you understand that before we get started. Okay?
A. Yes, sir. Yep.
Q. Okay. You're not going to be able to remember everything that I ask you about today, I'm sure, and I don't want you to guess at anything. I don't want you speculating or guessing at the questions I'm asking. But I am entitled to your best recollection. So to the extent that you remember anything related to the questions I've asked, I'm entitled to know that, but don't guess at something. If you don't know, you don't know, just let me know that. Okay?
A. Okay.
Q. The court reporter is going to make a transcript about what we're talking about today, my questions and your answers. Couple things related to that. I will do my best not to ask a follow-up question while you're still answering, if you would do me the same courtesy of not answering when I'm asking a question. She can't transcribe us both talking at the same time. Okay?
A. Understood.
Q. Along the same lines, your lawyer may object, may

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tell you not to respond to one of my questions. I don't think I've got anything like that in here, but she may make an objection for the record. Let her finish before you say anything or -- and I'll try to do the same, give her the same courtesy as well. Okay?

A. Fair enough.

Q. The court reporter can't transcribe head nods, head shakes.

A. (Witness nodding.)

Q. Just like that.

A. Right. Understood. Understood.

Q. Audible responses are going to be great for her. If you need me to clarify any of my questions, if there's something I asked that you don't understand, which is very likely at some point in the morning, just ask me to clarify something because it's very likely that -- I know exactly what I'm talk -- what I'm asking about and you're going to hear a question that I think is really artfully asked of you, and you're going to be like, I don't have any idea what you're talking about, Brian. Please clarify that. And I'd be happy to do that. Okay?

A. Okay. Thank you.

Q. This is not -- I know that we're under a little bit of a time crunch today, you need to be somewhere this afternoon. That said, I don't want this to be an endurance

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contest. If you need to run down the hallway to the restroom, get something to drink, anything like that, we can take a five-minute break. It's not a big deal. Just let me know and say, hey, can we take a quick break, and we'll go off the record and take a quick break. All right?

A. Cool.

Q. Kind of related to what I said earlier, your counsel may make objections for the record at some point during this proceeding. Unless she -- however, unless she instructs you not to answer my question, let her make the objection. I may or may not respond. And then go ahead and answer the question at that point. Okay?

A. Okay.

Q. Cool.

Are you on any medication today that would prevent you from giving your best testimony?

A. No.

Q. Is there any other reason why you can't give your best testimony today?

A. No.

Q. Don't have a cold or a flu or anything?

A. Other than a three-day weekend, everything's fine.

Q. I've got that same problem working for me this morning.

Let me ask you, other than speaking to your attorney

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have you done anything to prepare for this deposition this morning?

A. I went through back -- excuse me. I went back through some of my e-mails from the time period, but there was a lot of things that were frankly verbal, um, leading up to a lot of this very early on. So I -- there's not -- there wasn't a lot of preparation I was able to do, so I had to do some review of some e-mails but that's about it.

Q. Sure. And that's part of the reason that we're taking a deposition today, because a lot of this was verbal and there were meetings and whatnot and I just need to know kind of what happened.

Other than your counsel have you spoke -- did you speak to anybody about your deposition today?

A. No.

Q. Nobody at the company?

A. At Cashman?

Q. Yeah.

A. There's a couple people at Cashman that know I'm here. My supervisor, Joel Larson, and Shane Norman, who you've already deposed I think, so -- but other than that, no.

Q. Shane was the one I was kind of -- did you talk to Shane at all about the substance of what you were coming here to do today, or does he just know that you're here?

A. He just knows I'm here.

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Q. Anything substantive you talked about with anybody at Cashman other than, hey, I've got to go take this deposition? I'm going to this deposition, I'm going to be out of the office for a few hours?

A. Yeah -- no.

Q. Okay. Did you look at -- other than the e-mails we just talked about, did you look at any documents to prepare for this deposition?

A. No.

MR. BOSCHEE: I'm going to mark as the first exhibit, it's the amended, submitted depo notice.

(Exhibit No. 1 marked.)

Q. (BY MR. BOSCHEE) Take a look at this exhibit. This is an amended deposition notice that we sent out, which is why you're here today.

A. Uh-huh.

Q. Do you recall receiving a copy of this?

A. Yes, sir.

Q. Go to page 3.

A. (Witness complying.)

Q. Excluding items three and four, which we'll talk about in just a second, are you -- to the best of your understanding are you the person most knowledgeable from Cashman with respect to items one, two, five, six, seven, and eight? And take a second.

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A. Likely so.
Q. Okay. I'm going to mark the next -- keep that in front of you.
A. Okay.
Q. I have another exhibit that I just received this morning. I'm literally going to ask you one question.
(Exhibit No. 2 marked.)
Q. (BY MR. BOSCHEE) Okay. I don't know that you've actually seen this letter before. You may have.
A. Nope.
Q. Okay. My question to you is, without going back to items three and four in your -- in the deposition notice, relates to insurance policies and insurance claims basically. My understanding from this letter is that you are not the person most knowledgeable from Cashman as to insurance-related issues; is that correct?
A. That is correct.
Q. Just to save us some time because I've now deposed two folks over at Cashman and I don't want to have to keep doing this, do you happen to know off the top of your head who I would need to talk about insurance-related issues, who that person might be?
If you don't know, you don't know. That's fine. I'm just trying to save everybody a little bit of time going forward.

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A. There's one of two people.
Q. Okay.
A. And the only reason I say it's one of two people is we had some turnover. Our previous CFO would have been the person.
Q. Uh-huh.
A. Our new CFO was not present when all this happened.
Q. Okay.
A. So his name is Lee Vanderpool. The president of the company is Mike Pack, and Mike at the end of the day might be the best person to discuss insurance and that kind of --
Q. Mike Pack was the CFO at the time?
A. No, he is president.
Q. Okay.
A. And he has been president throughout.
Q. Who was the CFO at the time?
A. Jim Moore.
Q. Jim Moore.
A. And quite frankly, I'm not sure Jim Moore would be available to be deposed or not because he has terminal cancer.
Q. That would probably be no.
A. Yes.
Q. Okay. I assume -- is that why he left the company?
A. That is.
Q. Okay.

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A. So I'm sorry to just give kind of an obtuse answer, but that's -- that's the situation.
Q. No, that -- that stinks. Okay.
Well, it could be -- it could be something where counsel may pick up the phone and ask a question or two and get to the bottom of this, but I don't want -- I'm certainly not going to drag him in for that.
Okay. But other -- other than the insurance, who we may need to talk to Mike or Lee about, you're good to go on everything else in the depo -- in Exhibit 1 there?
A. Yes, sir.
Q. What is your position with Cashman?
A. I am the sales and rental manager of the power division.
Q. Okay. And how long have you had that position?
A. Six years.
Q. Okay. Did you have a different position with the company prior to that?
A. I was just a sales rep.
Q. Okay. What are your -- as -- as manager of the power division, what are your job responsibilities with that position for the last six years or so?
A. All of our account managers statewide report to me, and basically I'm responsible for growing our sales and rental business.

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Q. Okay. How long have you been employed with Cashman overall?
A. Sorry, I have to think because I left for two years. Overall about 19 years.
Q. Well, walk me through that. You started with Cashman when?
A. '91. Left in '97.
Q. Okay.
A. Came back in '99. Been with them ever since.
Q. What did you do with them from '91 to '97?
A. I was a technician for a good part of the time, and when I left I was a salesperson.
Q. What were your job responsibilities as technician? Walk me through a typical day in the life of a Cashman technician.
A. Okay. We repair anything that we sell, and that's primary Caterpillar products but there -- there's some other products associated with that too. I worked on generators, electrical equipment, engines, some machinery. You know, the idea was to get things running before warranty repairs, startups, those kind of things.
Q. Okay. And that was what you did before you become a sales rep?
A. Yes, sir.
Q. Okay. And when did you kind of transition from tech

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into sales?
A. I believe it was 1995.
Q. Okay. And then when you came back in '99, were you again a sales rep or --
A. I was --
Q. Okay.
A. -- yes.
Q. Okay. And you've had that until about six years ago?
A. Correct.
Q. Which would be 2006, 2007, sometime in there?
A. Yes.
Q. With respect to your current job, does your current job require any of your, I guess, technical background or your background as a technician? Does that come into play with what you do now?
A. Yes.
Q. Okay. How so?
A. What we do is -- the products and services that we sell -- everything is a very technical sale, so it is tremendously helpful to be able to fall back on that background and have an understanding when I have somebody telling me something in the field that they have going on that I -- I have a reasonable knowledge of the challenges that they have and what they need to do to fix them.

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Not to mention, prior to the sale I can have a discussion with architects and engineers and contractors and those kinds of things and talk them through what they're buying, why they're buying it, and what we're going to have to -- what challenges and opportunities we'll face during installation and start-up.
Q. Okay. With respect to specifically the City Hall project -- and that's pretty much what we're going to be talking about today.
A. Uh-huh.
Q. -- do you have a general familiarity with the start-up -- well, your word -- start-up, installation, ah, requirements for -- for what's going on over there right now?
A. Yes.
Q. Okay. And what I'm thinking of specifically are -- there's some codes that counsel and I are still -- still arguing about a little bit with the judge. But there's some codes that are -- as I understand, are required to get things up and running over there. Do you have a familiarity with that?
A. Generally speaking, yes. And the reason I say generally speaking is --
Q. That's fine.
A. -- each municipality has their own rules and regulations. And then sometimes the design engineer has input into that. And so they're not unfortunately universal to every project.
Q. Okay. Well, I guess what I'm -- what I'm wondering, specifically with respect to this project, my understanding is that -- that there is some concerns or some issues with -- with getting this -- at this stage, like tomorrow, getting this stuff started up and installed and running with these codes today. Could you -- could you explain to me what -- if you know, what your concerns are with respect to that?
A. Only to the extent that we (indicating) discussed it on the phone, and there's -- there's two --
MS. ROBINSON: I'm going to object --
Q. (BY MR. BOSCHEE) I don't want to know anything -- I don't want to know anything you discussed with Jennifer. I don't want to know anything that -- any attorney/client communication.
MS. ROBINSON: And I'm going to object to the form of your question. Maybe it's a little vague. If you can rephrase. "Issues," I don't know.
MR. BOSCHEE: I'm sure -- okay. Concern was the real -- was the word I was looking at.
Q. (BY MR. BOSCHEE) You guys have some -- you guys have some codes that are required to, as I understand it, get the stuff over at City Hall up and running, correct?
A. Typically, yes.

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Q. Okay.
A. And I say typically because I have no direct knowledge of the status of the equipment, what's been done, what's not been done --
Q. Right.
A. -- and what they're requiring.
Q. Well, going back in time, assuming -- I don't want to say assuming but -- you guys at some point stopped working on this project for -- because of nonpayment, correct?
A. Correct.
Q. At that point before anything else had happened, you guys had some codes that would have been used to get the stuff started, installed, and running, correct?
A. Codes can have two different definitions.
Q. Tell me what they are. You're the technical guy and I'm not.
A. So there's -- there's -- there's National Electrical Code and fire protection codes.
Q. Sure.
A. And those are -- those are code requirements that are regulations, laws. And then there's codes that are associated with communication protocols that we use for the equipment to be able to talk to each other. So there's -- I'm not sure which codes it is that they're asking about. That's where I'm at. I'm not sure -- I'm not sure what's holding

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this them up at this point. I don't know.
Q. Okay. Well, I'm just thinking out loud here. Both sets of those codes would probably be -- probably pretty handy in terms of getting everything up and running, I would think, wouldn't they?
A. The codes -- the protocols -- the communication protocols for the equipment would be absolutely required. The codes for the fire protection-- it's NFPA, National Fire Protection Association, and the National Electrical Code and Clark County fire code or City of Las Vegas fire code, depending upon which it is, they often vary from job to job.
Q. Okay.
A. So it's hard for me to say if that's what their hold up is, specifically what the hold up is. And what we do -- what would typically happen in a project like this is, once we get to the latter stages of the job, there's meetings between us and the contractor and the inspectors, and the inspectors sort of lay out what specifically they're looking for to meet the codes.
And then a lot of times we have to make adjustments to our bills of materials or specifically how -- we may have an image at the beginning of the job of how we're going to address the codes. What that looks like at the end of the project could be something very different.
Q. Okay.

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A. Does that help?
Q. It does a little bit. I want to talk about the protocol calls specifically, because I think I know what you're talking about with fire codes. And that's kind of a moving target a little bit.
A. Uh-huh.
Q. But the protocol codes, if those aren't -- if those aren't in, the equipment can't kind of communicate with each other. What is the net effect of that? I mean what -- what happens if those codes aren't used at installation?
A. A qualified person might be able to make the equipment work to a certain extent, but they probably wouldn't be able to make it work to its full capability.
Q. Okay. Would there be -- I mean when you say it wouldn't be able to work to its full capability, what are some things that might not -- might not work? Would there be safety concerns?
A. It depends.
Q. Okay.
A. And if the -- one of the things that we talked about -- one of the -- one of the more important functions of this system is to be able to parallel the two generator sets together. If the building load doesn't exceed the capacity of one generator, you could theoretically lock one generator out, use just one generator, and you could bypass a lot of that

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protocol and communications that make the system work.
If the load does exceed the rating of one generator set and you need both generator sets, then you're -- then those codes become absolutely necessary.
Q. Okay. I'm not -- I'm not an engineer or a contractor, per se, but I've been over to City Hall. It's a pretty big project. I mean, fair to say that it's going to -- it at least contemplates both generators being needed over there, doesn't it? I mean it's. . .
A. It was certainly designed that way.
Q. Right.
A. It's -- that would be something the design engineer could tell you better than I could.
Q. Sure.
But when -- when you guys were supplying the equipment, it was certainly contemplated it was going to be -- that both generators were going to be used over there, wasn't it?
A. Yes, but that could be for a different reason. In a lot of cases they'll have two generator sets for redundancy.
Q. Sure.
A. So they won't -- the load doesn't exceed the capacity of both generators -- or excuse me, of one generator. You have the second generator in case the first generator fails.

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Q. Kind of a backup?
A. And -- and -- and -- right. And one generator can still carry the entire building. So -- and that's why I said the design engineer would probably have to have a discussion with you about that because I don't know if they had a -- if they had two generators for capacity or two generators for redundancy.
Q. Okay.
A. Two kind of different things.
Q. That makes sense. And it's a government job so redundancy wouldn't be completely out of the question.
But assuming that -- if it wasn't -- if it wasn't a redundancy situation, if it was actually two generators were required, then those codes are absolutely going to be necessary for them to communicate with each other?
A. That is correct.
Q. We may get back to some of that. I have completely gone afield of my outline of questions, so I'm going to try to get back on track here.
Before the City Hall project, how many times have you worked with Mojave Electric?
A. Oh, boy.
Q. Estimate? I don't want you to have to count them on your fingers.
A. Yeah. Probably a few dozen.

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Q. Okay. How about Whiting-Turner?
A. Indirectly, probably a dozen times. I say indirect because we don't usually deal directly with the general contractor.
Q. Right. Usually deal with --
A. Mojave Electrical.
Q. -- with like --
A. Yes.
Q. Do you have any idea how many accounts you've opened for -- for Mojave off the top of your head?
A. How many --
Q. Shane had -- Shane had an estimate, and I was wondering if you maybe had a little more -- yeah, I mean how many different -- different specific accounts you've opened with -- with Mojave?
A. Oh, you know what. I don't know.
Q. Dozens?
A. Well, I guess depends on how you look at it. Are you talking about physical accounts, or you talking about projects?
Q. Projects?
A. Oh, projects. Yeah, probably -- I'm going to say three dozen.
Q. Okay. You personally worked on a lot of those projects?

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A. Yes.
Q. Prior to this -- and obviously this is a bit of a -- have you ever had any problems with Mojave prior to this incident?
A. The only problem we ever had with Mojave -- and this has been more of a recent thing in the last couple of years -- they've had somewhat of a different definition associated with lien releases. And at times they've asked us to sign lien releases when we still haven't received full payment. And that's -- it seems to be related to one specific person that they hired a couple years ago. And prior to that we never had a problem with Mojave ever.
Q. Okay.
A. Paid like clockwork.
Q. Do you know that person's name off the top of your head?
A. Her first name is Francis.
Q. Okay.
A. I do not know her last name.
Q. You don't even need to tell me anymore.
A. Okay.
Q. I do know her last name.
You guys use conditional lien releases though, don't you?
A. Typically.

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Q. Okay.
A. I mean there's -- there's conditional and there's unconditional.
Q. Sure.
A. So -- but we have -- again, more recently we've had situations where she would hold a check until we signed conditional and/or unconditional releases for unrelated projects, which is very -- well, let's just say it's not consistent --
Q. Okay.
A. -- with industry practice. And -- but to collect money we did what we had to do paperwork wise to satisfy what she was asking for. And this -- quite frankly, this is more of a Shane question than mine. He has more direct knowledge of a lot of that that was going on. But -- but I do know there was some irregularities, and we were really struggling with how to -- how to work through that process.
Q. When you're describing -- and I talked to Shane about something related to this. And I don't -- if this is getting afield of your knowledge, please tell me. But when you're talking about, okay, there's payment due on this project and you've got a lien release for this. And basically you -- what you typically do in the industry is you swap check for a lien release, as I understand; is that right?
A. For the same project?

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Q. For the same project, correct.
A. Yes.
Q. And what I under -- as I understand what you're saying is, okay, that's fine for this project. But then you got a project over here, and they're holding your money on this one as well looking for -- looking for a lien release when you haven't been paid yet. Is that what you're telling me?
A. It appeared from conversations that I had with Shane that that was what they were doing.
Q. Okay. And how often did that happen?
A. It seemed to happen on every job after she got hired.
Q. Okay. I guess the obvious question to me is -- I mean why -- if -- if the payment wasn't made yet, if you guys weren't paid in full, why were you giving unconditional lien releases?
MS. ROBINSON: I'm just going to object. It's going outside his notice for his person most knowledgeable. So are you asking him as the person most knowledgeable of Cashman, or did you already depay -- depose Shane as the person most knowledge on this issue, are you asking him for his own personal knowledge?
MR. BOSCHEE: I'm asking for his own personal knowledge because he brought it up.

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MS. ROBINSON: Right That --
MR. BOSCHEE: I mean that's -- I mean I understand. But Shane -- Shane painted a very different -- I mean not a very different, but Shane said something a little different. I just want to make sure that I understand exactly what -- what this witness is talking about because I just want -- more of a clarification than anything.
Q. (BY MR. BOSCHEE) To the best of your understanding why -- you know why -- why were doing -- why were you guys doing that?
A. To the best of my understanding we had had a long-term relationship with Mojave Electric. We had no history of never not being paid. And so we felt like if that's what we needed to do to accommodate a valuable customer, then -- then we were willing to do that.
Q. Okay. Again, to the best of your understanding, prior to this situation, we'll call it, did you guys ever have a payment problem with Mojave? Have you ever been not paid by Mojave?
A. Never not paid, no.
Q. Okay.
A. Slow sometimes, but never not paid.
Q. Right. Sometimes -- the situation we're talking about, you know, a little bit of slow pay, little bits, but never a non-payment issue, correct?

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A. Correct.
Q. Okay. And again, you're usually one or two steps removed Whiting, but had you ever had this situation with Whiting before, just not getting paid?
A. Not to my knowledge.
Q. Okay. With respect to -- and again the -- the lien releases and the -- and the payment kind of Francis holding the checks, as I understand it, that resulted in a little bit of a slow -- a slowdown effect, but you guys always did get paid for the work that you performed prior to this project, right, as far as you know?
A. As far as I know.
Q. Okay. Now, on this project you guys, as I understand it, contracted directly with a company called CAM Consulting, right?
A. Correct.
Q. And they were -- I mean I always look for the politically correct way to say this, but I mean it's the term used in the industry I think, minority contractor, are you familiar with that?
A. Yes.
Q. That was their role here, correct --
A. Yes.
Q. -- CAM Consulting?
A. Yes.

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Q. Are you familiar generally with the requirements for minority contracts? I mean why did they end up being used in this pro -- in projects like this?
A. That's a broad question, but to --
Q. In your experience?
A. To make it sort of simple, a lot of government projects require a certain amount of equipment and services to be purchased by -- from, excuse me, minority entities. And -- and I don't recall what the percentage was, but I can remember being told early on by -- by -- Peter Fergen is the vice president of Mojave that does a lot of their purchasing and those kinds of things. He told me very early on that we were -- that there was a percentage of the project that had to be purchased by -- from minority entities and their intention was to purchase this equipment through a minority entity.
Q. Okay.
A. So I -- so we -- does that answer your question?
Q. I think so.
You've dealt with minority contractors on other projects, correct?
A. Yes. Not a lot, but yes.
Q. Was this -- was this scenario or was this experience considerably different than your experiences on other projects with minority contractors, obviously other than not getting paid?

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A. The obvious exception?
Q. Other than that how did you like the play, Mrs. Lincoln, but -- yeah, up to that point?
A. You got me with the Mrs. Lincoln.
Q. Sorry.
A. It's okay.
Um, no, I -- I would say in the few instances that we had to do -- I think the only thing that was different is in most cases we dealt with a larger company, as opposed to a very small entity such that CAM was.
Q. Okay. Now, I talked to Shane a lot about the -- the -- kind of credit process and things like that. We'll talk about that very briefly in a few minutes. But as I understand, you worked with -- you were kind of on the ground and worked with CAM kind of directly in terms of the equipment transfer, is that fair, or not really?
A. No, not really. I -- no.
Q. Tell me what was your experience. What did you do with CAM?
A. The only time I actually met Angelo was when we met over at Mojave's office to discuss transacting this deal through them.
Q. Okay.
A. And -- and actually I'm not even sure -- I don't even recall talking to him on the phone after that. It was a

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pretty straightforward discussion. We discussed the finances, the percentage, and came to an agreement, shook hands, and that was pretty much it.

Q. That was that?

A. Yeah.

Q. Okay.

A. In terms of equipment getting to the site, what I would call logistics of the project, everything was transacted directly with the Mojave folks.

Q. Okay. That makes sense.

Did you participate -- when I say "you" I mean you or anybody else at Cashman -- participate in the selection of CAM as the minority contractor here?

A. Yes.

Q. Okay. What -- how so? Walk me through the kind of picking them process, if you will. That was a terrible question but...

A. No, that's okay. I'll do the best I can here.

We had -- originally all of our equipment was going to be purchased through a company called NEDCO, which we had done this with before. And NEDCO's a large company and there's -- you know, there's generally no problems there. But they wanted -- this was a very tight competitive bid job. There was not a lot of money in there to be spiffing (sic) companies for pushing paper through their books. And what

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NEDCO wanted for a percentage was not going to be acceptable.

So we were talking to another group that was just in the process of getting their disadvantaged business license, and they were -- they were experiencing delays getting that done. And Pete contacted me a couple of times and said, you know, what are we doing? Are -- is that group going to work? And you know it didn't seem like it was going to.

And then he called me and said, listen, we had this guy come in. We're using him on a couple other things. Would you like to meet him? Maybe you could work something out with him. So -- and I'm not sure how the meeting was actually arranged. I don't know if he was already there. And -- but I went over there very shortly after the phone call and met Angelo at their office. And Pete introduced us in their conference room, and we sat down and had a discussion.

Q. Okay. And after that discussion you were comfortable using, I guess CAM, but I mean Angelo? After you met him you were comfortable using them going forward?

A. I'm not sure if comfortable is the right word. His documentation was in order. His story seemed legitimate. And by story he talked about being in the Army Rangers, which I guess maybe wasn't even the case. But he'd been wounded and different things, and so he had gotten licensed by this federal office to be a disadvantaged business. And you know seemed like -- certainly I think all of us as Americans want

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to support people who have come back from wars and those kinds of things. So it seemed like somebody that we want to try and do business with. If we have to put money in somebody's pocket, I would rather put money in somebody like that's pocket, rather than you know somebody that maybe doesn't need it quite so much.

Q. Sure.

A. Does that make sense?

Q. Yeah. I think I understand what you're saying.

A. Okay.

Q. And I don't disagree with your rationale on that.

Let me -- you had the meeting, and it's Mojave and you and Angelo. Did you have any conversations -- I know you didn't with Angelo, but did you have any conversations with anybody at Mojave -- okay, Angelo leaves -- kind of, okay, you left the room now I can talk about you behind your back conversation. Did you have any conversations like that with anybody at Mojave about Angelo and CAM and any concerns you might have using them, you personally?

A. No, not really.

Q. Okay.

A. Not -- not -- not relative to concerns. It was basically, okay, he's willing to do it for what we're looking to spend. And so let's go forward, let's get paperwork written up. At that point the job was getting very

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compressed. We needed to get some paperwork going and do some different things or we were going to start missing some milestones.

Q. Okay.

A. So it was -- it was -- we jumped right into, let's get things going.

Q. Time was getting tight at that point?

A. Yes, sir.

Q. Okay. Now, when I talked to Shane he -- he -- he discussed having some concerns about the credit or in his case lack of credit that CAM had. Did you ever have a conversation with Mr. Norman about that?

A. Not specifically, no. I mean understanding was that there was going to be -- and this was something that Pete and I had talked about it -- that there was going to be an exchange of checks pretty -- I mean we understood the fact that -- that Angelo didn't have three quarters of a million dollars to lay out and then wait for payment. We understood that he was going to take payment from Mojave and then turn right around and cut Cashman a check for our portion. So there was -- I don't think there was ever any confusion in -- in that regard. And that was our understanding of what was going to happen.

You know, Shane in his typical process had -- had Angelo fill out a credit app. He also -- I'm pretty sure --

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understood the same, and we moved forward.
Q. I think you answered -- you indirectly answered this, but I just want to clarify. You had never worked with CAM or Angelo Carvalho before? Cashman hadn't before this project, had --
A. We had not, that's correct.
Q. Okay. And again, if you could quantify it, um, disadvantaged businesses, minority contractors, how often do you think you'd worked with them on other projects? I think the word you used was handful but -- less than ten?
A. Definitely less than ten, probably less than five.
Q. Just a couple of times?
A. Yes.
Q. Have you ever encountered anything like this? And I say the "anything like this," a failure to pay by a minority contractor?
A. No.
Q. Okay. Did you -- aside from what you knew or didn't know about CAM, you talked a little bit about Angelo personally. And he told you he was an Army Ranger and things like that. Did you know any -- did you ever know anything else about Angelo Carvalho personally aside from he's working with this company, he's doing this? Did you do any other background check on him or anything like that?
A. With the exception of verifying his status with

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the -- and I'm sorry, I'm forgetting the name of the government entity that he was -- he was sponsored by.
Q. Sure.
A. I -- with the exception of verifying that that letter was legit, had no other knowledge of him.
Q. So basically just to summarize, just so I've got the lay of the land: Time's getting tight. NEDCO wasn't going to work out. You had someone else that was having a hard time getting a disadvantaged status; is that right?
A. That's correct.
Q. Okay. And get a call from Mojave. Say, hey, we worked with this guy on this other project. Why don't you come in and meet him, see if you have a comfort level. You go in, have the one meeting at Mojave's office. Everybody shakes hands. Submit the paperwork. And then you just kind of go forward from there --
A. Yes, sir.
Q. -- correct?
Let's take a look at -- now things start getting -- going south.
(Exhibit No. 3 marked.)
Q. (BY MR. BOSCHEE) I suspect you'll recognize this check. Take a second to look at it.
A. I might be familiar with it.
Q. I assume you've seen this check before?

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A. Yes, sir.
Q. Okay. This is -- you recognize this as the check from CAM for the full 755,893.89, correct?
A. Correct.
Q. And that was, as I understand from documents that have been filed and other things, that was the amount that -- that you guys were owed on this project for the equipment provided, correct?
A. I don't have our invoice in front of me, but I -- it's -- I believe it's correct.
Q. We'll look at those later, but it's close. Okay.
As I understand it, Shane Norman received this check; is that right?
A. Yes.
Q. Okay. Do you have any understanding -- I talked to Shane about his, and you may not know. Do you have any understanding as to why you guys accepted a postdated check from Mr. Carvalho?
A. I -- honestly, no.
Q. Okay. Did he ever communicate anything directly to anybody at Cashman, you or otherwise, other than Shane, any reason why he would need to give you guys a postdated check?
A. No.
Q. Okay. Did you ever have any conversations with Shane Norman about the fact that you guys had accepted a

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postdated check from -- from CAM?
A. No.
Q. Okay. I'm guessing it's not something you typically do, Cashman typically does, accepting postdated checks in situations like this?
A. Not to my knowledge.
Q. Okay. You testified earlier that it was your -- that everybody's understanding kind of was: Mojave's paying CAM, CAM's paying you guys, and that's going to be a fairly, you know, simultaneous process, correct?
A. Correct.
Q. Okay. Did it concern you that this check was dated a handful of days after -- well, let me ask you this: Do you have an understanding as to whether Mojave paid CAM the 755,893? Do you have an understanding as to whether that actually happened?
A. I believe that happened, yes.
Q. Okay. And then --
A. I haven't seen that check, so I -- but I believe it's happened.
Q. Okay. I can get it for you as an exhibit, but I don't think it necessarily matters.
And then CAM gives you guys a check, but it's dated a few days later. Did that give -- would that be something that would cause you -- typically in a situation like this

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cause you concern?
MS. ROBINSON: I'm going to object to incomplete hypothetical, and he already stated he had no knowledge.
MR. BOSCHEE: Well -- okay. I'm saying --
THE WITNESS: I --
MR. BOSCHEE: -- as to this personally but --
THE WITNESS: I was on vacation when this happened --
Q. (BY MR. BOSCHEE) Oh, okay.
A. -- so I didn't know -- I didn't know any of this was even going on until I got back --
Q. Okay.
A. -- a week later.
Q. You get back and there's a stop payment on this check, correct?
A. Welcome back. Yes.
Q. Exactly. Again, thank you for that vacation.
Do you guys have -- I mean -- I say you guys, I keep saying that, I mean Cashman. Do you have a procedure, standard procedure, when a creditor fails to fund like -- as in a situation like this?
A. You know, that's probably a question best asked of Shane.
Q. Okay.
A. I'm not really in the -- I'm not typically involved

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directly in the collections business.
Q. Okay. Well, let me ask you a different way, because I did ask Shane this. Are you aware of any protections that the company has to try to protect itself from something like this happening?
A. Certainly the lien process.
Q. Right.
A. You know, in a lot of cases, situation like this, we would ask for a joint check. And I believe we did. And again, this was Shane's, so I'm -- this is a discussion with Shane, so it's secondhand.
Q. Sure.
A. But my understanding is that he did ask to do a joint check and was told that that was a problem. And I'm not sure he was ever told why it was problem, but they didn't want to do it.
Q. Okay. Were you ever told by anybody why a joint check was a problem?
A. The one time I had a discussion with Pete Fergen about it early on he -- I think he had a concern that a joint check would create a -- what am I looking for -- a potential inconsistency in the process of using a disadvantaged business. He was afraid the paperwork wouldn't look appropriate.
Q. Okay. These --

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A. That was my impression of what he answered.
Q. Sure.
These other jobs that you had worked on with disadvantaged owners, with minority contractors, on those jobs did you receive joint checks, or did it go the process like this where the minority contractor got paid and then paid you?
A. Minority contractor got paid and paid us. We were usually dealing with people of -- of greater financial strength.
Q. But the process --
A. And quite frankly, this was easily the biggest job we had ever done in this process as well.
Q. Right.
A. We were usually working in the 30- to $50,000 range. It was a completely different scale.
Q. Three quarters of a million dollars was a little bit --
A. Correct.
Q. Was the outlier in that?
A. Right.
Q. But the process, the actual process, was the same in the other jobs as it was here where the minority contractor gets paid, then you get paid? Kind of, you know, one check, then another check?
A. Correct.

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Q. Okay. As I understand it, no one else from Cashman ever accompanied Mr. Carvalho to a financial institution or anything like that, it was just Shane that was dealing with him directly, correct? As far as you know?
A. As far as I know.
Q. Now, going back to the joint check question, if you will, you worked on a few dozen projects with Mojave, have you ever gotten a joint check from Mojave on any of those projects? That you can recall?
A. No, not that I can recall.
Q. Okay. And they -- and I understand they wouldn't -- again, Pete Fergen may have said -- but for whatever reason they didn't want to do a joint check on this project, and you guys proceeded anyway, right? I mean it wasn't -- that didn't cause you guys pause in not -- in not finishing -- you know, going forward and giving the lien release, did it?
A. Did it not give us pause? It was certainly not what we would have preferred.
Q. Okay.
A. So to say that it -- it probably did give us a little bit of pause. But you know in -- in my discussions with Shane after the fact, as he said, you know, we don't usually have a problem with $750,000 checks bouncing, it's usually the $3,000 checks that bounce. So it just -- it just really at that point hadn't entered our mind that somebody

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would do something like this.
Q. Okay. We'll get to this in a minute as well but -- you did supply an unconditional lien release in exchange for -- not a joint check, but the check from CAM, correct?
A. I don't know. I wasn't there.
Q. That wasn't you?
A. That wasn't me.
Q. Do you have an understanding as to whether that happened? I mean I don't -- we talked to Shane about this at length but...
A. I don't know.
Q. Okay. In the absence of a joint check, are you aware of any other precautions that you guys undertook at that point?
A. Again, as far as I know the project was liened or prelieved.
Q. Okay.
A. Which, you know, usually is security enough on a government project that you're going to get paid.
Q. Sure.
And a lot of these are -- these are probably going to be pretty quick questions because I talked to Shane about them a little bit, but you may have -- there were a couple things that he wasn't able to identify. He said you might know.

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A. Okay.
Q. Are you familiar with the steps that Cashman has taken subsequent to the two bounced checks to obtain funds from Mr. Carvalho?
A. You know, from a very high level. I know that I personally went and knocked on his door one day. Shane and I both knocked on his door one day. We tried some very direct things to try and physically collect money. Not to threaten the guy, but to you know compel him to pay. And those were obviously unsuccessful.
But other than that when it reached the point of where it was beginning to become apparent that there was something not right, the first thing I did when I got back from vacation is I heard about this, and I sent an e-mail to Pete and I said should we be considering you guys stop payment on his check, because we're -- and -- and he had changed his e-mail address, he changed his phone number. All the information that I had on him from his business card that he gave me in our initial meeting was all invalid.
Q. Just so we're clear, when you say Pete, you mean Pete Fergen?
A. Pete Fergen. Yep.
And so I e-mailed Pete and said, you know, we're trying to reach him. We're not able to reach him. He's not answering his phone. He's not answering his e-mails. Now it

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turned out that he had changed his phone numbers and e-mails and I didn't know that. That's why he wasn't responding. Um, well, I think.
But I did at that point ask Pete, do you guys want to consider stopping payment on your check? And that was -- that was the first thing that came to my mind is if this guy is going to scamper, you know, maybe we can do something real quick to protect Mojave.
Q. Okay.
A. And so -- and I don't know -- we never verbally had a conversation about it, and so I don't know what they talked about internally --
Q. Okay.
A. -- with that. But that was -- I mean it was -- at that point I was still in the mode of it's not too late, let's see if we can do something to protect us both. Mojave had been a tremendous partner to us for years. I didn't want to see them get hurt either.
So -- and at that point that's what it -- it was starting to look like because of this -- you know, this guy was going to skip away with our money and go lay on a beach in Tahiti. So that was -- that was step one.
And then we had some follow-up discussions. Pete got us some updated contact information. And that was when Shane and I started to get sort of aggressive with -- with

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trying to chase him down and collect the money. And it really did -- you know, he told us some stories about being deployed in Afghanistan and coming back in the middle of the night and all kinds of other craziness. And we didn't -- his stories were just plausible enough to be believable that the reason why he was having these delays -- the reason he stopped payment on the check was because we were sending him e-mails concerned about the funding of the check and all kinds of other things.
It was really -- at that point it seemed very plausible that everything was just sort of a honest mistake and as soon as we got him face to face and at a financial institution he would be able to get us a check legitimately, get us paid, and all those other things. And that's what Shane attempted to do by going down to his bank with him with the second check.
Q. Right.
A. And then -- and then he bailed at the last minute, is my understanding. And that was when -- that was when the game was really afoot.
Q. Okay. Other than the e-mail with Pete Fergen, did you have any follow-up conversations with folks at Mojave about, okay, this guy doesn't have any money in his bank account. He's skipped off with the funds. What can we do?
A. I don't recall.

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Q. Okay.
A. I should, but I don't.
Q. Did you have any meetings with anybody at Mojave about this issue?
A. I did not.
Q. Okay. Do you have any understanding -- other than Shane, do you have any understanding as to whether anybody else at Cashman did, had meetings with Mojave?
A. The only meeting we had with Mojave that I recall specifically was -- now Shane was having discussions and those kinds of things, and I'm sure you've got a record of those.

The only other meeting that we had was when we were a good bit of the way down the road and we had told them that we weren't going to perform startup on the equipment and those kinds of things and things were starting to get sort of messy. I sent an e-mail to Brian and to Troy. And I said, you know, we've done a lot of projects together over the years -- and I can't remember the exact words in my e-mail. I'm sure we could find it.

But the gist of it was, we've done a lot of projects over the years, we've had a lot of challenges, and we've always been able to overcome them, can we get a few minutes of your time to sit down and discuss this and see if there's some place we can find some common ground and get this thing moving forward.

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And I mean Troy called me within ten minutes of me hitting the send button on the e-mail. He said, "Absolutely. Come on down. Let's talk about it."

And I went down there with my boss, Joel Larson, and Mike Pack, our president. And we met with Brian Bugney (phonetic) and with Troy Nelson, and we discussed the situation where it was and what we could do to get things moving forward again somehow. And there really wasn't a whole lot of resolution in that meeting. I mean certainly Mojave had their stance and we had ours, and I don't think we really made a lot of progress there.

Q. Well, let's walk through that a little bit. Let's -- I want to follow up on that meeting because -- I may have heard something different about that meeting.

But when you say Mojave had their stance and we had our stance, specifically what do you mean by that?

A. You know, they wanted us to perform startup, and Mike basically told them that we would be glad to perform startup if they would cut us a check for $755,000 we were owed and we would perform startup.

Q. Okay. So at that point Cashman had not performed the startup?

A. That is correct.

Q. Okay. Maybe getting back into the technician days, what was required at that point in time to perform startup, if you recall?

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A. You know, at that stage of the game it was still pretty early on. Mojave would -- to kind of step through at a real high level, Mojave would perform installation, which involves putting the equipment in place, hooking it up, verifying wiring, doing some different things against the schematics that we provided them. It's a pretty straightforward deal from their standpoint.

And then we have -- we have two stages to startup, basically. We have a technician that goes out and verifies that the installation is correct and everything was done correctly. He verifies wiring and -- basically verifies Mojave's work and makes sure that it's done to the factory standard.

And the second part of startup is actually physically starting to energize equipment, make equipment work, activate the electronics, physically start running equipment, setting up controls, adjusting controls, doing different things. And it all -- there's a checklist that we have to do on all the pieces of equipment. And that would be the generators, the switchgear, the transfer switches and the Mitsubishi UPS that are -- that we have checklists from the factories that tell us the things that have to be done.

And we go through those checklists. And it's basically just verifying that everything is operating

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correctly and there's no -- there's no defects in materials of workmanship at that point. And then when we're done performing those checklists, the customer signs a document that they've received the equipment, it's in good running order, and it now has a viable factory warranty.

Q. And those protocol codes that we talked about earlier, about a half hour ago, that's part of that startup process as well, isn't it?

A. That would have been part of that process, yes.
Q. Energizing and all that --
A. Uh-huh.
Q. -- okay.

And that's -- and none of that, the inspection of -- of the installation or the energizing startup, any of that, that hadn't been done when you had the meeting with Mojave, correct?

A. No.
Q. As to the equipment?
A. No.
Q. As I understand it, and correct me if I'm wrong about this, but the equipment was delivered, but before you guys could go back and inspect anything or do any of the startup, you know, the energizing or anything, this -- this check issue happened, and that was pretty much where you guys stopped doing anything, correct?

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A. That is correct.
Q. Okay. Are you familiar -- Shane talked about this a little bit, and I don't know if you're familiar with it or not. But there was -- you guys submitted this to the -- to the bad check department, I understand?
A. Of the District Attorney's office?
Q. Yes.
A. Yes. Correct.
Q. Okay.
A. I'm not sure of the timing of that, but I know Shane was -- that was one of his first things that he, Shane did.
Q. Are you familiar with what's happening in that case? I understand a Grand Jury was apparently called?
A. I testified in front of a Grand Jury. That's the extent of what I know.
Q. Do you know what the proceeding was that you testified at, what stage of the -- of the process that was in?
A. I --
Q. If you don't know, you don't know.
A. I don't know.
Q. Okay. That's fine.
Do you have a general understanding of what's going -- what's happening with that case? Obviously, you testified so...
A. With the exception of my testimony, I have none.

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Q. Okay. Has Mojave participated in that -- in that case at all, to the best of your knowledge?
A. I don't know.
Q. Okay, that's fine.
I want to just get into the project briefly. I'm going to show you -- you're probably not going to know a lot about this document, but I'm going to show it to you anyway.
A. Sure.
(Exhibit No. 4 marked.)
MS. ROBINSON: Can we take a break?
MR. BOSCHEE: Sure. When we come back, we'll talk about Exhibit 4.
(A brief recess was taken.)
MR. BOSCHEE: Back on the record.
Q. (BY MR. BOSCHEE) You understand you're still under oath?
A. Yes, sir.
Q. Okay. Off the record we had a ten-second conversation about Pete Fergen's position with Mojave. Could you tell me what that is?
A. His -- he's a vice president. He manages a lot of their -- he manages most of their larger projects. He does their major product purchasing, handles a lot of logistics, and has several folks work for him that handle the -- that handle the direct logistics for him

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Q. Okay. And he was someone that you dealt with? He's someone at Mojave you personally dealt with a fair amount?
A. For a lot of years, yes.
Q. Right. Okay.
Before we broke I marked CAT application for credit for CAM Consulting as Exhibit 4. You recognize this document?
A. I do.
Q. Did you see this document prior to using CAM on this job? Did you review this document --
A. No.
Q. -- I know Shane did?
A. No.
Q. Okay. But you had an understanding that an Application For Credit was filled out by CAM, correct?
A. I had an understanding, yes.
Q. Because otherwise if they didn't you wouldn't have been able to use them on -- use them going forward, could you?
A. Right. Even the fact that it wasn't necessarily the understanding that it was going to be a credit transaction, so to speak, we weren't extending them 30-day terms -- even when we deal with somebody on a cash basis, we have them fill out these applications so we have their pertinent information and they sign, you know, that they're going to comply with our terms and conditions and those kinds of things.
Q. Yeah, you anticipated my next question, which is,

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even though this was a cash transaction, you're still going to have a minority contractor in a situation like this fill out the credit application so that you've got the information --
A. Yes --
Q. -- correct?
A. -- sir.
Q. Okay. And in this case, they filled out -- as I understand the process, they fill out the Application For Credit and then there's the -- the invoicing starts taking place from you to them, correct? I mean, there's nothing -- there's nothing in between that is there?
A. I --
Q. As far as --
A. You know, honestly I'm not sure. Ordinarily there is a process of, you know, checking trade references and those kinds of things. And I'm honestly not sure if Shane did that in this case or not, understanding that it was going to be sort of a check exchange. So I don't know the answer to that.
Q. Okay. And we did talk to Shane about that. I don't think it necessarily matters for what we're talking about. But I guess what I'm asking is: There wasn't -- there isn't some other document that transpires between the credit application and the beginning of invoicing that I just haven't seen, is there, between you and CAM?
A. That -- a purchase order.

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Q. Right.
A. Right. That's it.
Q. Let's go to the first invoice or an invoice.
(Exhibit No. 5 marked.)
Q. (BY MR. BOSCHEE) These are -- Exhibit 5, take a look at them -- are some invoices that I'm guessing are going to look familiar to you I hope.
A. Yes.
Q. Okay. Followed up with -- we've got the Bill of Lading in the back?
A. Bill of Lading.
Q. I assume you are familiar with these documents?
A. Yes.
Q. Now, just to be clear about something, did -- to the best of your understanding, Cashman ever enter any contract directly with Mojave on this project?
A. I don't know how to answer that question. And the reason I say that is because the purchase order was a Mojave Electric purchase order. It was on their letterhead. And I believe the line said, Care of CAM Consulting or something --
Q. Okay.
A. -- along those lines. So I guess I'm not sure how to answer that.
Q. Well, let me ask you -- let me ask you a better question: There's no -- there's no signed written contract

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between Cashman and Mojave that I just haven't seen for this project, is there?
A. With the exception of that purchase order that --
Q. The purchase order, right.
A. No.
Q. As a part of -- of the overall -- of the overall agreement between CAM, Cashman, and Mojave, could you just tell me generally what was the scope of work that Cashman was going to perform on this project, kind of start to finish?
A. Okay. We would take the purchase order and provide what we call submittals, which is basically a technical description of the equipment we proposed to provide. And we provide those submittals to Mojave Electric, and they provide those to Whiting-Turner, who in turn provides them to the architects and engineers that design the building.
And basically everybody just reviews everybody's scope of work and what they're proposing to use to make sure it meets with their specifications and requirements. And I don't know the specific details relative to this because I'm not the person that directly reviews those anymore. But I believe there was a few questions relative to some of our equipment that the engineers came back with, but there was nothing -- they were all of a very minor nature. And -- and I believe we addressed those questions.
And we received a release from Mojave Electric to go

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ahead -- the release basically signals us, go ahead and order the equipment. So we went ahead and ordered equipment. The equipment gets built, produced, modified in some cases, and then delivered to the site. And that's the Bills of Lading --
Q. Sure.
A. -- that are on here. And we delivered the generators and the transfer switches, the paralleling gear and the UPS to the site, coordinating with -- I believe Chris Meyers is the project manager on this job for Mojave. And we -- our project manager handled all the logistics with Chris, getting everything to the site when they needed it, where they needed it.
Mojave unloads the equipment, installs the equipment, as we discussed earlier.
Q. Right.
A. When the equipment's all installed, they call us out to perform startup. And I kind of outlined that process as well. And at the end of all of that when the successful startup is completed, we complete the paperwork that we submit to Caterpillar and Mitsubishi that states that the startup was completed by a factory-certified technician, everything conforms to their requirements as far as the installation goes, and we're good to start the warranty at that time on all both those pieces of -- or three of those pieces of equipment.

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Q. Okay.
A. That's pretty much it. I -- as I said earlier, some of the, I guess what I would call fine-tuning of the project, how they're going to comply with the fire department as far as alarms and their fire command room and some different things, a lot of that stuff is somewhat of a fluid situation. And when we get to the end -- we have an idea at the beginning how we're going to address that, but sometimes what we plan on doing at the beginning is not exactly what happens at the end.
And so we -- we, you know, typically participate in some meetings. We discuss how we intend to address whatever it is they're asking for. And then we go through the process of doing that. It's usually not a tremendously big deal.
Q. That was very thorough. It was a good answer to my very vague question.
We discussed earlier the scope and you just discussed the scope involved the installation of the st -- the startup primarily of a lot of this equipment down the line a little bit. And that never happened, correct, because of the check?
A. Right.
Q. Right.
A. We put an all stop to everything.
Q. Sure.
Now, looking at this exhibit -- looking at the Bill

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of Lading first -- Bills of Lading, you see at the top there it says -- the date on there is 1/17/11. Does that comport generally with your recollection of when most of this equipment was delivered? January, early February of 2011?

A. Without having my calendar in front of me it seems right.

Q. Okay. The reason I ask -- and then we'll move on to the next -- because the first two invoices which constitute, you know, the majority -- it's actually the first three pages of this exhibit, you've got the first invoice there for 598,936.26?

A. Uh-huh.

Q. And then the 156,627.92. And they're both dated February of 2011, February 1st of 2011. Again, does that comport generally with your understanding of when this equipment was delivered to the site?

A. The February 1st date or the January 17th?

Q. Well, either one. I mean I guess -- let me ask you a better question.

A. Because we have two different things here.

Q. Sure.

A. The January 17th I'm going to say is probably the date that the equipment left the factory, and then the February 1st date is probably pretty close to when the stuff actually arrived on the site.

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Q. Okay.

A. Does that make sense?

Q. Yeah, and that's what I was going to ask you?

A. Okay.

Q. The Bill of Lading is probably when the stuff leaves. And then sometime before February 1st is when the equipment arrives on the site, because then you send the invoice out because the equipment's been delivered --

A. That is correct.

Q. -- correct?

Okay. So that's most of it, it looks like. And then I've got another one that's the fourth page in. It looks like some miscellaneous lugs essentially were -- were delivered for $329.71, it looks like March 25, 2011. Do you have a specific recollection of that?

A. I have no idea.

Q. Okay. But per your understanding, almost all of the equipment, other than maybe these lugs, all of that stuff was delivered to the site a little bit before February 1st, 2011; is that right?

A. Yes.

Q. Okay. Sitting here -- and if you add -- I'll represent to you if you add the three invoices up -- we talked about this earlier. I did the math, and I'm not very good at this, but I'm guess -- it comes out to 755,893.89. Do you

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have an understanding of whether Cashman delivered any materials or did any additional work on -- on the City Hall project after the -- you know, after March of 2011?

A. The only thing that I know of is we have a -- we have a factory project manager for paralleling gear specifically who visited the site sometime after this, just to review the installation and those kinds of things. And I don't remember the specific date.

Q. When you say after this?

A. Right.

Q. Is that after the installation or after delivery?

A. After delivery.

Q. Okay. Would it have been shortly after the delivery?

A. Pretty shortly.

Q. I'll introduce another exhibit. This might help.

(Exhibit No. 6 marked.)

Q. (BY MR. BOSCHEE) Exhibit 6, I will represent is -- is what appear would be my client's daily log.

A. Okay.

Q. Okay. This is the last -- if you take a look -- and we've got some -- we've got some dates on here. And it's got, (as read): Description of work performed. It's kind of hard to read. And this goes into -- this is that right -- this is between, if you look at the dates, January 20th, January 21st,

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after the Bill of Lading, but before the invoice.

January 21st, this is the last record that my client has of Cashman actually being onsite. Do you have any understanding or documentation that Cashman was onsite after this, after January 21st?

A. I don't because that gentleman doesn't work for Cashman, he works for the factory.

Q. Okay.

A. So I -- and I couldn't tell you what the date was. I couldn't tell you what the date was.

Q. Okay.

MS. ROBINSON: Can you clarify who you mean by "my client"?

MR. BOSCHEE: Oh, I'm sorry.

MS. ROBINSON: Who you're identifying, because you have so many.

MR. BOSCHEE: I understand.

You've got -- what you've got here is a -- is a Whiting-Turner document. I believe this was actually filled out by Mojave.

MS. ROBINSON: Oh.

MR. BOSCHEE: By the subcontractor. And the reason I say that is because it's a Subcontractor's Daily Log, and it says, (as read): Trade, Mojave.

Q. (BY MR. BOSCHEE) So someone from the factory came

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out in the -- you know, shortly after delivery of the stuff to inspect it, but you don't have any knowledge or documentation that anybody from Cashman was actually onsite or delivered any materials after January 21st of 2011, do you?

A. Not to my knowledge.

Q. Okay. Do you have any -- again, there's the factory person that came out -- I understand the factory person is not a Cashman employee, correct?

A. That is correct.

Q. Okay. Do you have any -- any record or knowledge of any work that Cashman performed after January 21st of 2011?

A. I don't.

Q. Kind of what I'm getting at is, we talked about the fact that there was a bunch of stuff that was going to happen, but then the check incident happened so you guys never got to the inspection and then the -- the startup. So after delivery of this stuff, January 20th and 21st, you guys were done, you guys didn't do any other work on this project, correct?

A. Right. At that point we're in a wait mode for Mojave to contact us and let us know they want us out to the site.

Q. Sure.

And then the -- the check unfortunateness happens and then that was that?

A. Right.

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Q. So the scope of work that we talked about earlier that include the startup and everything, there's no -- we're not -- we don't have any dispute between us, you guys didn't complete the scope of work that you had originally agreed to do, correct?

A. Correct.

Q. Because you didn't get paid?

A. Right.

Q. Right. Okay.

And the work that was left to be completed, just so I've got this clear in my mind, was you guys were going to go out inspect the installation that Mojave and/or whoever had done with the equipment and then perform the startup, correct?

A. Correct.

Q. And that was going to involve those protocol codes that we talked about earlier, correct?

A. That would involve -- that would be part of it, yes.

Q. Okay. Did you guys receive -- do you recall receiving a demand from Mojave to complete the work -- to complete your scope of work? Does that ring a bell?

A. I'm not sure about a demand. I got an e-mail asking.

Q. Let's start there.

A. Yeah. I got an e-mail asking and -- and I, you know -- from Pete Fergen.

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Q. Okay.

A. And I said, you know, we're not in a position to be able to do that. We got to work this money thing out first and then we'll be out.

Q. Sure.

Was that e-mail before or after you had the meeting with Brian and Troy?

A. Before.

Q. Okay. So Pete sends you an e-mail saying, hey, you know got this problem, but we really need you to come out and get the inspection and startup done. You say, no, you know this money issue is a big deal. And then sometime after that you send an e-mail to Troy. Troy calls you up. You guys go and have a meeting, but that doesn't resolve it either, correct?

A. Correct.

Q. Okay. And just so I understand, the reason you guys -- when I say "you guys," you being part of the decision-making process, I'm assuming, did not do the inspection and startup is because you didn't get paid, correct?

A. Correct.

Q. Were there any other issues that you -- I mean -- and again, you know, other issues besides the $755,000 you -- but were there any other issues or reasons that you wouldn't

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have gone out and done the inspection or the startup?

A. No.

Q. Did you receive any complaints from Mojave about the quality or functioning of the materials that were provided?

A. No.

Q. Okay. Do you recall anybody at Mojave ever requesting repair of any of the equipment that was provided? Does that ring a bell?

A. No.

Q. You personally didn't -- don't have knowledge of that?

A. Don't recall that.

Q. Then obviously the follow-up of that would be: You don't recall ever actually going out and repairing any of the equipment out at the job site, do you?

A. No.

Q. Okay. Because again, January 21st that's -- you guys haven't gone back out there to do any inspection, installation, or repair any other work out there, have you?

A. Not to my knowledge.

Q. Okay. Do you have an understanding -- did anybody at Mojave communicate to you they were going to try to hire some folks, other contractors, to complete your work?

A. Yes.

Q. Who communicated that to you?

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A. Pete Fergen.
Q. What did Pete tell you?
A. He said first he was going to contact some neighboring CAT dealers to see if they could get one of them to do it. And then -- and that was sort of the end of our conversation in that regard because it -- because the understanding is that only an authorized Caterpillar dealer can start this equipment up.
Q. Okay.
A. So I -- when -- when we started hearing rumors that maybe there was an independent company out there starting it up, I was not aware that they we're looking at hiring an independent.
Q. Okay. When you are talking to Pete and had the meeting with Brian and Troy -- I want to be -- I want to be clear about this so I -- so I know. There was no dispute that you guys weren't -- that you weren't paid, that CAM's check bounced. Why were they asking you -- or what were they communicating to you that they want -- as a reason to go out there and finish the job?
A. You know, our discussions at that point were basically it needs to be done.
Q. Okay.
A. They have obligations to Whiting-Turner. Whiting-Turner has obligations to the owner. And they -- you know, it

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needed to be done.
Q. Okay. During those meetings, those communications, did they articulate to you that, well, we did pay. We paid CAM, so the work needs to get done and you guys need to figure out what to do with CAM? Was part of the rationale, if you will?
A. I'm not sure if that was specifically spoken --
Q. Okay.
A. -- but I -- that was certainly the implication.
Q. Okay. And sitting here right now -- again we talked about this earlier -- but you don't -- you don't have any -- you don't dispute that Mojave paid CAM, do you?
A. I -- without having direct knowledge of it, I don't necessarily dispute it.
Q. Okay. And we talked earlier, you didn't actually do the exchange, but there was an unconditional lien release provided for this work, correct?
A. I -- it looks like you have it there so I'm --
Q. I do. I'm going to show it to you.
A. I've never -- I've not seen it.
Q. You've never seen it?
A. I have not.
Q. Okay.
A. I don't -- that's a Shane Norman -- that's his department and their function that takes care of that.

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Q. Understand. And I'm not going to have you look at a document that you haven't seen.
Were you -- did you play any part in -- in the lien process in terms of getting the process started or anything else, or was that all Shane?
A. Pretty much all Shane. The only thing -- the only part of that process that our department has is we provide the customer with a form to fill out with the prelien information so we have all the interested parties' information and those kinds of thing. Other than that, I -- after that, it's pretty much Shane's department's --
Q. Okay.
A. -- rodeo.
Q. Okay. The lien's dated April 26th, 2011 and signed under a notary. Do you have any reason to dispute that date as the lien date? I mean does that comport with your understanding of when you guys lienied the project -- or I mean --
MS. ROBINSON: I'm going to --
Q. (BY MR. BOSCHEE) -- gave the lease -- gave the release? Because we're going to look at the Right to Lien in a second.
A. I guess I have no comment.
Q. Okay.
A. I don't know.

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Q. You just don't know?
A. Right.
Q. Okay. Well, let's take a look. Maybe you don't -- maybe you don't know this, I've got a Notice of Right to Lien. Have you ever seen that document before?
A. I have not.
Q. Did you provide any equipment -- any equipment? You did provide equipment.
Did you provide the information with respect to getting that process started, the Right to Lien?
A. Again --
MS. ROBINSON: I object, he -- asked and answered.
MR. BOSCHEE: Well, he said he --
Q. (BY MR. BOSCHEE) He (sic) said that your company provided some information with respect to the release and -- and the lien itself. The prelien information --
A. Right.
Q. -- like what did you -- what did you provide in terms of the prelien?
A. The prelien is essentially -- I haven't seen the form in a while, to tell you the truth. But the last time I saw it, it's basically a list of the interested contractors on the job, the owner, names, addresses, contacts. There's really not much else to it.
Q. And you didn't -- you've never actually seen the --

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the Notice of Right to Lien for -- with respect to this project, have you?
A. I have not.
Q. Well, then I'm not going to ask you about it.
Have you ever seen the lien, the actual Notice of Lien for this project?
A. I have not.
Q. Did you participate in any way, shape, or form with putting that document together?
A. Again, with the exception of the prelien process, no.
Q. Okay. This document -- this Notice of Lien is dated June 21st, 2011, signed byShane Norman. Do you have any reason to -- and it looks like it was recorded on -- the next day, June 22nd, 201 by Ms. Robinson. Do you have any reason to doubt that that's the date the lien was recorded? Any reason to dispute that?
A. No.
Q. Okay. Follow-up question, I'm going back again off my own line: Do you have an understanding as to why you guys didn't give a conditional lien release with respect to the 755,000, as opposed to an unconditional lien release?
A. I don't.
MS. ROBINSON: Objection, asked and answered.
Q. (BY MR. BOSCHEE) Or was that a -- was that a -- was

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that a decision you were part of?
A. Again, I was on vacation.
Q. Okay.
A. So that was a Shane decision.
Q. Okay. You were completely out of the loop on that?
A. That is correct.
Q. On the other projects you had worked on or that you were a part of with the disadvantaged business owners or minority contractors where the check was cut and then the next check was cut to you guys, did you provide unconditional lien releases on those projects, if you know?
A. If we liened the project, at some point we would have had to provide an unconditional release to close out the job.
Q. Okay.
A. So logic says yes, we have. I'm not -- I don't see them very often.
Q. Right.
Let me -- let me ask you another way. On those other projects -- we talked about the process, right. There's -- the minority contractor gets a check and then they cut a check to you guys, correct?
A. (Witness nodding.)
Q. Do you have an understanding as to whether a conditional release was given upon the first check being cut

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and then an unconditional release being given once the minority contractor's check cleared your financial institution, or was it just, it got paid, here's the unconditional release, if you know?
A. I don't know. That's a Shane question. Sorry.
Q. Okay, yeah. And I think we did ask Shane that question, but anyway.
MS. BRISCOE: He said you would know.
MR. BOSCHEE: He did say you would know.
MS. ROBINSON: I don't recall that actually.
MR. BOSCHEE: He did. Well, I've got his transcript here.
Q. (BY MR. BOSCHEE) But he said you might know that.
A. That's -- that's typically his.
I -- i can tell you, if you take the minority contractor out of it --
Q. Yeah.
A. -- if we're dealing directly with a contractor, ordinarily the conditional release is provided upon -- we usually get paid in stages on a job like this, and they'll hold what's called a retention. And we'll get -- we'll sign a conditional release on the payment -- the majority payment, and we won't provide the unconditional until the retention is paid.
Q. Until the thing's paid in full?

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A. Right.
Q. But in this case, the 755 was -- was the entirety of -- was essentially the entirety of the payment --
A. It's -- yeah --
Q. -- per the invoice?
A. I'm trusting your math.
Q. Right. Don't make that mistake the second time but -- but it is, that's the correct number.
Is that -- and that would -- given that there's no necessary retention at that point going forward, would that be -- that would be a typical reason -- you don't know specifically as to this project, but that would typically be a reason to give the unconditional instead of the conditional, because there's no retention to hold back?
A. Correct.
Q. Okay.
A. That would make sense.
Q. Do you have any knowledge of a claim made to Whiting-Turner with respect to this amount owed?
A. I don't.
Q. You don't. That was again -- that was a Shane issue completely?
A. Yeah. Yep.
Q. So sitting here right now you're not -- you're not familiar with the 90-day -- what's typically termed the 90-day

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notice to the general contractor, with respect to this?
A. That was something that Shane was working with Mike on, and I -- frankly I'm not -- I wasn't involved.
Q. Okay. That would be something -- if -- if there was something that Shane didn't know in his deposition about that that would be something I would need to talk to Mike about?
A. Mike Paek.
Q. The president?
A. The president of our company.
Q. Okay.
A. I guess so, yes.
Q. Okay. Sitting here right now are -- and this is the only -- I'll represent this is -- this is a document disclosed because I -- I don't have any other ones.
Are you aware of any -- of any other notices that were sent to Whiting-Turner, other than perhaps this 90-day notice? I mean did you personally communicate anything to Whiting-Turner, i.e., we didn't get paid. You know, we're going to make a claim on your bond. Anything like that?
A. I did not.
Q. Okay. That again would have been Shane and Mike, theoretically, or Mike?
A. Yes, I -- for want of a -- I'm not sure.
Q. Okay. The 90-day notice that was provided to Whiting-Turner is again -- it's at that same -- this one is

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June 24th, 2011. Do you have -- sitting here right now, do you have any knowledge or information as to -- as to any notices that were provided to Whiting-Turner prior to that?
A. No, I don't.
Q. Okay. Do you sitting here right now have any knowledge of any notices that were provided to any surety companies, Whiting or Mojave's, at any point during this process?
A. No direct knowledge.
Q. Okay. And who -- if anybody had that direct knowledge would it be Shane or Mike?
A. Yes.
Q. I want to go back to the initial meeting and -- the meeting with Angelo and you and Mojave. Specifically to the best you can recall, what did -- and was that -- was that with Pete or was it with Troy or Brian?
A. It was with Peter.
Q. Okay. Specifically, what did Pete tell you about their relationship or their working relationship on the other projects with CAM Consulting?
A. Almost nothing.
Q. Okay.
A. He basically just introduced us and said that we've been -- we've had -- he -- I think he said something to the effect of, we're working with him on some other things. Seems

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like a really straight up guy. Can probably get us where we need to go on this project.
Q. Okay.
A. I'm paraphrasing, but I -- pretty close.
Q. I understand. And it's been awhile, so remember specific words in a conversation is difficult. I get that.
But during that conversation that kind of led you to the meeting with them, did he articulate that they had any kind of a special working relationship or that they had a personal relationship with Angelo Carvalho, other than just working on some projects with him?
A. No.
Q. Now, Cashman -- you guys -- Cashman has also brought a claim in this case for fraudulent transfer against Mojave. Are you familiar with that?
A. I'm not.
Q. You're not?
A. No.
Q. Okay. So asking you about the factual basis for that is probably -- probably something you're not going to know about.
Let me ask you this: To the extent that any investigation was performed after the fact, after the check didn't clear, as to other business dealings between Mojave and CAM Consulting, would you have been involved in that?

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A. The only knowledge I had of any sort of prior relationship between Mojave and CAM was when we got -- when we subpoenaed CAM's financial records and bank statements and there were payments made to Mojave that appeared to be for transactions prior to this one. But that's the extent of what I know.
Q. Okay. Did you -- after you got those bank statements, did you perform any follow-up investigation beyond that as to the other jobs or what the source of those payments would be?
A. No. And when we sat in that meeting with Brian and Troy, you know Mike mentioned those transactions specifically. I think sort of -- he didn't want to -- I'm not sure why he didn't want to ask directly. But he didn't want to ask directly about them. But he did mention those transactions. And Brian and Troy pretty much just didn't acknowledge one way or the other their knowledge of those transactions.
Q. I got to follow up on that because I don't -- when you say they didn't acknowledge one way or another, I mean -- let me -- let me see if I understand this. What specifically did Mike ask them about those other payments?
A. I believe Mike said something to the effect of that -- you know, the transactions we see on here, we see a couple of payments to Mojave for -- and they were large dollar amounts.

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Q. Uh-huh.
A. And Brian and Troy basically just didn't say anything.
Q. They didn't deny them? They didn't tell -- say they were for another job? They didn't say anything?
A. They didn't acknowledge.
Q. Did they just sit there silently and not say anything about that question? It's a pretty loaded question. I mean I -- they didn't say a word?
A. They did not say a word.
Q. Did either of them say, well, we're just not going to talk about that or we're just not going to address that, that's apples and oranges, or I mean they literally didn't say anything?
A. They did not acknowledge it.
Q. I'm just imagining Troy Nelson sitting in a room not saying anything upon a question like that. I'm having a hard time reconciling that but. . .
A. He's not the kind of guy to hold back on something. And that was why it was sort of noteworthy. That's why I remember it specifically is -- you know, Troy's not -- well, you know him. He's -- he's not a -- he's not somebody who's not a forthcoming person. And that was -- that's why it sticks in my mind, because it was so out of character.
Q. Well, did you or Mike follow up with any questions

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about those checks after the non-response?
A. No. We moved on to talking about other things relative specifically to this project.
Q. Like what?
A. How do we go forward?
Q. And at that point you reached an impasse because there was no way to go forward?
A. That is correct.
Q. You guys, as I understand it -- as I understand the topic, Mojave wants you to go forward because it needs to get done. You guys aren't going to go forward do the ins -- or do the checklist and then do the startup, provide the codes, because you weren't paid, correct?
A. Correct.
Q. Okay. You're a tech guy, so I'm going to ask you a little bit of a technical question. And we're still arguing about this with the judge a little bit but. . .
If Cashman has to go in and provide those protocol codes at this stage in the game, does that -- what concerns would you have about doing that today?
A. Concerns? None from a technical standpoint.
Q. Okay.
A. I mean there's no physical reason why we wouldn't be able to do that. It's just -- it's proprietary information. It's privileged and --

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Q. You haven't been paid?
A. Correct.
Q. Okay. But from an actual just going in there and putting the codes in and getting the stuff communicating, like physically there's no real issue there, you just don't want to do it because you haven't gotten paid, right?
A. That is correct.
MR. BRISCOE: Let me take two minutes, review my notes, and we might be able to get you out of here pretty quick.
THE WITNESS: Okay.
(A brief recess was taken.)
MR. BOSCHEE: Back on the record. We'll be quick.
THE WITNESS: No problem. I appreciate it.
Q. (BY MR. BOSCHEE) You understand you're still under oath?
A. Yes, sir.
Q. Factory guy came out and inspected the site at some point. You don't know -- we don't have dates, that's fine. Did he ever provide you a report that you recall?
A. Not us.
Q. Okay. Who did he provide it to?
A. Back to the factory.
Q. Okay. Did you ever have a conversation with the factory guy about what he saw out there or anything like that?

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A. Had a conversation with him, it was -- you know, it was basically, the equipment is installed. It looks like it's being installed correctly. But that was -- it was still very early --
Q. Right.
A. -- stages, so there wasn't anything really done yet. It was more -- honestly, I think he wanted a weekend in Vegas. So -- I hate to say it but. . .
Q. I can't hate him for that.
But it was early on in the process. He just went out, looked at it, said things are going smoothly, chow?
A. Right.
Q. When you talked to Pete initially about CAM and he said they were working on other jobs with CAM, did he tell you what other jobs they were working on with him?
A. He did not.
Q. Okay. But you knew that they were working -- you knew that Pete was working on at least a couple other jobs with CAM before that meeting, right?
A. Yes.
Q. The meeting -- the one meeting with all three of them?
A. Right. Yes.
Q. Okay. And did he articulate any problems that they had had with CAM on any other projects?

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A. No, he did not.
Q. Did he talk about any -- any money that was due and owing on those other jobs during that meeting?
A. We did not even -- didn't have that in depth of a discussion.
Q. Didn't get to that. Okay.
We talked about the fact that you haven't seen the prelien notice and you haven't even seen the lien, per se, but one thing that Shane did identify you as knowing is, who's going to figure out the amount of the mechanic's lien. Would that be you or would that be someone else at Cashman that would determine the amount that Cashman's going to lien for?
A. It would be probably somewhat of a joint discussion.
Q. Okay.
A. Certainly myself and the account manager on the job have the most direct knowledge of what work -- what costs go into the total makeup of the job, if that's -- I think that's what you're asking.
Q. Well, I am, and that's why -- I guess what I'm getting at it is, okay, we've got a $755,893.89 lien on this project. Did you participate in coming to that number?
A. Yes.
Q. Who else participated in coming to that number?
A. My account manager.
Q. And so who did you provide that number to? I mean

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obviously you didn't see the lien, you didn't see the prelien, but the information was provided to somebody. Who did you provide that to?
A. Within Cashman?
Q. Yeah. Right.
A. In other words, for them to be able to generate that paper?
Q. Right.
A. Shane.
Q. Oh.
A. And I'm going to guess that he just did it off the invoice --
Q. Okay.
A. -- or invoices.
Q. Sure.
But you were involved in coming up with the number?
A. Yes, sir.
Q. Okay. Let's say a 755,893.89 bowl of gold coins fell in your lap today and you were able to go out and complete the project, get the inspection and the startup done. How much time would that take?
A. Difficult to say without having a knowledge of the condition of the site. Now, I'm assuming that it's pretty late in the construction stages. So assuming that everything is -- the table is set, so to speak --

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Q. Uh-huh.
A. -- and everything is ready and everything that Mojave did was done correctly and all those other things, you know, a typical time frame for a project like this would be two weeks.
Q. Okay.
A. Maybe three.
Q. Two to three weeks.
Would that be the same as had -- I mean, let's say CAM's doesn't -- let's say he's got sufficient funds back in the day and you guys had gone out and done the inspection when -- when Mojave called, and the startup. Would that time frame be the same at that point as it is now, or would it take a little longer or shorter?
A. Hard to say. Likely longer, only because -- if you've ever been on a construction site, it's kind of a mad house. And there's people running all over the place and doing different things and everything gets sort of fragmented. And there's probably -- there probably would have been days in there where we would not be able to get our work done.
So we would say, you know something, where you are with your situation, we can't get any work done today so we're not going to have a technician out there. So if the -- the time -- the total time frame should be the same. Well, I shouldn't say that. The net time frame would be the same.

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The total would probably be something longer, maybe four weeks.
Q. Sure.
We're kind of talking about the same thing. If it would take you 14 days, and right now you could do it 14 consecutive days, back a -- you know, a year ago it would have maybe taken you 14 days with breaks?
A. Correct.
Q. Okay. How much expense would -- would -- ballpark would Cashman incur on that process?
A. You know, it depends a lot on how much is done correctly at the site.
Q. Right.
A. It can vary pretty widely. I -- man, I don't recall how much we had in there for startup.
Q. Okay.
A. I mean we can take a literal sense of it and -- two guys for 14 days and do the math at $110 an hour --
Q. Sure.
A. -- and come up with a number. But that's just the -- that's just the man hours. It doesn't count if we had to purchase any materials or anything. So I don't -- I don't think I can answer that accurately.
Q. So you don't know what the hard cost would be because it would depend on whether everything was installed

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correctly?
A. And -- right.
Q. And then rest of it would be man hours. And then it's just a question of two people, 14 days, X amount per hour, figuring that math out?
A. Right. And then -- and then as we discussed earlier, the last part of that is working out the final details. How are -- how is the communication with the building going to work, how is the communication with fire command going to work, those kinds of things that get hammered out in the latter stages of the process. So there could be a variance there in cost as well.
Q. Okay. Well, how -- when you say a variance in cost, I mean how much variance are we talking about there? I mean ballpark? It doesn't seem like a lot, but I -- you know.
A. Well, you know, it depends --
Q. Yeah.
A. -- if -- if they want some high-level communications at a digital level, I mean that's a 5-, $6,000 process.
Q. Okay. Not a high cost relative to what we're talking about in this case?
A. Relative to three quarters of a million dollars not high.
Q. Well, 5-, $6,000, not insignificant either?
A. Right.

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Q. So I mean you would have to come out-of-pocket for -- okay.
Just specifically talking about the installation of the protocol codes, how much time is that going to take? If it has to happen? If it. . .
A. You know I really can't answer. And the reason I can't answer is when I was a technician, we didn't have all these digital communications. So I can tell you that we have to go all the way back to the beginning. It's not something you can pick up in the middle and do just that. We have to go back to the very beginning and start from ground zero and work through the checklist process that Caterpillar gives us to get to that point where we start getting things communicating with each other.
Q. Okay. And to go back from the beginning and go through the checklist, how -- I mean, approximately how long is that going to take?
A. That's 14 days.
Q. That's 14 days?
A. Yep.
Q. Well, so what you're saying is you can't -- as I understand this, you can't install the protocol codes without doing the whole startup?
A. Correct.
Q. Okay.

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A. Whatever has been done out there, and I don't know what has or has not been done, is -- is -- how do I say this -- is inconsequential. It doesn't make any difference what they did or didn't do. From Caterpillar and Mitsubishi's on the UPS side's standpoint, none of that work was done by a factory-authorized rep. So all of that has to be done by a factory-authorized rep. So -- and because our folks don't know what was done or what was not done you can't -- you can't try and pick up somebody else's work in the middle. They're going to have to start from the beginning and go all the way through the process.
Q. Okay.
A. And if that doesn't happen -- well, two things could happen. Number one, it could be done incorrectly. A step could be missed, and that could be expensive. The second part is there won't be a viable warranty on any of the products until that is done.
Q. Okay. Sitting here right now though, you don't know whether a factory-authorized representative has been out there and done any of that work, do you?
A. I'm relatively sure that that has not happened.
Q. Based on?
A. Based on discussions we had with Mitsubishi as far as them dispatching somebody. They were not going to dispatch anybody without our knowledge. And they say that they

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haven't.
Q. Okay.
A. And as far as Caterpillar goes our -- we've had -- we have very specific what we call sales and service agreements with Caterpillar. And if another dealer is going to come in and work in our territory, perform any sort of work whatsoever, they need to notify us that they're going to be in our territory working. And we've had no CAT dealer notify us that they were going to be working on the job.
So could somebody have snuck in and done it?
Q. Sure.
A. Yes. It's not very likely.
Q. Okay. Have you had communications with anybody at Caterpillar about not wanting anyone else to come in and do that, primary because you guys haven't -- or are owed a lot of money on this project?
A. I don't recall.
Q. How about Mitsubishi, communications with them along those same lines?
A. I --
Q. I.E., don't let -- don't let someone else come in and do this because we're owed a lot of money and -- and we want to get paid?
A. Yeah, I don't recall -- yeah, no, I don't recall having that conversation.

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Q. But nobody from Caterpillar or Mitsubishi could do anything with the protocol codes? That's something that you guys would have to do, because like you said earlier, I think it's proprietary?

A. Correct.

Q. All right. And the other kind of question I had -- it's kind of random -- when you say the factory guy, which factory?

A. We have several involved. What -- carry a couple of different terms. Their official name at this point is Caterpillar Switchgear. It use to be known as Intelligent Switchgear Organization. And then it was known as CAT ISO (phonetic) for awhile during a transition period. But their official title now is Caterpillar Switchgear.

Q. Okay.

A. And it's a division of Caterpillar. And they have -- they have their own people that go out and do site inspections and project management and those kinds of things. It's a very -- very technical business that most dealers don't have the real ability to support, so they have factory folks that help out.

Q. Okay. That was -- that was where I was going. I wasn't sure where -- which of the factories he came from.

We talked about a lot of subjects today and a lot of specific things. Is there anything else about your

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involvement with the City Hall project and specifically relating to your dealings with Mojave Electric that I did not ask you about today, but that you feel are important to my understanding of what -- what the dynamic here is, issues going forward?

A. No.

MS. ROBINSON: Object, form of the question.

THE WITNESS: No.

MR. BOSCHEE: Okay, I don't have any further questions.

I'm assuming Jennifer doesn't have any questions?

MS. ROBINSON: No.

(Signature requested.)

(The proceedings concluded at 11:36 a.m.)

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CERTIFICATE OF DEPONENT

PAGE LINE CHANGE REASON

* * * * *

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

KEITH LOZEAU, Deponent

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REPORTER'S CERTIFICATE

I, Tammy M. Breed, CSR No. 305, Certified Reporter, certify:

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me;

That the testimony of the witness, the questions propounded, and all objections and statements made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

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

I declare under penalty of perjury under the laws of Nevada that the foregoing is true and correct.

Dated this 5th day of September, 2012.

TAMMY M. BREED, C.C.R. No. 305

EXHIBIT E

FILE COPY

PAYMENT BOND

THE WHITING-TURNER CONTRACTING COMPANY
300 EAST JOPPA ROAD
TOWSON, MARYLAND 21286

BOND NO. 929490974

KNOW ALL MEN BY THESE PRESENTS:
That Mojave Electric

as Principal, hereinafter called Principal, and Western Surety Company 230 South 500 East, Suite 480, Salt Lake City, UT 84102, a South Dakota corporation,
(here insert the name, address and state of incorporation of Surety)

as Surety, hereinafter called Surety, are held and firmly bound unto THE WHITING-TURNER CONTRACTING COMPANY, 300 East Joppa Road, Towson, Maryland 21286 as Obligee, hereinafter called Obligee, in the amount of Ten Million Nine Hundred Ninety-Six Thousand Six Hundred Sixty-Nine & NO/00 Dollars ($10,969,669), for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated 2/11/2010 entered into Contract No 12600-26A with Obligee for City of Las Vegas New City Hall 495 Main Street Las Vegas, NV 89009 in accordance with drawings and specifications prepared by

which Contract is by reference made a part hereof, and is hereinafter referred as a Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such, that if the Principal shall promptly make payments to all persons supplying labor, material, rental equipment, supplies, or services in the performance of the said Contract and any and all modifications of said Contract that may hereafter be made, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The said Surety agrees that no change, extension of time, alteration, addition, omission, or other modification of the terms of either the said Contract or the said Prime Contract, or both, or in the said work to be performed, or in the specifications, or in the plans, shall

FILE COPY

in anywise affect its obligation on this Bond, and it does hereby waive notice of any such changes, extensions of time, alterations, additions, omissions, and other modifications.

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.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their several seals this 2nd day of March, 2010, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Mojave Electric
Principal

(Seal)

Witness:

_____

By: _____
Signature

Troy Nelson, President
Name and title - type or print

NEVADA RESIDENT AGENT
BY: _____
LICENSE#: 2028
THE HARRIS AGENCY
5105 S DURANGO DR. STE. 100
LAS VEGAS, NV 89113

Western Surety Company
Surety

By: _____
Signature/ Attorney-in-Fact
Rose M. Creighton

PA-015
8/95

EXHIBIT F

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.

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 MBE 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 is 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. We 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 we 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 16th, 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 QII --

A. Yes.

Q. -- Las Vegas.

So the City isn't involved in that process at

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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?

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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

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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, so 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?

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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, Sherilly?

MS. BRISCOE: Nope.

THE REPORTER: Would you like a copy?

MS. BRISCOE: Yes.

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

-ooo-

CERTIFICATE OF DEPONENT

PAGE	LINE	CHANGE	REASON

* * * * *

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 360
Las Vegas, NV 89119

Phone: 702-650-7700
Fax: 702-650-7650

SUBCONTRACT NO. 12600-267

SUBCONTRACT FOR: Electrical, Fire Alarm, and Low Voltage

SUBCONTRACTOR: Cutler-Hammer
Address: 6755 W. Hacienda Avenue
Las Vegas, NV 89118
(O) 702-798-2919
(F) 702-798-1912
Respond to Address: Same as above

OWNER: MGM 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 Subcontract made this 11th day of February, 2010, by and between Mahlon Electric (hereinafter called the Subcontractor), and THE WHITING-TURNER CONTRACTING COMPANY, of Baltimore, Maryland, with its principal office located at 300 East Lombard Street, 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 or any part 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 modifications and 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.

Initialed by: Contractor _____ Subcontractor _____

Rev 1/08

MOJ00001

EXHIBIT NO: BR-SUB-10
WITNESS: PASILERA
DATE: 10/14/12
J. DAHLBERG, RPR, CCR 732, 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".

Subcontractor understands 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 these 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" as used in the Contract Documents shall be deemed to also refer to the Subcontractor insofar as it has application to the work covered by this Subcontract. The term "Subcontractor" may be referred to as "it" while Subcontractor is incorporated or not.

ARTICLE 2. SCOPE OF WORK—The work to be performed and obligations to be undertaken by the Subcontractor are as specified in Article 2 hereof and in accordance with Drawings and Specifications prepared by HMA Architecture+ dated 8/Addition 6 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 facilities, to 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, engineers, 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 anticipated 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 shall 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 familiar with the particular nature 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 execute 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 inspection and quality process.

(d) In the event that Subcontractor employs union labor the Subcontractor agrees to be bound by the terms and provisions of the current established Impartial Jurisdictional Disputes Board, any such successor Board or any subsequent, jointly entered into by employers and union(s) 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 established and published by the Building and Construction Trades Department, AFL-CIO having jurisdiction and/or joint Registered Electing the Building Industry.

ARTICLE 4. DILIGENT PERFORMANCE.

(a) Subcontractor agrees to commence, pursue diligently and complete the work in such sequence and order and at such time as Contractor shall establish from time to time during the course of the work, and shall progress the work so as not to delay any other trades or contractors, time being of the essence of this Subcontract. Any written dates furnished by the Subcontractor and approved by Contractor and Owner by 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 the delivery which causes or may cause a delay in Subcontractor's performance. No extension of completion time 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 extra crews as deemed necessary in the judgment of the Contractor to maintain the progress of the work. Any such overtime, acceleration, shift or altered sequence of 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 the

suspend the work or any part thereof without incurring liability thereto. An extension of time shall be the sole and exclusive remedy of Subcontractor for any delay or suspension 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 receive from Contractor any damages or losses, whether direct or indirect, arising from or related to any delay other than an extension of time, 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 related to such activities, and any information requested for Critical Path Method scheduling utilized on 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 pending resolution of the dispute.

ARTICLE 5. PAYMENTS

(a) Payments of progress sums under the Subcontract, shall be made as follows: The Contractor shall pay to the Subcontractor an amount equal to ninety percent (90%) of 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 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 after the Subcontractor's portion of 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 statement of full 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 or withholding retainage any and all sums of 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, including but not limited to any other contract or agreement between the Subcontractor and the Contractor from any and all liability of 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) produce Waivers of Liens, Releases and Claims releases in the form required by Contractor by Subcontractor and all persons furnishing labor or materials to the Subcontractor on this Project through the period covered by the application; and (2) such further or 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 at any tier, directly or indirect, to determine the correct status of Lien releases and Subcontractor shall be required to provide such information. Contractor, in its discretion may issue 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 construed to be an admission or approval by the Contractor of the sufficiency of the work covered by the payment.

(d) Notwithstanding any other provision 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 obtain a 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 of 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 full and just any rights and remedies that may exist with respect to enforcing a mechanic's lien on the Project.

(e) Contractor may apply any payments other than Subcontractor progress payments 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, including man hours 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 percentages 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

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Contractor _____ Subcontractor _____

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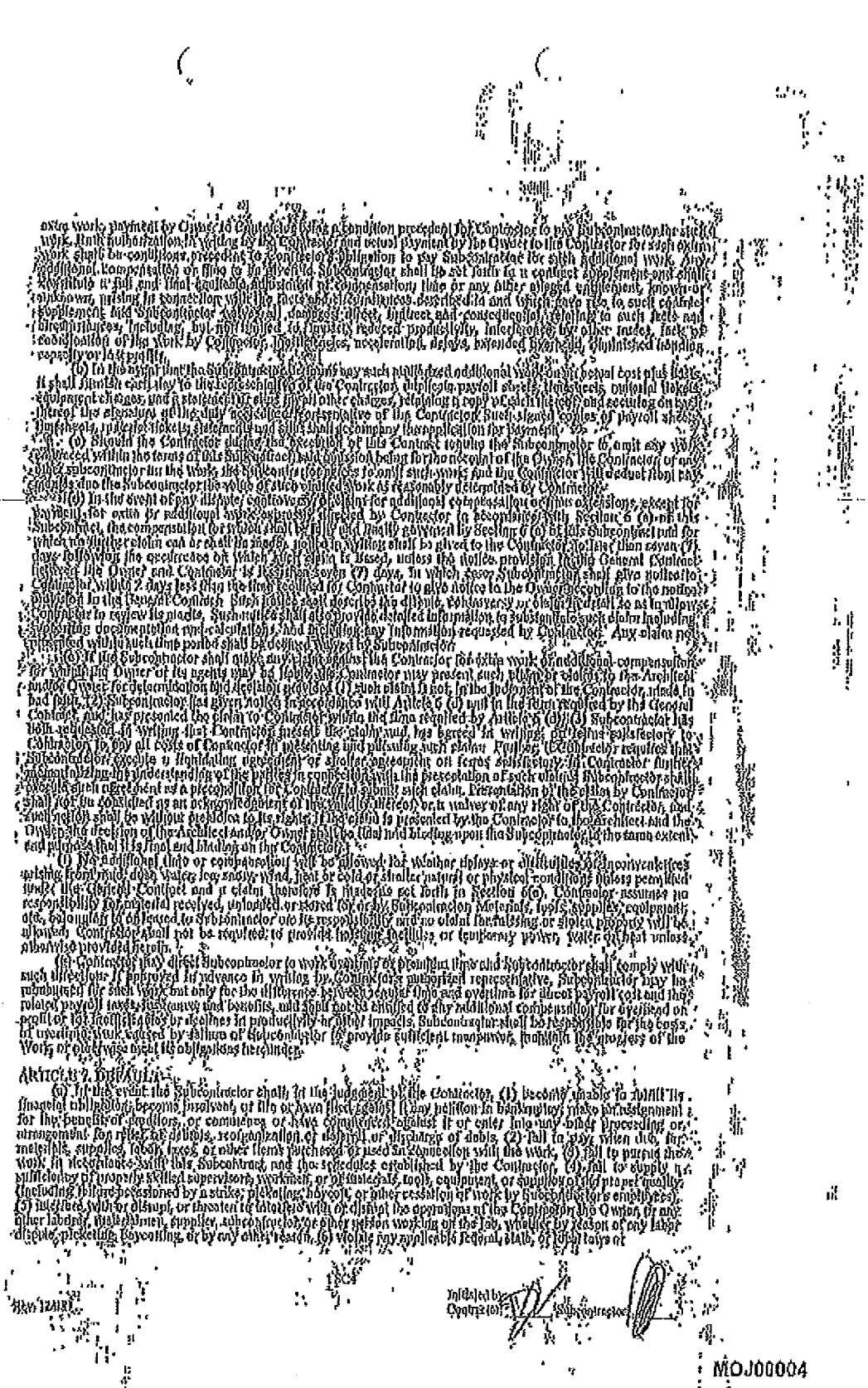

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[illegible] (4) advise Contractor or demonstrate to Contractor that Subcontractor will be unable to timely and satisfactorily perform any of its obligations under this Subcontract, or (5) commit any other breach of this Subcontract, then any such event 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 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 and the Subcontractor will not have any right to cure such default and the Subcontractor may be terminated immediately. In any event that prohibit the ability there is no right to cure as provided herein above, or in the event of the willful or [illegible] acts performed yet fault hereunders without all such defaults having been fully cured, the Contractor may terminate this Subcontract, take possession of all or any materials, fabricated 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 costs as well as any other costs, damages, or expenses, including Contractor's legal fees and expenses, 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 such total costs, damages or expenses shall exceed the balance due, the Subcontractor agrees to pay the amount of such 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 completed in the job, the net reasonable value of the items as of the date of taking shall be taken into account in the calculations of the aforesaid total completion costs, damages, and expenses. With respect to any such items which are not so incorporated or completed, or which have a salvage value, the Contractor may, at its option (1) assess 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 supply any and all sums due or to become due to the Subcontractor hereto, 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 rights 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 assists to do work to complete 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 successfully asserts any of its rights under this Article 9, 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 or otherwise.

ARTICLE 8 [illegible] CLAIMS AND WAIVER OF LIENS.

Subcontractor agrees to provide to Contractor with its invoices and payment requests and suppliers of all tiers executed releases of claims and/or waivers of liens and lien rights in the form provided by Contractor and as such time as may be requested by Contractor. Subcontractor shall hold all monies held by Contractor in trust for the payment of labor, 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 suits 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 ten days thereafter provide Contractor with such releases, bonds or other documents as may be required under this Article 8. Contractor may take all necessary steps to have such notice or lien, or claim, released, 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 pay all sums which it deems necessary to obtain releases of liens against the Project, and Subcontractor shall pay all costs and expenses associated with such releases, including the cost of posting releases bond and attorney's fees, shall be deducted from amounts payable by Contractor to Subcontractor under this Agreement or by other agreement or circumstances Subcontractor shall remain liable in the event that monies payable to it are insufficient to pay any balances or expenses arising from such liens.

ARTICLE 9 MISCELLANEOUS.

(a) The Subcontractor shall not assign, sublet or transfer this Contract or any part thereof or any money due or to become due hereunder 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 subcontractor rights in and to any agreements or purchase orders for labor or

Initialed by:
Contractor _____ Subcontractor _____

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[illegible] equipment or services related to the Project, as well as any shop drawings, plans, specifications, or other documents prepared by or on behalf of the Subcontractor and such employment shall vest 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 who's 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 any 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 affiliates, 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 by omissions of the Subcontractor, its officers, directors, agents, employees or subcontractors, in the performance of this Contract, regardless of whether such act, 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. This Subcontractor shall not and not 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 require an indemnity obligation prohibited by applicable law or to waive Subcontractor's rights against any third subcontractor or supplier which may have contributed to causing the injury or damage in claim against any person or entity indemnified under this Section by an employee of the Subcontractor or Sub-Subcontractors, whether 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 type of damages, compensation or benefits payable by or for the Subcontractor or Sub-Subcontractors under workers' compensation acts, disability benefits, or other employee benefit acts.

(e) Subcontractor acknowledges that, before executing this Agreement, it has carefully examined this Agreement and the Contract Documents and that Project site, has made such investigation of the Work required to be done and has material obtained to be furnished and, based upon such investigation and investigation, Subcontractor represents that it fully understands and can perform all requirements of this Contract Documents.

(f) With respect to the subject matter of this Subcontract: (1) Subcontractor shall have its 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 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, statements of claim of 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, direct Subcontractor to cease work thereon. The Subcontractor, in such event, shall be entitled to further payment only as provided in Article 5. The Subcontractor hereby to be bound by any and all provisions in the General Contract respecting termination as well as termination for any reason.

(h) Subcontractor agrees to timely submit each payment check list and related invoice or, if subcontractor's total billing exceeds Ten Thousand Dollars ($10,000.00), as long for work or materials provided pursuant to this Agreement for this Project by them, after the sole of Contractor's inspection upon request. Subcontractor shall furnish to submit promptly to Contractor, upon request, lien rights, 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 require, pay such subcontractors and suppliers and Subcontractor authorizes them to provide Contractor with any requested information.

(i) The Subcontractor warrants to Contractor that materials furnished against pay defects, faulty or damages, during the term during the period of construction and for a period of one year from the date of final completion of the Project (or the such longer period of time as may be required herein or by the Contract Documents). The Subcontractor shall promptly such defective work, materials, or damages at the request of the Contractor, if timely completed 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 compliance 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 district, 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 therefor shall be subject to Articles 3 and 5 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 at the job site, during the course of its work by qualified, fulltime supervision acceptable to Contractor. The Contractor shall have the right to require at any or all times a change

Initialed by:
Contractor _____ Subcontractor _____

whether called by the Owner, the Contractor, or others, the presence or participation of the Subcontractor authorized to act on 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 employ disciplined 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 disobedient or to the progress of any work on the Project, whereupon any such employees, suppliers or subcontractors shall be removed and shall not again be employed on any part of the Work without written consent of the Contractor.

(i) 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, requirements, 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 reporting forms of the Secretary of Labor issued pursuant to the Rehabilitation Act of 1973, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, and the Americans With Disabilities Act of 1990.

(j) Subcontractor shall at all times comply with all applicable federal, state and local laws, regulations and orders relating to safety and health, and related procedures established by Contractor and shall to the extent permitted by law indemnify and hold Contractor and Owner, their agents, officers, employees and successors harmless from any and all liability, claims or damages, penalties, contractual or statutory, 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 such alleged violation by Subcontractor, its employees or any subcontractor hereunder. Subcontractor further agrees that in the event of a claim of violation of any such laws, regulations, orders or procedures against any of those persons or entities with the performance of this Agreement, Contractor may immediately take whatever action is deemed necessary by Contractor to remedy the claim and withhold any and all monies 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 establish 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 established by the Contractor and/or the Owner; (2) take all necessary steps to promote safety and health on job sites; (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 require any laborer or mechanic employed in the performance of the Contract to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his health or safety as determined under construction safety and health standards promulgated by the Secretary of Labor; and (6) immediately notify all hazardous, unsafe or dangerous conditions 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 those exposed persons to avoid the hazard.

(k) In the event of conditions, facilities or obligations or technical rules between or among the terms, provisions or conditions of this Subcontract and any other Contract Documents, the terms, provisions and conditions which grant greater benefits 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 assert 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 by particular provisions hereunder. Disputes hereunder shall not be resolved by arbitration but rather shall be resolved by litigation unless Contractor elects to contractor in writing to arbitrate a specific dispute. In the event that arbitration is provided in the General Contract for disputes between Owner and Contractor, Contractor shall have the 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 to the consolidation of said disputes with any arbitration of related disputes between Contractor and Owner or any other party.

(l) The Subcontractor agrees to provide and furnish prior to commencing work, Certificates of Insurance or Insurance evidencing the work under this Contract for Workers Compensation, General Liability Insurance for 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 issued by companies with a financial rating acceptable to the Contractor, and shall not be subject to modifications or cancellation during the terms 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 maintaining taxes and premiums for Unemployment Compensation, Social Security, Withholding Tax and Workers Compensation.

(m) The Subcontractor agrees to furnish a bond guaranteeing its performance of this Subcontract and the payment of its subcontractors and suppliers, if so required 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 damages due Subcontractor hereunder to or actually paid to other third party who will dispense payment to subcontractors, material suppliers or other creditors of the Subcontractor.

(n) The Subcontractor understands and agrees that it shall not deal directly with representatives of the Owner, but shall handle all matters concerned 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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(c) This Subcontract shall be governed by the laws of the State of Nevada, 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.

(d) 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.

(f) 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 the extent without invalidating or rendering unenforceable any valid portions of the provision and/or any other provisions of this Subcontract.

(g) 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.

(y) Owner shall be considered a third party beneficiary of all rights under the Contract, but not its 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 or Contractor pursuant or unjust enrichment, are hereby waived and released. This Subcontract and its 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 final and binding on the Subcontractor for the work and not conditioned upon a final completion date or on any basis of 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. Each subcontractor shall likewise be entitled to 10% for work performed by the next lower tier and 5% for work performed by their contractors and suppliers. No fee will be allowed on overhead percentages. Such percentages include all costs of overhead and supervision above the foreman level.

ARTICLE 11. CONTRACT ALTERATIONS AND OMISSIONS—Any terms and conditions, to the extent attached 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 attached or added as part of the exhibit hereto by Subcontractor, such terms and conditions shall only become part of this Subcontract if, and only to the extent such term or condition is accepted 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:
Nevada Plastics

BY: _____
Signature

Typed or Printed Name and Title

DATE: _____

WITNESS: _____

CONTRACTOR:
THE WHITING-TURNER CONTRACTING COMPANY

BY: _____
Signature

Paul Schmidt Vice President
Printed Name and Title

DATE: 2/11/10

WITNESS: _____

SCS

Initialed by Contractor: _____ Subcontractor: _____

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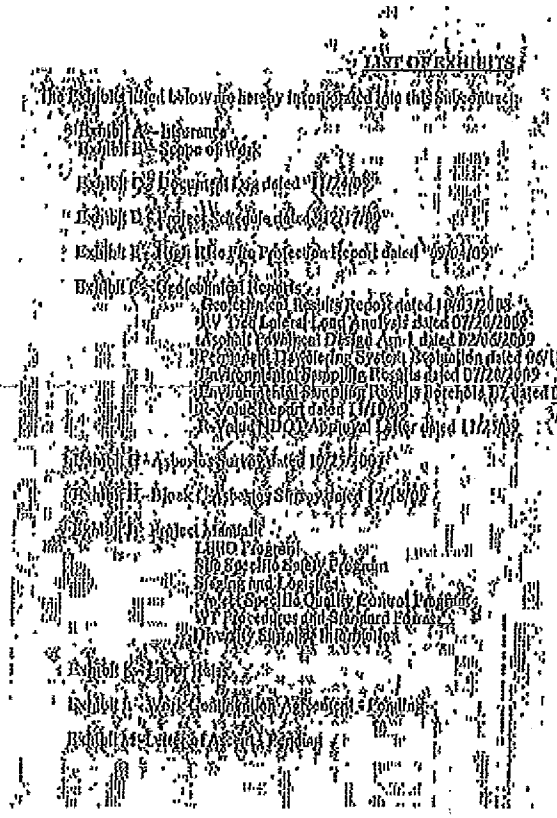

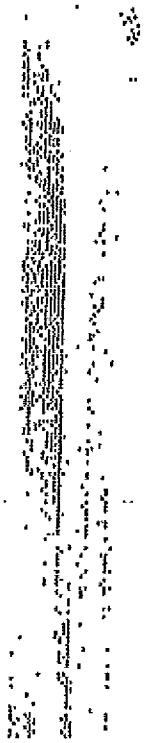

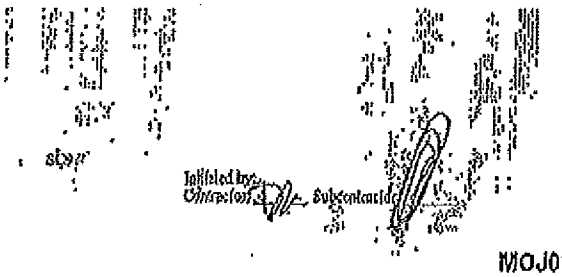

EXHIBIT A

INSURANCE

GENERAL INSURANCE REQUIREMENTS

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 insurances in the forms and with limits to satisfy fully 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 qualified to conduct business within the state(s) where the project is located. The insurance companies must also have a Best's Rating of no less than A- and a financial size of Class VII, or better. Subcontractor shall be responsible for any and all deductibles or self-insured retentions in the applicable policies.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE

This insurance shall pay the Subcontractor's employees the statutory benefits for Workers' compensation liability in the state(s) where the Work is performed. Where applicable, coverage shall be provided for the U.S. Longshore and Harbor Workers' Compensation Act, the Federal Employers' Liability Act and the Jones Act for those 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 for all premiums paid by the Workers Compensation Premium for the workers on this Project.

COMMERCIAL GENERAL LIABILITY INSURANCE

This insurance must be written on an occurrence basis, providing coverage for claims arising out of accidences 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 person 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 illegal excavation, grading, drilling or blasting.

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 included in the policy with a liability 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 $5,000,000 aggregate and follow coverages provided in 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. The form reasonably acceptable to Whiting-Turner, evidencing that Subcontractor's insurance coverages is in compliance with the minimum requirements set forth in this Exhibit A and in the Contract Documents.

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All insurance policies shall be endorsed to provide at least 30 days prior written notice to Whiting-Turner of cancellation, non-renewal, reduction in limits of any insurance provided pursuant to this Exhibit A. The following wording (or similar wording acceptable to Whiting-Turner) and "best efforts" to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives. In the Certificate of Insurance or elsewhere, it must be noted that endorsements of insurer of this type is obligatory.

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 a waiver of subrogation in favor of same. Use standard ISO endorsement forms 2010 (07/04) for ongoing operations and 2037 (07/04) for completed operations. Alternatively, if applicable, use standard ISO endorsement forms 2010 (07/04) for ongoing operations and CG 2037 (07/04) for completed operations; additional insured endorsements shall not exclude or limit coverage for bodily injury arising out of the sole negligence of the additional insured. Subcontractor's insurance shall be primary and non-contributory with any insurance carried by Whiting-Turner. Subcontractor's insurance shall contain a severability of interests provision. Subcontractor shall provide Whiting-Turner and the additional insureds with thirty (30) days advance written notice of cancellation, non-renewal, reduction in limits of any insurance provided pursuant to this Exhibit A. The following wording (or similar wording acceptable to Whiting-Turner) and "best efforts" to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives. In the Certificate of Insurance or elsewhere, it must be noted that endorsements of insurer of this type is obligatory.

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 a waiver of subrogation in favor of same. Use standard ISO endorsement forms 2010 (07/04) for ongoing operations and

Exhibit B

Scope of Work

This work to be performed and materials to be furnished by the Subcontractor, as specified in Article 2 hereof and in accordance with Drawings and Specifications prepared by EMA Architects (refer to Drawing and Specification Log) and Willing-Turner's direction, are outlined as follows:

A) 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, hoisting equipment, layout, shop drawings, submittals, unloading, scaffolding, ladders, shoring, temporary permits, engineering, necessary shoring, reproduction, (as established by Contractor) materials, support functions and other items and 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 manufacturer's data, MSDS sheets (for ALL material), mockups, submittals, etc. full's (in reproducible form), procurement log (and lists/schedule), etc. required to complete the work) as specified by the Contract Documents. Submittals shall be coordinated to allow adequate 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 this 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 Willing-Turner Contracting Company, LLC ("Willowork, LLC"; "JH Las Vegas, LLC"; "FC LV Vegas, LLC"; "Forest City Commercial Construction Co, Inc"; "Forest City Enterprises, Inc. and their subsidiaries and affiliates"; "The City of Las Vegas"; "Bliss Manfred Architects"; and "EMA Architecture", as additional insured. The coverage's shall meet or exceed those specified in Willing-Turner's Exhibit A. Subcontractor shall require each sub-subcontractor to have the insurance coverage required by Exhibit A. Subcontractor shall furnish Willing-Turner evidence thereof before each sub-contractor 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 Willing-Turner's modified AIA G702 and G703 forms. No FAX copies shall be accepted. *"Period Draw" entry due no later than the 25th of the month.* *Releases of lien are to be provided with each invoice.* Upon subcontractors shall submit monthly verification of current cost/paid 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 highlighting 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 Willing-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 following cleanliness guidelines set forth by Willing-Turner. Dumpsters will be provided by Willing-Turner. This clean up shall be performed often enough to ensure no other trades are hindered by debris and/or debris causes a safety situation. Should subcontractor fail to clean work area on a daily basis Willing-Turner will issue one final written notice only, giving the subcontractor 24 hours notice to complete 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.

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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 codes. All material delivered to jobsite shall be offloaded by subcontractor to a designated staging point. Forty eight (48) hour advance notice to General Contractor is required.

9. Subcontractor 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 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 hoisting for subcontractor's use. Laydown 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 at the site.

12. Subcontractor shall be responsible for all safety barricades, temporary protection, security, etc. for work performed under this subcontract. Subcontractor shall specifically provide perimeter protection to areas of work (whether falls can occur (i.e. trenches, building edge, stair openings, elevator shafts, and any other open excavations where a safety hazard could exist).

13. Subcontractor is aware that other contractors will be working in close proximity. Subcontractor is responsible for independently coordinating this work with Whiting-Turner and other subcontractors to avoid impacts, conflicts and delays.

14. Subcontractor shall be issued a copy of the proposed construction schedule restricting some activities may be permitted in altered sequences as construction progresses and more work is 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 constraints 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 or close out data 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 - 3-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 1 set of blue-lines. 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, work-by-area 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 (Sub-Intendent/Field Foreman) are required to attend progress to discuss/update the flow of work. Failure to attend these meetings will be considered a breach of this subcontract.

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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 weeks. Attendance is required whether subcontractor is on site or not.

30. Subcontractor understands that Whiting-Turner will by establishing break areas and guidelines for all subcontractors regarding food. At no time will the consumption of food be allowed in or around any existing building systems areas, i.e., mechanical rooms, pump plant, electrical distribution areas, etc.

31. Visitors/vehicles shall not be allowed on site.

32. Subcontractor to own temporary power is available on building only for small hand tools only. Any additional power necessary for welding, etc. will not be available.

33. 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.

34. 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.

35. Whiting-Turner shall provide initial building and overall site control. Subcontractor is responsible for its own layout, field verification and coordination. 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 installing work.

36. Subcontractor shall provide Whiting-Turner daily field reports complete with number of men (by classification), hours of work, areas of work, and brief description of work performed. Subcontractor shall provide weekly as-built drawings and make available to Whiting-Turner superintendent 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.

37. Safety meetings will be held in addition of once a week. All subcontractor's superintendents, foremen and employees for 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.

38. Subcontractor understands and acknowledges that all equipment inside of the building must be either new and/or have exhaust scrubbers that meet current OSHA standards for fume limitations.

39. The general building permit will be provided by others; all other permits, trade licenses, etc. that are required for performing this scope of work shall be responsibility of this subcontractor.

40. Prior to submission of first invoice, subcontractor shall supply complete list of all suppliers, vendors, manufacturers, etc. Complete with addresses, phone numbers and contact persons. Further, this list is to include weights of materials, values of materials, and location of manufacturing of materials required for the project LEED certification application(s).

41. 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 restrictions, etc. Subcontractor accepts the existing conditions and has included any and all item(s) to complete this scope of work.

42. This subcontractor is responsible for all work until the owner, architect, and general contractor give written acceptance of the work.

43. Subcontractor is responsible for all items discussed and reviewed during the scope review meeting held prior to award.

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34. Subcontractor is warned that any damage to existing roofing, new construction, or appurtenances will result in back charges for repairs. Subcontractor shall not will accept 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. Drilling 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, without such written waiver by subcontractor of any claim for increase in the contract price, such or extension of the contract time.

38. Subcontractor understands that all additional workers performing work must have a Georgia Required Authorization (CRAA) number assigned. Only a Project Manager or Project Engineer can issue a CRAA number. Superintendents are not authorized to issue CRAA numbers.

39. Subcontractor understands tickets for extra work will NOT be considered, unless signed by an authorized Whiting-Turner representative and MUST have a CRAA 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 considered 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 agreement shall be in accordance with Article 9(f).

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 its 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 fragmented by separate parties, include the following:
Furnishing Party – Delivery to the job site (freight, freight, insurance, and taxes).
Installing Party – Receiving, detailed inventory (once item(s) are signed for, the installing party accepts total responsibility for (misc items) unloading, storage, handling and installation).
Forty-eight (48) hour advanced notice to Whiting-Turner is required to 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. Subcontractor shall be responsible for shoring and pumping of their own excavations. Subcontractor includes all imported fill as necessary for backfill (only to fully repair).

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.

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49. Subcontractor shall provide necessary traffic control, flagmen, delineators, signage, etc. as necessary to safe guard the 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. Subcontractors shall be expected to utilize MBE / WBE / DBE vendors and suppliers where possible and provide backup documentation 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 to the owner for 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. Subcontractor 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 (if applicable), 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. Subcontractor 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 3.1. 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, 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.

56. Subcontractor shall submit the VOC content of all paints, coatings, primers and sealants used inside the building (defined as inside the weatherproofing system and applied on-site) for review to ensure compliance with 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 mobilization required to successfully complete this work.

58. Change order Pricing and Processing.

Definitions.

A. Overhead: Any office salary, management labor, estimating, secretarial, accounting, etc., supervision, working foreman. Materials considered overhead are items such as but not limited to: copies, supplies, phones, fax machines and all items associated with office work.

B. Profit: Fee for work performed as percentage of cost for work. No profit will be attributed to overhead.

C. Small tools: (Value less than $300.00) shall be considered overhead unless specific tools require equipment / tools be purchased to accomplish such work in which time they will become property of the Owner.

D. Insurance.

Liability insurance, health insurance for office staff, unemployment and equipment insurance, theft insurance, builder risk insurance shall be considered overhead.

E. Bond Cost: Shall be attributed to the change order pricing based on submitted bond rate at bid submission and contract award.

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59. Labor

A. Final bids should contemplate that a contractor doing work on the site or any subcontractor being utilized to do work on the site must be party to a local labor agreement with the construction union that represents the trade(s) that it will employ on the project. Such labor agreement must contain a no strike clause applicable to the project and a method for resolving employee work disputes without work disruption. Any exceptions to this requirement must be specific and 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 negotiations between it and the relevant labor organization. By way of example only, these costs could include wage and benefit adjustments as a result of negotiations, expenses of further negotiations, or other costs required by any negotiated work rules with the relevant labor organization.

C. Final bids should contemplate that a Project Labor Agreement applicable to this project has been agreed to with unions by the Southern Nevada Building Trades Council, and it is that agreement is in place, contractors on this project utilizing trades represented by that Council will be expected to sign the agreement. It may be difficult to negotiate it may include hiring priorities for candidates certain only, Vegas at 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 consultation committee whereby the employees agree to work and the contractors agree not to lock out, during the duration of labor negotiations provided the contractors agree to and do not cause retroactive to the time of prior contract expiration. Details on this clause or issues 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 secure all their candidates for this project with locals in the area of the project, Wards 1, 3 and 5 of Las Vegas and that such employees working will be monitored and monitored throughout the project. The geographical boundaries of the Wards is available from the city.

60 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, signing, unloading, installation, tools, temporary services, permits, equipment, labor, supervision, insurance, taxes, incidentals, engineering, and supply functions necessary for or related to proper execution and completion of the Electrical scope of work, whether temporary or permanent, and all other sections as they apply to this work in accordance with all drawings, specifications, addenda, general conditions, requirements, and other related documents as indicated 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 attaining applicable certifications, installation methods, and properties 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 aforementioned 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 the LEED requirements per the Contract Documents, including but not limited to: erosion/sediment control, dust control, building material staging, construction waste management, recycled content, regional materials, low-emitting materials, FSC certified woods, no urea-formaldehyde products, construction indoor air quality management plan.

6. Subcontractor must sort trash and debris before placing in Whiting-Turner trash dumpsters as noted in the LEED recycling plan for waste and recycling of all debris. This includes reporting on a monthly basis to all recycled/reused/salvaged material and/or equipment installed to date relative to project totals.

7. Subcontractor understands the existing site and soil conditions as indicated in the attached Geotechnical Report.

8. Subcontractor shall provide 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 their installation including engineering, agency approvals, shoring materials and placement, daily shoring safety inspections and shoring diagrams in this Subcontract. Subcontractor agrees to multiple shoring installations 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% tie off project. It is understood that the safety rails provided by the Contractor are not to be utilized as a tie off point.

12. Subcontractor shall provide protection when working near, below or above project access points and other trades as it pertains to his scope of work.

13. Subcontractor shall be responsible for all scraping and patching cost of fireproofing material where installation work covered under this Subcontract and/or failing, any damages caused by this Subcontractor. Subcontractor understands that the finish painting Subcontractor will be the only one allowed to perform patchwork do 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 with other Subcontractors' work that interfaces with this Subcontractor's work including, but not limited to, embeds, boxouts, openings, structural, architectural supports, lighting, etc. Contractor supervision 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 and/or the crane pad on that second shift, third shift and/or overtime. In the event of crane shared use, all paperwork for shared use of other Subcontractor's crane shall be the responsibility of this Subcontractor and the Subcontractor which has priority use of that crane. Contractor shall not be responsible for any damage/accidents arising from such use. Subcontractor understands, that due to its own negligence, any costs related with loss of valuable crane damage, crane repairs, additional crane mobilizations and demobilizations, their 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 Rise Mobilization Report for City of Las Vegas New City Hall for this scope of work.

18. Subcontractor understands that all seismic connections/anchorages 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 and 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, occupancy sensors, grounding & bonding, lighting control equipment, emergency generators, automatic transfer switches, bus-ways, conduit, raceways, wiring, cabling, fittings, hangers, supports, & other the Contract Documents.

20. Subcontractor shall provide sufficient manpower to perform the work as scheduled with a core team and all labor as team planning concurrently.

21. Subcontractor shall coordinate with the mechanical, plumbing, fire sprinkler, elevator, fire alarm, security, audio/visual, and telecommunications subcontractors for power testing, start up, and testing to ensure these systems are complete and fully functional.

22. Subcontractor shall coordinate electrical installation and terminations with all contract documents of all disciplines.

23. Subcontractor shall ensure all code required clearances are met for installation of all equipment. Subcontractor shall layout all equipment prior to installation and inform Architect prior to welding of any conflicts.

24. Subcontractor shall be responsible for electrical utility tie-ins to the NV Energy transformers.

25. Subcontractor has included all pipe/ conduit supports as it relates to this 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 X and Y are not listed in the Specification Table of Contents.

27. Subcontractor shall provide excavation, trenching, backfilling, compaction, import/export as required to perform the scope of work.

28. Subcontractor shall furnish and install all concrete encasement duct-banks for work performed under this Subcontract. Concrete encasement shall be colored as required by local code.

29. Subcontractor shall coordinate with Nevada Power 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 splice boxes in a manner not to exceed one splice box per every 100 foot length of the building. The temporary power centers shall be mounted on a pallet-type arrangement and shall be shifted as required by construction activities. Subcontractor shall also provide temporary power for the manufacturer 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 in all areas and shall comply with OSHA requirements. Subcontractor shall provide removal of the temporary lighting system 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 by elevator mechanics.

33. Subcontractor shall provide temporary power, temporary site lighting, engineering, and permit drawings for the trailer yard including final connections for Whiting-Turner trailer and owner trailer. Subcontractor shall include all excavation, trenching, backfill, bollard/lighting pads, conduit above ceilings for power and data connections to conference rooms with spare conduits for telephone/data. All temporary power shall be run underground. Reference site logistics plan for office trailer sizes and locations.

34. Subcontractor shall size-off all existing onsite electrical prior to demolition by others including, but not limited to, stairs, panels, light poles, etc. Subcontractor shall visit existing project site to determine exact scope of electrical size off.

35. Subcontractor shall provide all supply and spare conduits with pull string and proper identification per the Contract Documents.

36. Subcontractor shall furnish and install electrical light for any future or spare devices.

37. Subcontractor shall furnish and install a complete lightning protection system per the Contract Documents.

38. Subcontractor shall furnish and install a complete transient voltage surge suppression system per the Contract Documents.

39. 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.

40. Subcontractor shall ensure all building lighting is in compliance with LEED requirements for light pollution reduction.

41. Subcontractor shall coordinate with the framing Subcontractor and the Acoustical Ceiling Subcontractor for all required framing and support wire for lighting fixtures. Support wires shall be furnished and installed by Others, with final connections to light fixtures by this Subcontractor.

42. Subcontractor shall provide power connections for all mechanical and fire suppression equipment.

43. Subcontractor shall furnish and install a complete diesel engine driven generator system including, but not limited to, generator set, closed coupled tank, grounding, rolling bollard, and all associated fire testing and rolling for power turnover. Subcontractor shall include any and all necessary fire testing of systems.

44. Subcontractor shall coordinate with the Automatic Door Subcontractor and Motorized Overhead Door Subcontractor for power requirements and locations.

45. Subcontractor shall provide power and lighting connections for all elevators and coordinate with the Elevator Subcontractor for these connections.

46. Subcontractor shall furnish and install all conduits with pull string and proper identification for the complete Quadrado, or similar, paging system throughout the Development Services Center (DSC).

47. Subcontractor shall furnish and install all conduits with pull string and proper identification for the complete EMR, 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.

48. Subcontractor shall install all electrical hand dryers including, but not limited to, all blocking, wiring, connections, mounting, fixtures, etc.

49. Subcontractor shall provide power connections for all variable frequency drives (VFD) and motor starters.

50. Subcontractor shall furnish and install a complete central dimming and network lighting control system including, but not limited to, panels, transformers, relays, computer hardware, devices, wiring, software, training, programming, commissioning, etc as required per the Contract Documents.

51. Subcontractor shall furnish and install weatherproof GFI receptacles within 25 feet of all mechanical equipment or as indicated on the Contract Documents.

52. Subcontractor shall furnish and install all disconnect switches, fuses, and circuit breakers per the Contract Documents.

53. Subcontractor shall furnish and install all seismic restraints, vibration isolation, and sound isolation for all equipment and components of the electrical systems as required per the Contract Documents.

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MOJ00020

64. Subcontractor shall furnish and install all sleeves and block outs for penetrations through concrete and CMU and provide miscellaneous during concrete pours to ensure sleeves and block outs are installed correctly.

65. Subcontractor shall install all conduits and raceways in strict accordance to the specifications. No elevations shall be combined 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.

66. Subcontractor shall install conduit in concrete walls and CMU assemblies, where possible, to avoid surface-mount installations.

67. Subcontractor shall coordinate all floor penetrations with the Roofing Subcontractor so that penetrations can be properly sealed during roof installation.

68. Subcontractor shall furnish, install, and terminate all heat trace cable per the Contract Documents.

69. Subcontractor shall furnish and install all fire caulking, fire sealing, and fire caulking for work performed under this Subcontract.

70. Subcontractor shall furnish and install all access sealant penetrations at rated walls.

71. Subcontractor shall furnish all access panels required for electrical work to the Framing/Drywall Subcontractor before walls and ceilings are installed. Lockable access panels shall be furnished for areas accessible to the general public. Painted access panels shall be furnished for locations in fire-rated partitions. Location shall be determined on the Subcontractor's shop drawings for coordination & layout with the Framing/Drywall Subcontractor.

72. Subcontractor shall coordinate ceiling layout and grid dimensions with all trades and notify Whiting-Turner of any conflicts.

73. Subcontractor shall furnish and install all required power and data at the LVMD Information Kiosk.

74. Subcontractor shall furnish and install all electrical identification per the Contract Documents.

75. Subcontractor shall provide all testing and start up procedures per the Contract documents. Subcontractor shall furnish all test reports, start up reports, and manufacturer test results as required by the Contract Documents.

76. Subcontractor shall coordinate layout and size dimensions of all required concrete housekeeping pads. Housekeeping pads shall be by others.

77. Subcontractor that includes all material and labor necessary for all installation and connections to all angular structure, millwork, and ceiling display casings. It applies to this scope of work.

78. Subcontractor shall provide manpower, materials, equipment, tools, ladders, instruments, etc to assist with the compliance of the building pressurization testing. The independent commissioning agent services will be provided by the Owner.

79. Subcontractor shall ensure the entire electrical system is in compliance with the smoke management requirements of the Contract Documents, and provide manpower during smoke management testing procedures.

80. Subcontractor shall provide manpower during fire life safety testing, final inspections, and owner training as required by Whiting-Turner.

Fire Alarm

81. Subcontractor shall coordinate with the mechanical, electrical, fire sprinkler, HVAC controls, and elevator subcontractors that all parties required to provide a complete and operational fire alarm system.

82. Subcontractor shall provide engineered design drawings of the entire fire alarm system. Subcontractor shall be responsible for submission 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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be the responsibility of this subcontractor. All work shall conform to the latest codes, fire protection reports and requirements 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.

71. Subcontractor shall install all conduits and raceways in strict accordance to the specifications. No deviations shall be allowed, unless approved by Architect in locations per the specifications. Conduits and raceways shall be installed square to building lines in a neat, orderly and professional workmanlike manner.

72. Subcontractor shall install conduit in concrete walls, where possible, to avoid surface-mount installations.

73. Subcontractor shall furnish and install all transponders, network fire alarm control panels, building graphics panel, and network fire alarm master control panel.

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. Final terminations shall be by the fire alarm subcontractor.

78. Subcontractor shall provide control relay modules to override the building standby system upon activation of the smoke control system.

79. Subcontractor shall furnish and install all fire alarm monitoring services required including, but not limited to, fire alarm controls, emergency generator status and controls for unlocking stairway and exit doors.

80. Subcontractor shall coordinate with the smoke partition door subcontractor for fire alarm tie-ins.

81. Subcontractor shall make all fire alarm connections for the elevator recall systems.

82. Subcontractor shall furnish and install all switches including, but not limited to, damper 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 rating/fire sealing/fire caulking the 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 audio/visual 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 $30,000 for overtime testing. This allowance shall only be used at the discretion 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 allowances 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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Subcontractor

MOJ00022

91. Subcontractor shall provide fire alarm system is in compliance with the smoke management requirements of the codes 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 the life safety testing, final inspections, fire/smoke testing, HVAC Commissioning and training as required by Building 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 outlets, wireless LAN outlets, and proper identification for a full and complete Tele/Data Communication system.

96. Subcontractor shall furnish and install all conduit 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 relating as applies to this 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 data/tele systems.

100. Subcontractor shall furnish and install all TV Communications racks.

101. Subcontractor shall furnish and install all conduits, J-boxes, and pull string necessary for the complete installation of the Q-matic numbering systems 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 Interior Media Interactive Wall Systems.

104. Subcontractor shall furnish and install conduit for all Interior Media Interactive Fixed Systems.

105. Subcontractor shall furnish and install conduit, J-boxes, and pull string for all KCLV equipment, theatrical lighting, breakers, etc.

106. Subcontractor shall furnish and install chamber Cyclorama Cyclorama lights and 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, lobbys, press junction areas, conference rooms, training rooms, mail 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 conduits, J-boxes, and pull string necessary the complete installation of the land based panic buttons.

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MOJ000231

JA 00001615

Site Reconfigured Public Amplification system

1. Subcontractor shall furnish and install a complete turn key fire protection public amplification system throughout the building. System shall include, but not be limited to, complete engineered design, amplifiers, antennas, receivers, 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, controls, standard street lights, signal luminaire 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 mobilizing to site for 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 terrace.

6. Subcontractor shall furnish and install all 4" P.A.S.T. conduit, cable, and wire as detailed in notes 16 and sheets C1.03, C3.03, C3.04, and C3.05.

BIM

7. Subcontractor shall provide a three dimensional Electrical 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).

8. The model must be an accurate representation of all elements (to lowest denominations (i.e. ductwork, equipment supports, flanges, diffusers, valves, gauges, etc.) and all its sizes (width or depth) and location required for shop drawings. A matrix showing specific model responsibilities shall be issued as an addendum to this scope of work.

9. 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.

10. Subcontractor shall provide the fabrication model in native application and Navisworks Manage 2009 (.nwc) formats.

11. System model shall be a solid or surface model (not wire frame) when viewed in Navisworks Manage 2009.

12. The fabrication models shall be prepared using software that allows 2-D drawing sheets to be extracted from the model so that production of those sheets do not require special modification of CAD effort. The system models and any drawings produced from the coordination process will be created at model 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 and any changes, etc.

13. During construction, the Model Coordination Process will be as follows:

14. Subcontractor shall identify conflicts between their fabrication model and base model and resolve with Whiting-Turner and design team prior to the coordination meetings.

15. Subcontractor shall identify any required penetrations in mechanical and structural elements for their work and correct any clashes within their own system prior to the coordination meetings.

16. Subcontractor shall provide fabrication model to Whiting-Turner. Whiting-Turner will integrate subcontractor model with base model in Navisworks to create a Coordination Model prior to each coordination meeting.

17. All modeling subcontractors and Whiting-Turner shall print, review, and resolve clashes / conflicts within the combined coordination model on a weekly basis.

18. Subcontractor shall make changes to their fabrication model per resolutions from each coordination meeting.

19. Modeling subcontractor and Whiting-Turner shall repeat Steps 3 through 5 until all clashes / conflicts have been resolved in coordination model.

Initials of Coordination Subcontractor:

MOJ00024

119. Subcontractor shall remove all temporary protection, plastic, boxes, etc. from fixtures and equipment after substantial completion and prior to building turnover.

120. 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.

121. Subcontractor shall furnish and install the low voltage lighting system in the Granite Slate Glass Wall.

122. 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 Video/ Audiovisual- Fit Out

123. Subcontractor shall furnish, install all labor and material necessary for the installation of a complete and workable system for the audio/visual components in the building lobbies/receptions, courts, offices, and council chambers per the contract documents including, but not limited to, all projectors, video projectors, video cameras, recessed projector screens, surface mount projector screens, equipment racks, flat panel displays, ceiling mount microphones, surface mount microphones, recessed speakers, surface mount speakers, professional screen controls/ switches, control touch panels, television equalizer panels, control keypad panels, ladder racks, cables, CATV equipment/controllers, fixtures, teleconferencing units, receivers, transmitters, panels, docking panels, AV gateways, control processors, fusers, cancellers, scalers, amplifiers, converters, audio switchers, etc.

124. 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, mini rooms, security rooms, conference rooms, etc. This work shall include, but not be limited to, all digital signage, control panels, wireless materials, projection broadcast PTZ cameras, AV input panels, interface systems, projector cabinets, microphones, flat panel displays, equipment, racks, speakers, touch panel displays, scrolling systems & controls, CCTV, projections panels, lead panels, etc.

125. Subcontractor shall be responsible for coordinating the installation of all necessary strap backing for tile, stone or wall. 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 installation of backing shall be borne by this subcontractor.

126. Subcontractor shall furnish and install all mounting brackets, all thread, back boxes, support systems, etc. necessary for the complete installation of the audio video/visual systems.

127. Subcontractor shall furnish and install all wire, equipment, fixtures, panels, terminations, and provide 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- Fit Out

128. 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, garage entrance cameras, etc.

129. 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.

130. Subcontractor shall install all their cable in inner ducts as noted in the construction documents.

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MOJ00026

JA 00001617

1.30 Subcontractor shall coordinate installation with adjacent trades, Whiting-Turner, and the Owner and is responsible to ensure this coordination takes place prior to installation

1.31 Subcontractor shall furnish and install all equipment, monitors, keyboards, etc, at security

1.32 Subcontractor shall include all tie-in and interlocking with Fire Alarm, HVAC, and other applicable systems as required by governing codes.

1.33 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 video recorded on DVD, and include a presentation and walk through of the systems.

1.34 Subcontractor shall furnish 15% equipment attic stock to the owner prior to final completion.

1.35 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.

1.36 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 Switchgear & Commodities Anticipated $ ___ % of Contract 20%

Supplier / Vendor / Scope Platform Anticipated $ ___ % of Contract 5%

Supplier / Vendor / Scope Generator Anticipated $ ___ % of Contract 15%

1.37 Subcontractor shall adhere to the following submittal schedule:

Description	Allotted Time for Submittal	Submittal Date Table
Safety Program	2 Weeks	Thursday, February 25, 2016
Manpower Loaded Schedule	4 Weeks	Thursday, March 11, 2016
Theatrical 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 Devices Product Data	4 Weeks	Thursday, May 6, 2016
Closeout Submittals	4 Weeks	

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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 of labor, material, and equipment necessary for a complete installation.

139. See below breakdown for contract schedule of values:

Core & Shell Mechanical Equipment Feeders	$1,417,704
Core & Shell Mechanical Equipment Wiring	$501,167
Core & Shell Lightning Protection	$74,235
Core & Shell Emergency Generator	$937,433
UPS System	$297,559
Core & Shell Lighting & Branch	$574,205
Core & Shell Devices & Branch	$91,134
Exterior Glass Fin LED Lighting	By Others
Interiors Lighting & Branch	$1,173,122
Interiors Devices & Branch	$212,335
Studio Power & Lighting	$12,326
Alternate Conduit/ Pull string	Incl. In Base
Site Vault System Conduit/ Pull string	Incl. In Base
LED Gobo Mounting Support	Incl. In Base
COMMUNICATIONS	
Lightning Control System	$6,598
Communications Raceway	$653,518
Communications Cabling	$996,078
Communications Devices	Incl. In Base
Building A/V systems Conduit, Pull String	$182,854
Chambers A/V systems Conduit, Pull String	$42,210
Chambers Assisted Listening Systems	$43,865
Recessed Projection Screens	$60,229

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Initials for Construction _____ Subcontractor _____

MOJ00027

Roof & Plaza Prefabricated Conduit	$34,710
Satellite System Conduit	$14,125
ELECTRONIC SAFETY & SECURITY	
Security Surveillance Conduit, J-Box, Pull String	$101,813
Card Key Pad Conduit, J-Box, Pull String	$12,000
Card Key Building Hardware Conduit, J-Box, Pull String	$3,500
Radio Station Conduit, J-Box, Pull String	$6,084
Fire Alarm System	$1,017,764
MISC.	
Site Electrical (Invitado $2500 to install under each)	$62,630
Dark Fiber Conduit (VAST Conduit)	Incl. above
Hoisting	Incl. above
Clean Up	Incl. above
Off-Site Parking	Incl. above
Fire response system	Incl. plumber
100% Payment & Performance Bond	$76,376
Lobby Glass Wall Lighting	Incl. Vesco in Data
Temp Power/ Lay Down/ Trailer Setup	$150,000
MBE/WBE/DBE Participation	10%
DIV TOTALS	$1,969,609
Vesco Lighting system at Grand Stair Glass Walls	Incl. above
LEDs at Glass Rail, Add Required by DOT	Incl. above
Testing	Incl. above
Install of Voting System already purchased by City	Incl. above
Lighting for Wall Art	Incl. above
Dark Fiber and Site electrical on Civil Drawings	Incl. above
Fire Response System	Incl. above
Q-Matic/ Fire Systems Conduit	Incl. above

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MOJ00028

EXHIBIT 0.1 – UNIT PRICING

SIZE	DESCRIPTION					
3/4"	EMT				$ 40.86	C
1"	EMT				$ 70.02	C
1 1/4"	EMT				$ 121.77	C
1 1/2"	EMT				$ 147.66	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				$ 640.78	C
3/4"	SET SCREW	STEEL	CONNECTOR	INSULATED	$ 33.18	C
1"	SET SCREW	STEEL	CONNECTOR	INSULATED	$ 51.24	C
1 1/4"	SET SCREW	STEEL	CONNECTOR	INSULATED	$ 105.02	C
1 1/2"	SET SCREW	STEEL	CONNECTOR	INSULATED	$ 144.03	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	$ 1,252.77	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		$ 10.20	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		$ 103.66	C
1 1/2"	SET SCREW	STEEL	COUPLING		$ 150.61	C
2"	SET SCREW	STEEL	COUPLING		$ 218.99	C
2 1/2"	SET SCREW	STEEL	COUPLING		$ 466.31	C
3"	SET SCREW	STEEL	COUPLING		$ 630.89	C
3 1/2"	SET SCREW	STEEL	COUPLING		$ 816.65	C
4"	SET SCREW	STEEL	COUPLING		$ 717.92	C
1/2"	COMPRESSION	STEEL	CONNECTOR	INSULATED	$ 36.66	C
3/4"	COMPRESSION	STEEL	CONNECTOR	INSULATED	$ 40.86	C
1"	COMPRESSION	STEEL	CONNECTOR	INSULATED	$ 70.67	C
1 1/4"	COMPRESSION	STEEL	CONNECTOR	INSULATED	$ 172.04	C
1 1/2"	COMPRESSION	STEEL	CONNECTOR	INSULATED	$ 234.68	C
2"	COMPRESSION	STEEL	CONNECTOR	INSULATED	$ 341.66	C
2 1/2"	COMPRESSION	STEEL	CONNECTOR	INSULATED	$ 1,209.78	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	$ 2,497.42	C
1/2"	COMPRESSION	STEEL	COUPLING		$ 37.30	C
3/4"	COMPRESSION	STEEL	COUPLING		$ 61.20	C
1"	COMPRESSION	STEEL	COUPLING		$ 79.07	C
1 1/4"	COMPRESSION	STEEL	COUPLING		$ 143.52	C
1 1/2"	COMPRESSION	STEEL	COUPLING		$ 206.00	C
2"	COMPRESSION	STEEL	COUPLING		$ 280.26	C
2 1/2"	COMPRESSION	STEEL	COUPLING		$ 1,070.93	C
3"	COMPRESSION	STEEL	COUPLING		$ 1,316.70	C
3 1/2"	COMPRESSION	STEEL	COUPLING		$ 2,002.11	C
4"	COMPRESSION	STEEL	COUPLING		$ 2,137.91	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			$ 604.00	C
2"	EMT 90 DEGREE	ELBOW			$ 950.00	C
2 1/2"	EMT 90 DEGREE	ELBOW			$ 1,614.00	C

MOJ00020

3/4"	EMT 90 DEGREE ELBOW		$ 2,140.00	C
1-1/2"	EMT 90 DEGREE ELBOW		$ 6,695.00	C
2"	EMT 90 DEGREE ELBOW		$ 5,040.00	C
	BOXES & BRACKETS			
4" SQUARE 1-1/2" DEEP COMBO BOX		52(1-1/2)W	$ 110.04	C
4" SQUARE 2-1/8" DEEP COMBO BOX		52(2-1/8)W	$ 15.76	C
4-11/16" SQUARE 1-1/2" DEEP COMBO BOX		52(1-1/2)E	$ 300.30	C
4-11/16" SQUARE 2-1/8" DEEP COMBO BOX		52(2-1/8)E	$ 261.00	C
4" SQUARE BLANK COVER		52BW	$ 83.04	C
4-11/16" SQUARE BLANK COVER		52BE	$ 84.20	C
RACO 911-1 FIRE BOXES OR EQUAL		52(1-1/2)RW	$ 1,110.26	C
RACO 911-2 FIRE BOXES OR EQUAL		52(2-1/8)RW	$ 1,110.26	C
FRASER-OAKES 1 GANG ADJUSTABLE RING		AR1	$ 690.80	C
FRASER-OAKES 2 GANG ADJUSTABLE RING		AR2	$ 885.80	C
FRASER-OAKES 3 GANG ADJUSTABLE RING		AR3	$ 1,030.80	C
1 POSITION WALL BRACKET		W1	$ 735.00	C
4 POSITION WALL BRACKET		W4	$ 915.00	C
8PL POSITION WALL BRACKET		W8	$ 730.00	C
1 POSITION 10" FLOOR BRACKET		F1(10)	$ 1,041.00	C
2 POSITION 10" FLOOR BRACKET		F2(10)	$ 2,020.00	C
	WIRING DEVICES			
20 AMP 1 POLE 120/277V COMMERCIAL GRADE SWITCH			$ 2.80	C
20 AMP 3 WAY 120/277V COMMERCIAL GRADE SWITCH			$ 8.05	C
20 AMP 4 WAY 120/277V COMMERCIAL GRADE SWITCH			$ 8.62	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			$ 8.03	C
20 AMP 120V COMMERCIAL 2 POLE 3 WIRE DUPLEX RECEPTACLE			$ 1.00	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			$ 12.90	C
1 GANG NYLON PLATE			$ 0.32	C
2 GANG NYLON PLATE			$ 0.88	C
3 GANG NYLON PLATE			$ 0.91	C
	PVC CONDUIT			
1" SCHEDULE 40 PVC CONDUIT			$ 48.10	C
1-1/4" SCHEDULE 40 PVC CONDUIT			$ 62.30	C
1-1/2" SCHEDULE 40 PVC CONDUIT			$ 72.10	C
2" SCHEDULE 40 PVC CONDUIT			$ 91.40	C
2-1/2" SCHEDULE 40 PVC CONDUIT			$ 166.50	C
3" SCHEDULE 40 PVC CONDUIT			$ 187.00	C
3-1/2" SCHEDULE 40 PVC CONDUIT			$ 239.00	C
4" SCHEDULE 40 PVC CONDUIT			$ 264.00	C
6" SCHEDULE 40 PVC CONDUIT			$ 400.00	C
2" DB60 PVC CONDUIT - NPCO STANDARDS			$ 49.40	C
3" DB60 PVC CONDUIT - NPCO STANDARDS			$ 80.00	C
4" DB60 PVC CONDUIT - NPCO STANDARDS			$ 148.10	C
6" DB60 PVC CONDUIT - NPCO STANDARDS			$ 310.00	C
2" DB100 PVC CONDUIT - SPRINT STANDARDS			$ 83.90	C
3" DB100 PVC CONDUIT - SPRINT STANDARDS			$ 106.40	C
4" DB100 PVC CONDUIT - SPRINT STANDARDS			$ 171.20	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			$ 188.02	C

MOJ00030

2"	SCHEDULE 40 PVC 90° ELBOW	$	278.81	C
2-1/2"	SCHEDULE 40 PVC 90° ELBOW	$	603.62	C
3"	SCHEDULE 40 PVC 90° ELBOW	$	887.33	C
3-1/2"	SCHEDULE 40 PVC 90° ELBOW	$	1,130.20	C
4"	SCHEDULE 40 PVC 90° ELBOW	$	1,460.66	C
6"	SCHEDULE 40 PVC 90° ELBOW	$	4,970.81	C
1 GALLON	PVC CEMENT	$	4,767.50	C
1 QUART	PVC CEMENT	$	1,283.28	C
1 PINT	PVC CEMENT	$	760.01	C
1 QUART	EMPTY CAN	$	691.36	C
1	DAUBBER (TO APPLY GLUE)	$	482.90	C
	ALUMINUM WIRE			
#1/0	XHHW ALUMINUM WIRE	$	701.01	M
#2/0	XHHW ALUMINUM WIRE	$	928.60	M
#3/0	XHHW ALUMINUM WIRE	$	1,020.80	M
#4/0	XHHW ALUMINUM WIRE	$	1,146.40	M
250	XHHW ALUMINUM WIRE	$	1,396.64	M
300	XHHW ALUMINUM WIRE	$	1,620.20	M
350	XHHW ALUMINUM WIRE	$	1,903.00	M
400	XHHW ALUMINUM WIRE	$	2,295.10	M
500	XHHW ALUMINUM WIRE	$	2,531.12	M
600	XHHW ALUMINUM WIRE	$	3,206.22	M
700	XHHW ALUMINUM WIRE	$	3,701.00	M
750	XHHW ALUMINUM WIRE	$	3,710.42	M

MOJ00031

EXHIBIT K

City of Las Vegas New City Hall

LABOR RATES

Trades: Electrical

Will out separate estimate for each labor trade used. Attach additional sheets if necessary.

Apprentice													
Straight Time	34	1	2	5.5	1	3	N/A	N/A	60	9	2	2	N/A	60
Time & Half	50	3	1.5	6.5	1	4	N/A	N/A	90	13	3	3	N/A	90
Double Time	67	4	6	11	1	6	N/A	N/A	1	17	4	4	N/A	120
Journeyman														
Straight Time	41	2	3	5.5	1	3	N/A	N/A	60	9	2	2	N/A	89
Time & Half	61	4	6	8.5	1	4	N/A	N/A	90	13	3	3	N/A	103
Double Time	82	6	9	11	1	6	N/A	N/A	1	17	4	4	N/A	138
Foreman														
Straight Time	45	4	3	5.5	1	3	N/A	N/A	60	9	2	2	N/A	75
Time & Half	68	6	4.5	8.5	1	4	N/A	N/A	90	13	3	3	N/A	112
Double Time	91	8	6	11	1	6	N/A	N/A	1	17	4	4	N/A	150
Superintendent														
Straight Time	50	4	4	5.5	1	3	N/A	N/A	60	9	2	2	N/A	81
Time & Half	75	7	7	8.5	1	4	N/A	N/A	90	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

MOJ00032

JA 00001624

EXHIBIT 8

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

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WITNESS: BRIAN BUGNI

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By Mr. Boschee:	87	

EXHIBITS

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3	Mojave Electric Purchase Order	26
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5	Contract Agreement	33
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(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 end -- 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 AIA 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 these 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 ap 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 Fergen.

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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 that? 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 entities specified?
A. Yes.
Q. In 1.1, Stanley Weil & Sting?
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 as 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 those 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 41,000.
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 those 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 those 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 hit 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 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 lole 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 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 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?
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 tower-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. ROSCHEE: 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 Fergen'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 in, 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, Gonsch 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 a 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, met

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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 Fergon 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

PAGE	LINE	CHANGE	REASON

* * * * *

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, 2012, 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

Mojave Electric, Inc.

3755 W. Hacienda Ave.
Las Vegas, NV 89118
(702) 798-2970
Fax (702) 739-1419

PURCHASE ORDER

70780 GEN - 16016
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 No. [illegible]

Ship To [illegible]

City LAS VEGAS State [illegible] Zip [illegible]

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
			Supply Generator Feature as required for the Contract				
			Specifications and Drawings dated November 26, 2008				
			including addendum 1 thru 6 and as directed by Project				
			Manager to include but not be limited to the below				
			listed material				
1	1	[illegible]	[illegible]	[illegible]	E		[illegible]
2	1	[illegible]	[illegible]	[illegible]	E		[illegible]
3	1	[illegible]	[illegible]	[illegible]	E		[illegible]
4	1	[illegible]	[illegible]	[illegible]	E		[illegible]
5	1	ATS-M	MGA, 480/277V, 3P, 4W, NSF Automatic Transfer Switch	7,711.00	E		$ 7,711.00
6	1	ATS-P	1200A, 480/277V, 4P, 4W, NSF Automatic Transfer Switch	10,587.00	E		$ 10,587.00
7	1	ATS-X	1000A, 480/277V, 4P, 4W, NSF Automatic Transfer Switch	10,267.00	E		$ 10,267.00
8	1	ATS-I	Remote Annunciator	-	E		$ -
9	1	Spares	Extra Materials as called for in 26321S-1.15	2,385.00	E		$ 2,385.00
10	1	CSA	2 year maintenance agreement	7,800.00	E		$ 7,800.00
11	1	Fuel	Diesel Fuel for electric - Based on cost budget for 20 gal	[illegible]	E		[illegible]
			[illegible]				
			[illegible]				
			[illegible]			

Mojave Electric, Inc.

[redacted]
3755 W. Hacienda Ave.
Las Vegas, NV 89118
(702) 798-2978
Fax (702) 739-1419

PURCHASE ORDER

70010 CHR- 10010
P.O. NO. & JOB NO. MUST APPEAR ON ALL INVOICES, DEL. TICKETS AND BILLS OF LADING.

Date 4/20/2010

Page 1 of 4

Ship Via DELIVER

TO [redacted]

Job [redacted] No. 70010

Ship To [redacted] 70010

City LAS VEGAS State NV Zip 89

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
			ALL PARTIES IN VIOLATION OF THIS PURCHASE ORDER				
			IT IS THE SELLERS 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				
			SELLERS INVOICE MUST COINCIDE WITH MOJAVE PURCHASE				
			ORDER - ITEM #, DESCRIPTION, AND UNIT PRICE BREAKDOWN				
			EQUIPMENT TO BE ON SITE 2 WEEKS AFTER TRANSMITTAL OF APPROVED SUBMITTALS				
			AND PROPER WRITTEN RELEASE BY MOJAVE ELECTRIC PROJECT MANAGER				
			SELLER SHALL WARRANT FROM THE DATE OF COMPLETION OF THEIR WORK UNDER THIS				
			OF MATERIALS TO SUBMIT ALL COSTS RELATED TO THIS PURCHASE ORDER AND SUBSEQUENT				
			CHANGE ORDERS. ANY INVOICES SUBMITTED AFTER THE 30 DAYS WILL BE CONSIDERED WAIVED				
			AND NOT BILLABLE BY MOJAVE ELECTRIC				
			TERMS: THIS IS A PAY WHEN PAID PO - INVOICES ARE TO BE INTO MOJAVE NOT LATER THAN THE 28TH OF THE				
			MONTH AND PROJECTED THRU THE END OF THE MONTH.				
			SUBMITTALS - WHEN DELIVERED TO MOJAVE WILL BE REVIEWED BY SECTION, SO SECTION AND 3 COPIES REQUIRED				
			AND DELIVERED TO OUR OFFICE WITHIN 10 DAYS OF RELEASE. ALL SUBMITTAL INFORMATION TO BE SENT TO				
			[redacted]				
			All paper copies + 1 Electronic copies of submittals to be supplied as required by Specifications				
			Paper copies + 1 Electronic copies of O&M Manuals to be supplied as required by Specifications				
			All required documents from supplier and Manufacturer as needed for BIM Process				
			LOG & PLEASE NOTE:				
			Miscellaneous: Within ten (10) days a written expediting report will be given to this office on the first and fifteenth of each month				
			report is to include the following 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.				
			Refer to the Assistant Accounting Operations Manager to receive copies of the invoices of record.				

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			[redacted]
TAX			
CASH DISC			

TOTAL PRICES FIRM

MO700036

ACCEPTED FOR VENDOR

BY [redacted]

MOJAVE ELECTRIC, INC.

BY [redacted]

Angelo Cavallo / Wohl & Cali Consulting Collection Equipment

Asst. VP Project Development

EXHIBIT 9

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 Wednesday, November 28, 2012
At 2:05 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 LLOYD
BY: JENNIFER R. LLOYD, ESQ.
6725 Via Austi Parkway, Suite 260
Las Vegas, Nevada 89119
(702) 836-3138
(702) 836-3139 (Facsimile)
jlloyd@pezzilloLloyd.com

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

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EXHIBIT	DESCRIPTION	PAGE
1	Performance Bond, The Whiting-Turner Contracting Company	7

LAS VEGAS, NEVADA; WEDNESDAY, NOVEMBER 28, 2012
2:05 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. My name is Jennifer Lloyd. I represent Cashman Equipment Company. We're here concerning the litigation on the Las Vegas City Hall project.

Can you go ahead and state your name for the record?

A. Nancy Briseno-Rivera.

Q. And I know you've had your deposition once before; but was that the only time you've had your deposition taken, was the time previous that I took?

A. Yes.

Q. Okay. Do you want to go back over all the instructions again, or do you recall, you know, the question and answer, not speaking over one another?

A. I don't need to go through it again.

Q. Okay. I'm going to show you the Notice of the Deposition of the Person Most Knowledgeable that was prepared after your first deposition where you appeared as the Person Most Knowledgeable. And if you want to open to the second page.

If you want to review those items listed there and confirm that you are being produced as the person most knowledgeable on those items now?

A. Yes, I am.

Q. You are, okay.

What did you do to prepare for your deposition today?

A. I just confirmed the process for the submittals.

Q. And on any other issues?

A. The PLC.

Q. What's a "PLC"?

A. The Program -- Program Logic Controller.

Q. What is that?

A. For the actual piece of generator, the piece that's missing.

Q. That's for the switch gear?

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A. Right.
Q. Oh, okay.
A. Yeah. One of the questions that was pertaining to the status of the generator.
Q. And did you do any other -- review anything else to prepare for today?
A. No. Just read through the questions, because I think originally I didn't really understand what the question was.
Q. Okay. So then let's start with the questions concerning the payment bond that Mojave was required to obtain under its contract with Whiting-Turner on the Project. You identified that they had obtained a payment bond?
A. Right.
Q. And at that time you were not familiar with if the claim had been made or --
A. Right.
Q. -- the status. So you're now familiar with those items?
A. Yeah, I believe I am.
Q. So has the claim been made by Whiting-Turner on that bond?
A. No.
Q. Did Whiting-Turner provide a copy of that bond

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to the owner?
A. Of?
Q. The Project.
A. Yeah.
Q. You provided a copy of Mojave's bond?
A. No. Not -- I thought you had meant our bond. No, not Mojave's bond.
Q. Okay.
A. It's in our files, and that's about it.
Q. Okay. So no claim was made to Western Surety on that bond by Whiting-Turner?
A. No.
MS. LLOYD: And then I'm going to do Exhibit 1.
(Exhibit 1 was marked for identification.)
MR. BOSCHEE: So the depo notice was not an exhibit?
MS. LLOYD: No. I was going to --
MR. BOSCHEE: It doesn't matter. I just wanted to make sure for my marking.
BY MS. LLOYD:
Q. Can you take a look at that document.
Are you familiar --
A. Yes.
Q. Okay. And can you describe to me what that is?
A. It's just a payment bond, a performance bond

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saying that if something goes wrong that their bonding agent will -- you know, if Mojave doesn't step up, then the bonding agent will step in.
Q. So this is the bond that Mojave has obtained --
A. Right.
Q. -- under the contract.
Okay. So let's go over, I guess, the approval process for the generator system.
A. Uh-huh.
Q. Your testimony previously was sort of vague on the submittals and how that all works. So if you want to tell me what you sort of gained after --
A. Well, we still --
Q. -- since we spoke the first time.
A. Right. It was still David Cortigus (phonetic) who reviewed the submittals, who no longer works with us. So submittals are given to us by the subcontractor.
Q. Uh-huh.
A. We review them for making sure that they are for the specifications that need specifications, and then we stamp them and then they go on to the architect. The architect reviews them and, at the same time, usually gives them to their JVA in this case, to the mechanical or electrical consultant. They review it usually concurrently and make either -- any kind of

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comments on it and then give it back to us, and then we give it back to Mojave.
Q. Okay. And are those submittals part of Mojave's scope of work?
A. Yes.
Q. And so the preparation would be considered as part of their contractual obligations?
A. Yes.
Q. Okay. Do you recall the submittal process for the specific equipment supplied by Cashman with the approval process, if it was approved or if there were changes required?
A. I don't know if there was. I didn't look at that to see if there was any comment.
Q. Okay. And when did Whiting-Turner first become aware that Cashman would be supplying the generator equipment to the Project?
A. I don't know that we ever did until -- I don't know that we ever did, to be honest with you.
Q. Did you review the submittals for the generator equipment?
A. No. Me personally, no.
Q. So in preparation for the deposition, you didn't review --
A. No. All I did was make sure that I understood

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the process.
Q. Okay. So Cashman's name was on the submittals?
A. Yeah. If they're -- right. Typically, it's just Mojave's. It's whoever we're -- we never look at whoever the name is, unless it specifically says in our specifications.
Q. Okay. I'm just saying that Cashman -- when you prepared it, there are stamps on the front of the submittal packet?
A. I didn't see if it was.
Q. Okay. But if it was, then would that have been the first that Whiting-Turner would have been aware that Cashman was on the Project?
A. No.
MR. BOSCHEE: Well, objection. That calls for speculation.
MS. LLOYD: It does call for speculation.
THE WITNESS: All we would know is -- it's kind of like if Lithonia is -- it doesn't mean that Lithonia's our sup- -- the actual -- who we're purchasing lighting from; it just means that that's where the piece of equipment was coming from. So even if it did say Cashman on there, that doesn't mean we -- we just know that it's a piece of Cashman equipment.
///

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BY MS. LLOYD:
Q. Well, Cashman isn't a manufacturer. Caterpillar is the manufacturer; right? So I understand what you're saying for a manufacturer; but Cashman's actually a company, not a manufacturer.
A. Yeah.
Q. So that would be a little bit different than the example that you're giving.
A. Right. But typically all we look at is the equipment and the manufacturer -- if it was Caterpillar, the equipment -- and then making sure that it meets our specifications.
Q. Okay. And then we spoke previously about the Whiting-Turner payment bonds, and you weren't aware whether claims had been made or what the status of claims were. So were any claims made on that bond that you're aware of now?
A. Typically -- and again, typically what ends up happening is when our surety gets ahold of us, they basically just send us an e-mail saying, Hey, there's a claim on our bond and you guys -- you know, you do anything to settle it; and usually we settle it. I usually settle it before there's actually a claim on the bond or even, like, a lien placed on the Project; I try to settle it beforehand.

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Q. So do you communicate with the bonding company about potential claims or claims that you know that are out there?
A. It's really just an e-mail saying, What's the status of it?
Q. Okay. And so were there other claims that either threatened or made a claim on the payment bond, the Whiting-Turner payment bond?
A. Other than Cashman?
Q. Uh-huh.
A. Yeah.
Q. And I think you spoke before, but I don't know that you were certain of what the status of those were, who those other claimants were?
A. Yeah, those have all been resolved.
Q. Okay. And then we spoke about the Cashman notice on the claim on the bond that had been submitted by Cashman to Whiting-Turner, and you weren't -- you didn't recall if Whiting-Turner had responded to that notice. Do you know now if Whiting-Turner responded to that notice?
A. No, I don't.
Q. Okay. So who would know?
A. Probably our legal -- our legal person, or probably Paul would know if we responded to that bond

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claim.
Q. And then --
MR. BOSCHEE: Can I ask just quick --
MS. LLOYD: Sure.
MR. BOSCHEE: When you say your "legal person," is that Todd Touton generally, or do you have someone in-house?
THE WITNESS: No, we have someone in-house.
MR. BOSCHEE: Okay, that's all I wanted.
(Reporter clarification.)
BY MS. LLOYD:
Q. Okay. Did Whiting-Turner speak with the owner about Cashman's claim on the Whiting-Turner payment bond?
A. Yes, after -- basically any forms -- it might have just been a verbal that we said -- I'm trying to think of what -- how it came down. I think the first time that he knew anything about it was when I told him that -- when Cashman was calling us saying they hadn't received payment.
Q. So even before the claims were initiated? I think the first communications were sort of informal --
A. Right.
Q. -- by Cashman seeking to, you know, find out what happened with the payment. Is that what you

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recall?
A. Yes.
Q. So when you said "he," are you referring to David Phillips?
A. Right.
Q. Okay. So when those first informal communications occurred, you spoke with Mr. Phillips about that?
A. I can't remember if I did at that time, or if it was whenever we received any paperwork.
Q. Okay. Did you forward a copy of the notice -- of the notice of the claim on the payment bond to the owner representative?
A. No. Typically, I think he would have gotten it just because it's the name of the -- you know, of the owner.
Q. Uh-huh.
A. So he would have gotten it through PQ or Forest City.
Q. Okay. And so did you have any communications with Mr. Phillips about either the claim on the payment bond or the lien claim asserted by Cashman on the Project?
A. Not until -- if we received it in the mail --
Q. Uh-huh.

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A. -- when we get it through registered mail, he would have gotten it as well. So that's usually when we'd talk about it.
Q. And so what were the substance of those communications with Mr. Phillips?
A. I don't -- what do you mean, "What were the substance"?
Q. What did you guys talk about?
A. I don't recall what we talked about. Yeah, I don't recall what we talked about other than, you know, just basically what happened. How did -- did we have all of our paperwork in order, basically? Had it -- we paid Mojave, and then trying to figure out why Cashman didn't get paid or how -- you know, trying to understand what happened.
Q. So how did you go about investigating what happened?
A. Well, I -- that's where I asked, Where's our -- I'm pretty sure we got our -- all the liens in line -- or not liens in line -- I'm sorry -- the unconditionals. So that was my first response is showing -- asking my secretary, Where's all of our unconditionals. So everything was in -- it was in order --
Q. Uh-huh.
A. -- which then we couldn't understand what

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happened.
Q. Uh-huh. So then what -- how did you investigate further, I guess, what happened?
A. We probably spoke -- I think I spoke to Brian Bugal over at Mojave and said, What's going on?
(Reporter clarification.)
THE WITNESS: What did he say? I mean -- I mean, I know what the story is, but I don't know if it was him that told me or how I actually came about understanding the story about -- you know, that we paid Mojave, Mojave paid CAM, and CAM paid Cashman, and Cashman didn't get the money. You know, the bounced check, but --
BY MS. LLOYD:
Q. Right. Right. Okay. So were you aware of any action taken by the owner concerning the payment bond claim asserted by Cashman?
A. No. He would always just wait and see whatever -- he knew we -- anytime something happened we'll take care of it, and then we basically responded back to him saying, Okay, everything's been resolved, or Here's what the issue is.
Q. So the owner just expected you to resolve any issues?
A. Yeah.

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Q. So since this issue isn't resolved -- is this issue resolved as to the owner now?
A. No.
Q. How is it -- like, what's the status with the owner on the Cashman claim?
A. Just waiting that -- to get that code that the PLC actually be operational in the generator. That's the remaining piece.
Q. So then let's talk about the lien. Did Whiting-Turner respond to Cashman directly on the lien claim? Are you aware of that?
A. No, I'm not aware. And that would be our legal.
Q. Who's your legal?
A. Our legal person is Dan China, C-h-i-n-a. And even Paul doesn't respond. They just -- Dan China -- the reason I would say Paul is because Dan China usually will contact Paul.
Q. Oh.
A. So Dan China is really going to be the person who would know.
Q. Okay. So when you were speaking about the hand (phonetic) bond claim, we were sort of talking about the lien claim as well. But do you recall any other action that Whiting-Turner took in response to the lien claim?
A. No.

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Q. And I believe you stated you didn't recall whether you spoke to Mr. Phillips about the informal notice you had received about Cashman not getting paid?
A. Right.
Q. So you're not sure when the first time you spoke about Cashman's claim with the owner would be?
A. No. Because I was still trying to figure it out myself when I -- you know, when I started getting the phone calls from Cashman informally, I was trying to figure it out, so I didn't even -- I'm sure I didn't tell him until it was completely understood whatever the situation was.
Q. So Whiting-Turner hasn't been paid in full on this Project; right?
A. No, not yet.
Q. So what's currently being withheld by the owner?
A. Just -- it's really just our final payment which -- it's really just our final payment, and part of that is Mojave's cost -- or payment to us.
Q. Part of that is what? I'm sorry.
A. What we've already paid Mojave, that's still owed to us from the owner, in addition to a few other items.
Q. So the owner's holding the money for the generator and --

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A. Right now they are, but we've -- it's probably not going to be withheld from us. I mean, we just -- we're in the final payment right now, so I don't -- I don't think it's going to be withheld.
Q. Longer?
A. Yeah, longer.
Q. Why is that?
A. Because of the bond that Mojave has on the Project. Because there's really --
Q. The bond that's Exhibit 1?
A. Uh-huh.
Q. How does that affect the --
A. Well, it's just security that regard- -- we're thinking, regardless, it's got to be -- somehow this has to be resolved between Mojave and Cashman.
Q. So the owner -- you're thinking the owner is going to release the payment in reliance on the fact that there's a bond that Mojave's posted to cover situations like this? Is that --
A. Yeah.
Q. Am I understanding what you're testifying to correctly? Is that what you said? Did I restate what you said? Like, am I understanding under your testimony how this bond relates to that --
A. Yeah.

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Q. -- final payment by you guys?
A. We're saying that -- yeah. We're saying that it's a Mojave/Cashman issue, and therefore -- and the equipment's there. So if -- even if they want to withhold anything, it may just be what they feel is the cost for the PLC, not the entire generator.
Q. Right, okay.
A. So we feel we've -- you know, they pretty much paid for -- or we've done almost everything with the exception of the PLC.
Q. Okay.
A. So we may negotiate what that's worth.
Q. As to the generator price?
A. Right.
Q. Okay. So the generator systems -- I guess we talked about this previously, but I don't know that you were totally sure -- but what's the status of the generator systems now at the Project?
A. They're working properly. The only piece that's missing is that PLC, which it gives us the ability to be able to monitor it. Not -- not there locally, but basically on a network system or, like, on a computer system where you get wireless, I guess.
Q. Okay. So --
A. It's not really wireless, but just through the

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computer system where you don't have to be there locally to do something. You can do it remotely.
Q. Like, turn them on or turn them off?
A. Not necessarily turn them on; but understand if it's running off of fuel or whatever the generator's actually -- how it's -- how it's performing.
Q. Uh-huh.
A. You can get reports and stuff like that with this PLC, and it actually allows it to -- like, we have a LEED -- L-E-E-D -- that type of a system at the Project. So through the management system, the building management system, it would be able to talk back and forth with the generator and say, Okay, the generator's using fuel and it's using this much fuel; so it allows them to understand what the generator's -- you know, if it's using a certain amount of fuel or doing whatever it's doing. So without this PLC, those two things cannot connect. So the generator's still doing what it's supposed to be doing; it just doesn't allow us to communicate with it remotely.
Q. Okay. So it's not a life/safety issue?
A. No.
Q. And everything is operating to code?
A. Right.
Q. Okay. And do you know if there was an issue

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with the delivery of the generator system that required it to be held overnight on a truck that, you know, incurred additional costs? Do you recall?
A. No.
Q. And then are you aware if there was an issue with, I think -- is the generator system installed in a room?
A. Yeah.
Q. -- an issue with modifying the structure that the generator system was in?
A. Yes.
Q. So can you describe for me what that issue was and how it occurred?
A. It basically -- it was supposed to be -- it was bigger and it wouldn't fit through the doorway that we needed to put it in; it was a masonry wall. So what we did was we cut out a hole from the masonry and just put a different type of a door system so that we could bring the generator in.
Q. And was that discovered when the generator was delivered, or was it discovered previous to delivery?
A. I think it was -- I'd be guessing. I don't know.
Q. And who did that fix? Do you recall?
A. As far as?

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Q. The mas- -- like having to cut open the --
A. Amazon Masonry.
(Discussion held off the record.)
BY MS. LLOYD:
Q. And were they a contractor on the Project?
A. Yes.
Q. So was that change order to them to do that work?
A. Yes.
Q. And do you recall when that work was completed?
A. No.
Q. And for that change order, was it a change order to Whiting-Turner as well from the owner?
A. No.
Q. So you just absorbed that change? You didn't present it to the owner as an extra cost?
A. No, it wasn't an extra cost to the owner.
Q. Why is that?
A. Because it wasn't the owner's issue.
Q. Was it the owner's design on the generator -- you know, system --
A. Yeah.
Q. -- like, the building or --
A. I'd have to -- honestly, I'd have to look to see. It might have been. Now that -- I'm trying to

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recall my memory -- it may have been a change order, but I -- I can't remember. It would depend on -- it would depend on the design, if the design just didn't work to begin with and it wasn't caught until after the fact.
Q. Uh-huh.
A. I can't remember. I'd have to go back and check.
Q. And then if the -- you weren't aware if there was an issue with delivery, then, where the equipment had to be held on a truck?
A. No.
Q. Okay. And if there was an extra cost associated like that, would Mojave have submitted, you know, information to Whiting-Turner on that type of issue, or are you aware?
A. No. No, they wouldn't have, really. They just need to give us a -- you know, a couple days' notice of when they think the equipment is going to be there so that we're all prepared.
Q. Okay. So the change to the generator room could have been a change order to the owner, but you're not sure?
A. Right. I'd have to go back and look.
Q. So your main owner contact was David Phillips?
A. Yes.

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Q. And do you know if he's still in Las Vegas?
A. Yes.
Q. And is his office located at the Galleria Mall?
A. Yes.
MS. LLOYD: I don't have anything further. Do you have any questions?
MR. BOSCHEE: Just one. I want to go back to this -- to the room.
EXAMINATION
BY MR. BOSCHEE:
Q. Now, I think you said -- you testified to counsel's question that you don't -- you don't recall a change order being submitted to the owner; is that right? I mean, because it sounded like -- I heard two different things; I just want to make sure that we're clear on this. You don't recall if a change order was submitted to the owner?
A. Yes, I don't recall. I know we gave a change order to the -- to the mason.
Q. Amazon Masonry?
A. Correct.
Q. Do you have a specific recollection as to whether that was a cost that was absorbed down the chain, or if that was a cost that was reimbursed by the owner, or don't you know?

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A. I can't remember. I don't know. I can't remember because I'd have to go back and look and see if it was a design issue, in which case it would have been --
Q. Okay.
MS. LLOYD: An owner change.
THE WITNESS: -- an owner's change, or if it was because we didn't think the process through and didn't think about getting the generator in. I remember something about it, but I can't exactly remember why that opening had to change, other than getting the generator in.
BY MR. BOSCHEE:
Q. And do you recall specifically when that -- and when I say "when," proximity to the delivery of the generator -- was it within a couple of days? a couple of weeks? When was that adjustment done by Amazon Masonry?
A. I would say a couple of weeks.
MR. BOSCHEE: Okay. That's all. I just wanted to clear that up.
EXAMINATION (continued)
BY MS. LLOYD:
Q. And just to clarify, that wasn't a back charge to Mojave, or was it?
A. That's what I can't remember.

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Q. Okay.
A. It would -- again, it would be one of those -- it would be one of the three items. It would either be a back charge to Mojave, and when there's a back charge it could be that they deal directly with the subs; or it could have been through Whiting-Turner where we back charge Mojave, get the money from them, and then pay the sub; or it could be -- it was a design issue, and we would pay the mason and charge the owner.
Q. Okay. And I guess is there -- can you produce the documents related to those --
A. Yes.
Q. -- items?
MS. LLOYD: Okay. Thank you.
Is that it?
MR. BOSCHEE: Well, let me ask the obvious follow-up question.
EXAMINATION (continued)
BY MR. BOSCHEE:
Q. You -- I believe you produced the documentation -- and I wasn't directly involved -- you produced documentation responsive to counsel's written discovery request; correct?
A. Yes.
Q. Did you see anything along these lines in the

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documents you reviewed that were eventually produced to Cashman -- a lot of those items you produced you produced to us and then we produced to Cashman -- did you see any of this documentation in there?
A. It would be in there.
Q. Okay. That's kind of what I figured, but I just wanted to make sure.
Is there anything that you had relating to -- to this issue that wouldn't have been in that giant heap of documents that you gave us that we turned around and gave to Jennifer, that you're aware of? Is there anything else in your office?
A. No.
MS. LLOYD: I haven't come across it. I mean, I haven't -- we've gone through probably about half of the documents so far. But I guess my concern was, if it wasn't a back charge or a change order to Mojave, would it necessarily have been included? Because if it dealt only with, say, Amazon where it was, say, a design issue so you did a change order to the owner and you did a change order to Amazon, would that necessarily have been included? I wasn't sure that I was going to find it in there, because it wasn't -- you know, if you were looking for Mojave/Cashman and this was something -- you know, a different subcontractor --

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THE WITNESS: It would be just because Mojave -- it was a coordination issue with Mojave, so I know Mojave was involved in the opening.
MS. LLOYD: Okay. Okay.
MR. BOSCHEE: Yeah, that was the only thing. I was just trying to make sure that it wasn't -- these random documents in there that -- okay.
MS. LLOYD: That's it.
(The deposition concluded at 2:32 p.m.)
-oOo-

CERTIFICATE OF DEPONENT

PAGE LINE CHANGE REASON

* * * * *

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, commencing on Wednesday, November 28, 2012, at 2:05 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 3rd day of December, 2012.

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

CERTIFICATE OF DEPONENT

PAGE	LINE	CHANGE	REASON
8	19	We review them to make sure they are per the specifications.	Upon review this response was unclear and required clarification.
8	28	JBA	Letter in Co. name is B
22	14	The generator and switchgear (PSG) were on site prior to us making modifications to the electrical room in the basement where the switchgear was located. The switchgear was in the room prior to making modifications. We had to make modifications to the room to access that part of the switchgear.	Upon review this response was unclear and required clarification.
22	22	It was discovered after switchgear was on site.	Upon review this response was unclear and required clarification.
23	24	It was a back charge to Mojave, not an owner change.	Upon review this response was unclear and required clarification.
24	23	It was not a change order to the owner.	Upon review this response was unclear and required clarification.
26	1-4	It was not a change order to the owner. It was a backcharge to Mojave.	Upon review this response was unclear and required clarification.

* * * * *

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: 1-2-13

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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

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)

Hearing Date: April 11, 2013
Hearing Time: 9:00 a.m.

DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AGAINST WEST EDNA ASSOCIATES LTD, DBA MOJAVE ELECTRIC AND WESTERN SURETY COMPANY ON THE PAYMENT BOND CLAIMS

COMES NOW, Defendants/Counterclaimants (collectively "Counterclaimants" or "Defendants"), by and through their attorneys of record, Brian W. Boschee, Esq. of the law firm of COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON, and hereby file this

opposition to the motion for summary judgment filed by Cashman Equipment ("Cashman" or "Plaintiff") against defendants West Edna Associates d/b/a Mojave Electric ("Mojave") and Western Surety Company ("Western").

Summary judgment is not warranted here because: (1) Cashman failed to comply with the mandatory notice provisions of the bond in question, and therefore recovery should be barred; (2) Cashman failed to mitigate its damages and put any insurance policy on notice of Angelo Carvalho's ("Carvalho") acts; (3) Nevada statutes preclude surety coverage to a fourth-tier supplier; and (4) an intervening mechanic's lien bond and additional bond for codes supersede and release the surety bonds and render them unnecessary.

This Opposition is made and based upon NRCP 56, the following Memorandum of Points and Authorities below, the exhibits attached hereto and incorporated by reference, the pleadings and papers on file herein, and such oral argument as may be adduced at a hearing on this matter.

POINTS AND AUTHORITIES

I. INTRODUCTION

This is not the first time that Cashman has come to this Court looking for the relief sought in the instant Motion. Cashman has sought summary judgment as to other payment and license bonds issued for the City Hall Project (the "Project"). Cashman has sought summary judgment as to its mechanic's lien and the corresponding mechanic's lien bond. The Defendants have sought summary judgment as to the mechanic's lien as to the surety Defendants. At the last hearing on this matter, on November 9, 2012, the Court was clear that until a determination had been made as to the validity of Cashman's mechanic's lien, and whether Cashman was owed any damages by any defendant other than CAM Consulting ("CAM"), Carvalho, and Jenel Rennie, ruling on whether Cashman was entitled to proceeds from any of the bonds should be continued to allow Cashman to conduct discovery with respect to certain issues relating to its mechanic's lien, including notice to the owners of the Project.

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The aforementioned discovery is completed, and the parties will be coming back before the Court to argue all of the respective motions as soon as the Court sets a new hearing date.[1] Until the Court makes a determination as to whether Mojave owes Cashman **anything** by way of Cashman's claims in this case, or that Cashman's mechanic's lien is valid, any determination with respect to the instant payment bond would be premature. Further, as a result of the five amendments to the Complaint, Cashman now has several bonds and sureties involved in this case, should the Court determine that any of its claims are valid. As noted at the last hearing, bringing the instant payment bond into the case is simply overkill, but given that issues of material fact still exist as to whether Cashman is owed anything by Mojave and whether Cashman has a valid mechanic's lien, the instant Motion must be denied.

II. STATEMENT OF FACTS

At this point, the Court has likely memorized the facts of this case, but for purposes of the instant Motion, the following undisputed facts are relevant to the issues at hand. There is no dispute that Mojave entered into a contract with CAM to provide materials pursuant to Mojave's subcontract with Whiting Turner. A true and correct copy of Mojave's contract with CAM is attached hereto as **Exhibit "A"** and incorporated by reference. There is also no dispute that CAM entered into a separate contract with Cashman for supply of said materials for the Project. A true and correct copy of Cashman's contract with CAM is attached hereto as **Exhibit "B"** and incorporated by reference. Cashman has steadfastly denied ever being in a contractual relationship with Mojave at every stage of this action.

All of the parties have testified that CAM's involvement in the Project was mandated by the City of Las Vegas and the owners of the Project, who required participation by disadvantaged business owners. Cashman bid $755,893.89 to supply the aforementioned materials and labor to the Project. Upon delivery of ***most*** of the materials and ***most*** of the labor,[2] there is no dispute

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[1] The parties were supposed to complete supplemental briefing on the aforementioned issues and come back for hearing on March 26, 2013. However, for purposes of discussing possible settlement, the briefing schedule was amended and a stipulation submitted to the Court for a new hearing date. As of the date of this Opposition, the Court has not provided a new hearing date in the Order accompanying the stipulation.

[2] There is also no dispute that Cashman did not supply all of the materials required for the Project, namely certain batteries and operational codes, and did not complete the labor on the Project. Those facts were confirmed by both

that Mojave tendered payment to CAM, as required by its contract with CAM. A true and correct copy of Shane Norman's deposition testimony from August 16, 2012, at pages 36-38, is attached hereto as **Exhibit "C"** and incorporated by reference. A true and correct copy of Keith Lozeau's deposition testimony from September 4, 2012, at pages 37 and 67 is attached hereto as **Exhibit "D"** and incorporated by reference. Likewise, Cashman has provided this Court with no evidence that Mojave did not tender the full payment to CAM. Within minutes of CAM's receipt of Mojave's payment, CAM provided Cashman with a post-dated check in the amount Mojave had just tendered to CAM. *See* Shane Norman's deposition testimony from August 16, 2012, at pages 31-32, attached hereto as **Exhibit "C"**. Cashman did not simply ask CAM to sign over the check from Mojave, nor did Cashman ask for immediate tender of the funds CAM owed Cashman pursuant to the contract between CAM and Cashman. Instead, Cashman accepted a post-dated check from CAM and then issued an unconditional, final lien release as to the materials and labor provided. *See id.* at pages 31-32, and 51.

As the Court now knows, CAM's check to Cashman bounced as a result of CAM removing most of the money from its bank account prior to Cashman cashing the check. *See* Keith Lozeau's deposition testimony from September 4, 2012, at pages 41 and 66, attached hereto as **Exhibit "D"**. While Cashman's statements with respect to providing the materials and equipment for the Project are true, with the exception of the aforementioned labor and materials Cashman has refused to provide, it is also true that Mojave tendered full payment for those materials and Cashman's labor to the party with whom Mojave had a contract, CAM. Based upon the contractual arrangements between the three parties, it would have been improper for Mojave to pay Cashman directly without first tendering the payment to CAM.

Mojave obtained a payment bond for the Project in the amount of $10,969,669.00. A true and correct copy of this payment bond is attached hereto as **Exhibit "E"** and incorporated by this reference. While Cashman chooses to cite one portion of this bond, which states that the bond, "shall inure to all persons supplying labor, material, rental equipment, supplied or services in the performance of **said Contract**," the bond also states, clearly and unambiguously that if the

(continued)
representatives of Cashman deposed in this case, Shane Norman and Keith Lozeau.

EXHIBIT 12

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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; 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
Dept. No.: 32

Consolidated with Case No.: A653029

FOURTH AMENDED COMPLAINT

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

Defendants.

AND ALL RELATED MATTERS.

COMES NOW, Plaintiff, CASHMAN EQUIPMENT COMPANY, (hereinafter "Cashman" or "Plaintiff") by and through its attorneys of record, Pezzillo Robinson, in support of its Third Amended Complaint against the Defendants named herein and alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Cashman, is a Nevada corporation duly authorized to conduct business and conducting business within the State of Nevada.

2. Plaintiff is informed and believes and based thereon alleges that Defendant CAM CONSULTING INC. ("CAM"), is or was at all times relevant to this action, a Nevada corporation authorized to conduct business in the State of Nevada.

3. Plaintiff is informed and believes and based thereon alleges that Defendant ANGELO CARVALHO ("CARVALHO") is a resident of Clark County, Nevada and an owner of Defendant CAM.

4. Plaintiff is informed and believes and based thereon alleges that Defendant JANEL RENNIE aka JANEL CARVALHO ("RENNIE") is a resident of Clark County, Nevada, an owner of Defendant CAM and the owner of the property located at 6321 Little Elem St., North Las Vegas, Nevada, 89031 and more particularly identified by Assessor's Parcel Number 124-29-110-099 (the "Property"), which is subject of Plaintiff's claim to quiet title contained herein.

5. Plaintiff is informed and believes and based thereon alleges that Defendant WEST EDNA ASSOCIATES, LTD., dba MOJAVE ELECTRIC ("MOJAVE") is or was at

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all times relevant to this action, a Nevada limited liability company authorized to conduct business in the State of Nevada as a licensed contractor, license numbers 38571, 37380 and 19512; is the principal on the Mechanics Lien Release Bond, issued by WESTERN SURETY COMPANY (Bond Number 58685401) for the project commonly referred to as the New Las Vegas City Hall project (hereinafter "the Project"); and is the principal of a payment bond issued by WESTERN SURETY COMPANY (Bond Number unknown).

6. Plaintiff is informed and believes and based thereon alleges that Defendant WESTERN SURETY COMPANY ("WESTERN") is authorized to conduct business within the State of Nevada as a contractor's bond surety, and in that capacity issued two contractor's license bonds to Defendant MOJAVE, Bond Number 929452545 in the amount of $5,000.00 and Bond Number 929444674 in the amount of $2,000.00. Said bond was issued for the benefit of various public members injured by Defendant MOJAVE's actions as a contractor, including Plaintiff. Additionally, WESTERN also issued a Mechanics Lien Release Bond to Defendant MOJAVE (Bond Number 58685401) in the amount of $1,133,840.84, for the benefit of Plaintiff. Further, WESTERN also issued a Payment Bond to Defendant MOJAVE (Bond Number unknown) for the benefit of Plaintiff.

7. Plaintiff is informed and believes and based thereon alleges that Defendant THE WHITING TURNER CONTRACTING COMPANY ("WHITING TURNER") is or was at all times relevant to this action, a Maryland limited liability company authorized to conduct business in the State of Nevada as a licensed contractor, license nos. 33400, 68086, and 68079 and is the general contractor on the Project.

8. Plaintiff is informed and believes and based thereon alleges that Defendant FIDELITY AND DEPOSIT COMPANY OF MARYLAND ("FIDELITY") is authorized to conduct business within the State of Nevada as a contractor's bond surety, and in that capacity issued a contractor's license bond to Defendant WHITING TURNER, Bond Number 9045603 in the amount of $50,000.00 for license number 33400, and issued a payment bond, Bond

Number 8997023. Said bonds were issued for the benefit of various public members injured by Defendant WHITING TURNER's actions as a contractor, including Plaintiff.

9. Plaintiff is informed and believes and based thereon alleges that Defendant TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA ("TRAVELERS") is a surety that issued a payment bond, Bond No. 105375118, for the benefit of various public members injured by Defendant WHITING TURNER's actions as a contractor, including Plaintiff.

10. Plaintiff is informed and believes and based thereon alleges that Defendants QH LAS VEGAS LLC, PQ LAS VEGAS, LLC, LWTIC SUCCESSOR LLC and FC/LW VEGAS LLC (hereinafter collectively "Owners") were the former owners or had ownership interests or were successors to the owner of the Project at the time of construction and that the Owners are holding funds that were to be released for construction of the Project.

11. Defendants sued herein under the fictitious names of DOES 1 through 10, inclusive, are presently unknown to Plaintiff but are believed to reside in the State of Nevada and are in some respect liable for the acts and omissions, whether intentional, negligent or otherwise, alleged herein.

12. Defendants sued herein under the fictitious names of ROE CORPORATIONS 1 through 10, inclusive, are presently unknown to Plaintiff but are believed to be corporations authorized to conduct business in the State of Nevada and are in some respect liable for the acts and omissions, whether intentional, negligent or otherwise, alleged herein.

13. The obligations sued upon herein were performed in Clark County, Nevada.

FIRST CAUSE OF ACTION
(BREACH OF CONTRACT AGAINST CAM, DOES 1-10, AND ROE CORPORATIONS 1-10, INCLUSIVE)

14. Plaintiff repeats with the same force and effect paragraphs 1 through 13, as if

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set forth in full.

15. Plaintiff and Defendant entered into an agreement whereby Plaintiff agreed to sell equipment to Defendant ("the Contract") for the total price of $755,893.89. The equipment was to be incorporated into the Project.

16. Plaintiff provided the equipment to Defendant and as required by the Contract. Defendant agreed to pay Plaintiff for the equipment pursuant to the terms of the Contract.

17. Defendant has breached the terms of the Contract by failing and refusing to pay for the equipment provided by Plaintiff, and now owes a sum in excess of $10,000.00.

18. Plaintiff has performed all conditions and promises required on its part to be performed under the Contract, except as said performance has been waived, excused or prevented by Defendant's breach of the Contract.

19. Based upon Defendant's breach of the Contract as described above, Plaintiff has been damaged in a sum in excess of $10,000.00, together with fees, costs, and interest thereon as provided in the Contract until paid in full and other such damage according to proof.

SECOND CAUSE OF ACTION
(BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING AGAINST CAM, DOES 1-10, AND ROE CORPORATIONS 1-10, INCLUSIVE)

20. Plaintiff repeats with the same force and effect paragraphs 1 through 19, as if set forth in full.

21. All contracts entered into in the state of Nevada contain the implied covenant of good faith and fair dealing.

22. Defendant's intentional failure to pay Plaintiff for the equipment after receiving the funds to pay Plaintiff from MOJAVE, the electrical subcontractor on the Project, and according to the terms of the Contract constitutes a breach of the implied covenant of good faith and fair dealing.

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23. Based on Defendant's breach of the Contract as described above, Plaintiff has been damaged in a sum in excess of $10,000.00, together with fees, costs, and interest thereon as provided in the Contract until paid in full and other such damage according to proof.

THIRD CAUSE OF ACTION
(FORECLOSURE OF SECURITY INTEREST AGAINST CAM, MOJAVE, DOES 1-10, AND ROE CORPORATIONS 1-10, INCLUSIVE)

24. Plaintiff repeats with the same force and effect paragraphs 1 through 23, as if set forth in full.

25. Plaintiff holds a valid security interest in the equipment sold to CAM as provided for in the credit agreement executed by CARVALHO on behalf of CAM, which were pledged in writing in order to secure payment for the equipment.

26. Plaintiff perfected its security interest in the equipment.

27. Plaintiff properly filed its security agreement in accordance with the pertinent provisions of the Nevada Uniform Commercial Code.

28. Plaintiff is entitled to execute upon its security agreement and take possession of all assets or proceeds subject of the security agreement and seeks a judgment and order from this Court allowing such execution.

29. Plaintiff is entitled to an award of its interest, costs and attorneys' fees incurred herein.

FOURTH CAUSE OF ACTION
(ALTER EGO AGAINST CAM, CARVALHO, RENNIE DOES 1-10, AND ROE CORPORATIONS 1-10, INCLUSIVE)

30. Plaintiff repeats with the same force and effect paragraphs 1 through 29, as if set forth in full.

31. Plaintiff is informed and believes and based thereon alleges that Defendant CAM is not and was not adequately funded.

32. Plaintiff is informed and believes and based thereon alleges that Defendant

CAM is solely owned by Defendants CARVALHO and RENNIE, and that CAM is influenced and governed by CARVALHO and RENNIE.

33. Plaintiff is informed and believes and based thereon alleges that CAM received payment from MOJAVE, the electrical subcontractor on the Project, for the equipment it purchased from Plaintiff and instead of paying Plaintiff for the equipment, CARVALHO and RENNIE diverted the funds from CAM and used the funds for their own benefit.

34. Plaintiff is informed and believes and based thereon alleges that CARVALHO and RENNIE used the corporate assets as their own, withdrawing $600,000.00 from the corporate banking account even though those funds were to be used to pay Plaintiff.

35. As set forth herein, a unity of interest and ownership exists between the Defendant CAM and Defendants CARVALHO and RENNIE such that one is inseparable from the other and the facts of this matter demonstrate that adherence to the fiction of a separate entity would, under the circumstances, sanction a fraud or promote injustice and would therefore be inequitable.

36. Therefore, as CARVALHO and RENNIE are the alter ego of CAM, CARVALHO and RENNIE are liable for the damages suffered by Plaintiff, in an amount in excess of $10,000.00, together with fees, costs, and interest thereon pursuant to the terms of the Contract until paid in full and other such damage according to proof.

FIFTH CAUSE OF ACTION
(CONVERSION AGAINST CARVALHO,
DOES 1-10, AND ROE CORPORATIONS 1-10, INCLUSIVE)

37. Plaintiff repeats with the same force and effect paragraphs 1 through 36 as if set forth in full.

38. Plaintiff is informed and believes and based thereon alleges that Defendant CARVALHO received payment from MOJAVE, the electrical subcontractor on the Project, for the equipment provided to Defendant CAM by Plaintiff.

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39. Defendant CARVALHO then issued payment to Plaintiff in the form of a check in the amount of $755,893.89.

40. Plaintiff deposited the check, but it was returned by the bank.

41. Plaintiff is informed and believes and based thereon alleges that Defendant CARVALHO stopped payment on the check.

42. Plaintiff is informed and believes and based thereon alleges that Defendant CARVALHO personally withdrew $600,000.00 from the corporate bank account even though CARVALHO knew that money was received for Plaintiff and was to be used to pay Plaintiff for the equipment Plaintiff sold to CAM.

43. Plaintiff subsequently contacted Defendant CARVALHO to request that payment be reissued to Plaintiff for the equipment Plaintiff sold Defendant.

44. Defendant CARVALHO then again issued payment to Plaintiff in the form of a check in the amount of $755,893.89.

45. Plaintiff is informed and believes and based thereon alleges that Defendant CARVALHO issued the second check knowing there were no funds in the bank account to pay Plaintiff, as CARVALHO had previously withdrawn $600,000.00 from the account and had paid other expenses with the money to be paid to Plaintiff.

46. Plaintiff presented the second check to the bank upon which it was drawn, Nevada State Bank, and was informed that the account did not have sufficient funds to cover the check.

47. Plaintiff has attempted to contact Defendant CARVALHO numerous times and CARVALHO is not responding and has not issued payment.

48. As evidenced by Defendant CARVALHO twice purporting to make payment to Plaintiff for the equipment purchased, the money in CARVALHO's possession belongs to Plaintiff and Plaintiff has the right to possession of the money.

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49. Defendant CARVALHO is wrongfully and intentionally exercising dominion and control over Plaintiff's property interfering with Plaintiff's right to the property.

50. In keeping Plaintiff's money, Defendant CARVALHO is depriving Plaintiff of its use of the property.

51. Defendant CARVALHO's failure to pay Plaintiff has caused damages to Plaintiff in an amount in excess of $10,000.00, together with fees, costs, and interest thereon pursuant to the terms of the Contract until paid in full and other such damage according to proof.

SIXTH CAUSE OF ACTION
(FRAUD AGAINST CAM, CARVALHO
DOES 1-10, AND ROE CORPORATIONS 1-10, INCLUSIVE)

52. Plaintiff repeats with the same force and effect paragraphs 1 through 51, as if set forth in full.

53. Defendant CAM and Defendant CARVALHO represented to Plaintiff that they would pay for the equipment purchased with the monies received from MOJAVE, the electrical subcontractor on the Project, knowing that the money was to be held in trust for Plaintiff and paid to Plaintiff.

54. Defendant CAM and Defendant CARVALHO presented a check to Plaintiff purporting to pay Plaintiff for the equipment.

55. Plaintiff is informed and believes and based thereon alleges that Defendants did not intend to pay Plaintiff for the equipment.

56. Plaintiff is informed and believes and based there on alleges Defendants requested that the bank stop payment on the check and diverted the funds for their own use.

57. Plaintiff subsequently discovered that there were not sufficient funds to pay Plaintiff in Defendants' bank account.

58. Plaintiff relied to its detriment upon Defendants' false representations by

supplying the equipment to the Project and executing a release.

59. Due to Defendant's intentional Fraud upon Plaintiff as described above, Plaintiff has been damaged in a sum in excess of $10,000.00, together with fees, costs, and interest thereon until paid in full and other such damage according to proof.

60. Plaintiff is also entitled to punitive damages as a result of Defendant's tortious conduct.

SEVENTH CAUSE OF ACTION
(NEGLIGENT MISREPRESENTATION AGAINST CAM, CARVALHO DOES 1-10, AND ROE CORPORATIONS 1-10, INCLUSIVE)

61. Plaintiff repeats with the same force and effect paragraphs 1 through 60, as if set forth in full.

62. Defendant CAM and Defendant CARVALHO represented to Plaintiff that they would pay for the equipment purchased with the monies received from MOJAVE, the electrical subcontractor on the Project, knowing that the money received was to be held in trust for Plaintiff and paid to Plaintiff.

63. Defendant CAM and Defendant CARVALHO presented a check to Plaintiff purporting to pay Plaintiff for the equipment.

64. Plaintiff is informed and believes and based thereon alleges that Defendants did not intend to pay Plaintiff for the equipment or did not insure that they had sufficient funds to pay Plaintiff.

65. Plaintiff is informed and believes and based there on alleges, Defendants requested that the bank stop payment on the check.

66. Plaintiff subsequently discovered that there were not sufficient funds to pay Plaintiff in Defendants' bank account.

67. Plaintiff relied to its detriment upon Defendants' false representations by supplying the equipment to the Project and executing a release and has suffered damage as a result.

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68. Defendants intended for Plaintiff to act on its representations and are therefore liable to Plaintiff for the damages Plaintiff suffered in reliance thereon.

69. Due to Defendants' Negligent Misrepresentation, Plaintiff has been damaged in a sum in excess of $10,000.00, together with fees, costs, and interest thereon until paid in full and other such damage according to proof.

EIGHTH CAUSE OF ACTION
(QUIET TITLE AGAINST CARVALHO, RENNIE, DOES 1-10, AND ROE CORPORATIONS 1-10, INCLUSIVE)

70. Plaintiff repeats with the same force and effect paragraphs 1 through 69, as if set forth in full.

71. Plaintiff is informed and believes and based thereon alleges that Defendants CARVALHO and RENNIE converted funds that were to be paid to Plaintiff as set forth herein.

72. Plaintiff is informed and believes and based thereon alleges that those funds were used by Defendants to purchase the Property on or about May 11, 2011, less than two weeks after CARVALHO withdrew $600,000.00 from the corporate bank account.

73. Plaintiff is informed and believes and based thereon alleges that Defendants titled the Property to RENNIE only, using her maiden name, so as to conceal the property purchase.

74. Plaintiff is informed and believes and based thereon alleges that because Defendants used Plaintiff's money to purchase the Property, Plaintiff has a claim to ownership of the Property.

75. Plaintiff's claim to quiet title is brought pursuant to NRS 40.010.

76. Plaintiff is entitled to an order of this Court declaring it the owner of the Property.

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NINTH CAUSE OF ACTION
(ENFORCEMENT OF MECHANIC'S LIEN RELEASE BOND AGAINST MOJAVE, WESTERN, DOES 1-10, AND ROE CORPORATIONS 1-10, INCLUSIVE)

77. Plaintiff repeats with the same force and effect paragraphs 1 through 76, as if set forth in full.

78. Plaintiff supplied equipment to the Project at the request of and pursuant to the Contract with CAM.

79. Plaintiff is informed and believes and based thereon alleges that said equipment was used in or for the construction, alteration or repair of an improvement on the Property.

80. Plaintiff is entitled to hold a lien on the Property as Plaintiff is a lien claimant, as set forth in NRS 108.2214.

81. Plaintiff served via certified mail, return receipt requested, a certain Notice to Owner of Right to Lien upon Defendants or their successors in interest, as required by NRS 108.245, or was exempt from the obligation to serve said Notice.

82. Within the time required by NRS Chapter 108, Plaintiff caused to be recorded a mechanic's lien on the Project in the amount of $755,893.89, Instrument No. 201106220002156, in compliance with the requirements of NRS 108.226 and served upon the record owner in compliance with the provisions of NRS 108.227.

83. Plaintiff's lien is a valid lien upon the Property.

83. On or about September 8, 2011, Mojave, as principal, and Western, as surety, caused a Bond for Release of Mechanic's Lien Pursuant to Section 108.221 seq. of Nevada Revised Statutes to be recorded to release Plaintiff's mechanic's lien.

84. Pursuant to NRS 108.2415(5), the surety bond recorded to release Plaintiff's mechanic's lien replaces the property as security for the lien and pursuant to NRS 108.2421. Plaintiff is entitled to bring an action against the principal and surety on the bond.

85. Plaintiff was required to retain the undersigned firm of attorneys to prosecute this action, and as a result has incurred and will continue to incur costs and attorneys fees in preparing, recording and foreclosing its lien, which Plaintiff is entitled to recover from said Defendants.

TENTH CAUSE OF ACTION
(UNJUST ENRICHMENT AGAINST MOJAVE, DOES 1-10, and ROE CORPORATIONS 1-10, inclusive)

86. Plaintiff repeats with the same force and effect paragraphs 1 through 85, as if set forth in full.

87. Plaintiff supplied equipment to the Project at the request of and pursuant to its Contract with CAM.

88. Plaintiff is informed and believes and based thereon alleges that said equipment was used in or for the construction, alteration or repair of an improvement on the Property.

89. Plaintiff is informed and believes and based thereon alleges that MOJAVE contracted with CAM to purchase the equipment Plaintiff sold to CAM.

90. Plaintiff is informed and believes and based thereon alleges that MOJAVE knew that Plaintiff was selling the equipment to CAM that MOJAVE would later purchase.

91. Plaintiff is informed and believes and based thereon alleges that MOJAVE refused to issue a joint check payable to both CAM and Plaintiff to pay for the equipment Plaintiff supplied to the Project.

92. Plaintiff is informed and believes and based thereon alleges that MOJAVE issued payment for the equipment to CAM.

93. Plaintiff is informed and believes and based thereon alleges that after receiving said payment CAM then issued two checks made payable to MOJAVE in the amounts of $139,367.70 and $136,269.00, respectively.

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94. Plaintiff is informed and believes and based thereon alleges that the payments MOJAVE received from CAM were funds that were to be used to pay Plaintiff for the equipment.

95. Plaintiff is informed and believes and based thereon alleges that MOJAVE, by virtue of those payments from CAM has retained monies that rightfully belong to Plaintiff.

96. Plaintiff is informed and believes and based thereon alleges that MOJAVE may not have paid the entire amount due for the equipment.

97. As MOJAVE has in its possession monies that should have been used to pay Plaintiff for the equipment, MOJAVE has been unjustly enriched to the detriment of Plaintiff, causing Plaintiff damages in a sum in excess of $10,000.00 and other such damage according to proof.

98. Plaintiff has retained the services of an attorney to prosecute this action and is entitled to an award of attorney's fees and costs incurred.

ELEVENTH CAUSE OF ACTION
(CONTRACTOR'S LICENSE BOND CLAIM AGAINST MOJAVE, WESTERN DOES 1-10, and ROE CORPORATIONS 1-10, inclusive)

99. Plaintiff repeats with the same force and effect paragraphs 1 through 98, as if set forth in full.

100. Plaintiff is informed and believes and based thereon alleges that Defendant MOJAVE, as principal, and Defendant WESTERN, as surety, caused to be issued two contractor's license bonds in accordance with the provisions of Chapter 624 of the Nevada Revised Statutes. Said bonds are identified as Bond Number 929452545 in the amount of $5,000.00 and Bond Number 929444674 in the amount of $2,000.00, were conditioned upon full compliance by MOJAVE with all of the provisions of Chapter 624 of the Nevada Revised Statutes and inures to the benefit of all persons, including Plaintiff, damaged as a result of a violation of any requirements of said chapter by MOJAVE.

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101. Plaintiff is informed and believes and based thereon alleges that the damages it has suffered are a direct and proximate result of violations of one or more of the following sections of Chapter 624 of Nevada Revised Statutes by Defendant MOJAVE:

(a) Section 624.3012(1) in that MOJAVE diverted funds which were received for a specific purpose in the prosecution of construction contracts and thereby deprived Plaintiff of payment to which it was entitled;

(b) Section 624.3012(2) in that MOJAVE willfully and deliberately failed to pay money due for labor and materials rendered in connection with its operation as a contractor, when it had the capacity to pay, or when it had received sufficient funds therefore as payment, in the prosecution of construction contracts for which the equipment was provided.

102. In light of MOJAVE's willful and deliberate failure to ensure that Plaintiff was paid for the equipment Plaintiff provided to the Project and as it has been unjustly enriched by retaining monies owed to Plaintiff for the equipment MOJAVE violated Chapter 624 of the Nevada Revised Statutes and Plaintiff is entitled to recover against the license bond issued by Defendant WESTERN.

TWELFTH CAUSE OF ACTION
(UNJUST ENRICHMENT AGAINST WHITING TURNER, DOES 1-10, AND ROE CORPORATIONS 1-10, INCLUSIVE)

103. Plaintiff repeats with the same force and effect paragraphs 1 through 102, as if set forth in full.

104. Plaintiff is informed and believes and based thereon alleges that Defendant WHITING TURNER, has been unjustly enriched by the wrongful act of retaining the equipment that was provided to the Project by Plaintiff, and failing to pay for said equipment.

105. As such, said Defendants have been unjustly enriched to the detriment and damage of Plaintiff in a sum in excess of $10,000.00.

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106. Plaintiff has retained the services of an attorney to prosecute this action and is entitled to an award of attorney's fees and costs incurred.

THIRTEENTH CAUSE OF ACTION
(Claim on Payment Bond against WHITING TURNER, FIDELITY, TRAVELERS, DOES 1-10, and ROE CORPORATIONS 1-10, inclusive)

107. Plaintiff repeats with the same force and effect paragraphs 1 through 106, as if set forth in full.

108. Plaintiff agreed to supply equipment to the Project.

109. Plaintiff supplied the materials to the Project; however Plaintiff has not been paid as required for the equipment supplied and incorporated into the Project.

110. Upon information and belief, WHITING TURNER contracted with FIDELITY and TRAVELERS to obtain a payment bond for the protection of unpaid claimants on the Project.

111. Upon information and belief, FIDELITY and TRAVELERS executed a payment bond for the protection of unpaid claimants on the Project.

112. Upon information and belief, Plaintiff has fulfilled all of the requirements to maintain an action against WHITING TURNER, FIDELITY and TRAVELERS on the payment bond for the amount which remains unpaid to Plaintiff for equipment supplied to the Project.

113. Plaintiff has been damaged in an amount in excess of 10,000.00, together with fees, costs, and interest and other damages allowed pursuant to statute thereon as provided until paid in full and other such damage according to proof.

FOURTEENTH CAUSE OF ACTION
(Claim on Payment Bond against MOJAVE, WESTERN, DOES 1-10, and ROE CORPORATIONS 1-10, inclusive)

114. Plaintiff repeats with the same force and effect paragraphs 1 through 113, as if set forth in full.

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115. Plaintiff agreed to supply equipment to the Project.

116. Plaintiff supplied the materials to the Project; however Plaintiff has not been paid as required for the equipment supplied and incorporated into the Project.

117. Plaintiff is informed and believes and based thereon alleges that MOJAVE contracted with WESTERN to obtain a payment bond for the protection of unpaid claimants on the Project.

118. Plaintiff is informed and believes and based thereon alleges that WESTERN executed a payment bond for the protection of unpaid claimants on the Project.

119. Plaintiff is informed and believes and based thereon alleges that Plaintiff has fulfilled all of the requirements to maintain an action against MOJAVE and WESTERN on the payment bond for the amount which remains unpaid to Plaintiff for equipment supplied to the Project.

120. Plaintiff has been damaged in an amount in excess of 10,000.00, together with fees, costs, and interest and other damages allowed pursuant to statute thereon as provided until paid in full and other such damage according to proof.

FIFTEENTH CAUSE OF ACTION
(UNJUST ENRICHMENT AGAINST OWNERS, DOES 1-10, AND ROE CORPORATIONS 1-10, INCLUSIVE)

121. Plaintiff repeats with the same force and effect paragraphs 1 through 120, as if set forth in full.

122. Plaintiff supplied equipment to the Project for which it was not paid.

123. Plaintiff is informed and believes and based thereon alleges that Defendants have been unjustly enriched by said equipment supplied by Plaintiff, as Defendants are withholding construction funds to be used for payment of construction activities on the Project.

124. As such, said Defendants have been unjustly enriched to the detriment and damage of Plaintiff in a sum in excess of $10,000.00.

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125. Plaintiff has retained the services of an attorney to prosecute this action and is entitled to an award of attorney's fees and costs incurred.

WHEREFORE, Plaintiff prays for relief as follows:

1. For compensatory damages for an amount in excess of $10,000.00, together with interest thereon at the contractual rate until paid in full and other such damage according to proof;

2. For punitive damages against Defendants CAM, CARVALHO and RENNIE;

3. For judgment declaring that Plaintiff has a valid security interest in the property subject of the UCC filing for an amount in excess of $10,000.00, plus interest from the date the amounts became due until paid in full, costs and fees and that Plaintiff's security interest has priority over every other lien or claim of interest in the property;

4. For judgment declaring that Plaintiff is the owner of the Property subject to the Quiet Title claim alleged herein;

5. For judgment declaring that Plaintiff has a claim in a sum in excess of $10,000.00 against MOJAVE's lien release bond, issued by WESTERN, plus interest from the date the amounts became due until paid in full, costs and fees;

6. For judgment declaring that Plaintiff has a claim in excess of $10,000.00 against MOJAVE's contractor's license bond, issued by WESTERN, plus interest thereon from the date the amounts became due until paid in full, and that Plaintiff's claim has priority over every other claim of interest on the bond;

7. For judgment declaring that Plaintiff has a claim in excess of $10,000.00 against WHITING TURNER's payment bond, issued by FIDELITY and TRAVELERS, plus interest thereon from the date the amounts became due until paid in full, and that Plaintiff's claim has priority over every other claim of interest on the bond;

8. For judgment declaring that Plaintiff has a claim in excess of $10,000.00

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against MOJAVE's payment bond, issued by WESTERN, plus interest thereon from the date the amounts became due until paid in full, and that Plaintiff's claim has priority over every other claim of interest on the bond;

9. For reasonable attorneys fees and costs; and

10. For such other and further relief as this Court deems just and proper.

DATED: January 10, 2013

PEZZILLO LLOYD

By: _____

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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 **CASHMAN EQUIPMENT COMPANY's OPPOSITION TO 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** **Date: March 12, 2013** **Time: 9:00 AM**

Plaintiff, CASHMAN EQUIPMENT COMPANY, by and through its undersigned counsel, opposes Defendants QH Las Vegas, LLC, PQ Las Vegas, LC, LWTIC Successor, LLC, and FC/LW Vegas' Motion to Dismiss or in the Alternative, Motion for Summary Judgment. This Opposition is

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made and based upon the following Memorandum of Points and Authorities, the exhibits attached hereto, the pleadings and papers on file herein and any oral argument allowed by the court at the hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Defendants QH LAS VEGAS LLC, PQ LAS VEGAS, LLC, LWTIC SUCCESSOR LLC and FC/LW VEGAS LLC (hereinafter collectively ("Owners" or "Defendants") Motion to Dismiss or in the Alternative, Motion for Summary Judgment must be denied. Cashman has discovered evidence in support of its claim for unjust enrichment against these Defendants, genuine issues of fact exist precluding judgment in favor of these Defendants on this claim, Cashman has properly plead its claim for unjust enrichment as allowed by Nevada law, the liability of these Defendants rests on the undisputed fact that they were the Owners of this Project at the time of construction and are withholding funds for the generator materials supplied by Cashman to the Project and Mojave did not obtain a bond that provides coverage to Cashman for the Owner's unjust enrichment in retaining the materials supplied by Cashman and then failing to pay for those materials. Cashman should be allowed to proceed to trial on this claim.

Plaintiff moved this Court for permission it to file a Fourth Amended Complaint in this matter based upon newly discovered evidence that gave rise to two new claims, one of which is the claim at issue here for unjust enrichment against these Defendants, the entities who owned or had ownership interest in the Project at the time of construction. It was discovered during the deposition of Nancy Briseno-Rivera, THE WHITING TURNER CONTRACTING COMPANY's ("Whiting Turner") Lead Project Manager for this Project, that the Owners are still withholding construction funds from Whiting Turner on the Project, and had specifically withheld funds that were related to the materials supplied by Cashman to the Project. *See* Exhibit "7," Deposition Transcript of Nancy Briseno-Rivera at pgs. 47 – 53. The Court granted Plaintiff's Motion based upon the good cause shown, and Plaintiff filed its Fourth Amended Complaint.

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In raising the claim for unjust enrichment against these Defendants, Plaintiff seeks to recover payment for the materials it supplied to the Project. It is undisputed that Plaintiff supplied these materials and has not received payment even though the materials have been incorporated into the Project and construction is complete. Ms. Briseno's testimony is in direct opposition to that of the Owners' representative and substantiates Plaintiff's claim for unjust enrichment as the Owners have received the benefit of the materials supplied by Cashman without having made payment for those materials. It is difficult to understand how this claim could be considered inappropriate or not supported by evidence, as Defendants try to claim in their Motion.

Plaintiff is not precluded from alleging claims based upon alternative theories of recovery, including unjust enrichment, where the evidence discovered in this matter substantiates the claims asserted. Defendants want Plaintiff to only proceed on claims of which Defendants approve; however, Defendants do not get to limit Plaintiff's claims simply because they do not want to be involved in this litigation or because Plaintiff has asserted other claims related to the materials it supplied to the Project and for which Plaintiff has not received payment. The lien release bond obtained by WEST EDNA ASSOCIATES, LTD dba MOJAVE ELECTRIC ("Mojave") only served to release Plaintiff's lien from the property upon which the Project is located. It does not provide a recovery for Plaintiff's claim for unjust enrichment against these Defendants as they were the Owners of the Project at the time of construction and are withholding funds related to the materials supplied by Cashman to the Project. The current ownership of the Project is irrelevant for purposes of Cashman's claim for unjust enrichment.

II.

STATEMENT OF RELEVANT FACTS.

1. The Project was constructed on land owned by QH Las Vegas, LLC. FC/LW Las Vegas LLC, LWTIC Successor LLC c/o Forest City Enterprises and PQ Las Vegas are related entities with a common parent company, Forest City Enterprises. *See* Deposition of David Phillips, at p. 6-9, attached hereto as Exhibit "4;" *see also* Deposition of Nancy Briseno-Rivera, October 4, 2012, at p. 10-11, attached hereto as Exhibit "7."

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2. The Project was transferred to the City of Las Vegas, Nevada on February 17, 2012 as part of a land swap within a larger development agreement between the Forest City entities and the City of Las Vegas. *See* Exhibit "5," property information, and Exhibit "4," at p. 6-7 and p. 19.

3. Cashman contracted with CAM CONSULTING INC. ("Cam") to supply materials to the Project that were comprised of a generator and related equipment. *See* Exhibit "1," Affidavit of Shane Norman; Exhibit "2," Invoices; and Exhibit "3," Delivery Receipts.

4. 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."

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

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

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

8. Mojave's performance of its contract with Whiting Turner included supplying and installing the materials provided by Cashman. *See* Exhibit "7" at Exhibit "1"of the Transcript (WTC00002).

9. Mojave has received payment for the materials Cashman supplied to the Project. *See* Exhibit "8," p. 19, lns. 7 – 9; *see also* Exhibit "7," p. 32-33.

10. Whiting Turner has not received payment for the materials Cashman supplied to the Project. *See* Exhibit "7," p. 47-48.

11. The owner of the Project at the time of construction is withholding payment from Whiting Turner comprised of retention and the amount owed for the materials supplied by Cashman to the Project. *See* Deposition of Nancy Briseno-Rivera, November 28, 2012, p. 18-20, attached hereto as Exhibit "9."

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12. The new owner of the Project, the City of Las Vegas, is not involved in the issues related to paying Whiting Turner the remaining amounts owed for its work on the Project. *See* Exhibit "7," p. 48-49.

13. The materials supplied by Cashman to the Project, the generator systems, are working properly except for the PLC. *See* Exhibit "9," at p. 20-21.

III.

ARGUMENTS AND AUTHORITIES

A. Cashman Has Stated Claims Against these Defendants Upon Which Relief May Be Granted, Therefore Defendants' Motion To Dismiss Must Be Denied.

Should the Court choose to view Defendants' Motion as a Motion to Dismiss pursuant to NRCP 12(b)(5) and disregard any matters offered outside of the pleadings, the Motion must be denied as Cashman has stated a claim for Unjust Enrichment against these Defendants in its Fourth Amended Complaint that includes factual allegations that when viewed as true entitled Cashman to the requested relief.

When presented with a motion to dismiss, "the district court must view all factual allegations in the complaint as true, and draw all inferences in favor of the nonmoving party," making dismissal only appropriate if it appears beyond a reasonable doubt that the Plaintiff could prove no set of facts, which, if true, would entitle the Plaintiff to relief. *Blackjack Bonding v. City of Las Vegas Municipal Court*, 116 Nev. 1213, 14 P.3d 1275 (2000); *see also Zhang v. Eighth Judicial District Court*, 103 P.2d 20, 22 (Nev. 2004); *see also Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 22, 62 P.3d 720, 734 (2003) (a complaint should not be dismissed unless it appears to a certainty that Plaintiff could not prove a set of facts that would entitle plaintiff to relief). Likewise, the Court must accept all factual allegations contained in the complaint as true. *Conway v. Circus Circus Casinos, Inc.*, 116 Nev. 870, 8 P.3d 837 (2000).

A Motion to Dismiss, pursuant to NRCP 12(b)(5), requires the Court to consider whether a claim upon which relief could be granted has been stated on the face of the Complaint. Generally, in evaluating the propriety of a motion to dismiss the Court will not consider any matter outside of the

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TEL 702 233-4225

pleadings. *See Schneider v. Continental Assur. Co.*, 110 Nev. 1270, 885 P.2d 572 (1994). In this matter, Cashman has asserted claims against these Defendants for Unjust Enrichment. This claim contains factual allegations, that when accepted as true, would entitle Cashman to the relief requested. Accordingly, Defendants' Motion to Dismiss must be denied.

B. Should The Court Consider Matters Outside Of The Pleadings, Defendants' Motion Must Still Be Denied As Defendants Have Not Met Their Burden and Genuine Issues Of Material Fact Exist That Preclude Summary Judgment From Being Entered.

Even if treated as a Motion for Summary Judgment, Defendants' Motion must still be denied as Defendants' have not established that they have not been unjustly enriched by receiving and retaining the materials supplied by Cashman and then failing to pay for those materials and genuine issues of material fact exist as to the amount Defendants are currently withholding for those materials. Summary judgment is only appropriate when "the pleadings, depositions, 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." *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005); *see also Margrave v. Dermody Properties, Inc.*, 110 Nev. 824, 827, 878 P.2d 291, 293 (1994); and NRCP 56. A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party. *Wood v. Safeway, Inc.*, 121 Nev. 724, 121 P.3d 1026 (2005).

1. Defendants Have Been Unjustly Enriched at the Detriment of Cashman as They Have Retained the Materials Supplied by Cashman, Withheld Construction Funds and Have Not Paid In Full for the Materials Cashman Provided to the Project.

Cashman filed this matter seeking payment for the materials it supplied to the Project. It is undisputed that Cashman supplied materials comprised of the generator, the switchgear and related items to the Project and that Cashman has not received payment for the materials. *See* Exhibits "1" – "3." It is undisputed that these materials have been incorporated into the Project. *Id.* It is undisputed that Cashman is owed $755,893.89 for these materials. *See* Exhibit "1." After conducting discovery, Cashman discovered that these Defendants, the owners of the Project during construction, are withholding funds for the materials supplied by Cashman from the general contractor, Whiting Turner. *See* Exhibit "7," pgs. 47 – 53. In fact, Defendants refuse to release

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LAS VEGAS, NEVADA 89119
TEL 702.233.4225

retention to Whiting Turner because the generator is not complete. *See* Exhibit "9," p. 18-20. These undisputed facts give rise to Cashman's claim for unjust enrichment against these Defendants. While Defendants claim they are not withholding these amounts, Ms. Briseno's contrary testimony established genuine issues of material fact concerning what amounts these Defendants are withholding and how much of that withholding is for the materials supplied by Cashman, and as genuine issues of materials fact exist, Defendants' Motion for Summary Judgment must be denied.

Cashman included its claim for unjust enrichment against these Defendants in its Fourth Amended Complaint. Unjust enrichment "exists when a plaintiff confers a benefit on the defendant, the defendant appreciates such benefit, and there is "'acceptance and retention by the defendant of such benefit under circumstances such that it would be inequitable for him to retain the benefit without payment of the value thereof.'"" *Certified Fire Prot. Inc. v. Precision Constr. Inc.*, 283 P.3d 250, 257 (Nev. 2012), citing *Unionamerica Mtg. v. McDonald*, 97 Nev. 210, 212, 626 P.2d 1272, 1273 (1981) (quoting *Dass v. Epplen*, 162 Colo. 60, 424 P.2d 779, 780 (Colo. 1967)). To support a claim for unjust enrichment, the plaintiff must show a benefit to defendant. *Id.*

The evidence submitted by Cashman establishes that Cashman has conferred a benefit on Defendants by supplying the materials to the Project. Defendants retained the materials, as they are incorporated into the Project, and the majority of the materials supplied by Cashman, including the generators, are operational. The completion of the Project, which included the materials supplied by Cashman, enabled the Defendants to complete the land swap with the City of Las Vegas, evidencing the benefit received by Defendants.

Defendants have not paid for the value of the benefit conferred by Cashman. Defendants are withholding the payment of construction funds, funds that were to be used for this Project, which means that Defendants have not paid in full for the construction of the Project. According to the testimony of Ms. Briseno, Whiting Turner's Lead Project Manager, Defendants are withholding payment from Whiting Turner comprised of retention and the amount owed for the materials supplied by Cashman to the Project. *See* Exhibit "7," pgs. 47 – 53 and Exhibit "9," p. 18 – 20. Defendants have offered no evidence in support of their claim that they have paid in full for these materials, and are instead citing to previous pleadings that also only contain allegedly "factual"

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statements without evidentiary support or cite to portions of Mr. Phillips testimony without including those portions that do not support their contentions.

Defendants do not even address Ms. Briseno's testimony as to the funds that are being withheld in their motion and instead rely only upon a portion of Mr. Phillips testimony, the Owners' representative, by selectively quoting his statements. However when read in context, Mr. Phillips testified that the Project is not closed out and that the Whiting Turner contract is still open "because there is payments still within that – their [Mojave's] 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.." *See* Exhibit "4," p. 24, lns. 5-11. Mr. Phillips could not recall the amount being withheld for the generator but estimated it was in the range of $30,000.00. *Id.* at p. 24, lns. 18-19. Mr. Phillips also testified that Defendants are withholding retention from Whiting Turner on its contract, somewhere in the range of 5 percent because the project is not closed out as the generator and the related equipment, while operational, are not providing full functionality at this point. *Id.* at pgs. 25 – 29. Mr. Phillips testimony supports Cashman's claim for Unjust Enrichment as it establishes that these Defendants have not paid in full for this equipment.

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TEL 702 233-4225

2. Defendants' Transfer of the Project to the City of Las Vegas Does Not Defeat Cashman's Claim for Unjust Enrichment.

As set forth *supra,* Cashman conferred a benefit on Defendants by supplying the materials to the Project. Defendants retained this benefit in the Project, as the materials were incorporated therein and were required for the Project to be completed and subsequently transferred so that Defendants could fulfill its duties under its agreement with the City of Las Vegas and receive land as part of a land swap. The materials supplied by Cashman, including the generator, are operational. *See* Exhibit "9," at p. 20 – 21. Defendants failed to pay in full for the materials provided by Cashman. According to Ms. Briseno, Defendants' were withholding the entire cost of the Cashman materials. *See* Exhibit "7," p. 47 – 48. As admitted by Mr. Phillips, Defendants are at least withholding approximately $30,000.00 related to the Cashman materials in addition to Whiting Turner's retention. *See* Exhibit "4," p. 24, lns. 15 – 19. After the Project was completed, and while still withholding these funds, Defendants transferred the Project to the City of Las Vegas as part of a

land swap contained in a larger development agreement between Defendants and the City of Las Vegas, as testified to by Mr. Phillips. *Id.* at p. 7. Without the materials supplied by Cashman, the Project would not have been complete and the transfer and land swap could not have occurred. Defendants have benefitted from the materials supplied by Cashman to the Project, a benefit that allowed Defendants to complete its duties under the development agreement with the City of Las Vegas and obtain the land in the land swap. It is undisputed that Defendants have not paid in full for the materials supplied by Cashman as that fact has been admitted by Mr. Phillips, the Owners' representative. Given that Cashman conferred a benefit on Defendants, that was retained by Defendants and for which Defendants have not paid full value, Defendants' Motion must be denied and Cashman must be allowed to proceed on its claim for Unjust Enrichment.

PEZZILLO LLOYD
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LAS VEGAS, NEVADA 89119
TEL 702 233-4225

3. Cashman has Properly Stated its Claim for Unjust Enrichment Against These Defendants as Allowed by Nevada Law.

Cashman has submitted evidence in support of its claims for Unjust Enrichment against these Defendants, as discussed *supra*. It is undisputed that these Defendants have not paid in full for the materials supplied by Cashman to the Project, as testified to by Ms. Briseno and Mr. Phillips, and Defendants have not offered any evidence in support of its contention that it did pay for these materials.

Nevada allows for the Plaintiff to proceed on a claim for unjust enrichment against a Defendant where there is no written contract with that Defendant even if a written contract existed with another party. In *LeasePartners Corp. v. The Robert Brooks Trust Dated Nov. 12, 1975*,113 Nev. 747, 942 P.2d 182 (1997), LeasePartners agreed to provide financing to Danzig Corp. for equipment installed on the property Danzig Corp. leased from Brooks Trust, the owner. Danzig Corp. breached its lease agreement with Brooks Trust, then breached its financing agreement with LeasePartners. *Id.* at 751-52. LeasePartners brought claims for unjust enrichment against Brooks Trust, alleging Brooks Trust, the owner, was unjustly enriched by the equipment paid for by LeasePartners, as that equipment was installed on the property owned by Brooks Trust, and LeasePartners was not paid by Danzig for the equipment. *Id.* at 752. The District Court granted judgment in favor of Brooks Trust. *Id.* LeasePartners appealed and the Supreme Court of Nevada

reversed the decision, holding that "unjust enrichment occurs 'when ever [sic] a person has and retains a benefit which in equity and good conscience belongs to another.'" *Id.* at 756, citing *Unionamerica Mtg. v. McDonald*, 97 Nev. 210, 212, 626 P.2d 1272, 1273. The Court held that LeasePartners claim for unjust enrichment against Brooks Trust was not barred as there was no written agreement between LeasePartners and Brooks Trust, even though there was a written agreement between LeasePartners and Danzig Corp. related to the equipment. *Id.*

Cashman has properly brought its claim for Unjust Enrichment against these Defendants as Cashman does not have a written agreement with these Defendants for the materials it supplied to the Project, and whether it had a contract with another party for these materials is irrelevant under the Nevada Supreme Court's holding in *LeasePartners*. The fact that Cashman has alleged alternative claims against other defendants in this matter has no bearing on whether Cashman can proceed on its claim for Unjust Enrichment against these Defendants. *See* NRCP 8(a). The lien release bond provided by Mojave does not provide security to Cashman's claim for unjust enrichment and will not pay the amount owed to Cashman should Cashman's lien claim fail. The existence of the bond has no bearing on whether Cashman can proceed on the claim at issue here. As Cashman has established that a benefit has been conferred and retained by Defendants, that Defendants have not paid full value and that Cashman's claim is proper under Nevada law, Defendants' Motion must be denied.

IV.

CONCLUSION

Based on the foregoing, Defendants' Motion to Dismiss or in the Alternative Motion for Summary Judgment must be denied.

DATED: March 6, 2013

PEZZILLO LLOYD

By: _____

Jennifer R. Lloyd, Esq.
Nevada State Bar No. 9617
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

CERTIFICATE OF MAILING

The undersigned, an employee of the law firm of PEZZILLO LLOYD, hereby certifies that on the 14th day of March, 2013, a true and correct copy of the foregoing document, **CASHMAN EQUIPMENT COMPANY's OPPOSITION TO 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,** was served by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope(s) addressed to:

Brian Boschee, Esq.
COTTON, DRIGGS, ET AL.
400 S. 4th St., 3rd Fl.
Las Vegas, NV 89101
Attorneys for Whiting Turner Contracting, Mojave Electric LV, LLC, Western Surety Company, Fidelity and Deposit Company of Maryland, QH LAS VEGAS LLC, PQ LAS VEGAS, LLC, LWTIC SUCCESSOR LLC and FC/LW VEGAS LLC

Edward S. Coleman, Esq.
COLEMAN LAW ASSOCIATES
8275 S. Eastern Avenue, Suite 200
Las Vegas, Nevada 89123
Attorneys for Janel Rennie aka Janel Carvalho and Linda Dugan

Keen L. Ellsworth, Esq.
ELLSWORTH, BENNION & ERICSSON, CHTD.
777 N. Rainbow Blvd. Ste. 270
LAS VEGAS, NV 89107
Attorneys for Element Iron and Design

An employee of PEZZILLO LLOYD

PEZZILLO LLOYD
6725 VIA AUSTI PARKWAY, SUITE 290
LAS VEGAS, NEVADA 89119
TEL. 702 233-4225

EXHIBIT 1

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

AFFIDAVIT OF SHANE NORMAN

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 comprised of the generator, the switchgear and related items 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 equipment was bid as a lump sum to Mojave to meet owner requirements.

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. Defendant Cam failed to provide payment to Cashman.

10. 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.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
S JOHNSON
No: 12-6141-1
My Appointment Expires Dec 5, 2016

Shane Norman 2/6/13
Date

SUBSCRIBED AND SWORN to before me this 6 day of November, 2013.

Notary Public in and for said county and state

EXHIBIT 2

CASHMAN EQUIPMENT

INVOICE

1.800.937.2320
www.cashmanequipment.com

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

PLEASE REMIT TO:
Cashman Equipment Company
File # 56761
Los Angeles, CA 90074-6761

S1236701	02-01-11	109502

THANK YOU!

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

S1236701	02-01-11	109502	767810-GEN10010		00	E	015	4	.1
S12367	02-01-11			10					206227
AA	032		JSG01016					0	10-081

CUSTOMER CONTACT: ANGELO CARVALHO

1.0	EQUIPMENT SALE CATERPILLAR INC. MODEL C32 900 KW, 4580/277V, 4P, 4W, N3R ENCLOSED GENERATOR ID NO: 10-081 SERIAL NO: JSG01016	152849.91
1.0	EQUIPMENT SALE CATERPILLAR INC. MODEL C32 900 KW, 4580/277V, 4P, 4W, N3R ENCLOSED GENERATOR ID NO: 10-082 SERIAL NO: JSG01013	152849.91
1.0	EQUIPMENT SALE **1000A, 480/277V, 4P, 4W, N3R CATERPILLAR INC. MODEL TRANSWITCH TRANSWITCH ID NO: 10-037 SERIAL NO: TSG03509	7672.45
1.0	EQUIPMENT SALE **1000A, 480/277V, 4P, N3R CATERPILLAR INC. MODEL TRANSWITCH TRANSWITCH ID NO: 10-038 SERIAL NO: TSG033510	10215.66
1.0	EQUIPMENT SALE **1200A, 480/277V, 4P, 4W, N3R CATERPILLAR INC. MODEL TRANSWITCH TRANSWITCH ID NO: 10-039 SERIAL NO: TSG03511	10812.66
1.0	EQUIPMENT SALE **3000A, 480/277V, 3P, 4W, N3R CATERPILLAR INC. MODEL SWITCHGEAR PARALLELING SWITCHGEAR ID NO: 10-040 SERIAL NO: SNGR36267	244869.80

COD

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 Systems

Compliance Protection Systems

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

CASH003

CASHMAN

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 # 60761
Los Angeles, CA 90074-6761

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

THANK YOU!

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

S1236701	02-01-11	109502	767810-GRN10010	00	E	815	4	2
S1236?	02-01-11		10				206227	
AA	C32	J6W01016			.0	10-081		

FUEL	7611.75
SPARE PARTS	2363.17
SHUNT TRIP STATION	497.50
TRUCK LAY OVER	1741.25
CUST SRV AGRMT	7462.50

COD

	598936.26

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 N HACIENDA AVE
LAS VEGAS NV 89115

CASHMAN POWERSHOVEL

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

INVOICE

1.800.937.2326
www.cashmanequipment.com

CAM CONSULTING
3074 CIVIC CENTER DR
NORTH LAS VEGAS NV 89030-7524

PLEASE REMIT TO:
Cashman Equipment Company
File # 66751
Los Angeles, CA 90074-6751

S1236601	02-01-11	109502
156627.92		

THANK YOU!

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

S1236601	02-01-11	109502	767810-GEN10010		90	E	815	4	1
S12366	02-01-11			10					206228.
XX	96AE500244	10-71M73354-01					.0	10-504	

CUSTOMER CONTACT: ANGELO CARVALHO

	EQUIPMENT SALE MISC UPS	MODEL 96AE500244	
1.0	ID NO: 10-504	SERIAL NO: 10-71M73354-01	156627.92
	400 KV 277/480V, 3 PHASE W/BATTERIES MOE [illegible] SHUNT TRIP STATION		

COD

156627.92

SOLD TO:

CAM CONSULTING
3074 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 Systems | 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

81238901	03-25-11	109502
329.71		

THANK YOU!

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

81238901	03-25-11	109502	767810GEN-10010		00	E	015	4	1
812389	03-25-11			10					208546
AA		XXXXX					.0	MISC-ED	

CUSTOMER CONTACT: ANGELO CARVALHO

	EQUIPMENT SALE CATERPILLAR INC. MODEL ID NO: MISC-ED SERIAL NO: XXXXX	
1.0	LUGS 6 BA[illegible] CHT[illegible] 6 EA[illegible] [illegible]360[illegible]	305.00
	COD NV CLARK	24.71
		329.71

SOLD TO:

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

SHIP TO/REFERENCE:

LV CITY HALL

CASHMAN Power Systems CAT | Computer Protection Systems CPS

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

CASH006

EXHIBIT 3

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 Kuzo (Date) 1-17-11 FROM: FBI, LAC

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, or its own water line, 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 of the issue of this Bill of Lading, or (2) in the applicable motor carrier classification or tariff if this is a motor carrier shipment. Agents of the carrier are without authority, either orally or otherwise, to alter, amend, or waive any provisions of this contract. The shipper hereby certifies that he is familiar with all the terms and conditions of the said bill of lading, 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: Cashman Equip Co Attn: City Hall

(Also consignee's address for purposes of notification only)

Destination: 518 South Street: 10th St City

County _____ State _____ Zip _____

Route: Las Vegas, NV Delivery Address: 89101

(If to be held at delivery station, shipper desires and agrees to pay storage charges at delivery terminal)

Delivering Carrier: _____ Car or Vehicle Initials and No. _____

Collect on Delivery $: Kim Cashman And Remit to _____

702-326-6596

Street _____ City _____ State _____

No. Packages	Kind of Packaging, Description of Articles, Special Marks, and Exceptions	*Weight (Subject to Correction)	Class or Rate	Check Column
1	Enc 1 Ken Tech			
	# 42206-2			
	Property of Las Vegas City Hall			
1	muffler			
2	shock mounts			
	Call 702-205-2311			

*If this shipment is to be delivered by 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

For _____ (The signature here acknowledges only the amount prepaid)

Charges Advanced: _____

†The fifth sentence and the following sentence in the 9th section of Rule 7 of the Uniform Straight Bill of Lading conflicts herein, and all other requirements of Rule 7 of the Uniform Straight Bill of Lading are hereby waived by the shipper.

†Shipper's release in lieu of stamp not a part of bill of lading approved by the Interstate Commerce Commission.

Shipper, Per _____ Agent

Per _____

Permanent post-office address of Shipper

Per _____

THIS SHIPPING ORDER must be legibly filled in, in Ink, in Indelible Pencil, or in Carbon, and initialed 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 Kitos (Date) 1-7-11 FROM IBLLC

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 or its own water line, 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 Domestic Straight Bill of Lading adopted by the Association of American Railroads and 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. Agent and carrier are required to check this bill of lading unless unable to do so by reasonable diligence at time of shipment, and shall not make delivery of this shipment without payment of freight and all other lawful charges.

Consigned TO Kirkmeyer Farms / LV City Hall

Destination ST & South Street 1st St

County State Zip

Route Las Vegas, NM 87701 Delivery Address*

(*To be filled in only when shipper desires and agrees that shipment will not be delivered on Sunday or legal holiday.)

Delivering Carrier Car or Vehicle Initials and No.

Collect on Delivery $ Kirk Q Cummer And Permit to

702-32 Gr 6696

Street City State

No. Packages	HM	Description of Articles, Special Marks, and Exceptions	*Weight (Subject to Correction)	Class or Rate	Check Column
1		Western Fuel Tank			
		# 42706-1			
		Project - Las Vegas City			
		Fuel Oil Lines			
1		Misc Fuel Water parts	1-7-11	6:20 pm	
		Chris Myers - 702-205-3311			

*If weight is not known, so state. If 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

Shipper, Per

Permanent post-office address of shipper

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

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 Prepaid

☐ 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 herein.

Agent or Cashier

For

(The signature here acknowledges only the amount prepaid.)

Charges Advanced $

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

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

Shipper's imprint in lieu of stamp, not a receipt of 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 Prepaid

☐ 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 herein.

Agent or Cashier

For

(The signature here acknowledges only the amount prepaid.)

Charges Advanced $

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

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

Shipper's imprint in lieu of stamp, not a receipt of 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 Prepaid

☐ 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 herein.

Agent or Cashier

For

(The signature here acknowledges only the amount prepaid.)

Charges Advanced $

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

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

Shipper's imprint in lieu of stamp, not a receipt of

2

CASHMAN CAT
POWER SOLUTIONS

CASHMAN POWER SOLUTIONS
8300 SAINT ROSE PARKWAY
HENDERSON, NV 89052
PHONE: (702) 649-8777
FAX: (702) 639-8090

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

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

Additional Notes and Comments

Received By: [signature] 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 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

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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

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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

Page 7

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

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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

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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

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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.

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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 Hetkis

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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

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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?

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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

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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

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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?

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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

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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

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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.

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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.

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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

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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

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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.

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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

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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 --

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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.

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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.

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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

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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

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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

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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

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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.

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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.

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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

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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.

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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.

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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

* * * * *

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 5

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Search

Tuesday, September 10, 2012

Assessor

Michele W. Shafe, Assessor

PARCEL OWNERSHIP HISTORY

Assessor Map | Aerial View | Residential Codes | Current Owner Info | New Search

ASSESSOR DESCRIPTION
PARCEL MAP FILE 117 PAGE 14 LOT 1
SEC 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 Comments: SP 186-10	20120217-0001875	02/17/2012	NO STATUS	203	2.71 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	20091210-0003373	12/10/2009	NO STATUS	203	2.71 AC
139-34-201-022	LIVEWORK L L C ETAL	20070622-0004071	06/12/2007	NO STATUS	203	2.71 AC
139-34-201-022	LIVEWORK L L C ETAL	20070622-0004071	06/22/2007	NO STATUS	203	2.44 AC

Notes: 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.

Jobs | Site Map | Contact Us | Privacy Policy | © 2010 Clark County, NV | 500 S. Grand Central Pkwy., Las Vegas, NV 89155 (702) 455-0000

GENERAL INFORMATION	
PARCEL NO.	139-34-201-022
OWNER AND MAILING ADDRESS	CITY OF LAS VEGAS %OFFICES BUS DEV %DIRECTOR 400 STEWART AVE 2ND FLR LAS VEGAS NV 89101-2913
LOCATION ADDRESS CITY/UNINCORPORATED TOWN	495 S MAIN ST LAS VEGAS
ASSESSOR DESCRIPTION	PARCEL MAP FILE 117 PAGE 14, LOT 1 SEC 34 TWP 20 RNG 61
RECORDED DOCUMENT NO.	* 201202170 1075
RECORDED DATE	02/17/2012
VESTING	NO STATUS
COMMENTS	SF 186-40

*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	908970	743702
IMPROVEMENTS	0	0
PERSONAL PROPERTY	0	0
EXEMPT	0	743702
GROSS ASSESSED (SUBTOTAL)	908970	743702
TAXABLE LAND+IMP (SUBTOTAL)	2597057	2124863
COMMON ELEMENT ALLOCATION ASSD	0	0
TOTAL ASSESSED VALUE	908970	743702
TOTAL TAXABLE VALUE	2597057	2124863

ESTIMATED LOT SIZE AND APPRAISAL INFORMATION	
ESTIMATED SIZE	2.71 Acres
ORIGINAL CONST. YEAR	0
LAST SALE PRICE MONTH/YEAR	0
LAND USE	0-00 VACANT

Inst #: 201202170001075
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 NOWARD
Recorded By: KGP 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

APNs: 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 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, 2010

"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.

_____
NOTARY PUBLIC

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
S. RENEE HOBAN
My Appointment Expires Oct. 26, 2010

S. Renee Hoban
11-24-2010
Exp. 10-26-10

LV 410,970,2261 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 67 OF PLATS OF CLARK COUNTY, NEVADA RECORDS AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE ROUND ALUMINUM CAP MARKING THE INTERSECTION OF MAIN STREET AND CLARK AVENUE ON THE NEVADA DEPARTMENT OF TRANSPORTATION "O" CENTERLINE; THENCE NORTH 27°54'14" EAST, ALONG SAID CENTERLINE, A DISTANCE OF 80.03 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°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 16.71 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 276.10 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 16.71 FEET TO A POINT ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF FIRST STREET; THENCE SOUTH 27°14'15" WEST, ALONG SAID NORTHWESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 380.62 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 90°00'27", A CURVE LENGTH OF 16.70 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 276.19 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

00°01'29", A CURVE LENGTH OF 18.71 FEET TO THE POINT OF BEGINNING.

CONTAINING IN ALL 2.71 ACRES OF LAND.

BASIS OF BEARING

SOUTH 27°53'30" 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. 16992
POGGEMEYER DESIGN GROUP, INC.
6980 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.

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 A. Brickner Capacity: Grantee

SELLER (GRANTOR) INFORMATION (REQUIRED)	BUYER (GRANTEE) INFORMATION (REQUIRED)
Elizabeth N Fretwell	
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
DATE: 3-25-15

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)
Print Name: First American Title File Number: 386452
Address: 2480 Paseo Verde Pkwy Suite 110
City: Henderson State: NV Zip: 89074

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

LV 410.070.2010

EXHIBIT 6

DISTRICT COURT
CLARK COUNTY, NEVADA

CASHMAN EQUIPMENT COMPANY, a Nevada Corporation,

Plaintiff,

vs.

CASE NO.: A642589
DEPT NO.: 32

CAM CONSULTING, INC., a Nevada corporation; ANGELO CARVALHO, an individual; JAMES BENNITE aka JAMES CARVALHO, an individual; NEVE EDNA ASSOCIATES, LTD., dba MOJAVE ELECTRIC, a Nevada corporation; WESTERN SURETY COMPANY, a surety; PHS 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.

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 BARLBERG, RPR, CCR NO. 759, CSR 11715

APPEARANCES:

For the Plaintiff:
PEZZILLO LLOYD
BY: JENNIFER R. LLOYD, ESQ.
6725 Via Austi Parkway, Suite 290
Las Vegas, Nevada 89119
(702) 836-3130
(702) 836-3139 (Facsimile)

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

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WITNESS:		PAGE
PETER RODNEY FERGEN		
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EXHIBITS

EXHIBIT	DESCRIPTION	PAGE
1	Consultant Agreement, Bates MOJ00185 through MOJ00193	17
2	Contract Agreement, Bates MOJ00200 through MOJ00209	26
3	"Generator" "Transfer Switch" Bates MOJ00033 through MOJ00036;	32
4	Invoices, Bates CASH003 through CASH008	36
5	E-mail from Peter Fergen to Chris Waters, 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 2006.
Q. Just one other time?
A. Yes, in a formal setting, yes.
Q. And what 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

Page 6

question is pending. I would ask that you answer the question that's 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. BOSCHEE: But don't tell her about the substance of what you talked to Sherilly about.
THE WITNESS: No. I talked to Sherilly 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.

Page 7

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 convert what -- the estimate into project management, including purchasing -- eng- -- 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 more 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 Gen-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. What 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 Mojave'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 Holorn, H-o-l-o-r-n.

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. Their statement was 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, Well, there's another veteran that came 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 Lozeau.

MS. HOYOS: Let's take a break for a second.

(Pause in proceedings.)

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BY MS. LLOYD:
Q. Okay. So just to go back for a second, you said you were talking with Keith Lozeau 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 room.
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

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first -- that was the first project or the second project; we also had dealings with him on the Las Vegas Metro facility, and the conduit purchase order on that job. And I don't recall what else is 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 them.
Q. What's the Veterans Association?
A. VA, which is what gives him his Veteran's -- Disabled Minority Veteran.
Q. He was a Disabled Minority Veteran?
A. Correct.
Q. And what 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. Uh-huh.
Q. -- VA?
A. Federal.

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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 these -- well, I'm just going to lump them all together just for purposes of the deposition, so MBE, WBE, 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 NEDCO Supply; one of them being Hispanic, the other one being American Indian.

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Q. And so on a project like this, why wouldn't you use Codale or NEDCO?
A. I actually use both of them. But we looked 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 CAM Consulting or you can do Codale. I says, Or you can do NEDCO; 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 woman-owned business, which was Hampton-Haddox Electric out of Southern California.
Q. So besides calling the VA, did you do any other reference checking for CAM Consulting?
A. No, ma'am.
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 first one.
Q. And were there any others?
A. Not that I recall.
MS. LLOYD: Then let's take a look at the NV Energy agreement, which will be Exhibit 1.
(Exhibit 1 was marked for identification.)
BY MS. LLOYD:
Q. If you can take a look at that agreement. Are you familiar with it?
A. Yes.

Q. Can you tell me 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. What as I understand, Mojave Electric subcontracted to the price --
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. We 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. BOSCHEE: 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 MS. LLOYD:
Q. So then he subcontracted to Mojave Systems to do the installation?
A. Yes.
Q. Okay. So what 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?

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 see that, actually. It looked very familiar.
But there would have been a separate contract between CAM 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 them in

to me 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. It's not -- no.
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 stark 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?

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. BOSCHEE: You have to answer the question. If it's not clear --
THE WITNESS: Well, I did. I said no.
Oh, you said why.
MR. BOSCHEE: 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 --

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. He paid directly to the supplier, because he 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 those suppliers were?
A. Only one that comes to my mind is Stanley and -- I don't remember the other one. I thought it was Sting, but I'm not positive.
Q. So when you're talking about the exchange of payments, for instance on the NV Energy, Mojave was issuing 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 nefarious 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 aspects 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 Bugni, 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 Coxwin.
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 in 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?

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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. Pertaining 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 --

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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

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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 debate all the bills.
Q. Where does your understanding of a joint

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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. Uh-huh.
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. LLOYD: Mark this as 3.
(Exhibit 3 was marked for identification.)
THE WITNESS: You're missing the first two

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pages.
BY MS. LLOYD:
Q. I can -- 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?

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A. No. I submitted -- I reviewed their bid in making sure that their billing material matches by billing material off the contract.
Q. Okay. So then you issue 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. BOSCHEE: So we just want 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?

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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 Angela's signature.
Q. And then you signed on behalf of Mojave?
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 were to perform. But again, most of the material

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came through Cashman.
Q. Okay. Do you know if there were any changes or additions to this purchase order?
A. That I do not know.
Q. That would be who?
A. That would be -- that would be Chris Meiers.
(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 their -- Mojave Field and my

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project manager, Chris Meiere.
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 e-mail 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 my buying the fuel for the tanks.

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Q. So what was the outcome of your efforts, I guess, on doing these items?
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 generator, 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. Were you the responsible for contacting whoever it was that --
A. I got -- I contant -- I gave the contact information to Chris Meiere 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

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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 forgot -- 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 Costco.
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.

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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 Meiere.
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 haven'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 MR. HOYT:
Q. Instead of Cashman?
A. Yes.
Q. And --

A. The general contractor emphasized that minority participation was required.
Q. Who did the general contractor emphasize that to at Mojave?
A. I don't know; it was passed to me by the project manager, Chris Meiers.
Q. And how did -- did you make the decision that this equipment should come through a minority or a diversity contractor?
A. We -- a lot of the material did. Like I says, I did light fixtures -- light fixtures came from NEDCO Supply, which is Indian owned, American Indian; and the switch gear, which is the next major big ticket item, would have come 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 there -- supplied their diversity contract?
A. The total percentages, no.
Q. And you said Chris Meiers made the decision about which items were to be procured 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. BOSCHEE: 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 Metro 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, "muddying 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 certain 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 terminations?

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 finaled. 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. Then?
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 -- 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 could have gone through whether it had been verify coolants, variey 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 if --

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

happen?

A. Correct.

Q. And then at the end, or whatever point -- can you tell me at what point they would get back involved?

A. Well, be basically pretty close to when they were paid is when the equipment should have been going through start-up. Because within 30 days of that is when we were chasing everything down. So I don't want to go off the top, but that's, again, off the top of my head. So give an exact date, I can't.

Q. And would you have been responsible for deciding whether or not retention was held on the CAM --

A. No.

Q. -- purchase order?

A. This, again, is Brian.

Q. Have you ever encountered an issue like this before with a minority or diversity contractor?

A. Never.

Q. So you never encountered payment issues with diversity contractors?

A. I've never been in a position where I had to worry about it.

Q. What do you mean by that?

A. It was not -- it was somebody else's task; in this scenario, Brian's.

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 arrangement 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 us. 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 60 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 us 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 could 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, is we had to -- they modified the doors to open without hitting the wall.

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 that 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 internet you get a lot of different things, but I don't remember how those 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.

MS. LLOYD: Okay, I think that's it.

MR. BOSCHEE: I have no questions.

THE REPORTER: Would you like a copy?

MR. BOSCHEE: Yes.

(The deposition concluded at 11:53 a.m.)

-oOo-

CERTIFICATE OF DEPONENT

PAGE	LINE	CHANGE	REASON

* * * * *

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, Dean H. 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 HEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this 18th day of October, 2012.

DEAN H. DAHLBERG, RPR, CCR NO. 759, CSR 11715

EXHIBIT 7

DISTRICT COURT
CLARK COUNTY, NEVADA

CASHMAN EQUIPMENT COMPANY, a Nevada Corporation,

Plaintiff,

vs.

CASE NO.: A642583
DEPT NO.: 32

CAM CONSULTING, INC., a Nevada corporation; ANGELO CARVALHO, an individual; JAMES REGNIE aka JAMES 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.

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: SHENILLY A. BRISCOE, ESQ.
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
(702) 791-0308
(702) 791-1912 Facsimile

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EXHIBITS

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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. Sheilly.
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. So 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. FQ Las Vegas.
Q. And was FQ 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 JHA's role was on the Project?
A. The architect for construction documents.
Q. Who was the architect for design?
A. Elkus Manfredi Manfredi.
Q. Was the architect, JHA, employed by Forest City?
A. Yes.
Q. And then what was JHA's role on the Project?
A. Mechanical and electrical consultant.
Q. And who was JHA contracted with, if you know?
A. JHA.
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. He 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-d-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-n-g-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 Valavich.
Q. Did Forest City also attend those meetings?
A. Yes.
Q. And were any other entities or persons at those meetings?
A. CMA.
Q. CMA. So a meeting was held monthly with the City, CMA, 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. So 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 QR 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 QR.
Q. Did you say QR? 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 QR, 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 QR?
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 F.
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

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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.

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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.

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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

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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

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vendors for Mojave?
A. Just asked for certificates. There's MBE 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. Has 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?

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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 Notes 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

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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

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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 JBA?
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 JBA. JBA 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, Bernard 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

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.

Electronically Filed
Jun 17 2015 11:41 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Case No: 66452
Case No: 61715
Case No: 65819

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

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55	Cashman's Reply in support of Countermotion for Summary	11/02/2012	5	JA0001088-1101

	Judgment			
98	Cashman's Reply in Support of Motion for Attorneys' Fees	05/05/2014	31	JA0007708-13
72	Cashman's Reply to its Motion for Summary Judgment on the Payment Bond Claim	04/05/2013	9	JA0002066-94
48	Cashman's Reply to its Motion to Stay or Suspend Order Granting in Part Counterclaimants' Motion for Preliminary Injunction to Procure Codes or Alternatively Motion for Clarification and Request for OST	10/22/2012	4	JA000891-904
10	Cashman's Response to Mojave's Counterclaim	11/21/2011	1	JA000100-03
85	Cashman's Response to Mojave's Counterclaim (Filed in A653029)	09/12/2013	10	JA0002491-95

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70	Cashman's Supplement to its Countermotion for Summary Judgment on its Payment Bond and Mechanic's Lien Claims	03/18/2013	8	JA0001783-1893
63	Certificate of Service for Fourth Amended Complaint	01/17/2013	5	JA0001204-05
1	Complaint	06/03/2011	1	JA00001- 9
11	Complaint (Filed in A653029)	12/09/2011	1	JA000104-11
28	Counterclaimants' Motion for Mandatory Injunction to Procure Codes on OST or in the Alternative Application for Writ of Possession	07/18/2012	2	JA000332-58
104	Decision and Order	08/04/2014	32	JA0007777-81
27	Defendants' Answer to Third Amended Complaint,	06/28/2012	2	JA000305-31

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	Counterclaim, and Cross Claim			
20	Defendants' Motion for Summary Judgment	03/09/2012	1	JA000150-203
38	Defendants' Motion for Summary Judgment of Surety Payment and License Bond Claims	08/30/2012	2	JA000467-98
41	Defendants' Motion to Expunge or Reduce Mechanic's Lien	09/17/2012	3	JA000620-700
69	Defendants' Opposition to Cashman's Motion for Summary Judgment on the Payment Bond Claim	03/15/2013	7-8	JA0001665-1782
46	Defendants' Opposition to Cashman's Motion to Stay or Suspend Order Granting in Part Counterclaimants' Motion for Preliminary Injunction to Procure Codes or Alternatively	10/01/2012	4	JA000885-89

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	Motion for Clarification and Request for OST			
23	Defendants' Reply to Cashman's Opposition to Motion for Summary Judgment	05/02/2012	2	JA000266-75
71	Defendants' Supplement to Motion to Expunge Lien and Opposition to Motion for Summary Judgment as to Lien and Bond Claims	04/02/2012	8-9	JA0001894-2065
89	Defendants' Trial Brief	01/16/2014	11	JA0002506-33
9	Errata to Amended Answer to Second Amended Complaint, Counterclaim and Crossclaim	11/10/2011	1	JA00098-99
110	Errata to Notice of Entry of Order Denying Cashman's Request for Costs Pursuant to NRS 18.020	09/02/2014	32	JA0007804-12

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5	Errata to Second Amended Complaint	10/10/2011	1	JA00051-52
99	Findings of Fact and Conclusions of Law	05/05/2014	31	JA0007714-29
34	Findings of Fact and Conclusions of Law Based upon Counterclaimants Motion to Procure Codes	08/10/2012	2	JA000414-16
61	Fourth Amended Complaint	01/10/2013	5	JA0001154-72
91	Joint Pretrial Memorandum	01/16/2014	11	JA0002560-79
92	Joint Trial Exhibit Index	01/21/2014	11	JA0002580-82
92.J01 to 92.J65	Joint Trial Exhibits	01/21/2014	11-27	JA0002583-6552
106	Judgment	08/18/2014	32	JA0007789-91
101	Memorandum of Costs and Disbursements	05/13/2014	31	JA0007748-50
94	Motion for Relief Pursuant to NRCP	03/20/2014	29	JA0007099-7112

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	60(b) and Motion for Attorneys' Fees and Costs Pursuant to NRS Ch. 108			
50	Motion to Amend Complaint	10/31/2012	5	JA0001040-76
12	Motion to Consolidate (re: Case A653029)	01/11/2012	1	JA000112-18
93	Non-Jury Trial Transcripts (for January 21, 2014 through January 24, 2014)	01/31/2014	27-29	JA0006553-7098
40	Notice of Appeal	09/13/2012	3	JA00610-19
102	Notice of Appeal	05/30/2014	32	JA0007751-72
111	Notice of Appeal	09/02/2014	32	JA0007813-29
105	Notice of Entry of Decision and Order	08/13/2014	32	JA0007782-88
76	Notice of Entry of Defendants' Motion for Summary Judgment of Surety Payment and License Bond Claims and Cashman's Countermotion for	05/06/2013	10	JA0002390-95

	Summary Judgment			
100	Notice of Entry of Findings of Fact and Conclusions of Law	05/06/2014	31	JA0007730-47
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

	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

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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

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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

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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

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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

	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

	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

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