

1 contract?

2 Q. Yes. Is there a maintenance agreement?

3 A. Correct.

4 Q. For C?

5 A. Not specifically just for C; for C and for D.

6 Q. But was there a time when there was agreement
7 that it was just for C?

8 A. Before there was D. Yes.

9 Q. Before there was --

10 A. Before there was D, there was a maintenance
11 contract just for C.

12 Q. Okay.

13 A. When D came online, then the maintenance
14 contract included both C and D.

15 Q. Okay. All right. And does it now include
16 anything other than that?

17 A. Well, it's not in existence.

18 Q. At one time did it include more than that?

19 A. The contract as it was negotiated in its last
20 round did anticipate that Terminal 3 would be included
21 in the maintenance contract, and the price for that
22 inclusion had already been negotiated and was included
23 in the contract that had been executed.

24 Q. Now, there was a contract for the
25 refurbishment?

1 A. Correct.

2 Q. That was in addition to the maintenance
3 contract?

4 A. Separate and apart from.

5 Q. And then there was new contracts, or contract
6 for D?

7 A. There was a separate contract for the
8 installation of the D Gate system.

9 Q. And did it include the maintenance?

10 A. No. The maintenance has always been a
11 separate contract from the construction or
12 implementation of, or upgrade or expansion of the train
13 system.

14 Q. So when you did D for the construction of it,
15 are there negotiations going on about the maintenance
16 contract as well to include D?

17 A. There was a time when there were negotiations
18 to include the D Gate system as part of the maintenance
19 agreement and the price for that maintenance service.

20 Q. When's the last -- well, strike that.

21 Were you involved in discussions about the
22 maintenance agreement?

23 A. I was.

24 Q. And to your recollection, how many times has
25 it been extended or revised?

1 the fact that there were other predecessor agreements,
2 do you know if any of them ever provided for the
3 payment of prevailing wages?

4 A. Not to my knowledge.

5 Q. Do you know on the C Gate checkpoint, the new
6 one, when C -- were you here when C was designed?

7 A. No.

8 Q. So you don't know why it would include a
9 train?

10 A. I do know why.

11 Q. And the reason is?

12 A. Because when C Gates was initially
13 constructed, it was a 100 percent satellite terminal,
14 and the only way to get there was by train. The walk
15 path was added later.

16 Q. And why was the walk path added?

17 A. When we added the additional gates on the
18 northwest side of C, we added the bridge to those gates
19 from the checkpoint to provide a walking alternative.

20 Q. You added -- there were gates that were added
21 to the original C?

22 A. Correct.

23 Q. The ones that are --

24 A. The ones that are closest to the train station
25 would be the now, it was originally four gates, it is

1 now two gates, that are the, that are those northwest
2 gates of the C Gates were added, originally four and
3 then down to three and now down to two gates.

4 Q. Two were eliminated or just not functioning?

5 A. One was eliminated when we added the C Gate
6 checkpoint. The other one was eliminated as a result
7 of Southwest's planes having longer wingtips and
8 needing to reconfigure the gates so that all of their
9 planes would fit at every gate.

10 Q. So in effect there's two gates less than
11 before?

12 A. Yes. Used to be 20 gates. Now there are 19.
13 We added one gate over on the northeast side, and we
14 lost a gate on the, this northwest side and so there
15 are 19.

16 Q. And are there currently any plans to add any
17 additional gates?

18 A. No. Not at C Gates.

19 Q. So what was the purpose of installing the new
20 C checkpoint?

21 A. We needed additional checkpoint capacity.

22 Q. You mean there were too many people going to
23 the one that existed at that point?

24 A. Correct. We did not have enough physical
25 space to have sufficient lanes to effectively process

1 the number of passengers in the peak periods.

2 Q. And how long has it been operating?

3 A. I would have to go back and research it, but
4 my recollection is a couple of years.

5 Q. Couple of years?

6 A. Yes.

7 Q. Okay. Do you know what the use of that gate
8 has been during those two years?

9 A. Which gate?

10 Q. The new one, the new C Gate, C checkpoint?

11 A. Oh, checkpoint?

12 Q. Yes.

13 A. The preponderance of Southwest customers use
14 the C Gate checkpoint to get to their gate.

15 Q. This one or the other one?

16 A. The new one.

17 Q. Preponderance to get to their --

18 A. Gates, whichever gate they're going to.

19 Q. Okay. Let's look at the -- I direct your
20 attention to Exhibit 1, the page relating to
21 C Concourse.

22 A. Page 7.

23 Q. That's what it says.

24 A. Right.

25 Q. Okay. So the old one, if I'm right, is right

1 up next to the thing about C Concourse, that little
2 button?

3 A. Correct. That's the old, that's the Old C.

4 Q. Okay. The new one is directly below it and a
5 little to the, I guess east? Whatever.

6 A. That's to the west.

7 Q. Okay. West, you're right. All right. Now,
8 which gates -- are the ones, are the four that were
9 initially here, are they still on here or have they
10 been removed?

11 A. C25 and C24 are the two, are the remaining two
12 gates of that four-gate expansion. 27 and 28 went
13 away.

14 Q. Where's 27 and 28?

15 A. They went away; they're not here.

16 Q. Oh, I'm sorry.

17 A. They went away.

18 Q. Okay. So you're saying that, "preponderance"
19 I guess means more than half?

20 A. Way more than half.

21 Q. Of Southwest people?

22 A. Correct.

23 Q. Come through here?

24 A. Right. Let me explain the reason for that.

25 If you're going to Southwest ticket counter,

1 which most Southwest customers do for whatever reason,
2 even -- because most of our customers are not seasoned
3 traveler and not local, they will have the taxicab drop
4 them off at the Southwest curb on the ticket counter.
5 They come in that door, and you have two choices to get
6 to the C Gates from a checkpoint. You can go to the
7 Old C or the New C. If you're at the ticket counter,
8 it's a simple right-hand turn up one short escalator
9 and you're at the checkpoint. It's a very short
10 distance. The other one you turn the opposite
11 direction, go all the way to the middle of the
12 ticketing building, up the escalator, turn right, clear
13 through the Esplanade, turn right again, and you get to
14 the checkpoint. Go through the checkpoint, then you
15 can either ride the train or walk.

16 So, the total walking distance is less, and
17 the total time of travel is less if you use the new
18 checkpoint. So Southwest directs their customers who
19 are going to the C Gates to use this checkpoint from
20 the ticket counter location, so that is why the
21 preponderance of the customers use that.

22 Q. So are you saying the ridership on those
23 trains is down?

24 A. Significantly.

25 Q. Do you know how much?

1 A. I could do a calculation, but on the arrival
2 it's about the same. For the people who are arriving
3 to the airport and going to baggage claim, the
4 ridership is approximately the same. For the people
5 who are departing, the ridership is down by, I would --
6 not counting -- well, you've also got tenants and
7 employees who ride the train to get to work and such.
8 I would say that the ridership is probably down
9 70 percent on the outbound.

10 Q. Outbound?

11 A. Yes.

12 Q. Do you know what it is on the inbound?

13 A. It would be roughly the same as it had been in
14 the past because the choice to walk or ride the train
15 has, in terms of why you would make that decision, has
16 not changed.

17 Q. Okay. Thanks.

18 Referring back now to CBE-552, and the
19 submission of it as an agreement under 332, and as I
20 said earlier, you understand 332 has some exceptions in
21 it for competitive bidding?

22 A. Correct.

23 Q. Do you know who makes the determination as to
24 what section we're going to file under?

25 A. We leave the legal interpretations to our

1 legal advisers, so our district attorney would make
2 those legal determinations.

3 Q. So you wouldn't have been involved in saying
4 which number or whatever it was, C or A or whatever?

5 A. I would not have written that in there.

6 Q. Were you aware that they were going to be
7 noncompetitive bids?

8 A. Correct, I was.

9 Q. That was a purposeful thing. You wanted it to
10 be noncompetitive so that Bombardier would have the
11 contract?

12 A. It was a -- yes, it was determined to procure
13 it under the exception to the competitive bidding
14 process.

15 Q. Acknowledging the fact that this contract is
16 no longer in effect, do you recall from when it was in
17 effect what work it covered?

18 A. Generally.

19 Q. Would you describe that?

20 A. It covered the ongoing daily maintenance of
21 the train systems. The trains must be maintained on a
22 daily basis. They're taken out of service at scheduled
23 times. For the C Gates, it's all early in the morning,
24 and then the D Gates it's a split time. And there are
25 specific maintenance routines that are performed on the

1 trains each night.

2 Q. Do you know what is included within, quote,
3 "maintenance routines"?

4 A. Not specifically. I haven't been down there,
5 I haven't been down there to watch and I have not,
6 although I've read the contract, I have not spent any
7 particular time understanding the specific tasks that
8 they do on a daily basis.

9 Q. All right. Are you the final approver of
10 contracts before they get to the County Commission?

11 A. Yes.

12 Q. Are you familiar with the concept of the
13 prevailing wage?

14 A. Yes.

15 Q. What do you understand it to mean?

16 A. By state statute, if a contract is considered
17 a public work, then it is to be, and you pay prevailing
18 wages, which is a wage rate that's established by the
19 Labor Commissioner based on a survey of wages
20 throughout the state.

21 Q. And do you know -- well, strike that.

22 Has the airport entered into agreements that
23 do require payment of prevailing wages?

24 A. Many.

25 Q. Give me a couple of examples.

1 Q. "A number" being?

2 A. Quite a few.

3 Q. A lot?

4 A. Well, depends on your definition of "a lot."

5 I don't know what your definition is.

6 Q. Also depends on your definition of "quite a
7 few."

8 A. More than 10. How about that?

9 MR. KAHN: Thank you.

10 BY MR. MOSS:

11 Q. More than 10, but less than 50?

12 A. I couldn't say that. I mean -- okay, I have,
13 we have landscape maintenance contract. We have
14 elevator/escalator, moving walkway maintenance
15 contract. We have carpet cleaning maintenance
16 contract. We have power washing maintenance contract.
17 We have, oh, on the jet bridge -- no, we maintain our
18 own jet bridge. But we have maintenance contracts for
19 chillers and boilers and for equipment in the garage,
20 electrical maintenance -- I mean, we have -- I've never
21 set down and counted them.

22 Q. I got the picture. Okay. All right.

23 Do you know, do any of those contracts require
24 you pay prevailing wage?

25 A. No.

1 Q. And you said if there's, if there's no
2 question, you don't ask, and if it's close, you ask.
3 Do you know, did you ever ask on this one, on CBE-552?

4 A. I never did. Whether anybody did on the
5 original contract, I was not part of that.

6 Q. By "ask," I mean seek legal?

7 A. No, I did not ask the question on this
8 particular contract. Whether it was initially asked in
9 the beginning when the first contract was developed, I
10 do not know.

11 Q. That's fair enough. All right. Well, are you
12 aware of the fact that the prevailing wage statute,
13 NRS 338, exempts certain contracts that are issued
14 under 332?

15 A. I have read that.

16 Q. Read that before this case or --

17 A. I guess I became familiar with that as part of
18 the discussion of this issue.

19 Q. Okay. Well, let me represent to you that 338
20 exempts certain contracts issued under 332, if it's a
21 contract that is directly related to the normal
22 operations of the property or the normal maintenance of
23 the property. Were you aware of that?

24 A. I have read that section of the statute.

25 Q. Okay. Are you aware of the fact that your

1 counsel has taken the position that this contract,
2 CBE-552, was a contract that was both related to the
3 daily operation, normal operations of the facility and
4 the maintenance of the facility?

5 A. Yes.

6 Q. And do you agree with that?

7 A. I do.

8 Q. Are you aware of the fact that if an employee
9 has a complaint that they're not being paid daily wage,
10 they can file a complaint with the Labor Commissioner?

11 A. Yes.

12 Q. And that if that occurs, you as the public
13 body have an obligation to investigate to see if the
14 law's being violated?

15 A. Correct.

16 Q. And you're aware that that happened in a
17 number of cases --

18 A. Yes.

19 Q. -- relating to Bombardier?

20 A. Yes.

21 (Exhibit 4 marked)

22 BY MR. MOSS:

23 Q. Okay, I'm handing you a document that's dated
24 November 24th, 2009, and it's a document that is
25 addressed to Michael Tanchek, Labor Commissioner,

1 Margi Grein, Executive Officer, Nevada State
2 Contractors Board, dated October 16th, 2009. There's
3 a signature at the bottom that appears to be yours; is
4 that correct?

5 A. That is my signature.

6 Q. You're familiar with this letter?

7 A. I am. I'm just reviewing it.

8 Q. Okay, I'm sorry.

9 A. Okay, yes.

10 Q. You recall this?

11 A. I do.

12 Q. Did you draft this?

13 A. No. I signed it, I did not draft it.

14 Q. Do you know who drafted it?

15 A. Cannot recall off the top of my head.

16 Q. Does it express your thoughts?

17 A. Yes.

18 Q. Correctly and accurately?

19 A. Correct.

20 Q. If you go into this second larger paragraph
21 and go down and see the sentence or the line that says,
22 "System (APM) for Terminal 3." You see that?

23 A. Um-hum.

24 Q. The next sentence says, "The ongoing
25 maintenance of our existing systems and the timely

1 installation of the new system for Terminal 3 are vital
2 and integral to the airport's operation and success.
3 Delay in granting a license will only serve to disrupt
4 the smooth operation of the ATS and the work necessary
5 to complete the C and D modernization and Terminal 3
6 project." Is that a correct statement of your
7 thinking?

8 A. It is.

9 Q. And in what way is the APM system integral to
10 the airport's operation?

11 A. Well, without the train system, the D Gates
12 specifically cannot be functional, cannot use them.
13 There's no way to deliver, no effective way to deliver
14 passengers to and from that gate area.

15 C, there are, there's another way, but it is
16 much less effective, and for Terminal 3, there is no
17 effective way to provide transportation to our
18 customers to and from the D Gates and Terminal 3.

19 Q. Would it not have some impact on C as well?

20 A. Yes. C would be the least impact, but it
21 would definitely have -- it would be a difficult
22 impact, but not as bad as D, and D would be fed from
23 both Terminal 1 and Terminal 3.

24 Q. Do you believe that automated tram service to
25 these locations is important and integral to the

1 operation of the airport?

2 A. Very much so.

3 Q. On a daily basis?

4 A. Very much so.

5 Q. Referring you to Exhibit 2, which is the
6 contract, CBE-552, and rather than flip through it, I
7 will represent to you that it includes a provision that
8 requires, when it was in effect, Bombardier to ensure
9 that the trams were available 99.65 percent of the time
10 on a 24-hour, 365-day basis. Are you aware of that?

11 A. Yes.

12 Q. Why is a standard that high included?

13 A. That's how important it is that the systems
14 are reliable for the efficient operation of our
15 facility.

16 Q. Meaning that anything less than that would be
17 impeding upon the operation of the facility?

18 A. Yes, particularly in our peak times.

19 Q. And was that why it was put in there that way?

20 A. Yes.

21 Q. Has it been in there from the get-go; do you
22 know?

23 A. For as long as I can remember.

24 Q. Not -- I mean prior to even this version of
25 it?

1 A. Correct. I did not, I've not read the
2 original contract so I cannot speak to that contract,
3 but for all the contracts that I've been aware of, it
4 has been in the contract.

5 Q. Directing your attention to some of the
6 construction contracts that you had, and including ones
7 with Bombardier, again I don't want to kick a dead
8 horse again, but what do you consider a construction
9 contract to cover? What's it for?

10 A. To construct things.

11 Q. Okay. And so it imposes upon the contractor
12 some, all, many functions related to constructing
13 something?

14 A. Correct.

15 Q. Do they typically have provisions in them that
16 talk about how close you're getting to finishing?

17 A. They have milestones, when certain tasks
18 should be completed by contract.

19 Q. And are there provisions that say they must be
20 completed by X or there's going to be penalties?

21 A. Correct. There is a daily damage, generally
22 enumerated in the contract what that daily amount is if
23 they do not meet the milestones for reasons under their
24 control.

25 Q. And the premise then is is that at some point

1 the construction will be done and it's over; is that
2 correct?

3 A. Correct, that we close out the contract.

4 Q. And they go away?

5 A. Yes.

6 Q. Okay. Now, you also have maintenance
7 contracts?

8 A. We do.

9 Q. Do maintenance contracts, including this one,
10 have in them requirements to show completion of the
11 task at certain points?

12 A. No, they have an expiration date.

13 Q. But is it your understanding that maintenance
14 will go on throughout the period of the contract?

15 A. Yes, and beyond with somebody else, or them,
16 but yes, it's an ongoing process.

17 Q. In other words, you don't say, maintenance is
18 done now?

19 A. I wish. No. It doesn't happen that way.

20 Q. Right.

21 A. We can change methods of performing
22 maintenance, take it in-house, take it outside, and we
23 can change the way in which we approach the way we
24 maintain things, but maintenance is maintenance.

25 Q. But would you agree that for a system like an

1 automated train system, tram system, whatever, it's
2 going to continually require maintenance?

3 A. As long as we have the system, it requires
4 maintenance.

5 Q. Are you familiar with project labor
6 agreements?

7 A. I am.

8 Q. And has DOA been party to project labor
9 agreements in the past?

10 A. We have.

11 Q. And are you party now to one?

12 A. We are.

13 Q. Would you describe for me what your
14 understanding of a project labor agreement is?

15 A. It's an agreement between the County on behalf
16 of the airport in this case, with the labor
17 associations, the trades, on how we're going to manage
18 construction projects that are covered by the project
19 labor agreement.

20 Q. And is it your understanding that the project
21 labor agreement applies only to construction projects?

22 A. It only applies to construction projects, and
23 only those projects which are specifically assigned to
24 the project labor agreement.

25 Q. I understand. All right. Do you have any

1 kind of concept of project labor agreement for
2 maintenance contracts?

3 A. I'm -- if there is such a thing, I'm not aware
4 of it, but we have never, we have never had one, nor
5 have we entertained one.

6 Q. You are aware of the fact, obviously, that a
7 decision was made at some point to bring the work that
8 Bombardier was providing under 552, quote, "in-house,"
9 correct?

10 A. I am.

11 Q. Do you recall when the decision was made that
12 that would in fact occur?

13 A. I don't remember the specific date, but it was
14 a decision made by the Board of County Commissioners in
15 an open public meeting.

16 Q. A year ago, two years; do you know?

17 A. Something like that.

18 Q. When did you first become aware of any
19 suggestion by anyone that the work being performed
20 under 552 be brought in-house?

21 A. It was a suggestion made by Mr. Bill Stanley
22 in a meeting in my office was the first time I heard of
23 it.

24 Q. Suggestion by Mr. Bill Stanley, and who's Bill
25 Stanley?

**DEPOSITION
OF
MICHAEL SHAMAN**

00184

ER0184

1 BEFORE THE NEVADA STATE LABOR COMMISSIONER
 2 LAS VEGAS, NEVADA
 3)
 4 INTERNATIONAL UNION OF)
 5 ELEVATOR CONSTRUCTORS,)
 6)
 7 Claimant/Objector,)
 8)
 9 and Case No.
 10 2:11-cv-02034-ECR-CWH
 11)
 12 BOMBARDIER,)
 13)
 14 Respondent/Employer,)
 15)
 16 RE: CLARK COUNTY)
 17 DEPARTMENT OF AVIATION)
 18 CONTRACT CBE-552)
 19 _____)

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DEPOSITION OF MICHAEL SHAMAN
 Taken on Thursday, September 6, 2012
 At 10:09 a.m.
 At 3800 Howard Hughes Parkway
 Suite 600
 Las Vegas, Nevada 89169

25 Reported by: Susan Lee Naylor, CCR #513, RPR, RMR

1 Q A rough estimate is fine.

2 A Fourteen years.

3 Q Okay. Great. Thanks.

4 A You're welcome.

5 Q Okay. Now, can you summarize what your
6 duties were as a VP of the systems division?

7 A Yes. As my -- well, I am still a VP
8 today, but my response to your question is a vice
9 president for operations and maintenance for
10 approximately ten years. I had various capacities.
11 I came into the role exclusively managing all of the
12 operations and maintenance contracts worldwide, and
13 we had approximately 26 countries -- or 26
14 contracts, rather, over nine different countries. I
15 grew the role into one being accountable for the
16 manufacturing of vehicles in Pittsburgh,
17 Pennsylvania, including what we called operation --
18 an operational role which included health, safety,
19 and environment.

20 Q Okay. Great. Thank you for that
21 information. Now, does the company, to your
22 knowledge, operate any traditional railroads? And
23 by that, I mean systems run on heavy rails that have
24 have an operator on board.

25 A Yes. We currently do.

1 A That I cannot answer, sir.

2 Q Okay. And do you have any information
3 about how much, on average, each of these APM cars
4 typically weigh?

5 A No, off the top of my head. I couldn't
6 tell you.

7 Q Okay. Have you ever communicated with
8 anyone other than your company's counsel about
9 whether an APM car is a fixture?

10 MR. TRIMMER: Objection. Vague and
11 ambiguous, and calls for a legal conclusion.

12 THE WITNESS: The response is no.

13 BY MR. KAHN:

14 Q Okay. And have you ever communicated
15 with anyone other than your counsel, possibly, about
16 whether there's a difference between repair and
17 maintenance with respect to an APM system?

18 MR. TRIMMER: Objection. Vague and
19 ambiguous, and to the extent it is using legal terms
20 that haven't been defined.

21 THE WITNESS: Yes. I have had several
22 discussions in my capacity as vice president of
23 operations, because one of our goals was to reduce
24 the amount of repair time and increase the time of
25 preventive maintenance. And that's something that's

1 very common in a maintenance environment in terms of
2 the ratios between preventative maintenance and what
3 we define as corrective maintenance.

4 BY MR. KAHN:

5 Q Okay. So you've heard those terms,
6 "repair and maintenance," used to distinguish
7 between, say, routine maintenance on the one hand
8 and corrective maintenance on the other?

9 MR. TRIMMER: Objection. Misstates his
10 testimony.

11 THE WITNESS: We have -- you know,
12 again, I go back to my capacity as vice president of
13 O and M. And we set ourselves specific initiatives
14 to improve reliability of the product, and we
15 entered into a, what I would call a program of
16 measuring corrective versus preventative
17 maintenance. But that was done in the context of
18 our initiative to improve reliability and spend less
19 time repairing, and more time building in
20 prevention.

21 BY MR. KAHN:

22 Q Right. And how long ago did that
23 process begin?

24 A That process probably started four years
25 ago.

1 Q Okay. And did it result in any kind of
2 written memoranda or reports?

3 A Yes. It was metrics that are associated
4 with looking at the benchmarking of PM versus CM,
5 preventative maintenance versus corrective
6 maintenance, with the initiative of improving the
7 curve on preventative maintenance and lowering the
8 time spent on corrective maintenance.

9 Q And do you recall whether that analysis
10 ever came -- or generated any particular numbers
11 about McCarran Airport in terms of the ratio of PM
12 versus CM?

13 A They were part of the initiative, yes,
14 so they would have measured the PM-CM activity in
15 their own shop individually. Yes.

16 Q And do you have any recollection or have
17 with you, today, any data --

18 A No, sir.

19 Q -- about McCarran in particular?

20 A No, sir, I do not.

21 Q Who maintains or keeps the data we've
22 been discussing?

23 A That data would be kept current by
24 Mr. Steve Stowe, S-T-O-W-E, and he is the director
25 of O and M, operations and maintenance, for the

1 Americas.

2 Q Okay. Now, would each of the facilities
3 have been sent copies of any of that information for
4 its own guidance? In other words, would folks at
5 the Las Vegas APM operation be advised, here's what
6 your PM and your CM numbers look like?

7 A Yes, because if you take the example of
8 McCarran, the leader of McCarran Airport, the
9 Bombardier leader would be measuring his own
10 performance as it relates to the CM-PM ratio and
11 then feeding that data into the aggregate model.

12 Q So they would self-generate the initial
13 data?

14 A That's right. And plus, you know, they
15 would have company initiatives to demonstrate the
16 actions they were taking to improve preventative
17 maintenance.

18 Q Do you recall what the proportions were
19 between PM and CM?

20 MR. TRIMMER: Asked and answered.

21 THE WITNESS: I think, on the average,
22 we're looking at 80-20, 80 being preventative.

23 BY MR. KAHN:

24 Q Okay. And roughly what time period do
25 you recall that being the average?

1 A I'm going back when I left the position.

2 I'm going back 14 months ago.

3 Q Okay.

4 A That's my best recollection, sir.

5 Q And was there a significant change over
6 time in that overall proportion during the time
7 period you were looking at those numbers?

8 A Yes.

9 Q What were they, say, two or three years
10 before?

11 A Again, it's dependent on the way you
12 measured it. A lot of it was in the incomplete, or
13 not measuring it the way we intended to, so a lot of
14 it wasn't physical or management processes that
15 improved the performance. It was ensuring everybody
16 was using the same measuring stick. So you saw a
17 natural migration of improvement when everybody got
18 on the same page.

19 Q I see. But what were the ballpark?
20 What were the numbers?

21 A We were down, like 60-40 in some cases.

22 Q Okay. Have you ever communicated with
23 anyone other than, possibly, counsel about the job
24 duties of elevator repairmen?

25 A You know, I'm going back to contract

DECLARATION OF PAUL T. TRIMMER

00192

ER0192

BEFORE THE NEVADA LABOR COMMISSIONER

INTERNATIONAL UNION OF ELEVATOR
CONSTRUCTORS,

Complainant,

v.

BOMBARDIER TRANSPORTATION
(HOLDINGS) USA, INC.,

Respondent.

Contract CBE-552

**DECLARATION OF PAUL T.
TRIMMER IN SUPPORT OF
BOMBARDIER TRANSPORTATION
(HOLDINGS) USA, INC.'S MOTION
FOR SUMMARY JUDGMENT**

I, Paul T. Trimmer, hereby declare as follows:

1. I make this declaration in support of Respondent Bombardier Transportation (Holdings) USA, Inc.'s ("Respondent") Motion for Summary Judgment in the above-captioned action, pending before the Labor Commissioner, Clark County, Nevada. I have personal knowledge of the facts set forth herein, and if called and sworn as a witness, could and would competently testify thereto.

2. I am an attorney with the law firm of Jackson Lewis, counsel for Respondent in this matter.

3. Attached hereto as Exhibit 1 is a true and correct copy of the Contract for Maintenance of Automated Transit System Equipment CBE-552.

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4. Attached hereto as Exhibit 2 is a true and correct copy of the Notice of Prevailing Wage Claim/Complaint dated October 13, 2009 from the Office of the Labor Commissioner to the Department of Aviation.

5. Attached hereto as Exhibit 3 is a true and correct copy of a letter dated November 24, 2009 from the Department of Aviation to the Office of the Labor Commissioner

6. Attached hereto as Exhibit 4 is a true and correct copy of a letter of appeal dated December 17, 2009 from the International Union of Elevator Constructors ("Union") to the Office of the Labor Commissioner.

7. Attached hereto as Exhibit 5 is a true and correct copy of a letter dated December 31, 2009 from the Office of the Labor Commissioner to the Department of Aviation.

8. Attached hereto as Exhibit 6 is a true and correct copy of a letter dated March 30, 2010 from the Department of Aviation to the Office of the Labor Commissioner.

9. Attached hereto as Exhibit 7 is a true and correct copy of the Interim Order entered on June 7, 2011.

10. Attached hereto as Exhibit 8 is a true and correct copy of the Order granting the Stipulation to Dismiss Without Prejudice in the matter which was pending in the Eighth Judicial District Court entitled *Bombardier Transportation (Holdings) USA, Inc. v. Nevada Labor Commissioner*, Case No. A-11-644596-J.

11. Attached hereto as Exhibit 9 is a true and correct copy of a letter dated July 25, 2011 from the Department of Aviation to the Office of the Labor Commissioner.

12. Attached hereto as Exhibit 10 is a true and correct copy of a letter dated August 17, 2011 from Respondent's counsel to the Office of the Labor Commissioner.

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13. Attached hereto as Exhibit 11 is a true and correct copy of a map of McCarran Airport's A, B, C and D Concourses.

14. Attached hereto as Exhibit 12 is a true and correct copy of a letter dated October 16, 2009 from the Department of Aviation to the Nevada State Contractor's Board

15. Attached hereto as Exhibit 13 is a true and correct copy of the Clark County Board of Commissioners Agenda Item dated June 3, 2008 regarding approval of maintenance agreement.

16. Attached hereto as Exhibit 14 is a true and correct copy of of the Clark County Board of Commissioners Agenda Item regarding the award of Bid No. 10-601989.

17. Attached hereto as Exhibit 15 is a true and correct copy of the Clark County Board of Commissioners Agenda Item dated November 15, 2011 regarding approval of contract between Clark County and KONE, Inc.

18. Attached hereto as Exhibit 16 is a true and correct copy of the Clark County Board of Commissioners Agenda Item dated May 1, 2012 regarding approval of contract (CBE-670) between Clark County and Bombardier Transportation (Holdings) USA, Inc.

19. Attached hereto as Exhibit 17 is a true and correct copy of the excerpts from the legislative history concerning the initial enactment of NRS 338.011.

Dated this 28th day of March, 2013.


Paul T. Trimmer

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EXHIBITS

00196

ER0196

EXHIBIT 1

00197

ER0197

CLARK COUNTY, NEVADA

**CONTRACT FOR MAINTENANCE OF
AUTOMATED TRANSIT SYSTEM EQUIPMENT**

CBE-552

NAME OF FIRM	BOMBARDIER TRANSPORTATION (HOLDINGS) USA, INC.
DESIGNATED CONTACT, NAME AND TITLE	EDWARD A. GORDON VICE PRESIDENT APM MARKETING
ADDRESS OF FIRM INCLUDING CITY, STATE AND ZIP CODE	1501 LEBANON CHURCH ROAD PITTSBURGH, PA 15236-1491
TELEPHONE NUMBER (include area code)	(412) 655-5248
FAX NUMBER (include area code)	(412) 655-5841
EMAIL ADDRESS	rick.foster@us.transport.bombardier.com

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**CONTRACT FOR MAINTENANCE OF
AUTOMATED TRANSIT SYSTEM EQUIPMENT**

CBE-552

June 3

This contract, made and entered into as of this day of July 1, 2008 between CLARK COUNTY, a political subdivision of the State of Nevada, hereinafter called the "OWNER," and Bombardier Transportation (Holdings) USA Inc., a corporation of the State of Delaware, herein called the "CONTRACTOR."

WITNESSETH:

WHEREAS, CONTRACTOR has proposed to provide maintenance service for the operation of the Automated Transit System (ATS) equipment for McCarran International Airport; and, WHEREAS, OWNER desires the CONTRACTOR to provide maintenance for the said system;

NOW, THEREFORE, the CONTRACTOR hereby covenants and agrees to undertake and execute all of the said named work in a good, substantial and workmanlike manner and to furnish all the parts, materials, tools and labor necessary to perform properly the work in strict accordance with the General Provisions and Maintenance Requirements referred hereto as Attachment A, and hereto other contract documents Exhibits A and B attached and made a part hereof. For performance of the contract, the OWNER shall pay the CONTRACTOR as hereinafter defined.

The CONTRACTOR shall commence the work to be performed under this contract on July 1, 2008. The contract period shall be for five (5) years.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

APPROVED AS TO FORM:
DAVID ROGER, DISTRICT ATTORNEY

BY: E. Lee Thomson
E. LEE THOMSON
Chief Deputy District Attorney

CLARK COUNTY, NEVADA

BY: Handall H. Walker
HANDALL H. WALKER
Director of Aviation

CONTRACTOR:

Bombardier Transportation (Holdings) USA Inc

BY: Edward A. Gordon
EDWARD A. GORDON
Vice President APM Marketing

BY: Keith Orton
KEITH ORTON
Vice President, Finance

NOTE: Witnesses not required for a corporation, but a corporate certificate must be completed. Partnerships must complete a partnership certificate.

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**CONTRACT FOR MAINTENANCE OF
AUTOMATED TRANSIT SYSTEM EQUIPMENT
CBE-552**

1.0 GENERAL PROVISIONS

1.1 STATEMENT OF WORK

The work to be completed under this contract is set forth in Paragraph 2.0, Maintenance Requirements. The CONTRACTOR shall provide all labor, equipment and materials to perform the work according to the provisions contained therein.

1.2 TERM OF CONTRACT

This term of contract shall be for five (5) years commencing on July 1, 2008 through June 30, 2013.

1.2.1 FISCAL FUNDING REQUIREMENTS

OWNER reasonably believes that sufficient funds will be appropriated to make all payments during the term of the contract. In the event sufficient funds are not appropriated, the OWNER will so notify the CONTRACTOR for an orderly termination and close out of CONTRACTOR's operations hereunder as provided in Section 1.8. In any event, the contract is to terminate at the time appropriated funds are exhausted.

1.3 PAYMENT PROVISIONS

The OWNER agrees to pay CONTRACTOR, as follows, for the maintenance services described herein for the five (5) year contract period commencing July 1, 2008. The prices for each year are inclusive of the three (3) additional maintenance technicians for compressed maintenance of the D Gates Automated Transit System (ATS) which will reduce downtime by two (2) hours per day. With this reduced downtime, the hours of daily operation of the D Gates ATS will be 05:15 a.m. to 00:30 a.m. daily.

It is anticipated that during the term of this contract, new Terminal 3 will be constructed and the new ATS will begin carrying passengers. At the OWNER's sole discretion, when the new ATS at Terminal 3 commences operation, the additional cost associated with the three (3) additional technicians shall no longer be valid and therefore, the firm fixed price described below can be reduced by the amounts identified with an asterisk (*) and described as "Compressed maintenance fee".

Year One: July 1, 2008 – June 30, 2009

Base Price = \$2,712,145 + * Compressed maintenance fee = \$366,892

= A total fixed price of Three Million Seventy Nine Thousand Thirty Seven and no/100 Dollars (\$ 3,079,037).

Year Two: July 1, 2009 – June 30, 2010

Base Price = \$2,788,085 + * Compressed maintenance fee = \$377,165

= A total fixed price of Three Million One Hundred Sixty Five Thousand Two Hundred Fifty and no/100 Dollars (\$ 3,165,250).

Year Three: July 1, 2010 – June 30, 2011

Base Price = \$2,924,702 + * Compressed maintenance fee = \$395,646

= A total fixed price of Three Million Three Hundred Twenty Thousand Three Hundred Forty Seven and no/100 Dollars (\$ 3,320,347).

Year Four: July 1, 2011 – June 30, 2012

Base Price = \$3,070,937 + * Compressed maintenance fee = \$415,428

= A total fixed price of Three Million Four Hundred Eighty Six Thousand Three Hundred Sixty Five and no/100 Dollars (\$ 3,486,365).

Year Five: July 1, 2012 – June 30, 2013

Base Price = \$3,224,483 + * Compressed maintenance fee = \$436,199

= A total fixed price of Three Million Six Hundred Sixty Thousand Six Hundred Eighty Three and no/100 Dollars (\$ 3,660,683).

1.3.1 TERMINAL 3 ATS

Upon commencement of this contract, the exact date to begin passenger service of the new Terminal 3 ATS has not yet been determined. However, when the new Terminal 3 ATS system commences operation, the following annual price as described in the table 1.3.1.1- Terminal 3 Costs (includes escalation) on the following page shall be added to the yearly "Base" contract price.

Table 1.3.1.1- Terminal 3 Costs (includes escalation)
Terminal 3 Automated Transit System (ATS)
Pricing Per Contract No. 2273

	2006 Reference Price	Year 2011	Year 2012	Year 2013	Year 2014	Year 2015	Year 2016	Year 2017	Year 2018
Year 1 Price =	\$850,383	\$1,034,621	\$1,076,006	\$1,119,046					
Year 2 Price =	\$1,006,740		\$1,273,847	\$1,324,801	\$1,377,793				
Year 3 Price =	\$1,017,462			\$1,338,911	\$1,392,467	\$1,448,166			
Year 4 Price =	\$1,058,160				\$1,448,166	\$1,506,092	\$1,556,336		
Year 5 Price =	\$1,100,487					\$1,566,336	\$1,628,989	\$1,694,149	
Year 6 Price =	\$1,144,506						\$1,694,149	\$1,761,915	\$1,832,392
Year 7 Price =	\$1,190,287							\$1,832,392	\$1,905,687

For example, if the T3 ATS goes into service on January 1, 2012, the year 1 price will be \$1,076,006, year 2 price will be \$1,324,801, year 3 price will be \$1,392,467, and so on.

The yearly price for the maintenance of the T3 ATS operation that shall be added to each yearly "Base Price" listed in the each "Year" column described in Table 1.3.1.1 – **Terminal 3 Costs (includes escalation)**; above. The associated T3 Yearly Price to be added to the Base price for the T3 operation shall be solely dependent upon the year T3 commences operation.

Additionally, beyond the term of this agreement set to expire June 30, 2013, the prices listed above for the maintenance of the T3 ATS are predicated on the cross-utilization of concurrent Maintenance services including labor (common Administrative, Engineering, and Technician Services) and materials (common parts and supplies inventories and tools) provided by the CONTRACTOR on the Automated Transit Systems at C & D. In the event, the CONTRACTOR is no longer under contract for maintenance services for the Automated Transit Systems at C & D, then the OWNER will negotiate an Amendment to increase the CONTRACTOR's labor and materials for the efficient performance of Maintenance Services for the T3 ATS on a stand-alone basis. The unit prices from the CONTRACTOR's proposal shall be the basis of these Amendment negotiations.

All yearly prices listed in Table 1.3.1.1 are valid through June 30, 2018. Owner and Contractor shall begin negotiations for a new contract post July 1, 2018 beginning no less than 9 months prior to June 30, 2018. The new contract will be negotiated to encompass the entire ATS at McCarran International Airport, which includes APM systems on "C" and "D" and T3.

These contract amounts shall be subject to such additions and deductions as may be provided for in the contract documents. Payments shall be made upon the terms set forth in the contract documents.

1.3.2 CONTRACT AMOUNT

The contract amount reflects the OWNER's and CONTRACTOR's agreement as to the proper payment for all costs (excluding changes, heavy maintenance, major overhaul(s) described in Section 2.2.6.1, upgrades and enhancements) to be incurred by the CONTRACTOR in providing the operations and maintenance work in accordance with terms and conditions of the contract. The CONTRACTOR will not be entitled to any payment for additional work or reimbursement for costs over and above the amount for a given year unless it has received prior written authorization from the OWNER to exceed the contract amount.

1.3.3 METHOD OF PAYMENT

The CONTRACTOR shall be paid one-twelfth (1/12) of the contract amount for the applicable year each month and shall submit an invoice to OWNER. If additional fees, over and above the contract amount, have been approved by OWNER, CONTRACTOR will submit a billing for such additional services in the agreed amount along with its monthly invoice.

Except as otherwise provided herein, the OWNER will, within forty-five (45) days of receipt of an invoice, make payment to CONTRACTOR. The CONTRACTOR will submit an invoice for any additional work requested by the OWNER and performed during the preceding month, by the fifteenth (15th) day of each month.

The CONTRACTOR will be obligated to promptly pay all charges and costs incurred by CONTRACTOR for labor materials, supplies and equipment for the work performed under this contract within forty-five (45) days of invoice.

1.3.4 PAYMENT FOR UPGRADES AND ENHANCEMENTS

Upon completion of any OWNER approved upgrades and/or enhancements, and verification of the same by OWNER, CONTRACTOR will be paid the approved fixed-cost amount for the work as previously agreed between the parties pursuant to Paragraph 2.2.6.

1.3.5 CREDITS FOR SYSTEM AVAILABILITY

For any month of this contract that ATS does not achieve system availability (SA) of at least 99.65%, as defined in Exhibit "A" to this contract, a payment factor will be applied to the CONTRACTOR's total invoice amount for that month as follows:

<u>SYSTEM AVAILABILITY (%)</u>	<u>PAYMENT FACTOR</u>
99.65 - 100.00	1.000
99.55 - 99.64	0.991
99.45 - 99.54	0.981
99.35 - 99.44	0.971
99.25 - 99.34	0.961
99.15 - 99.24	0.949
99.05 - 99.14	0.937
99.00 - 99.04	0.930
98.95 - 98.99	0.916
98.85 - 98.94	0.892
98.75 - 98.84	0.870
98.65 - 98.74	0.850
98.55 - 98.64	0.832
98.45 - 98.54	0.816
98.35 - 98.44	0.807
98.25 - 98.34	0.786
98.05 - 98.24	0.773
98.05 or lower	0.761

For any period of 3 consecutive months, during this maintenance contract that a minimum SA of 99.65% is not met and/or a trend shows it will not be met, the CONTRACTOR will, at his expense, promptly undertake design reviews and a review of preventive maintenance procedures and propose a plan to correct within one month the default or potential default.

1.4 INDEMNIFICATION

Indemnity

The CONTRACTOR agrees, by entering into this contract, regardless of the coverage provided by an insurance policy, to pay all costs necessary to indemnify, defend and hold OWNER harmless from any and all claims, demands, actions, attorney's fees, costs, and expenses (collectively "Claims") but only to the extent such Claims are alleged to be based upon or arising out of any acts, errors, omissions, fault or negligence of CONTRACTOR or its principals, employees, subcontractors or other agents while performing services under this contract. The CONTRACTOR shall indemnify, defend, and hold harmless the OWNER for any attorney's fees or other costs of defense, even if the allegations of the claim are groundless, false or fraudulent.

Except claims for bodily injury and the costs of repair or replacement of damaged property, the CONTRACTOR's liability under this provision, for direct, indirect, special, incidental or consequential loss or damage, will be limited, in the aggregate, to two million dollars (\$2,000,000).

Patent Indemnity

CONTRACTOR hereby indemnifies and shall defend and hold harmless OWNER and its representatives respectively from and against all claims, losses, costs, damages, and expenses, including attorney's fees, incurred by OWNER and its representatives, respectively, as a result of or in connection with any claims or actions based upon infringement or alleged infringement of any patent and arising out of the use of the equipment or materials furnished under the Contract by CONTRACTOR, or out of the processes or actions employed by, or on behalf of CONTRACTOR in connection with the performance of the Contract. CONTRACTOR shall, at its sole expense, promptly defend against any such claim or action unless directed otherwise by OWNER or its representatives; provided that OWNER or its representatives shall have notified CONTRACTOR upon becoming aware of such claims or actions, and provided further that CONTRACTOR's aforementioned obligations shall not apply to equipment, materials, or processes furnished or specified by OWNER or its representatives.

CONTRACTOR shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing equipment, materials, or processes, or to modify such infringing equipment, materials and processes so they become non-infringing, or obtain the necessary licenses to use the infringing equipment, material or processes, provided that such substituted and modified equipment, materials and processes shall meet all the requirements and be subject to all the provisions of this Contract.

1.5 INSURANCE

The CONTRACTOR will provide OWNER with certificates of insurance for coverages as listed below, and endorsements affecting coverage required by this contract within ten (10) calendar days after approval by the OWNER. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer and licensed by the State of Nevada in accordance with NRS 680A.300.

Each insurance company's rating as shown in the latest Best's Key Rating Guide will be fully disclosed and entered on the required certificate of insurance. OWNER requires insurance carriers to maintain a Best's Key Rating of at least A - (minus) VIII (eight) or higher.

OWNER, its officers and employees must be expressly covered as additional insureds except on workers' compensation coverages.

The CONTRACTOR's insurance will be primary as respects the OWNER, its officers and employees

The CONTRACTOR's general liability policies will be endorsed to recognize specifically CONTRACTOR's contractual liability to OWNER. It is further agreed that the CONTRACTOR, or its insurance carrier, will provide the OWNER with 30-day advance notice of any cancellation of the policies, except for nonpayment which will be noticed ten (10) days in advance.

All deductibles and self-insured retentions will be fully disclosed in the certificates of insurance. No deductible or self-insured retention may exceed the equivalent of One Hundred Seventy Five Thousand Dollars (\$175,000) without the written approval of the OWNER.

If aggregate limits are imposed on bodily injury and property damage, then the amount of such limits must be less than Two Million Dollars (\$2,000,000). All aggregates must be fully disclosed and the amount entered on the required certificate of insurance. The CONTRACTOR must notify OWNER of any erosion of the aggregate limits.

The CONTRACTOR will obtain and maintain, for the duration of this contract, general liability insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONTRACTOR, its agents, representatives, employees or SUBCONTRACTOR's of any tier. The cost of such insurance will be included in CONTRACTOR's fixed fee.

General liability coverage will be on a "per occurrence" basis only and not "claims made." The coverage must be provided either in a commercial general liability form or a broad form comprehensive general liability form. No exceptions to coverages provided in such forms are permitted. Policies must include, but need not be limited to, coverages for bodily injury, personal injury, broad form property damage, premises operations, severability of interest, products and completed operations, contractual and independent contractors. General liability insurance policies will be endorsed to include OWNER as an additional insured. Subject to paragraph 6 of this subsection, CONTRACTOR will maintain limits of no less than One Million Dollars (\$1,000,000) combined single limit "per occurrence" for bodily injury (including death), personal injury and property damages.

The CONTRACTOR will obtain and maintain, for the duration of this contract, automobile coverage which must include, but need not be limited to, coverage against claims for injuries to persons or damages to property which may arise from or in connection with the use of any auto in the performance of the work hereunder by the CONTRACTOR, its agents, representatives, employees or subcontractors of any tier. Subject to the conditions set forth herein, CONTRACTOR will maintain limits of no less than Five Million Dollars (\$5,000,000) combined single limit "per occurrence" for bodily injury and property damage.

If the CONTRACTOR fails to maintain any of the insurance coverages required herein, then the OWNER will have the option of declaring the CONTRACTOR responsible for any payments made by the OWNER to obtain or maintain such insurance, and the OWNER may collect the same from the CONTRACTOR, or deduct the amount paid from any sums due the CONTRACTOR under this contract.

The CONTRACTOR shall obtain and maintain for the duration of this contract, a work certificate and/or a certificate issued by an insurer qualified to underwrite workers' compensation insurance in the State of Nevada, in accordance with Nevada Revised Statutes Chapters 616A-616D, inclusive, unless Contractor is a Sole Proprietor and shall be required to submit an affidavit indicating that it has not elected to be included in the terms, conditions and provisions of Chapters 616A-616D, inclusive, and is otherwise in compliance with those terms, conditions and provisions.

The CONTRACTOR agrees to maintain required workers' compensation coverage throughout the term of the contract. If CONTRACTOR does not maintain coverage throughout the term of the contract, CONTRACTOR agrees that OWNER may, at any time the coverage is not maintained by CONTRACTOR, order the CONTRACTOR to stop work, suspend the contract, or terminate the contract.

The insurance requirements specified herein do not relieve the CONTRACTOR of its responsibility or limit the amount of its liability to the OWNER or other persons and CONTRACTOR is encouraged to purchase such additional insurance as it deems necessary.

The CONTRACTOR is responsible for and required to remedy all damage or loss to any property, including property of OWNER, to the extent caused by the CONTRACTOR, CONTRACTOR's subcontractor, or anyone employed, directed or supervised by CONTRACTOR.

In the event of a change in the cost of premium, which the Contractor believes to have been caused by factors beyond its control (i.e. terrorism), the Contractor may submit documentation of this change in costs to the Authority. If the Authority, in its sole discretion, determines that the cost of premiums increased due to the factors beyond the Contractor's control, the Authority shall make an equitable adjustment to the O&M price for the appropriate time period.

1.6 OWNERSHIP OF DOCUMENTS

Copies of ATS maintenance records developed by the CONTRACTOR at the work site will be deliverable to the OWNER upon request.

1.7 INDEPENDENT CONTRACTOR

In the performance of this contract, the CONTRACTOR's status is that of an independent CONTRACTOR, and not as an agent or employee of the OWNER. The CONTRACTOR will conduct themselves in accordance with that status.

1.8 TERMINATION

OWNER reserves the right to terminate the CONTRACTOR for cause by giving sixty (60) days prior written notice.

The performance of the work under this contract may be terminated by the OWNER in whole, or from time to time in part, in accordance with this paragraph whenever the OWNER determines that such termination is in the best interest of the County. Any such termination will be effected by a minimum of sixty (60) days prior written notice by registered or certified mail, return receipt requested to the CONTRACTOR specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. Further, it will be deemed conclusively presumed and established that such termination is made with just cause as therein stated and no proof in any claim, demand, or suit will be required of the OWNER regarding such discretionary action. If such termination is given for nonperformance of the CONTRACTOR for work under this contract, the CONTRACTOR will not make claim for any termination expenses, except long-lead items which will not be received within the succeeding six (6) months, and for which the CONTRACTOR has an outstanding financial obligation.

After receipt of Notice of Termination, and except as otherwise directed by the OWNER, the CONTRACTOR will:

- Stop work under the contract on the date and to the extent specified in the Notice of Termination.
- Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portions of the work under the contract as is not terminated.
- Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.

- Assign to the OWNER, in the manner, at the times, and to the extent directed by the OWNER, all of the rights, title, and interest of the CONTRACTOR under the orders and subcontracts so terminated, in which case the OWNER will have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

Settle all outstanding liabilities and all claims arising out of such termination or orders and subcontracts, with the approval or ratification of the OWNER to the extent it may require, which approval or ratification will be final for all purposes of this Section.

- Transfer title to the OWNER and deliver in the manner, at the times, and to the extent, if any, directed by the OWNER:
 - Work in process, completed work, supplies, and other material produced as part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination; and
 - The completed, or partially completed documents, information, and other property which, if the contract had been completed, would have been required to be furnished to the OWNER.
- Complete performance of such part of the work which have not been terminated by the Notice of Termination; and
- Take such action as may be necessary, or as the OWNER may direct, for the protection and preservation of the property related to the contract which is in the possession of the CONTRACTOR and in which the OWNER has or may acquire an interest.
- Within sixty (60) days after Notice of Termination, the CONTRACTOR will submit his termination claim to the OWNER in the form and with the certification prescribed by the OWNER. Unless one or more extensions in writing are granted by the OWNER upon request of the CONTRACTOR made in writing within such sixty (60) day period or authorized extension thereof, any and all such claims will be conclusively deemed waived.
- Subject to the provisions of this paragraph, the CONTRACTOR and OWNER may agree upon the whole or any part of the amount or amounts to be paid to the CONTRACTOR by reason of the total or partial termination of work pursuant hereto; provided that such agreed amount or amounts will never exceed the total year amounts as reduced by the amount of payments otherwise made and as further reduced by the amounts for work not terminated. The contract will be amended accordingly, and the CONTRACTOR will be paid the agreed amount.
- Under a partial termination of the work under this contract, the OWNER will review the CONTRACTOR's termination claim, and make payment in the amount due the CONTRACTOR. Any disagreement on the amount of such payment will be subject to settlement under the arbitration provisions of Article 1.17, Claims and Disputes.

1.9 GOVERNING LAW AND VENUE

The terms and provisions of this contract shall be construed in accordance with the laws and court decisions of the State of Nevada. Venue of any action brought under this contract shall lie in Clark County, Nevada, exclusively.

1.10 CHARACTER OF WORKMEN AND EQUIPMENT

The CONTRACTOR shall employ such superintendents, foremen, and workmen that are careful and competent. All workmen shall have sufficient skill and experience to perform properly the work assigned them. The OWNER shall furnish all tools and equipment as necessary to perform maintenance and repairs of equipment. CONTRACTOR shall provide a work force as considered necessary for the prosecution of the work in an acceptable manner and a satisfactory rate of progress.

The OWNER may, in writing, demand the dismissal of any person or persons employed by the CONTRACTOR under this contract who misconducts himself/herself or is incompetent or negligent in the proper performance of its duties or neglects or refuses to comply with the directions of the OWNER as provided to CONTRACTOR. Such person or persons shall not be employed thereon again without the written consent of the OWNER.

Further, the CONTRACTOR's designated Superintendent shall not be replaced or reassigned by the CONTRACTOR without the approval of the OWNER. OWNER's approval of such replacement will not be unreasonably withheld.

All equipment, tools, and machinery used for handling materials and executing any part of the work shall be satisfactorily maintained. Equipment on any portion of the work will be such that no foreseeable injury to the work, or the property, will result from its use.

1.11 NO WAIVER OF LEGAL RIGHTS

Any waiver of any breach of this contract shall not be held to be a waiver of any other or subsequent breach, or of any right the OWNER or CONTRACTOR may have for damages.

1.12 FORCE MAJEURE

Neither the OWNER nor the CONTRACTOR shall be deemed in violation of this contract if it is prevented from performing any of the obligations hereunder by reason of boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, acts of superior governmental authority, unusual weather conditions, floods, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not in its control, nor will any such event be considered in the computation of system availability (SA) hereunder. However, notice of such impediment or delay in performance must be timely given.

1.13 NONDISCRIMINATION

The CONTRACTOR agrees as follows during the performance of any of the work covered by this contract:

The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The equal opportunity clause and the regulations contained in Title 41 of CFR Part 60-1 are incorporated in this contract by reference.

The CONTRACTOR shall file annually complete and accurate reports on Standard Form 100 (EEO-1) with the Joint Reporting Committee of the Federal Government. The CONTRACTOR shall file such a report within thirty (30) days after the effective date of this contract unless CONTRACTOR has submitted such a report within the twelve (12) months preceding the effective date of this contract.

The CONTRACTOR shall develop a written affirmative action compliance program for each of its establishments consistent with the rules, regulations and orders of the Department of Labor.

The CONTRACTOR shall not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The affirmative action clause and the regulations contained in Title 41 of CFR Part 60-741 are incorporated in this contract by reference.

The CONTRACTOR shall not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. The affirmative action clause and the regulations contained in Title 41 of CFR Part 60-250 are incorporated in this contract by reference.

1.14 PROPRIETARY INFORMATION

If CONTRACTOR transmits to the OWNER any information which CONTRACTOR considers confidential or proprietary, such information will be so designated. The OWNER will use such information exclusively in connection with ATS operation and maintenance; and, except as set forth as follows, the OWNER will not publish or otherwise disclose such information to third parties without the prior written permission of CONTRACTOR, except as required by law.

Notwithstanding the requirements set forth herein, OWNER may disclose said confidential or proprietary information to a governmental authority to the extent required to secure or maintain governmental permits, licenses, or other authorizations with respect to the ATS, provided, however, that if such disclosure is required, OWNER will give CONTRACTOR advance notice, which will be in writing if time permits, of such intended disclosure, so that both OWNER and CONTRACTOR may take all reasonable steps to secure protective treatment of the information against public disclosure by the governmental authority involved and that CONTRACTOR may participate in discussions with such governmental authority with regard to such protective treatment. In the event that efforts to secure protective treatment have become, after the exercise of all reasonable efforts, unsuccessful, CONTRACTOR will be afforded a reasonable opportunity to revise such confidential or proprietary information consistent with the requirements of the governmental authority.

1.15 LAWS AND REGULATIONS

CONTRACTOR and its employees and representatives shall at all times comply with all applicable laws, ordinances, statutes, rules or regulations.

If, during the term of this Contract, there are changes to existing laws or new laws, ordinances or regulations not pending at the time of signing this Contract which affect the cost or time of performance, CONTRACTOR shall immediately notify OWNER in writing and submit documentation of its effect on both time and cost. Upon concurrence by OWNER as to the effect of such changes an adjustment in the compensation and/or time of performance will be made.

If any discrepancy or inconsistency should be discovered between the Contract and any law, ordinance, regulation, order or decree, CONTRACTOR shall immediately report the same in writing to OWNER who will issue instructions as may be necessary.

1.16 CLAIMS AND DISPUTES

The following information is in regards to claims and disputes with the OWNER, and to provide the CONTRACTOR with the understanding on how to avoid and resolve contractual issues.

- Labor and materials not covered by the contract must be approved by the OWNER'S representative. The quote for additional work must include number of hours for labor and cost of parts.
- Work completed without prior approval shall not be authorized for payment.
- All claims must be submitted within thirty (30) calendar days. Claims submitted shall have all necessary documentation for charges sought. Failure to submit claim within thirty (30) calendar days shall be considered void.
- All claims approved by OWNER shall be paid within sixty (60) calendar days.
- CONTRACTOR agrees that signing of this contract covers all areas of maintenance for the ATS.

If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the OWNER in the administration of this Contract, or by his failure to act within the time specified in this Contract (or if no time is specified, within a reasonable time), the OWNER will consider a claim for equitable adjustment for any increase in the cost of, or time required for performance of this Contract caused by such unreasonable suspension, delay, or interruption. However, no adjustments will be allowed under this clause for any suspension, delay, or interruption to the extent (1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the CONTRACTOR or (2) for which an equitable adjustment is provided for or excluded under any other provision of this contract.

No claim under the preceding paragraphs of this clause will be allowed (1) for any costs incurred before the CONTRACTOR will have notified the OWNER in writing of the act or failure to act involved, and (2) unless the notification of claim is given and the claim filed in writing within thirty (30) days after termination of the delay. The OWNER's decision on all claims for equitable adjustment will be issued to the CONTRACTOR in writing. Claims that are approved by the OWNER will be reflected in a written modification to the contract.

Any dispute relating to this Contract will be resolved through good faith efforts upon the part of the CONTRACTOR and OWNER. At all times, CONTRACTOR will carry on the work and maintain the progress schedule in accordance with the requirements of the contract and the determination of the OWNER, pending resolution of any dispute. If the dispute is not resolved in ninety (90) days, either party may request arbitration in accordance with the following paragraphs.

Except as otherwise provided herein, all claims, disputes, or other questions that may arise between OWNER and CONTRACTOR concerning this contract which cannot otherwise be settled by negotiation, and which have not been waived by the making and acceptance of Final Payment, may be submitted to and be determined and settled by arbitration in the manner set forth in this paragraph. Either party, by written notice to the other received before litigation is commenced, may demand arbitration and may appoint an arbitrator. If litigation has been commenced prior to receipt of demand to arbitrate, arbitration will not be held. Within five (5) days after receipt of such notice, the other party will, by written notice to the former, appoint another arbitrator, and, in default of said second appointment, the arbitrator first appointed will be sole arbitrator and will proceed in the same manner as hereinafter provided for three arbitrators. When two arbitrators have been appointed, they will, if possible, agree upon a third arbitrator and will appoint the same by notice in writing, signed by both of them given to the OWNER and the CONTRACTOR. If fifteen (15) days elapses after the appointment of the second arbitrator without notice of appointment of the third arbitrator being given, as aforesaid, then either party may, in writing, require

that the American Arbitration Association or the Nevada Arbitration Association to appoint the third arbitrator. Upon appointment of the third arbitrator, the three arbitrators will meet without delay and will proceed to a determination of the dispute in accordance with the construction industry rules of the American Arbitration Association. Any costs of arbitration will be shared equally by both parties.

Either party may appeal the decision of the Board of Arbitrators to the District Court of the State of Nevada, as provided for per NRS Chapter 38.

This Arbitration section will not apply to claims, disputes or other questions involving sums of money which exceed \$50,000. The CONTRACTOR will carry on the work and maintain the progress and OWNER will continue to make payments on undisputed work during any dispute, arbitration or court proceedings, unless otherwise mutually agreed upon in writing.

If arbitration is commenced by either party under this section, then in this event the parties agree that during the period any such arbitration is being conducted, either party will have access to and the right to inspect, examine and make copies of any books, documents, papers, and records of the other involving transactions relative to the dispute which would have been discoverable had the matter been brought in the Nevada Courts. At the conclusion of the arbitration any such documents will be returned to the owning party.

1.17 NOTICE AND SERVICE THEREOF

Any notice to the CONTRACTOR from the OWNER or to the OWNER from the CONTRACTOR relative to any part of the contract shall be submitted in writing. Forwarding a notice may be accomplished by sending it by certified / registered mail, or hand delivered to the authorized representative at their work site.

1.18 WARRANTY

CONTRACTOR warrants that the ATS maintenance services performed by its personnel and the parts, equipment and services supplied by it in connection with such ATS operation and maintenance services will be provided in a manner such that the ATS will achieve a monthly system availability (SA), as defined and calculated in accordance with provisions of paragraph 1.3.4, of 99.65%. If the ATS fails to achieve the warranted monthly System Availability, due to the maintenance services provided by CONTRACTOR, payment for such services will be adjusted downward in accordance with the provisions of paragraph 1.3.4.

The only warranty made by CONTRACTOR is that expressly enumerated in this provision. Any other statements of fact or descriptions expressed in the contract, or any attachments hereto, will not be deemed to constitute a warranty of the work or any part thereof. THE WARRANTY SET FORTH IN THIS PROVISION IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING AND USAGE OF TRADE). The remedy provided above is the OWNER's sole remedy for any failure of CONTRACTOR to comply with its warranty obligations.

The CONTRACTOR will record all tasks performed by operations and maintenance personnel in fulfillment of warranty obligations under Contract and will record the time expended by such operations and maintenance personnel in performing such warranty tasks. Written reports will be submitted to the OWNER each month detailing the CONTRACTOR's use of operations and maintenance personnel in connection with warranty efforts performed during the prior month. This replacement of work hours will be at a mutually agreeable negotiated rate.

1.19 MISCELLANEOUS PROVISIONS

Third Party Beneficiaries. The provisions of this contract are only for the benefit of the parties hereto and not for any other person, except as specifically provided herein with respect to CONTRACTOR's suppliers. CONTRACTOR and OWNER agree to appear and to assist in the defense of any claim by a third party (other than a CONTRACTOR supplier) which alleges an interest in the subject matter of this contract.

Modification: No waiver, modification, or amendment of any of the provisions of this contract will be binding unless it is in writing and signed by a duly authorized representative of the party to be bound thereby.

Survival: The provisions of the paragraphs contained herein and titled INDEMNIFICATION, INSURANCE, PATENT INDEMNITY AND PROPRIETARY INFORMATION, will apply notwithstanding any other provision of this contract and will survive termination, cancellation, or expiration of this contract.

Assignment: This contract will not be assigned by either party without the prior written consent of the other party, which consent will not be unreasonably withheld; provided, however, that CONTRACTOR may assign any or all of its rights or obligations under this Contract to a wholly owned subsidiary.

1.20 AIRPORT SECURITY

a. OWNER Property

For security purposes, OWNER property is divided into three (3) categories as follows:

1. Landside: The non-secure portion of the Airport;
2. Airside: The Secured Area / Security Identification Display Area (SIDA); and
3. Sterile Areas: The parts of the terminal buildings that required access through a security check point. Note: This is a part of the SIDA.

All CONTRACTOR's personnel working on OWNER property, Landside, Airside or Sterile Areas, must be badged for identification purposes.

b. Federal Regulations

1. 49 Code of Federal Regulation (CFR), Part 1542, governing US Commercial Airport Security Program requires that security of the Secured Area / SIDA at McCarran International Airport be maintained at all times. This regulation has a provision for enforcement by the Transportation Security Administration (TSA), which may assess substantial fines (\$10,000.00 per occurrence) for potential security breaches or violations or actual security breaches and violations by authorized and unauthorized persons and vehicles entering the Secured Area / SIDA on LAS. OWNER will be reimbursed by CONTRACTOR for any fines levied for breaches or violations of security due to CONTRACTOR or those of any tier subcontractor. When working at Airport, regardless of location, CONTRACTOR's personnel must visibly display at waist level or above on their outermost garment the appropriate McCarran International Airport security identification badge at all times.

2. CONTRACTOR acknowledges that McCarran International Airport reserves the right to refuse identification badges to any person with a record of arrests and convictions, or poses a safety or security risk to the airport, which in its sole judgment would render that person an unacceptable risk to the security of the Airport.
3. CONTRACTOR agrees to accept and reimburse OWNER for any fines levied on OWNER by TSA for any violation of any TSA Security Regulations and Rules by CONTRACTOR and its employees or any of CONTRACTOR's subcontractors, vendors, suppliers and agents and their employees.

c. Access to the Airport Secured Area / SIDA

Access to the Airport Secured Area/SIDA can be gained by personnel displaying a Maroon or Green badge. Personnel with a Tan Badge are only allowed access to and within the McCarran Sterile Areas and Landside/Public Areas. CONTRACTOR will be allowed access to only those areas necessary to complete the work.

d. Airport Secured Area / SIDA

If a Maroon or Green badge holder enters a part of the Airport Secured / SIDA for which access has not been authorized, CONTRACTOR may be subject to a fine as detailed in Section 1.21.b., and personnel may be subject to immediate and permanent removal, to include security identification badge revocation, from the Airport by OWNER.

e. Landside / Public Work Areas

CONTRACTOR's personnel with a Tan badge can gain access to Landside / Public or Sterile Area work areas without escort. If a Tan badge holder enters an Airport Secured Area / SIDA, CONTRACTOR may be subject to a fine as detailed in Section 1.21.b., and personnel may be subject to immediate and permanent removal from the Airport by OWNER. Personnel with Tan badges do not have the authority to escort and must be screened through the TSA passenger security checkpoint prior to entering Airport Sterile Areas.

SECURITY PROCEDURES AND BADGING

- a. CONTRACTOR may apply for either a Maroon, Green or Tan badge for its personnel as applicable. The security identification badge shall be specific to the awarded contract, for which its personnel are assigned. All security badges are obtainable after receipt of Notice of Award and personnel's successful completion of US Customs & Border Protection (CBP) Access Seal background check (if applicable), TSA required criminal history records check and security threat assessment and successful completion of the Airport Security Training Class.
- b. Airport Badging Office hours are between 6am – 6pm, Monday through Friday, excluding special events and holidays. The Airport Badging Office telephone number is (702) 261-5652. The Airport Fingerprint Office hours are between 7:00 a.m. – 12:00 noon and 1:00 p.m. – 3:45 p.m., Monday through Friday, excluding special events and holidays. The Airport Fingerprinting Office telephone number is (702) 261-5686.

- c. CONTRACTOR's personnel requiring a Maroon, Green or Tan badge shall undergo a CBP access seal background check (if applicable) of which it may take up to five (5) business days for CBP to provide results. Once CBP check is complete (if applicable), personnel must be fingerprinted, as required by 49 Code of Federal Regulation (CFR), Part 1542. It may take up to fourteen (14) calendar days to receive the results of this Criminal History Records Check. Further, as required by Part 1542, individuals must submit necessary documentation and data for TSA to conduct a security threat assessment. Security Threat Assessment results may also take up to fourteen (14) calendar days to be received. Once Airport has received all results, the employee must attend the Airport Security Training Class. All badges expire on an annual basis. If the term of the contract is longer than twelve (12) months, then CONTRACTOR is required to re-badge all employees assigned to the contract. CONTRACTOR employees may renew badges beginning thirty (30)-days prior to date of expiration. Please note expiration date is date of employee's birthday.
- d. A Maroon or Green badge provides access to the Airport Secured Area/SIDA, as stipulated by OWNER and is required when CONTRACTOR has to provide pedestrian escort to Airport Secured Area/SIDA or has to guard a door or gate that allows access to Airport Secured Area/SIDA. Personnel with a Maroon or Green badge may act as escort for persons (visual control) at worksite only and are not authorized to escort vehicles.
- e. A Tan badge is authorized by and signed for by OWNER. This badge is required for all other personnel who do not have a Maroon or Green badge. A Tan badge provides access to Landside/Public/Sterile Areas as stipulated by OWNER. Tan badge holders may not be escorted into the Airport Secured Area/SIDA, nor do Tan badge holders have authority to escort and must be screened through the TSA passenger security screening checkpoints prior to entering Airport Sterile Areas.
- f. CONTRACTOR will provide OWNER with information on the specific doors/points of entry through which access is required. OWNER will relay access requests to the Airport Badging Office for card readers (Maroon or Green badged personnel only) and to the Facilities Division for keyed doors. Access will be removed after contract completion.
- g. Any toolbox, and tools contained within, for work/project duties only, may be brought into the Airport Sterile and Secured Area/SIDA, however, it is subject to search by the Airport and the TSA and must be controlled/secured. Toolboxes may not be taken through the TSA passenger security screening checkpoints.
- h. "Airport personnel" includes any and all personnel of the Airport, operator, concessionaires, vendors, contractors, and subcontractors. All of these personnel using tools of the trade (knives and any cutting instrument/tool of any kind) within the Sterile and Secured Area/SIDA must have an Airport Issued Security Identification badge. Non-badged personnel may use necessary tools of the trade in sterile areas under visual supervision and escort of a properly badged person. Tan badged are prohibited from escorted non-badged personnel. Tools not under direct visual supervision must be secured from public access.

APPLICATION/DOCUMENTATION

- a. CONTRACTOR through the OWNER's representative must obtain a fingerprint and badging application package from the Airport Badging Office. Upon completion, CONTRACTOR shall submit the application package to the Airport Badging Office. **NOTE:** If applicable, CONTRACTOR must first obtain applications for CBP Access Seal and complete necessary process and background checks for all of its personnel prior to requesting Airport Security Identification Badge.
- b. Applications for picture badges must be processed through the Las Vegas Metropolitan Police Department (METRO). Two (2) forms of personal identification are required prior to submitting the application to the Airport Badging Office, one of which must be a government-issued picture I.D.
- c. Owner will provide the Airport Badging Office with confirmation of the Notice of Award for each contract, including any renewals and/or extension dates and notice of contract completion.

BADGING AND FINGERPRINTING COST

- a. The badging and fingerprinting costs shall be paid by the OWNER. The initial cost for badging is \$10 per badge and \$27 for fingerprinting per individual. The cost for the first replacement badge is \$50, and \$100 for the second replacement, and \$200 for the third replacement (to be paid to the Airport Badging Office at the time the badge is issued), if the badge is lost for the fourth time, no badge will be issued. Badges re-issued after expiration will be issued at no cost. If a badge is reported stolen, there will be no charge if a copy of a police report is provided. Refunds will not be issued for replacement badges/lost badges.

LOST BADGES

- a. CONTRACTOR shall immediately file a report of lost or missing badges with the Airport Control Center at (702) 261-5125. If a lost identification badge is recovered, it must immediately be returned to the Airport Badging Office.
- b. CONTRACTOR shall immediately notify the Airport Badging Office of any employee or subcontractor of CONTRACTOR working on the contract that is terminated or is released from work and return badge.

VEHICLE ESCORTS

- a. All vehicles without decals must be escorted.
- b. No private vehicles, (registered to an individual) are authorized on the airfield.
- c. All CONTRACTOR's subcontractors and vendor vehicles that are to be escorted will be required to provide a copy of vehicle registration (company) and insurance at the designated point of entry into the Airport Secured Area/SIDA. Said escorted vehicles are also required to display their company logo on both sides of each vehicle which must be visible from a reasonable distance with lettering a minimum of 3" high. Logos will be checked at the designated point of entry into the Airport Secured Area/SIDA.
- d. All vehicles and personnel are subject to search and inspections.
- e. CONTRACTOR shall submit a request for escorts no later than 1:00 pm on the day prior to the requirement.

CONTRACTOR'S RESPONSIBILITY

- a. CONTRACTOR shall be responsible for all personnel engaged in the work to ensure that said personnel comply with all security requirements imposed by OWNER. It shall be CONTRACTOR's responsibility to ensure that all equipment and workmen do not enter Airport Secured Area/SIDA except as required during the progress of the work. CONTRACTOR shall follow the directions given by OWNER concerning the security policies, procedures, rules, regulations, and methods of access and any other restrictions applicable to work within Airport Secured Area/SIDA. CONTRACTOR's operations, vehicles and personnel shall be prevented from encroaching into aircraft operational areas by means of barricades, or as directed by OWNER.
- b. CONTRACTOR, upon completion of the contract or when badges are no longer required, shall immediately return all badges to the Airport Badging Office. Failure to do so will result in monies being held from the last payment.

1.21 OWNER / CONTRACTOR COOPERATION

During the term of this contract, OWNER may let other contracts with CONTRACTOR or others to modify, expand or otherwise enhance the ATS. In such events, OWNER and CONTRACTOR agree to cooperate fully during such activity to minimize any interference with ATS operation.

OWNER agrees to place a similar provision in contracts it lets, and to coordinate the efforts of its CONTRACTOR's within the work area or in close proximity to the same. The OWNER and CONTRACTOR will meet monthly to review maintenance procedures and approve CONTRACTOR invoices.

1.22 CHANGES

The OWNER, without invalidating the CONTRACTOR, may in writing order extra work (for example, due to an increase in the number of vehicles or operating hours) or make other changes by altering, adding to the work and the contract fixed cost, time for completion of the work and other affected terms and conditions are to be adjusted accordingly. All such work will be executed in accordance with the applicable terms and conditions of the Contract as adjusted as a result of the Extra Work or other changes. The adjustments in schedule and other affected terms and conditions required by the change or Extra Work will be resolved insofar as practical at the time of ordering such change or extra work.

Payment for any such change or extra work will be made as provided herein. The CONTRACTOR will supply price quotations for the proposed change or extra work no later than thirty (30) calendar days from date of receipt of notification. The CONTRACTOR's price quotation will include all costs for such change or extra work, including where appropriate the costs of impact, disruption and delay. The parties will agree in writing upon a price and payment schedule for the extra work or change before said extra work or change is commenced.

1.23 ENTIRE CONTRACT

This contract embodies the entire contract between OWNER and CONTRACTOR. The parties will not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. No changes, amendments or modifications of any of the terms or conditions of the Contract will be valid unless reduced to writing and signed by both parties.

2.0 MAINTENANCE REQUIREMENTS

Operation of the ATS, including staffing of the Control Center Facility, will be performed by the OWNER as described herein. The CONTRACTOR will provide all required labor and materials, and will maintain the ATS as specified herein.

2.1 GENERAL

2.1.1 OWNER'S OPERATION

Operation of the ATS, including staffing of the Control Center Facility, will be performed by the OWNER. Responsibilities of the OWNER will include:

- Selecting the operational mode for the ATS;
- Monitoring system operations at Central Control and notifying CONTRACTOR of system malfunctions;
- Observing passenger activities via the CCTV monitors at Central Control;
- Responding to passenger inquiries via the vehicle radio;
- Directing all emergency procedures involving passengers and/or employees;
- Directing the removal of disabled vehicles from service;

- Coordinating with the CONTRACTOR's maintenance representative regarding performance of ATS maintenance activities.
- Providing contractual direction to the CONTRACTOR's maintenance representative under circumstances (emergency or otherwise) not covered in this contract.

For purposes of communicating with the CONTRACTOR's site manager, the OWNER will designate a representative to be at the airport at all times when the system is in operation, to serve as the OWNER's ATS representative. All OWNER communications to the CONTRACTOR regarding the operation of the ATS system will be through the CONTRACTOR's site manager.

2.1.2 OWNER PROVIDED WORK AND SERVICES

2.1.2.1 GUIDEWAY AND FACILITY MAINTENANCE

The OWNER will provide and maintain the maintenance shop, office and equipment room space to the CONTRACTOR; however, the CONTRACTOR will do general housekeeping of these areas.

The OWNER will provide and maintain the guide way structures, including the running surface, and coordinate this with CONTRACTOR's operations of the ATS System.

The OWNER will also maintain the passenger station finish and uncontrolled directional signs.

2.1.2.2 SERVICES

The OWNER will provide the following services to the CONTRACTOR at the OWNER's expense:

- All utilities (electric, heat, water, and sewage) used in the operation and maintenance of the ATS and in the CONTRACTOR's administration of its activities at the airport;
- Employee and job related vehicle parking for CONTRACTOR's employees at the airport and for all vehicles required for operation and maintenance of the ATS; and
- Airport identification badges for all of CONTRACTOR's employees at the Airport.
- Maintenance radios and base station

2.1.3 EXTENT OF THE WORK

The work under this contract shall include furnishing all labor and material necessary to accomplish the inspection, cleaning, adjustment, preventive maintenance, lubrication, repair, testing, replacement of worn parts, replacement of spare equipment and repair of spare equipment for the ATS, as hereinafter defined.

The equipment to be maintained hereunder is defined as equipment (excluding power distribution equipment but including the U.P.S.) supplied by the CONTRACTOR or pursuant to the ATS Contract ("C" Trams = 4 vehicles, "D" Trams = 6 Vehicles, and T3 (when system is placed into service) = 6 vehicles and associated components of all trams) between the CONTRACTOR and OWNER, except as specifically identified hereinafter. Maintenance of OWNER-supplied equipment or facilities which were not a part of the ATS Contract between the CONTRACTOR and OWNER is not included under this contract.

The CONTRACTOR will provide, train, and supervise all maintenance personnel and provide all materials and equipment required to accomplish the task specified herein, to assure that ATS provides safe and reliable service for passengers.

As spare parts are used by CONTRACTOR from the OWNER's spare parts stock, CONTRACTOR will replace such spares with new or rebuilt replacement spares at no additional cost to the OWNER. The quantity and quality of each item may be varied at CONTRACTOR's discretion if the system safety and performance are not reduced. CONTRACTOR, with OWNER's approval, may also change the spare parts mix as long as the initial value of the stock is not reduced.

2.1.4 CONTRACTOR'S PERSONNEL

The CONTRACTOR will assign a qualified and experienced person, who will be directly employed by the CONTRACTOR, to be at the Airport at all times when the system is in operation. This person will be designated as the CONTRACTOR's maintenance representative for purposes of coordination and communication with the OWNER's operations personnel in accomplishing the orderly operation and maintenance of the ATS.

2.1.5 MAINTENANCE PLAN AND PROCEDURES

All maintenance work on the ATS will be performed in accordance with the approved maintenance plan and manuals.

ATS maintenance will be scheduled by the CONTRACTOR in such a way that the interference with, or effect upon the operation of the ATS system is minimized. To minimize operational impact, maintenance of equipment may necessarily have to be done at night, or in the off-peak periods. Maintenance practices or procedures which may compromise or degrade the operation must be approved by the OWNER in advance of their initiation, either on an individual basis, or as part of the approved maintenance plan.

2.1.6 MANUAL VEHICLE MOVEMENTS

When directed by the OWNER's authorized ATS representative, the CONTRACTOR will accomplish all manual vehicle movements associated with operation and maintenance of the ATS.

Whenever ATS vehicles stall, restoration of service is of paramount concern. Restoration of service and/or recovery of stalled vehicles will be accomplished by the following actions:

- The Control Center operator will attempt to restart the stalled vehicle remotely by issuing a command from Control Center.
- A maintenance person will be dispatched to the stalled vehicle. The maintenance person will thoroughly check the vehicle, and attempt to restart it using onboard reset devices.
- If the vehicle cannot be restored to automatic operations, the maintenance person will manually drive the vehicle to the nearest station, using the onboard controls provided for that purpose. At the station, passengers will be allowed to deboard the vehicle.
- If it is not possible to manually advance the vehicle to the station, passengers will be evacuated to the emergency walkway where, under the supervision of OWNER's personnel, they will walk to the nearest station. CONTRACTOR's personnel will assist OWNER as requested. OWNER's response time will be such as not to impact contract availability requirements.

Movement of vehicles under manual control will be accomplished only by qualified CONTRACTOR personnel, and only under rules and procedures established jointly by the CONTRACTOR and the OWNER to ensure personnel safety and equipment security.

2.1.7 RECORDS

The CONTRACTOR will keep detailed records and inventory data to permit the OWNER to ascertain the CONTRACTOR's compliance with the requirements of this contract and will furnish the OWNER copies of such documents upon request. The procedures and forms for such record-keeping will be submitted for approval by the OWNER. All records and data will become the property of the OWNER at the conclusion of this contract.

2.1.8 SUBCONTRACTS

The CONTRACTOR will have the right to subcontract portions of the maintenance work to qualified SUBCONTRACTOR's or service shops, provided the subcontracted service complies in every way with the requirements of this contract. In such cases, the CONTRACTOR will be responsible for the training of all subcontractor personnel.

2.2 SUBSYSTEM MAINTENANCE

The CONTRACTOR will maintain the ATS subsystems as specified in the following paragraphs. For each of the ATS subsystems, the following types of maintenance will be performed.

Routine Maintenance - Activities designed to provide a clean and aesthetically pleasing system for public use, as well as routine inspections and test designed to identify any unusual or abnormal equipment conditions. Routine maintenance activities will be included in the CONTRACTOR's Maintenance Plan.

Scheduled Maintenance - Activities designed to keep the ATS operating at prescribed levels of safety and reliability, which are performed on a recurring basis, at specified intervals. Scheduled maintenance activities will be included in the CONTRACTOR's maintenance plan.

Non-Scheduled Maintenance - Any corrective measure or repair required by an inspection, a failure, or unusual circumstances adversely affecting the normal ATS operation. Non-scheduled maintenance activities need not be included in the CONTRACTOR's Maintenance Plan, but, when required, should be performed on a priority basis.

The maintenance work performed by the CONTRACTOR will be sufficient to maintain system performance characteristics at the levels specified in the ATS Contract. CONTRACTOR and OWNER will mutually develop and agree on a data form to permit CONTRACTOR to input maintenance information into the OWNER's Maintenance Management Program.

2.2.1 VEHICLE MAINTENANCE

The CONTRACTOR will service and maintain the entire ATS vehicles, including, but not limited to: wheels, vehicle frame, structural members, vehicle body, seats, windows, panels, doors, suspension equipment, propulsion and braking equipment, vehicle control equipment, accessory equipment, door mechanisms, graphic, and air conditioning equipment.

As a minimum, the CONTRACTOR will perform the maintenance activities outlined below.

2.2.1.1 ROUTINE VEHICLE MAINTENANCE

Daily Cleaning of All Vehicles

- Visual examination for damage
- Wiping and dusting of exterior and interior surfaces
- Vacuuming of floors
- Removal of litter, debris, and graffiti
- Washing of floors, seats and windows
- Washing of exterior body and chassis (weekly or as-required*)
- Vehicle glass – once per week**
- *Any "as-required" needs shall be negotiated separately between OWNER and CONTRACTOR and then added to base contract.
- **If frequency of glass cleaning is required to be increased by OWNER, then CONTRACTOR'S SDC manager and OWNER's Representative will negotiate in good faith and mutually agree upon additional price to perform the work.

Inspection

- Visual examinations
- Equipment operational checks
- Diagnostic equipment-assisted checks

Service Tests

- Tests of vehicle subsystems as necessary to assure safe and reliable operation

2.2.1.2 SCHEDULED VEHICLE MAINTENANCE

Minor Maintenance

- Changing or adding lubricants
- Performing equipment adjustments
- Replacing components
- Performing minor repairs
- CCTV inspection

Major Maintenance (excluding work covered under Paragraph 2.2.6)

- Replacing major repairable units
- Performing major repairs
- Rebuilding and overhauling major components
- Repairing spare equipment

2.2.1.3 NON-SCHEDULED VEHICLE MAINTENANCE

Non-scheduled vehicle maintenance may be required because of unsatisfactory conditions discovered during an inspection, or because of an operational failure. When required, non-scheduled vehicle maintenance will be performed on a priority basis.

2.2.2 GUIDEWAY EQUIPMENT MAINTENANCE

The CONTRACTOR will align, adjust and otherwise maintain guideway and vehicle guidance devices as required to maintain the specified ride quality of the system. Also, the CONTRACTOR will clean and paint the CONTRACTOR supplied guideway equipment as required to prevent corrosion. As a minimum, the CONTRACTOR will perform the maintenance activities outlined below.

2.2.2.1 ROUTINE GUIDEWAY EQUIPMENT MAINTENANCE

Cleaning

- Sweeping the vehicle running surfaces
- Removal of debris and litter from the guideway
- Disposal of collected dirt and debris
- Periodic washing of the guideway with high pressure water

Inspection

- Visual examination of guideway equipment for deterioration or damage
- Equipment operational checks
- Diagnostic equipment-assisted check

2.2.2.2 SCHEDULED GUIDEWAY EQUIPMENT MAINTENANCE

Minor Maintenance

- Touch-up painting of exposed surfaces
- Alignment of guidance devices

2.2.2.3 NON-SCHEDULED GUIDEWAY EQUIPMENT MAINTENANCE

Non-scheduled guideway equipment maintenance may be required because of unsatisfactory conditions discovered during an inspection, or because of an operational failure. When required, non-scheduled maintenance of guideway equipment will be performed on a priority basis.

2.2.3 STATION EQUIPMENT MAINTENANCE

The CONTRACTOR will service and maintain all electrical, electronic and mechanical equipment, windows, and door panels associated with station doors. Also, the CONTRACTOR will service and maintain all passenger controls and displays located at the stations.

As a minimum, the CONTRACTOR will perform the following station equipment maintenance activities:

2.2.3.1 ROUTINE STATION EQUIPMENT MAINTENANCE

Cleaning

- Cleaning of all station windows (on the guideway side only)

Inspection

- Visual examination of station equipment, doors, ATS graphics, and station occupancy detectors
- Equipment operation checks
- Diagnostic equipment-assisted checks

2.2.3.2 SCHEDULED STATION EQUIPMENT MAINTENANCE

Minor Maintenance

- Station door adjustments and repairs
- Graphics repairs (excluding bulb replacement)
- Occupancy detector adjustments and repairs

2.2.3.3 NON-SCHEDULED STATION EQUIPMENT MAINTENANCE

Non-scheduled station equipment maintenance may be required because of unsatisfactory conditions discovered during an inspection, or because of an operational failure. When required, non-scheduled maintenance of station equipment will be performed on a priority basis.

2.2.4 POWER DISTRIBUTION EQUIPMENT MAINTENANCE

The OWNER will maintain all traction power distribution equipment up to the power rails. This will include, but not be limited to: metering equipment, power circuit breakers, lightning protection equipment power transformers, power cables and the Diesel Generator set.

As a minimum, the OWNER will perform the maintenance activities outlined below.

2.2.4.1 ROUTINE POWER DISTRIBUTION EQUIPMENT MAINTENANCE

Cleaning

- Cleaning and sweeping of substation areas
- Cleaning of power equipment cabinets

Inspection

- Visual examinations
- Equipment operational checks
- Diagnostic equipment-assisted checks

2.2.4.2 SCHEDULED POWER DISTRIBUTION EQUIPMENT MAINTENANCE

Minor Maintenance

- Adjustment and testing of power transformers and switch gear
- Repair and replacement of contactors and isolation switches
- Regularly scheduled diagnostic checks of equipment operation

Major Maintenance (excluding work covered under Section 2.2.6)

- Repair or replacement of failed equipment or components

2.2.4.3 NON-SCHEDULED POWER DISTRIBUTION EQUIPMENT MAINTENANCE

Non-scheduled power distribution equipment maintenance may be required because of unsatisfactory conditions discovered during an inspection, or because of an operation failure. When required, non-scheduled maintenance of power distribution equipment will be performed on a priority basis.

The CONTRACTOR will perform maintenance activities on the U.P.S., power rails and surge protection equipment. This task also includes the alignment and adjustment of the power rails on the guideway.

2.2.5 AUTOMATIC TRAIN CONTROL EQUIPMENT MAINTENANCE

The CONTRACTOR will service and maintain all automatic vehicle control (ATC) and associated equipment, including the ATS Control center equipment.

As a minimum, the CONTRACTOR will perform the maintenance activities outlined below.

2.2.5.1 ROUTINE MAINTENANCE OF AUTOMATIC TRAIN CONTROL EQUIPMENT

Cleaning

- Cleaning of ATC equipment cabinets

Inspection

- Visual examination
- Equipment operational checks
- Diagnostic equipment-assisted checks

Verification

- Periodic verification of the proper and safe operation of all ATC equipment

2.2.5.2 SCHEDULED MAINTENANCE OF AUTOMATIC TRAIN CONTROL EQUIPMENT

Minor Maintenance

- Operation of diagnostic programs
- Test operation of redundant equipment
- Component operational checks
- Preventive maintenance on all control equipment (such as lubrication, adjustments and cleaning)
- Scheduled replacement or repair of components

Major Maintenance (excluding work covered under Section 2.2.6)

- Repair or replacement of failed equipment or components

2.2.5.3 NON-SCHEDULED MAINTENANCE OF AUTOMATIC TRAIN CONTROL EQUIPMENT

Non-scheduled automatic vehicle control equipment maintenance may be required because of unsatisfactory conditions discovered during an inspection, or because of operational failures. When required, non-scheduled maintenance of AVC equipment will be performed on a priority basis.

2.2.6 UPGRADES AND ENHANCEMENTS

In accordance with Bombardier recommended upgrades and enhancement practices, at the beginning of each year of the maintenance service to be provided hereunder, the CONTRACTOR will submit for OWNER approval proposals for upgrades and/or enhancements required to be accomplished in the pending contract year. The proposal will include CONTRACTOR's justification for the work, the work-scope definition, estimate of time required and a fixed cost proposal for performing each task which will be reviewed by the OWNER. Any upgrades or enhancements performed by the CONTRACTOR will be subject to the covenants, terms and conditions of the contract.

Under no circumstances will the CONTRACTOR perform any of the proposed upgrades or enhancements or heavy maintenance and overhaul tasks without formal written approval from the OWNER.

In the event a requested upgrade or enhancement is rejected by the OWNER and subsequently a malfunction occurs which would not have occurred had the upgrade or enhancement been performed, any downtime resulting from such a malfunction and its repair will not be included in the System Availability calculation for the system nor will Contractor be deemed in violation of this contract.

2.2.6.1 HEAVY MAINTENANCE AND OVERHAUL

In accordance with Bombardier recommended Heavy Maintenance and Overhaul practices, and prior to the execution of the contract, and annually thereafter, the CONTRACTOR will submit for OWNER approval a schedule of heavy maintenance and overhaul tasks to be accomplished in the pending contract year. The schedule will include CONTRACTOR's justification for the work, the work-scope definition, estimate of time required and a fixed cost proposal for performing each task which will be reviewed by the OWNER. Any heavy maintenance or overhaul tasks performed by CONTRACTOR will be subject to the covenants, terms and conditions of the contract.

Under no circumstances will the CONTRACTOR perform any heavy maintenance and overhaul tasks, except for those that have been scheduled as specified above, without formal written approval from the OWNER.

Heavy maintenance and overhaul tasks will include, but are not necessarily limited to, the following:

Vehicles

- Propulsion motor overhaul
- Axle differential and planetary gear overhaul
- Air-conditioning compressor overhaul
- Replacement of bogie pivot bearing
- Exterior body waxing
- Replacement of carpet
- Vehicle Interior Refurbishment
- UPS System

Guideway

- Guideway painting - excluding repair or touch-up painting
- Running surface repair - excluding local patch work

Notwithstanding any of the above, the performance of any heavy maintenance and/or overhaul task that necessitates a disruption to normal scheduled operations will require written approval from the OWNER and coordination with the OWNER before it is performed.

In the event a requested heavy maintenance or overhaul item is rejected by OWNER and subsequently a failure occurs due to the rejection of the heavy maintenance or overhaul item, downtime for the purposes of calculating vehicle availability will be excluded and Contractor will not be deemed in violation of this contract.

2.2.7 MAINTENANCE EQUIPMENT/TOOLS AND JANITORIAL

The OWNER's inventory of maintenance equipment, tools, office and shop furniture and office equipment will be maintained by CONTRACTOR in good working condition for their intended use and stored and protected from harmful environments.

2.2.8 MAINTENANCE ADMINISTRATION

The CONTRACTOR will provide all required personnel, supplies and materials, and will perform the administration of the ATS maintenance program. Maintenance administration includes maintenance management, personnel training inventory control and contribution of hard copy reports to OWNER's Maintenance Management Program (MAXIMO).

During the term of this contract period, it is envisioned that the OWNER and CONTRACTOR will work together for the purposes of transferring the CONTRACTOR's current Management Information System (SIMS) over to the OWNER'S Maintenance Management Program (MAXIMO). This work will be funded by the OWNER under separate Purchase Order to be issued to CONTRACTOR by OWNER.

2.2.8.1 MAINTENANCE MANAGEMENT

For the purposes of OWNER/CONTRACTOR relations, Contractor's Service Delivery Center (SDC) Manager will be the single point of contact to the OWNER.

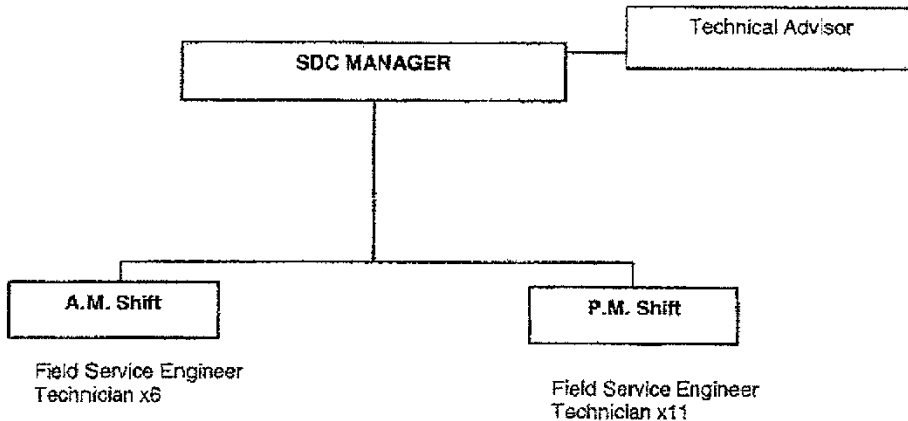
Maintenance management comprises all of the functions required to efficiently manage the maintenance activities, including:

- Supervision and clerical support
- Preparing and updating maintenance records
- Personnel administration
- Maintenance scheduling

2.2.8.2 PERSONNEL TRAINING

Personnel training includes all functions needed to train all CONTRACTOR ATS maintenance personnel.

O & M – Las Vegas APM Service Delivery Center



2.2.8.3 INVENTORY CONTROL

Inventory Control includes all activities required to maintain an adequate supply, of materials, supplies and equipment required to maintain the ATS. Included are such functions as purchasing and disbursement, receiving, cataloging, storage and requisition control. The CONTRACTOR will maintain inventory records which include equipment listings, required quantities and reorder points. Such records will be updated annually and submitted to OWNER thirty (30) days prior to the anniversary of the contract signature date.

2.2.8.4 OBSOLESCENCE

If any component, spare part, or subsystem of the ATS has been confirmed to be obsolete, or cannot be acquired or manufactured, the CONTRACTOR will advise the OWNER in a timely fashion of such obsolete component, spare part or subsystem. CONTRACTOR will work with the OWNER and recommend if possible, such parts that are equal or better in quality and operation, than original parts at no additional cost to the OWNER. However, in no event shall the CONTRACTOR be liable for losses or damages, including need for additional Services and/or Material/Equipment, arising out of or related to obsolescence of the ATS due to reasons out of the CONTRACTOR's control.

2.3 ANNUAL DETERMINATION

The CONTRACTOR will make an annual determination of spare parts inventory requirements versus actual inventory and report the results with recommendations to the OWNER along with submittal of the annual inventory. Any parts deemed obsolete by the CONTRACTOR or OWNER will be delivered to the OWNER, and the part(s) will be removed from the inventory list.

EXHIBIT "A"

ATS MAINTENANCE AGREEMENT

A1.0 SERVICE DEPENDABILITY

Service dependability is the measure of the ATS system's effectiveness both in providing operating vehicles in a timely manner to all patrons and in transporting these patrons to their destinations with minimum delays. The approach outlined herein does not attempt to quantify dependability by means of a single number, but rather to indicate dependability through three readily measurable quantities. These quantities are downtime, system availability, and schedule adherence, which taken together provide a measure of the degree to which the System provides service when subjected to dynamic and static system failures.

A1.1 DOWNTIME EVENT

A downtime event is defined as one or more system related problems which cause unscheduled stoppage of one or more on any portion of the guideway. (Inability to dispatch from a station is also considered an unscheduled stoppage). Stoppage resulting from causes listed as exclusions in Paragraph A1.5 will not be counted as downtime events.

A1.2 DOWNTIME AND DOWNTIME LIMITS

Downtime is the accumulated time (in minutes) of all downtime events as defined in Paragraph A1.1, downtime for an event during synchronized on-call, single lane on-call or single lane shuttle operation will include all time from when train movement is interrupted, and the CONTRACTOR's on-duty maintenance representative has been notified of the event, until all trains stopped by the event have restarted. Downtime will be accumulated separately for each guideway.

Downtime for an event during synchronized double shuttle operation will be computed as follows:

- When movement of only one train is affected, downtime for the event will include half the time from when train movement is interrupted and the CONTRACTOR's on duty maintenance representative is notified of the event, until the train stopped by the event has been restarted.
- When the movement of both trains is affected, downtime for the event will include all time from when trains movement is interrupted and the CONTRACTOR's on duty maintenance representative is notified of the event, until all trains stopped by the event have been restarted.

A1.3 SYSTEM AVAILABILITY AND EQUIPMENT HISTORY

Performance reports of system availability and equipment history will be made available to the OWNER immediately upon request.

A1.4 SYSTEM AVAILABILITY (SA)

This is the actual time (in minutes) in which the system provides normal service and is equal to the number of scheduled operating minutes less the total downtime resulting from downtime events. Availability will be separately calculated for each guideway.

Guideway availability is measured by the relationship:

$$GA = \frac{\text{system operating time}}{\text{system scheduled operating time}}$$

System availability (SA) will be the average of the sum of the guideway availabilities (GA).

A1.5 EXCLUSIONS

Certain events may cause stoppage of the system but are not considered downtime events. The following are considered exclusions for the purpose of determining downtime and system availability:

- Willful passenger-induced system interruptions
- Interruptions caused by unauthorized intrusions of persons or animate or inanimate objects into the system
- Interruptions caused by non-system induced loss of service
- Periods of normal operating time when the specified environmental limits are exceeded
- Interruptions that result in stoppages equal to or less than three (3) minutes for the Satellite C ATS or five (5) minutes for the Satellite D ATS during which time corrective action effectively restores the vehicle(s) to service
- Acts of vandalism causing system interruptions

A1.6 SYSTEM OPERATING SCHEDULE

The ATS is designed for 24 hours a day operation. The estimated operating times and modes are as follows:

- 17 hours - Synchronized Double Shuttle
- 7 hours - Single Lane Shuttle

The OWNER may alter this schedule to accommodate periodic, short term high/low demand fluctuations in airport operations. Permanent changes to the operating schedule, if required, will be developed in consultations with the CONTRACTOR.

FORM A
INSURANCE REQUIREMENTS

**CONTRACT FOR MAINTENANCE OF
AUTOMATED TRANSIT SYSTEM EQUIPMENT**

CBE-552

TO ENSURE COMPLIANCE WITH THE CONTRACT, CONTRACTOR SHOULD FORWARD THE FOLLOWING INSURANCE CLAUSE AND SAMPLE INSURANCE FORM TO THEIR INSURANCE AGENT PRIOR TO CONTRACT APPROVAL.

1. Formal/Time: The CONTRACTOR shall provide Owner with Certificates of Insurance, and endorsements affecting coverage per enclosed sample formats as required by this Agreement within ten (10) calendar days after the award by the Owner. All policy endorsements shall be signed by a person authorized by that insurer and who is licensed by the State of Nevada in accordance with NRS 680A.300. All required aggregate limits shall be disclosed and amounts entered on the Certificate of Insurance, and shall be maintained for the duration of the contract and any renewal periods.
2. Best Key Rating: The Owner requires insurance carriers to maintain during the contract term, a Best Key Rating of A- VIII or higher, which shall be fully disclosed and entered on the Certificate of Insurance. (see sample form)
3. Owner Coverage: The Owner, its officer's employees, agents, and volunteers must be expressly covered as additional insured's except on workers' compensation and professional liability coverage. The CONTRACTOR's insurance shall be primary as respects the Owner, its officers, employees, agents, and volunteers.
4. Endorsement/Cancellation: The CONTRACTOR's general and automobile liability insurance policies shall be endorsed to recognize specifically the CONTRACTOR's contractual obligation of additional insured to Owner and must note that the Owner will be given thirty (30) calendar days advance notice by certified mail "return receipt requested" of any policy changes, cancellations, or any erosion of insurance limits.
5. Deductibles: All deductibles and self-insured retentions shall be fully disclosed on the Certificates of Insurance and may not exceed \$10,000 without the express written permission of the Owner.
6. Aggregate Limits: If aggregate limits are imposed on bodily injury and property damage, then the amount of such limits must not be less than \$2,000,000.
7. Commercial General Liability: Subject to paragraph 6 of this attachment, the CONTRACTOR shall maintain limits of no less than \$1,000,000 combined single limit per occurrence for bodily injury (including death), personal injury and property damages. Commercial general liability coverage shall be on a "per occurrence" basis only, not "claims made," and be provided either on a Commercial General Liability or a Broad Form Comprehensive General Liability (including a Broad Form CGL endorsement) insurance form.
8. Automobile Liability: Subject to paragraph 6 of this attachment, CONTRACTOR shall maintain limits of no less than \$5,000,000 combined single limit per occurrence for bodily injury and property damage, to include, but not be limited to, coverage against all insurance claims for injuries to persons or damages to property which may arise from services rendered by CONTRACTOR and any auto used for the performance of services under this contract.
9. Environmental and Clean-up Liability: Environmental insurance shall not be less than \$1,000,000 aggregate for the duration of this contract.
10. Workers' Compensation: The CONTRACTOR shall obtain and maintain for the duration of this contract, a work certificate and/or a certificate issued by an insurer qualified to underwrite workers' compensation insurance in the State of Nevada, in accordance with Nevada Revised Statutes Chapters 616A-616D, inclusive, provided, however, a CONTRACTOR who is a Sole Proprietor shall be required to submit an affidavit (Attachment 1) indicating that the CONTRACTOR has elected not to be included in the terms, conditions and provisions of Chapters 616A-616D, inclusive, and is otherwise in compliance with those terms, conditions and provisions.
11. Failure To Maintain Coverage: If the CONTRACTOR fails to maintain any of the insurance coverage as required herein, Owner may withhold payment, order the //TYPE// to stop the work, declare the CONTRACTOR in breach, suspend or terminate the contract, assess liquidated damages as defined herein.
12. Damages: The CONTRACTOR is required to remedy all injuries to persons and damage or loss to any property of Owner, caused in whole or in part by the CONTRACTOR, their subcontractors or anyone employed, directed or supervised by CONTRACTOR.
13. Cost: The CONTRACTOR shall pay all associated costs for the specified insurance. The cost shall be included in the contract price(s).

14. Insurance Submittal Address: All Insurance Certificates requested shall be sent to the Clark County Department of Aviation, Purchasing, 3rd Floor, Attention: Senior Financial Office Specialist, 5757 Wayne Newton Boulevard, P.O. Box 11005, Las Vegas, NV 89111-1005.
15. Insurance Form Instructions: the CONTRACTOR's Insurance Company representative must fill in the following information:
1. Insurance Broker's name, complete address, phone and fax numbers.
 2. CONTRACTOR's name, complete address, phone and fax numbers.
 3. Insurance Company's Best Key Rating, A - (minus), VIII (eight) or higher must be shown on certificate
 4. Commercial General Liability (Per Occurrence)
 - (A) Policy Number
 - (B) Policy Effective Date
 - (C) Policy Expiration Date
 - (D) General Aggregate (\$2,000,000)
 - (E) Products-Completed Operations Aggregate (\$2,000,000)
 - (F) Personal & Advertising Injury (\$1,000,000)
 - (G) Each Occurrence (\$1,000,000)
 - (H) Fire Damage (\$50,000)
 - (I) Medical Expenses (\$5,000)
 5. Automobile Liability (Any Auto)
 - (A) Policy Number
 - (B) Policy Effective Date
 - (C) Policy Expiration Date
 - (D) Combined Single Limit (\$5,000,000)
 6. Worker's Compensation
 7. Description: Bid Number and Name of Contract (must be identified on the initial insurance form and each renewal form).
 8. Certificate Holder:
Clark County
c/o Department of Aviation-Purchasing
3rd Floor
5757 Wayne Newton Boulevard
P.O. Box 11005
 9. Authorized Agent Signature

CLARK COUNTY CERTIFICATE OF INSURANCE					ISSUED DAY (MONTH) YEAR					
PRODUCER 1. INSURANCE BROKERS NAME, ADDRESS, PHONE & FAX NUMBERS			THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.							
INSURED 2. NAME, ADDRESS, PHONE & FAX NUMBERS			COMPANIES AFFORDING COVERAGE		J.BEST'S RATING					
			COMPANY LETTER	A LIST ALL COMPANY'S AFFORDING	COMPANY'S					
			COMPANY LETTER	B COVERAGE FOR EACH POLICY	BEST KEY					
			COMPANY LETTER	C	RATING					
			COMPANY LETTER	D	A VIII (8) or					
			COMPANY LETTER	E	HIGHER					
COVERAGES										
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.										
CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS					
4.	GENERAL LIABILITY	(A)	(B)	(C)	GENERAL AGGREGATE	(D) 2,000,000				
	X COMMERCIAL GENERAL LIABILITY				PRODUCTS-COMP/OP AGG.	(E) 2,000,000				
	CLAIMS MADE X OCCUR				PERSONAL & ADV. INJURY	(F) 1,000,000				
	OWNERS & CONTRACTOR'S PROT.				EACH OCCURRENCE	(G) 1,000,000				
	UNDERGROUND EXPLOSION & COLLAPSE				PROP. DAMAGE (APPROPRIATE)	(H) 50,000				
	INDEPENDENT CONTRACTOR				MED. EXPENSE (Any one person)	(I) 5,000				
	5.				AUTOMOBILE LIABILITY	(K)	(L)	(M)	COMBINED SINGLE LIMIT	(N) 5,000,000
					X ANY AUTO				BODILY INJURY (Persons)	
					ALL OWNED AUTOS				BODILY INJURY (Property)	
					SCHEDULED AUTOS				PROPERTY DAMAGE	
HIRED AUTOS		EACH OCCURRENCE								
NON-OWNED AUTOS		AGGREGATE								
GARAGE LIABILITY		STATUTORY LIMITS								
EXCESS LIABILITY		EACH ACCIDENT								
UMBRELLA FORM		DISEASE-POLICY LIMIT								
OTHER THAN UMBRELLA FORM		DISEASE-EACH EMPLOYEE								
6.	X WORKER'S COMPENSATION									
	OTHER PROFESSIONAL LIABILITY									
7. DESCRIPTION: CLARK COUNTY, ITS OFFICERS, EMPLOYEES, AGENTS, AND VOLUNTEERS ARE INSURED WITH RESPECT TO LIABILITY ARISING OUT OF THE ACTIVITIES BY OR ON BEHALF OF THE ADDITIONAL INSURED IN CONNECTION WITH THIS PROJECT. PER ISO FORM ENCLOSED (ENDORSEMENT FORM)										
8. CERTIFICATE HOLDER			CANCELLATION							
CLARK COUNTY C/O DEPARTMENT OF AVIATION PURCHASING 3751 WAYNE NEWTON BLVD. P.O. BOX 11005 LAS VEGAS, NV 89111-1005			SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT.							
			9. Authorized Agent							

NAMED INSURED:				
POLICY PERIOD:		TO	ENDORSEMENT EFFECTIVE DATE:	

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

ADDITIONAL INSURED:

CLARK COUNTY, ITS OFFICERS, EMPLOYEES, AGENTS, AND VOLUNTEERS

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

Automobile Liability - (\$5,000,000) Policy No.: _____

General Liability - (\$1,000,000) Policy No.: _____

SCHEDULE (if required)

Name of Person or Organization:

Locations and Description of Completed Operations:

SAMPLE

(If no entry appears above, information required to complete this endorsement will be shown in the declarations as applicable to this endorsement.)

Section II

Who is insured is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" at the location designated and described in the schedule of this endorsement performed for that insured and included in the "products-completed operations hazard".

Authorized Agent (print name)

Signature

Date

FORM B
CONTRACT FOR MAINTENANCE OF
AUTOMATED TRANSIT SYSTEM EQUIPMENT
CBE-552

BUSINESS DESIGNATION

FOR INFORMATIONAL PURPOSES ONLY:

The above referenced firm is a ☐MBE ☐WBE ☐PBE ☐SBE ☐NBE ☐LBE as defined below.

STATE OF NEVADA BUSINESSES

MINORITY OWNED BUSINESS ENTERPRISE (MBE): An independent and continuing Nevada business for profit which performs a commercially useful function and is at least fifty-one (51%) percent owned and controlled by one or more minority persons of Black American, Hispanic American, Asian-Pacific American or Native American ethnicity.

WOMEN OWNED BUSINESS ENTERPRISE (WBE): An independent and continuing Nevada business for profit that performs a commercially useful function and is at least fifty-one (51%) percent owned and controlled by one or more women.

PHYSICALLY-CHALLENGED BUSINESS ENTERPRISE (PBE): An independent and continuing Nevada business for profit which performs a commercially useful function and is at least fifty-one (51%) percent owned and controlled by one or more disabled individuals pursuant to the federal Americans with Disabilities Act.

SMALL BUSINESS ENTERPRISE (SBE): An independent and continuing Nevada business for profit which performs a commercially useful function, is **not** owned and controlled by individuals designated as minority, women, or physically-challenged, and where gross annual sales does not exceed two million dollars (\$2,000,000).

NEVADA BUSINESS ENTERPRISE (NBE): Any Nevada business that has the resources necessary to sufficiently perform identified County projects, and is owned or controlled by individuals that are not designated as socially or economically disadvantaged.

BUSINESSES IN OTHER STATES

LARGE BUSINESS ENTERPRISE (LBE): An independent and continuing business for profit, which performs a commercially useful function and is not located in Nevada.

FORM C
CONTRACT FOR MAINTENANCE OF
AUTOMATED TRANSIT SYSTEM EQUIPMENT
CBE-552

SUBCONTRACTOR INFORMATION

It is our intent to utilize the following MBE, WBE, PBE, SBE, and NBE subcontractors in association with this Contract:

1. Subcontractor Name: _____
Contact Person: _____ Telephone Number _____
Description of Work: _____
Estimated Percentage of Total Dollars: _____
Business Enterprise Type: ☐ MBE ☐ WBE ☐ PBE ☐ SBE ☐ NBE
Ethnicity: ☐ Asian ☐ Black ☐ Caucasian ☐ Hispanic ☐ Native American ☐ Other: _____

 2. Subcontractor Name: _____
Contact Person: _____ Telephone Number _____
Description of Work: _____
Estimated Percentage of Total Dollars: _____
Business Enterprise Type: ☐ MBE ☐ WBE ☐ PBE ☐ SBE ☐ NBE
Ethnicity: ☐ Asian ☐ Black ☐ Caucasian ☐ Hispanic ☐ Native American ☐ Other: _____

 3. Subcontractor Name: _____
Contact Person: _____ Telephone Number _____
Description of Work: _____
Estimated Percentage of Total Dollars: _____
Business Enterprise Type: ☐ MBE ☐ WBE ☐ PBE ☐ SBE ☐ NBE
Ethnicity: ☐ Asian ☐ Black ☐ Caucasian ☐ Hispanic ☐ Native American ☐ Other: _____

 4. Subcontractor Name: _____
Contact Person: _____ Telephone Number _____
Description of Work: _____
Estimated Percentage of Total Dollars: _____
Business Enterprise Type: ☐ MBE ☐ WBE ☐ PBE ☐ SBE ☐ NBE
Ethnicity: ☐ Asian ☐ Black ☐ Caucasian ☐ Hispanic ☐ Native American ☐ Other: _____

 5. Subcontractor Name: _____
Contact Person: _____ Telephone Number _____
Description of Work: _____
Estimated Percentage of Total Dollars: _____
Business Enterprise Type: ☐ MBE ☐ WBE ☐ PBE ☐ SBE ☐ NBE
Ethnicity: ☐ Asian ☐ Black ☐ Caucasian ☐ Hispanic ☐ Native American ☐ Other: _____

 6. Subcontractor Name: _____
Contact Person: _____ Telephone Number _____
Description of Work: _____
Estimated Percentage of Total Dollars: _____
Business Enterprise Type: ☐ MBE ☐ WBE ☐ PBE ☐ SBE ☐ NBE
Ethnicity: ☐ Asian ☐ Black ☐ Caucasian ☐ Hispanic ☐ Native American ☐ Other: _____
- ☐ No MBE, WBE, PBE, SBE, nor NBE subcontractors will be used.

FORM D
CONTRACT FOR MAINTENANCE OF
AUTOMATED TRANSIT SYSTEM EQUIPMENT
CBE-552

AFFIDAVIT

I, _____, on behalf of my company, _____, being
(Name of Sole Proprietor) (Legal Name of Company)

duly sworn, depose and declare:

1. I am a Sole Proprietor;
2. I will not use the services of any employees in the performance of this contract, identified as Bid No. _____ /RFP No. _____ /CBE No. _____, entitled _____;
3. I have elected to not be included in the terms, conditions, and provisions of NRS Chapters 616A-616D, inclusive; and
4. I am otherwise in compliance with the terms, conditions, and provisions of NRS Chapters 616A-616D, inclusive.

I release Clark County from all liability associated with claims made against me and my company, in the performance of this contract, that relate to compliance with NRS Chapters 616A-616D, inclusive.

Signed this _____ day of _____, _____.

Signature

State of Nevada
County of Clark

On this _____ day of _____, _____, before the undersigned Notary Public, personally appeared _____, having proved on a satisfactory basis to be the person(s) whose name(s) _____ subscribed to this instrument, and acknowledge that _____ executed it.

Witness my hand and official seal.

Notary's Signature

FORM E
DISCLOSURE OF OWNERSHIP / PRINCIPALS
CONTRACT FOR MAINTENANCE OF
AUTOMATED TRANSIT SYSTEM EQUIPMENT
CBE-552

Type of Business:

☐ Individual ☐ Partnership ☐ Limited Liability Company ☐ Corporation ☐ Trust ☐ Other

Business Name (include d.b.a., if applicable): _____

Business Address: _____

Business Telephone: _____

Disclosure of Ownership:

All non-publicly traded corporate business entities must list the names of individuals holding more than five percent (5%) ownership or financial interest in the business entity appearing before the Board. "Business entities" include all business associations organized under or governed by Title 7 of the Nevada Revised Statutes, including but not limited to private corporations, close corporations, foreign corporations, limited liability companies, partnerships, limited partnerships, and professional corporations. Corporate entities shall list all Corporate Officers and Board of Directors in lieu of disclosing the names of individuals with ownership or financial interest. The disclosure requirement, as applied to land-use transactions, extends to the applicant and the landowner.

FULL NAME	TITLE

I certify under penalty of perjury, that all of the information provided herein is current, complete and accurate. I also understand that the Board will not take any action on land-use approvals, contract approvals, land sales, leases or exchanges without the completed disclosure form.

Signature/Capacity

Print Name

Date

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**ATTACHMENT 4
DISCLOSURE OF OWNERSHIP / PRINCIPALS**

Type of Business:

☐ Individual ☐ Partnership ☐ Limited Liability Company ☒ Corporation ☐ Trust ☐ Other

Business Name (include d.b.a., if applicable): Bombardier Transportation
(Holdings) USA Inc.

Business Address: 1501 Lebanon Church Road
Pittsburgh, PA 15236

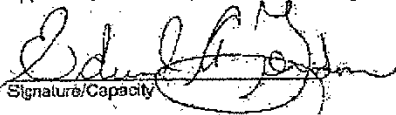
Business Telephone: (412) 655-5700

Disclosure of Ownership:

All non-publicly traded corporate business entities must list the names of individuals holding more than five percent (5%) ownership or financial interest in the business entity appearing before the Board. "Business entities" include all business associations organized under or governed by Title 7 of the Nevada Revised Statutes, including but not limited to private corporations, close corporations, foreign corporations, limited liability companies, partnerships, limited partnerships, and professional corporations. Corporate entities shall list all Corporate Officers and Board of Directors in lieu of disclosing the names of individuals with ownership or financial interest. The disclosure requirement, as applied to land-use transactions, extends to the applicant and the landowner.

FULL NAME	TITLE
The ultimate owner of Bombardier Transportation (Holdings) USA Inc. is Bombardier, Inc., a publicly traded company.	

I certify under penalty of perjury, that all of the information provided herein is current, complete and accurate. I also understand that the Board will not take any action on land-use approvals, contract approvals, land sales, leases or exchanges without the completed disclosure form.


Signature/Capacity

Edward A. Gordon
Print Name

May 1, 2008
Date

Clark County Department of Aviation

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EXHIBIT 2

00243

ER0243

JIM GIBSONS
Governor

DIANNE CORNWALL
Director

MICHAEL TANCHEK
State Labor Commissioner

STATE OF NEVADA



DEPARTMENT OF BUSINESS AND INDUSTRY
OFFICE OF THE LABOR COMMISSIONER
<http://www.LaborCommissioner.com>

REPLY TO:

1.1 OFFICE OF THE LABOR COMMISSIONER
550 E. WASHINGTON AVENUE, SUITE 4100
LAS VEGAS, NEVADA 89101
PHONE: (702) 486-2030
FAX: (702) 486-2030

1.2 OFFICE OF THE LABOR COMMISSIONER
675 FAIRVIEW DRIVE, SUITE 220
CARSON CITY, NEVADA 89701
PHONE: (775) 547-4338
FAX: (775) 537-6100

October 13, 2009

Susan Hobbes, Airport Construction Compliance Manager
Department of Aviation
P.O. Box 11005
Las Vegas, NV 89111-1005

Re: **NOTICE OF PREVAILING WAGE CLAIM/COMPLAINT**
Contract CBE-552

Dear Ms. Hobbes:

**PLEASE TAKE NOTICE THAT A PREVAILING WAGE CLAIM/COMPLAINT
HAS BEEN FILED BY:**

INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS

Against

BOMBARDIER TRANSPORTATION (HOLDINGS) USA, INC.

on the above referenced project.

Pursuant to Nevada Revised Statutes (NRS) 338.070(1), any public body and its officers or agents awarding a contract shall:

(a) Investigate possible violations of the provisions of NRS 338.010 to 338.090, inclusive, committed in the course of the execution of the contract and determine whether a violation has been committed and inform the Labor Commissioner of any such violations.

Pursuant to Nevada Administrative Code (NAC) 338, Section 14:

(1) On its own initiative or upon notice of a possible violation, an awarding body shall cause such an investigation to be made as may be necessary to determine whether a violation of NRS 338.010 to 338.090, inclusive, or NAC 338.005 to

NEVADA STATE LABOR COMMISSIONER

338.125, inclusive, was committed in the course of the execution of a contract for a public work that was awarded by the awarding body...Such an investigation must commence and conclude within a reasonable time, except that the investigation must not exceed 30 days unless an additional period of time is approved by the labor commissioner.

- (4) Upon the conclusion of its investigation, an awarding body shall issue, in writing, its determination of whether a contractor or subcontractor violated NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125, inclusive, and shall transmit a copy of the determination to the labor commissioner, the contractor and, if the contractor is a subcontractor, then to the prime contractor and any intermediate subcontractors, and any person who filed a claim or complaint with the labor commissioner relating to the investigation.

Please do not hesitate to contact me for assistance with this matter, including participating in discussions the claimant, respondent and your office. If you have any questions or require assistance, please call me at (702) 486-2654.

Sincerely,



Keith Sakelide
Deputy Labor Commissioner

cc: Bombardier Transportation (Holdings) USA, Inc. (w/encl.)
William H. Stanley, RUEC (w/o encl.)

Encl.

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EXHIBIT 3

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ER0246



Department of Aviation

RANDALL H. WALKER
DIRECTOR

ROSEMARY A. VASSILIADIS
DEPUTY DIRECTOR

POSTAL BOX 11005
LAS VEGAS, NEVADA 89111-1005
(702) 881-5211
FAX (702) 897-8533
E-MAIL: walkerrh@dmccarran.com

VIA FACSIMILE AND MAIL

November 24, 2009

Mr. Michael Tanchek
Labor Commissioner
State of Nevada
555 E. Washington Avenue, Suite 4100
Las Vegas, Nevada 89101

Project: ATS Maintenance Contract CBE-552
Subject: Bombardier Transportation Holdings USA, Inc. - IUEC Alleged incorrect payment of prevailing wages for a public work project

Dear Mr. Tanchek:

Pursuant to Nevada Revised Statutes (NRS) 338.070(1) any public body and its officers or agents awarding a contract shall: (a) Investigate possible violations of the provisions of NRS 338.010 to 338.090, inclusive, committed in the course of the execution of the contract, and determine whether a violation has been committed and inform the labor commissioner of any such violations; (b) When making payments to the contractor of money becoming due under the contract, withhold and retain all sums forfeited pursuant to the provisions of NRS 338.010 to 338.090, inclusive or NAC 338.005 to 338.125 inclusive.

An investigation was initiated when the Clark County Department of Aviation received a copy of the Complaint filed by William H. Stanley, Organizing Director for the International Union of Elevator Contractors ("IUEC") from Deputy Labor Commissioner Keith Sakelhide. The Complaint submitted by Mr. Stanley identified the contract listed above and alleged that the employees of Bombardier Transportation Holdings (Bombardier) were performing work for a public work project and not being paid the prevailing wage related to a public work project.

The Clark County Department of Aviation has several significant maintenance contracts for the care of Airport Facilities that rest under the Department's Facilities area of responsibility. Per past practices and our District Attorney's Office interpretation with regard to such maintenance contracts, NRS 338.011 exempts contracts directly related to the normal operation of the county or the normal maintenance of its property. This law



Clark County Board of Commissioners
Rory Reid, Chair • Myrna Williams, Vice-Chair

Tom Collins • Wayne Atkinson • Chela M. Field • [unclear]

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ER0247

Mr. Michael Tanchek
Labor Commissioner
November 24, 2009
Page 2

was passed in 1981 after the Labor Commissioner was applying Chapter 338.010's inclusion of the word "repair" in the definition of public works to require all of the contracts for services entered into under Chapter 332 which had any "repair" component to have to comply with the provisions of Chapter 338. The Attorney General had issued an opinion that maintenance and repair were synonymous.

NRS 338.011 states the legislature's intention to recognize that Chapter 332 has its own requirements and that maintenance contracts entered into under that chapter are not subject to the public works requirements of Chapter 338 even though they include repair as one of the services being provided. NRS 332.115(1)(c) specifically refers to contracts for "additions to and repairs and maintenance," which further demonstrates legislative intent for maintenance contracts to be able to include repairs as part of the scope of work without making the contract subject to the public works project requirements in NRS Chapter 338.

The purpose of maintenance is to care for, preserve and keep in proper condition. It is obvious that maintenance work requires the inclusion of repairs in order to keep things operating and in proper condition. Windows need replacing. Lights need to be kept working. Sprinklers need repair. County vehicles need new brakes and the ATS System needs to be kept in operating condition. This is the case with this maintenance contract. It should be noted that the rehabilitation work needed for this equipment was handled under a separate contract, referred to as Contract 2305, ATS Modernization Project, that was addressed separately from this investigation. With this being said, the individual points outlined in the IUEC complaint are not valid because prevailing wages do not apply to a maintenance contract of this nature.

Further research on other maintenance contracts within the Clark County Department of Aviation and other local government entities has reinforced that this type of contract for maintenance and repair is not a public work.

It is the opinion of the District Attorney's office, Clark County Department of Aviation Purchasing Administration, and myself that this contract is a maintenance and repair

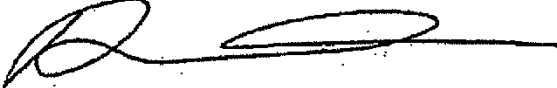
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ER0248

Mr. Michael Tanchek
Labor Commissioner
November 24, 2009
Page 3

contract governed by NRS Chapter 332 and not a public work project subject to prevailing wage under NRS Chapter 338.

Sincerely,



Bob Kingston
Assistant Director, Facilities

cc: Keith Sakelhide, Deputy Labor Commissioner
William H. Stanley, Director of Organizing, International Union of Elevator Constructors
Michael Fetsko, President, Bombardier Transportation Holdings USA, Inc.
E. Lee Thomson, Chief Deputy District Attorney, Clark County District Attorney's Office
Randall Walker, Director, Department of Aviation
Rosemary Vassiliadis, Deputy Director, Department of Aviation
Steven Jay, Airport Engineer, Department of Aviation
Edward Munzing, Purchasing Administrator, Department of Aviation

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1 1. Is the contract, CBE 552 ("Contract"), a "public work" contract, as defined in
2 NRS 338.010 or is the Contract a normal maintenance (or normal maintenance and repair)
3 contract, for existing equipment or an existing system, awarded under NRS Chapter 332?

4 2. Was the work performed on the Automated Transit System ("ATS") vehicles a
5 "public work" under NRS 338.010(16)?

6 3. Applicability of NRS Chapter 338; Exemptions:

7 a. Was all or part of the work performed on the project at McCarran
8 International Airport normal maintenance work? If yes, which work?

9 b. Was all or part of the work performed on the project at McCarran
10 International Airport railroad work? NRS 338.080(1). If yes, which work?

11 c. Was the Contract a contract for a public work whose cost is less than
12 \$100,000.00? NRS 338.080(3).

13 d. What is the cost of the Contract?

14 e. For purposes of NRS 338.080(3), how is the cost of the Contract
15 calculated?

16 4. If work performed on the project at McCarran International Airport was subject to
17 NRS Chapter 338 prevailing wage laws, were the workers properly classified and paid the
18 proper prevailing wage rates?

19 5. If workers were misclassified and/or were not paid the proper prevailing wage
20 rate for work performed on the project at McCarran International Airport, what amount(s) of
21 additional wages is/are due to which worker(s)?

22 At the pre-hearing conference the parties agreed that these identified issues provided a
23 framework for the hearing. The parties agreed that the hearing may not be limited to only these
24 issues as sub-issues or additional issues may reasonably need to be argued. Also, these issues
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1 may be modified as new information is identified through discovery. No rights or responsibilities
2 of any party are limited by the listing of these issues.

3 **IT IS HEREBY ORDERED** that the discovery plan and scheduling order which the
4 parties jointly proposed to the Labor Commissioner at the pre-hearing conference are adopted
5 by the Labor Commissioner as his order, as follows:

- 6 1. **Witness Lists / Initial Disclosures.** Each party shall exchange and file its witness
7 list and initial disclosures by no later than August 1, 2012. NVCP 16.1(1). Disclosure
8 of expert witnesses will occur no later than September 1, 2012, with rebuttal expert
9 witness disclosure by October 1, 2012.
 - 10 2. **Completion of Initial Discovery.** Each party shall complete its initial discovery, and
11 disclose any additional witnesses or documents, by no later than October 1, 2012.
 - 12 3. **Completion of Supplemental / Rebuttal Discovery.** Each party shall complete its
13 supplemental / rebuttal discovery by no later than November 1, 2012. Depositions
14 shall be no longer than 8 hours in duration per deponent. The parties may propound
15 a maximum of (a) 40 interrogatories and (b) 40 requests for production of
16 documents to other parties.
 - 17 4. **Submissions of Motions.** By no later than December 1, 2012, the parties shall
18 serve and submit motions objecting to discovery. All dispositive motions must also
19 be served by this date. Responses and objections to filed motions must be filed by
20 December 17, 2012. In addition, the parties have agreed to not file reply briefs in
21 support of their respective motions.
 - 22 5. **Trial Brief.** Each party shall serve and file its trial brief no later than February 1,
23 2013. The trial brief will not exceed 30 pages.
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1 6. **Hearing.** The hearing on the Determinations issued by Clark County shall
2 commence at 9:00 a.m. on February 19, 2013, at a location to be determined, and
3 continue thereafter until completed.

4 7. **Status Reports and Status Conferences.** The Labor Commissioner may from time
5 to time, as the need arises, schedule status conferences and/or require the service
6 and filing of status reports in order to manage the progress of this action.

7
8 Dated this 27th day of June, 2012.

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11 _____
12 THORAN TOWLER
13 Labor Commissioner
14 State of Nevada
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CERTIFICATE OF MAILING

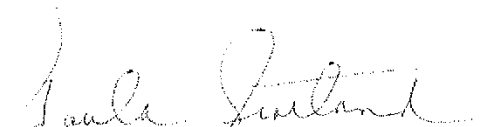
I HEREBY CERTIFY that on this date, I deposited into the U.S. Mail, postage prepaid thereon, a copy of the foregoing Scheduling Order to the persons listed below at their last known addresses:

Andrew J. Kahn, Esq.
McCracken, Stemerma & Holsberry
1630 S. Commerce Street
Suite A-1
Las Vegas, NV 89102

Gary C. Moss, Esq.
Paul T. Trimmer, Esq.
Jackson Lewis, LLP
3800 Howard Hughes Parkway
Suite 600
Las Vegas, NV 89169

Eldon Lee Thomson, Esq.
Clark County District Attorney's Office
500 S. Grand Central Pkwy.
Suite 5075
Las Vegas, NV 89106

Dated this 27th day of June, 2012.


An Employee of the Nevada
State Labor Commissioner

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1 Gary C. Moss, Bar Number 4340
2 moss@jacksonlewis.com
3 Paul T. Trimmer, Bar Number 9291
4 trimmerp@jacksonlewis.com
5 **JACKSON LEWIS LLP**
6 3800 Howard Hughes Parkway, Suite 600
7 Las Vegas, Nevada 89169
8 Telephone: (702) 921-2460
9 Facsimile: (702) 921-2461

10 Attorneys for Respondent
11 *Bombardier Transportation (Holdings) USA, Inc.*

12 **BEFORE THE NEVADA STATE LABOR COMMISSIONER**

13 **LAS VEGAS, NEVADA**

14 **IN THE MATTER OF:**

15 **INTERNATIONAL UNION OF ELEVATOR**
16 **CONSTRUCTORS,**

17 **Claimant,**

18 **v.**

19 **BOMBARDIER TRANSPORTATION**
20 **(HOLDINGS) USA, INC.,**

21 **Respondent.**

22 **Clark County Department of Aviation**
23 **Automated Transit Systems Equipment – DOA**
24 **Contract CBE-552**

25 **STIPULATED PROTECTIVE ORDER**

26 Upon the showing of good cause in support of the entry of a protective order to protect the
27 discovery and dissemination of information alleged by Respondent to be highly confidential or ,
28 confidential information, or information which will improperly annoy, embarrass, or oppress any
party, witness, or person providing discovery in this case, pursuant to the stipulation of all parties
to the case, IT IS HEREBY ORDERED:

1. This Protective Order shall apply to all documents, materials, and information,
including, without limitation, documents produced, answers to interrogatories, responses to
requests for admission, deposition testimony, and other information, whether in oral, written,

1 paper or electronic form, and whether disclosed or exchanged pursuant to the early disclosure
2 requirements and the discovery duties created by the Nevada Rules of Civil Procedure or
3 voluntarily between the parties during early mediation or otherwise.

4 2. As used in this Protective Order, "document" is defined as provided in FRCP
5 34(a). A draft or non-identical copy is a separate document within the meaning of this term.

6 3. Any party, or any third party subject to discovery in this action ("the Litigation")
7 may designate as "Confidential" or "Highly Confidential" any document or other material that
8 such party believes to contain "Confidential Information" or "Highly Confidential Information"
9 as defined below, including without limitation, any information voluntarily produced by a party or
10 non-party, any information produced pursuant to a discovery request (whether in paper or
11 electronic form), any document marked as an exhibit at any deposition taking in this proceeding,
12 any information given orally at a deposition or otherwise, or the transcript of any deposition taken
13 in this proceedings, any information provided in writing in response to any interrogatories, any
14 documents produced in response to an inspection demand or subpoena, or otherwise, if it reflects,
15 refers to or evidences any "Confidential Information" or "Highly Confidential Information."

16 4. All "Confidential" or "Highly Confidential" documents produced by any party or
17 non-party in the Litigation shall be used by the party or agent receiving or reviewing such
18 documents only for the purposes of preparing for a conducting the Litigation.

19 5. For purposes of this Protective Order, the term "Confidential Information" means
20 information that counsel of record for the designating party has determined, in good faith,
21 constitutes non-public confidential proprietary data, proprietary business information, and/or
22 research, development, personnel, or commercial information. Information shall be designated as
23 "Confidential" only upon the good faith belief that the information falls within the scope of
24 confidential information under the Federal Rules of Civil Procedure and the precedents thereto.

25 6. For purposes of this Protective Order, the term "Highly Confidential Information"
26 means information that counsel of record for the designating party has determined, in good faith,
27 constitutes or refers or relates to non-public highly sensitive commercial and/or competitive
28 information such as, but not limited to: (a) trade secrets; (b) information about new services or

1 products that are in the planning stage or that the designating party plans to introduce but that are
2 not yet offered for sale; (c) the designating party's current or future marketing plans for any of its
3 services or products; (d) information concerning the pricing of services or products, sales volumes
4 and advertising expenditures; (e) financial information; (f) consumer and marketing research and
5 documents that refer or relate thereto (except those conducted specifically for the Litigation); (g)
6 technical information about Bombardier's automated people mover system and information
7 related to its installation, repair, operation and maintenance; and (h) software related to
8 Bombardier's automated people mover system and information related to its installation, repair,
9 operation and maintenance. Nothing in the foregoing list constitutes an admission by any party
10 that such information is confidential under the law, but merely constitutes a recognition that it
11 will be treated as such under this Stipulation.

12 7. "Confidential Information" or "Highly Confidential Information" shall be
13 designated specifically by marking the thing and/or each page of a document produced as
14 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." In lieu of marking and producing the
15 original of a document, a marked copy thereof may be produced, provided that the unmarked
16 original is kept available by the producing party for inspection. If a document is produced
17 electronically, such document may be designated by appending the label "CONFIDENTIAL" or
18 "HIGHLY CONFIDENTIAL" to the media on which the document is produced, or to any image
19 of such document.

20 8. In the event that an original copy of a document is designated "CONFIDENTIAL"
21 or "HIGHLY CONFIDENTIAL" as set out in Paragraph 7, and one or more copies of the
22 document or the original are also produced but not so designated, the copies or original shall also
23 be treated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" if the receiving party is
24 actually aware of such fact.

25 9. Such "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" designation shall be
26 made at the time documents or materials are produced or within fifteen (15) days thereafter. In
27 the case of depositions, the designations shall be made by so stating on the record of the
28 deposition. Notwithstanding the foregoing, documents, materials or deposition testimony that are

1 not designated "Confidential" or "Highly Confidential" at the time of production or deposition
2 may subsequently be designated as "Confidential" or "Highly Confidential" within 15 days of the
3 date of production, or within such other time period allowed by the Labor Commissioner upon
4 motion, by the disclosing party in a letter to the receiving party that specifically describes each
5 documents materials, or testimony so designated, and the receiving party shall treat those
6 documents as "Confidential" or "Highly Confidential" as of the date of their designation.

7 10. Documents or materials marked as "CONFIDENTIAL" pursuant to the terms of
8 the Protective Order, and any information contained therein or derived therefrom shall not be
9 disclosed to anyone other than to "Qualified Persons – CONFIDENTIAL," who are defined to
10 consist of:

11 (a) Counsel to the parties to the Litigation, and clerical, secretarial and
12 paralegal staff employed by such counsel, but not including in-house counsel for the parties;

13 (b) Any outside expert or consultant and their staff retained by counsel to assist
14 in the prosecution or defense of this action after being advised of the terms of this Stipulated
15 Protective Order and agreeing in writing to abide by its terms to not disclose any Confidential
16 material to any persons not included in this paragraph;

17 (c) Any witness at deposition or at trial who is employed or was previously
18 employed by the producing party at the time the Confidential document was prepared or
19 disseminated (which shall be deemed to include the individuals identified in paragraph 11(g)), as
20 well as any person who created, sent or received the document in the ordinary course of business
21 as demonstrated by the evidence, provided that any such witness or person is advised of the terms
22 of this Stipulated Protective Order and agrees in writing or in transcribed testimony while under
23 oath to abide by its terms to not disclose any Confidential material to any persons not included in
24 this paragraph;

25 (d) Any person noticed for depositions or designated as trial witnesses to the
26 extent reasonably necessary in preparing to testify, provided that any such witness or person is
27 advised of the terms of this Stipulated Protective Order and agrees in writing to abide by its terms
28 to not disclose any Confidential material to any persons not included in this paragraph;

1 (e) Any court reporter or typist recording or transcribing testimony;
2 (f) The Labor Commissioner and Labor Commissioner personnel and counsel;
3 (g) Such other persons agreed to by all parties in writing or ordered by the
4 Labor Commissioner; and

5 (h) Names parties to this litigation (or their representatives) who have a need to
6 know the information, after being advised of the terms of this Stipulated Protective Order and
7 agreeing in writing to abide by its terms to not disclose any Confidential Material to any persons
8 not included in this paragraph.

9 11. Documents or materials designated as "HIGHLY CONFIDENTIAL" pursuant to
10 the terms of the Protective Order, and any information contained therein or derived therefrom
11 shall not be disclosed, summarized, described, or otherwise communicated or made available in
12 whole or in part to anyone except "Qualified Persons – HIGHLY CONFIDENTIAL," who are to
13 consist of:

14 (a) Counsel to the parties to the Litigation, excluding in-house counsel, and
15 clerical, secretarial and paralegal staff employed by such counsel;

16 (b) Any outside expert or consultant and their staff retained by counsel to assist
17 in the prosecution or defense of this action after being advised of the terms of this Stipulated
18 Protective Order and agreeing in writing to abide by its terms to not disclose any Highly
19 Confidential material to any persons not included in this paragraph;

20 (c) Any person who created, sent or received the document in the ordinary
21 course of business as demonstrated by the evidence, provided that any such witness or person is
22 advised of the terms of this Stipulated Protective Order and agrees in writing to abide by its terms
23 to not disclose any Highly Confidential material to any persons not included in this paragraph;

24 (d) Any court report or typist recording or transcribing testimony;

25 (e) The Labor Commissioner and Labor Commissioner personnel and counsel;

26 and

27 (f) Such other persons agreed to by all parties in writing or ordered by the
28

1 Labor Commissioner.

2 (g) In an effort to accommodate the Claimant's ability to review certain
3 documents that would otherwise be designated as Highly Confidential, the Parties agree that
4 Claimant's counsel may designate a total of three (3) individuals that he represents to assist him
5 with review of Highly Confidential material except as noted below. This person, hereinafter the
6 "Designee," shall be identified and his/her name shall be disclosed to Bombardier and the
7 County. The Designee must satisfy the following conditions: (1) he/she must be a current
8 employee of Clark County who has access to ATS documentation pursuant to his/her existing
9 employment; (2) must be a former Bombardier employee who executed and is bound by a
10 Bombardier non-disclosures agreement; and (3) must agree to be bound by and comply with the
11 requirements set forth herein. The Designee may discuss, describe, or otherwise share Highly
12 Confidential information with Claimant's counsel, and only Claimant's counsel. The parties
13 agree that Claimant's representative Bill Stanley may not serve as the Designee and that Mr.
14 Stanley is not permitted to review, discuss, see compilations of, or otherwise have access to
15 Highly Confidential material without the express consent of Bombardier's counsel or further
16 order of the Commissioner. Bombardier will meet and confer in good faith regarding restrictions
17 on the disclosure of such documents. This paragraph shall not apply to the documents requested
18 by Claimant concerning the costs of moving and installation of ATS vehicles, which documents
19 will be treated by Claimant's counsel as Highly Confidential.
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23 12. During a duly noticed deposition, documents or materials designated
24 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" may be disclosed to any witness
25 designated by the party that produced those documents or materials. At the request of any party,
26 attendance at depositions may be restricted to the persons designated in Paragraph 10 or 11, as
27 applicable.
28

1 13. A party may object to the designation of particular "CONFIDENTIAL" or
2 "HIGHLY CONFIDENTIAL" information by giving written notice to the party designating the
3 disputed information within 30 days of its designation. The written notice shall identify the
4 information to which the objection is made. If the parties cannot resolve the objection within ten
5 (10) business days after the time the notice is received, it shall be the obligation of the party
6 objecting to designating the information as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL"
7 to file an appropriate motion requesting that the Labor Commissioner determine whether the
8 disputed information should be subject to the terms of this Protective Order. During the
9 pendency of any such motion, the disputed information shall be treated as "CONFIDENTIAL" or
10 "HIGHLY CONFIDENTIAL" under the terms of this Protective Order until the Labor
11 Commissioner rules on the motion.
12

13 14. In connection with a motion filed under this provision and provision 13, the party
14 designating the information as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" shall bear
15 the burden of establishing that good cause exists for the disputed information to be treated as
16 such.
17

18 15. Inadvertent disclosure and/or production of documents claimed to be subject to
19 either the attorney-client privilege or work product doctrine does not waive the applicability of
20 such privilege or doctrine either generally or relative to the inadvertently disclosed and/or
21 produced documents. If any such documents are inadvertently disclosed to the receiving party
22 return such documents to the producing party, and the receiving party must immediately comply
23 by, to the extent reasonably practicable and consistent with the technology used by the producing
24 party to produce the documents, returning such documents and destroying any copies, notes or
25 memoranda concerning the privileged information. If, however, the receiving party disagrees
26 with the claim of privilege or work-product protection as to an inadvertently disclosed and/or
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1 produced document, the receiving party may object to the return of the document by giving
2 written notice to the party claiming the privilege. The written notice shall identify the document
3 to which the objection is made. If the parties cannot resolve the objection within ten (10)
4 business days after the time the notice is received, it shall be the obligation of the party claiming
5 the privilege or protection to file an appropriate motion requesting that the Labor Commissioner
6 determine the validity of the privilege or protection claim. If the party claiming the privilege or
7 protection fails to file such a motion within the prescribed time, the receiving party may retain the
8 disputed document, which shall not thereafter be treated as privileged or protected. In connection
9 with a motion filed under this provision, the party claiming the privileged or protection shall bear
10 the burden of establishing that good cause exists for the disputed document to be treated as
11 privileged or protected. The disputed document shall be treated as privileged or protected until
12 either the Labor Commissioner rules on the motion filed under this provision, or the time for
13 filing such a motion has expired. The parties acknowledge that issues of privilege may also arise
14 under foreign law and/or may be litigated in the foreign proceedings. Nothing in this agreement
15 is intended to affect any party's right to claim privilege or work product protection in the foreign
16 proceedings, or any counter argument of waiver in respect of any such claim.
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19 16. In the even a party seeks to file any material that is subject to protection under this
20 Protective Order with the Labor Commissioner, that party shall take appropriate action to ensure
21 that the information receives proper protection from public disclosure including: (1) filing a
22 redacted document with the consent of the party who designated the documents as Confidential or
23 Highly Confidential; (2) where appropriate (e.g. in relation to discovery and evidentiary
24 motions), submitting the information solely for in camera review; or (3) where the preceding
25 measures are not adequate, seeking permission to file the information under seal pursuant to the
26 procedural rules set forth in the applicable Rules of Court or Nevada Rules of Civil Procedure, or
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1 such other rules or procedures as may apply. Absent extraordinary circumstances making prior
2 consultation impractical or inappropriate, the party seeking to submit the information as
3 Confidential or Highly Confidential to determine if some measure less restrictive than filing the
4 information under seal may serve to provide adequate protection. This duty exists irrespective of
5 the duty to consult on the underlying motion.

6
7 17. If a document containing "Confidential" or "Highly Confidential" information is
8 filed with the Labor Commissioner, it shall be filed in a sealed envelope marked with the caption
9 of the case, a schedule of the contents of the envelope, and the following notation:

10 [Conditionally] Filed Under Seal
11 Contains CONFIDENTIAL INFORMATION
12 To be Opened Only By or As Directed by the Labor Commissioner

13 18. Should any party need, during the trial or any hearing before the Labor
14 Commissioner, to disclose "Confidential" or "Highly Confidential" information, the party may do
15 so only after appropriate in camera inspection or other safeguards are requested of the Labor
16 Commissioner or are otherwise ordered by the Labor Commissioner.

17 19. At the conclusion of this case, unless other arrangements are agreed upon, and
18 excluding those documents in the possession of the Labor Commissioner, each document and all
19 copies thereof which have been designated as "CONFIDENTIAL" or "HIGHLY
20 CONFIDENTIAL" shall, upon written request, be returned to the party that designated it
21 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL," or the parties may elect to destroy such
22 documents. Where the parties agree to destroy "CONFIDENTIAL" or "HIGHLY
23 CONFIDENTIAL" documents, the destroying party shall provide all parties with an affidavit
24 confirming the destruction. The provisions of this Paragraph shall not apply to the Labor
25 Commissioner or Labor Commissioner personnel.

26
27 20. This Protective Order may be modified by the Labor Commissioner at any time for
28

1 good cause shown following notice to all parties and an opportunity for them to be heard. The
2 Labor Commissioner and his personnel are not subject to the terms of this Protective Order.

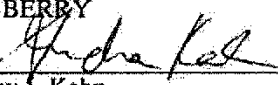
3 **IT IS ~~FOR~~ ORDERED.**

4 
5 Nevada Labor Commissioner

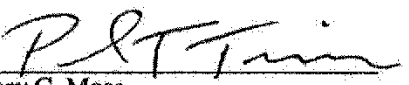
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9 Dated this ____ day of August, 2012.
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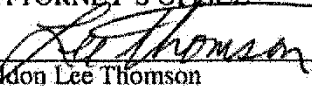
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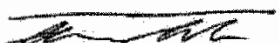
16 CLARK COUNTY DISTRICT
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19 Eldon Lee Thomson
20 500 S. Grand Central Parkway
21 Suite 5075
22 Las Vegas, Nevada 89106

21 4828-7166-5936, v. 1
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1 4. The hearing on the Determinations issued by Clark County shall commence at 9:00 a.m.
2 on Tuesday, June 25, 2013, in the Roadrunner Room at the Clark County District
3 Attorney's Office located at 500 S. Grand Central Parkway, Las Vegas, Nevada, and
4 continue thereafter until completed.

5
6 DATED THIS 14 DAY OF January, 2013

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8 
9 THORAN TOWLER
10 Labor Commissioner
11 State of Nevada
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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this date, I deposited into the U.S. Mail, postage prepaid thereon, a copy of the foregoing Amended Scheduling Order to the persons listed below at their last known addresses:

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Las Vegas, NV 89106

DATED this 14 day of January, 2013



An Employee of the
Nevada State Labor Commissioner

00093

BEFORE THE NEVADA LABOR COMMISSIONER

INTERNATIONAL UNION OF ELEVATOR
CONSTRUCTORS,

Complainant,

v.

BOMBARDIER TRANSPORTATION
(HOLDINGS) USA, INC.,

Respondent.

Contract CBE-552

FILED

APR 08 2013

NEVADA
LABOR COMMISSIONER - CC

**BOMBARDIER TRANSPORTATION (HOLDINGS) USA, INC.'s
MOTION FOR SUMMARY JUDGMENT**

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Inc.*

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ER0094

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BEFORE THE NEVADA LABOR COMMISSIONER

INTERNATIONAL UNION OF ELEVATOR
CONSTRUCTORS,

Complainant,

v.

BOMBARDIER TRANSPORTATION
(HOLDINGS) USA, INC.,

Respondent.

Contract CBE-552

**BOMBARDIER TRANSPORTATION
(HOLDINGS) USA, INC.'s
MOTION FOR SUMMARY
JUDGMENT**

Bombardier Transportation (Holdings) USA, Inc. ("Bombardier") hereby moves for summary judgment on all of the International Union of Elevator Constructors' (the "Union") claims. Work performed pursuant to Contract CBE-552 ("CBE-552" or the "Contract") is exempt from the prevailing wage rate requirements of NRS Chapter 338 for two reasons. First, CBE-552 does not constitute a "project" within the meaning of NRS 338.010(16), and therefore is beyond coverage of the statute. Second, even if CBE-552 could be considered a "project," it is still not subject to Chapter 338's requirements because NRS 338.011(1) establishes an express exception for contracts which are "directly related to the normal operation of the public body or the normal maintenance of its property." CBE-552 was the exclusive operations and maintenance contract for McCarran International Airport's Automated Transit System ("ATS"). As such, there can be no dispute that the Contract is directly related to the normal operation or normal maintenance of Clark County's property and is therefore exempt.

This Motion is made in accordance with the Labor Commissioner's Scheduling Order, Nev. R. Civ. P. 56, the attached Memorandum of Points and Authorities and Exhibits, all pleadings and documents on file with the Labor Commissioner, and any oral argument the Labor Commissioner deems proper.

Dated this 28th day of March, 2013.

Respectfully submitted,

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*Attorneys for Respondent
Bombardier Transportation Holdings (USA), Inc.*

I. QUESTIONS PRESENTED

This Motion presents three questions, all of which are dispositive and relate to the Labor Commissioner's authority to hear this case and proceed to a hearing:

1. Is the work performed pursuant to CBE-552 a "project" within the meaning of NRS 338.010(16)?
2. Is that work directly related to the normal operation of the Airport?
3. Is that work directly related to the normal maintenance of Clark County's property, i.e., the ATS system and the Airport?

If the answer to the first question is "no," or the answer to either the second or the third question is "yes," the Complaint should be dismissed. Those answers would establish that CBE-552 is not covered by Chapter 338.¹

II. SUMMARY OF ARGUMENT

CBE-552 was a contract between Bombardier and Clark County, Nevada for the operation and maintenance of the ATS and its associated equipment at McCarran International Airport ("McCarran" or the "Airport"). Under that contract, Bombardier performed whatever maintenance and operational services were required to ensure that the ATS system remained in good working order and was able to transport the approximately forty million visitors who travel through McCarran each year from the terminal to the gates. More than 40% of all the gates at McCarran – the gates in the "D" Concourse – cannot be accessed without using the ATS system. Most of the passengers who do not use the "D" Concourse also depend on the ATS system for practical reasons. The "C" Concourse is difficult to reach without the train, particularly for

¹ As the Labor Commissioner is aware, Bombardier has also asserted that it is exempt from the prevailing wage requirements of Chapter 338 because it is a railroad company within the meaning of 338.080(1). *See* January 2, 2011 Pre-hearing Brief and January 25, 2011 Pre-hearing Reply Brief. Because resolution of that objection would, at this point, require the Labor Commissioner to consider disputed factual issues, the argument is not included in this Motion. Should the matter proceed to hearing, however, Bombardier will make its case that it is an exempt railroad company.

arriving passengers, and a significant number of individuals using Terminal 3 rely on an ATS train to travel from Terminal 3's check-in area to the "D" Concourse.

Although the Contract contains no prevailing wage provisions – until this case, no one has ever contended that the Contract was subject to Chapter 338 even though Bombardier and its predecessors had been performing the same work since 1985 – the Union now claims that the maintenance work performed under CBE-552 is a "public work" and that the maintenance technicians who perform that work should be paid prevailing wage. This claim has no merit.

First, the Union's complaint fails Chapter 338's threshold condition because CBE-552 is not a "public work" within the meaning of Nevada's prevailing wage law. NRS 338.010(16). Nevada law is clear. Prevailing wages must be paid only for "public work," and the definition of "public work" is strictly limited. It does not include *any* publicly financed work. It is restricted to publicly financed "projects," NRS 338.010(16); and, a "project" is a plan or scheme to complete a particular objective in accordance with a defined schedule, like a development project.² A maintenance contract such as CBE-552, which is a commitment to provide a variety of different services as those services are needed throughout the term of the Contract, simply does not fall within the plain and ordinary meaning of the term "project," and stretching the word's interpretation to include a maintenance contract like CBE-552 would be inconsistent with Chapter 338.³ Accordingly, the Contract, and all work performed under it, cannot be considered "public work" within the meaning of Chapter 338.

² See MERRIAM-WEBSTER DICTIONARY, available online at <http://www.merriam-webster.com/dictionary/project> (accessed on December 30, 2010), defining "Project"; see also Section VI.B, *infra* at pp. 14-18.

³ In determining whether Bombardier's employees were involved in "public work," the Labor Commissioner must consider whether the contract and the work performed pursuant to that contract, constitute a "project." Although the Motion often refers to just the contract, it is clear that both must be considered together.

Second, even if one assumes that a maintenance contract like CBE-552 could be considered a "project," it is still exempt. NRS 338.011(1) expressly provides that the prevailing wage requirements of Chapter 338 "do not apply to a contract [a]warded in compliance with chapter 332 or 333 of NRS which is directly related to the normal operation of the public body *or* the normal maintenance of its property." (emphasis added). The undisputed facts establish that CBE-552 was awarded under Chapter 332 and that both exceptions are satisfied. It is obviously directly related to the normal operation of the Airport. While the Contract was in effect, Bombardier had exclusive responsibility for ensuring that the ATS system was operating and available for service. Approximately 78% of the Airport's gates rely on the ATS system to transport passengers to and from the terminal areas. The Airport could not operate without it. It is also self-evident that CBE-552 is directly related to the normal maintenance of Clark County's property, namely, the ATS system and the Airport. Indeed, *all* of the ATS system's maintenance was performed under the auspices of the Contract.

In sum, a hearing is not necessary. The facts required to interpret and apply NRS 338.010(16) and NRS 338.011(1) are undisputed. CBE-552 is not a "project" which can constitute "public work," and even if it were, it is exempt from Chapter 338's prevailing wage requirements in accordance with NRS 338.011(1). Bombardier is entitled to judgment as a matter of law. The Complaint should be dismissed.

III. STANDARD OF REVIEW

The Labor Commissioner has the authority to resolve this matter on summary judgment without conducting a hearing. See NAC 338.112(2). Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, demonstrate that no genuine issue of material fact exists, and the moving party is entitled to

judgment as a matter of law. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 731 (2005). The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant. A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party. *Id.*

IV. PROCEDURAL HISTORY

The Union initiated the Complaint process by letter dated October 9, 2009. *See Exhibit 1.* Mr. Stanley, the author of the letter and the Organizing Director of the Union, alleged that Bombardier maintenance employees performing maintenance work on the ATS system were entitled to be paid at prevailing wage rates because that contract constituted a "public work" within the meaning of NRS 338.010(16). *Id.* at 1-2. He also contended that the exception in NRS 338.011 did not apply because the work covered by the Contract included both maintenance and repair. *Id.* at 2. On October 13, 2009, Deputy Commissioner Sakelhide authorized the Complaint at issue here, directing the DOA to conduct an investigation into the Union's allegations and determine whether Bombardier had committed a violation. Exhibit 2.

On November 24, 2009, Bob Kingston, the Assistant Director, Facilities at the DOA, rendered the DOA's determination. Exhibit 3. He stated that he had conducted an investigation into the work performed under the Contract, and, just as importantly, reviewed the County's past practice and the Clark County District Attorney's interpretation of NRS 338.011(1). Based on that analysis, he found that CBE-552 and the work performed thereunder is exempt. *Id.* at 2-3. Mr. Kingston explained:

The purpose of maintenance is to care for, preserve and keep in proper condition. It is obvious that maintenance work requires the inclusion of repairs in order to keep things operating and in proper condition. Windows need replacing. Lights need to be kept working. Sprinklers need repair. County vehicles need new brakes and the [ATS] System needs to be kept in operating

condition. ... Further research on other maintenance contracts within the Clark County Department of Aviation and other local government entities has reinforced that this type of contract for maintenance and repair is not a public work.

Id. at 2. Accordingly, he wrote that “[i]t is the opinion of the District Attorney’s office, the Clark County Department of Aviation and Purchasing Administration, and [himself] that [CBE-552] is a maintenance and repair contract [that is not] ... subject to prevailing wage under NRS Chapter 338.” *Id.* at 3.

On December 17, 2009, the Union objected to the DOA’s initial findings by letter to the Labor Commissioner. Exhibit 4. As before, the Union insisted that NRS 338.011 did not apply because the work performed under CBE-552 could, in some cases, be deemed repair. *Id.* at 2-3. In doing so, the Union once again misapprehended the meaning of NRS 338.011, which deems work exempt not because of the type of work performed, but because of its immediate relationship to the local government’s normal operations and normal maintenance. *Id.*

Deputy Commissioner Sakelhide sent the Union’s objection to Mr. Kingston on December 31, 2009. Exhibit 5. In the cover letter accompanying the objection, Deputy Commissioner Sakelhide inexplicably and improperly suggested that the DOA’s prior review had been insufficient because it did not closely analyze the scope of work performed under the Contract to determine if that work constituted “normal maintenance” as opposed to “a modernization, an upgrade, a remodel, etc., and therefore subject to the provisions of NRS Chapter 338.”⁴ *See id.*

⁴ Deputy Commissioner Sakelhide provided no statutory basis for requiring the DOA to consider whether the Contract satisfied this heightened requirement. His letter did not analyze NRS 338.011 at all, and like the Union’s letter, appears to be based on a misunderstanding of the provision’s meaning by implying that NRS 338.011 does not apply if the contract can be described as a “public work.” NRS 338.010(16). As noted throughout this Motion, that reading is incorrect. NRS 338.011 exempts from Chapter 338’s prevailing wage requirements any contract directly related to the normal operation or normal maintenance of a local government’s property, whether it is “public work” or not. Any other

On March 30, 2010, the DOA issued a revised determination regarding the Complaint. Exhibit 6. It explained that it had conducted interviews with “Bombardier on site managers as well as most of the Bombardier employees performing the work” required by the Contract. *Id.* at 2. The DOA further explained that it had also reviewed the scope of work contemplated by CBE-552 and found that “throughout the investigation process none of the work appeared to be modernization, upgrades, remodels, etc... All of the work that was identified through interviews and observations was maintenance of the existing equipment and therefore not subject to the provisions of NRS 338.” *Id.* at 2 (emphasis added). Accordingly, the DOA confirmed its prior decision that CBE-552 was exempt from the prevailing wage requirements of Chapter 338.

The Union once again objected to the DOA’s findings and requested a hearing. Deputy Commissioner Sakelhide conducted a pre-hearing conference on October 7, 2010, during which it was agreed that briefing of certain issues might result in dismissal of the dispute without need for the time and expense of a hearing. In January 2011, the parties resolved the Union’s administrative complaint regarding Contract 2305, thereby eliminating a number of issues described in the agreement, and briefed the remaining issues that related to CBE-552.

Labor Commissioner Tanchek issued an “Interim Order” on June 7, 2011.⁵ Exhibit 7. After that Order was issued, both Bombardier and the Union requested that Labor Commissioner

reading of the statute would render its material terms meaningless. *See, e.g., Buckwalter v. Eighth Judicial Dist. Court*, 234 P.3d 920, 922 (Nev. 2010) (“Statutes must be construed together so as to avoid rendering any portion of a statute immaterial or superfluous.”) (quotations omitted).

⁵ The Interim Order speaks for itself, and given the parties’ stipulation that the neither the reasoning nor the holdings in that order will have any effect on the outcome of this case, it is not discussed in detail. *See* Exhibit 8 (Stipulation and Order). For the record, however, there is little doubt that Labor Commissioner Tanchek’s interpretations of NRS 338.011(1), *see* Exhibit 7 at 3:20-6:14, and NRS 338.080, Exhibit 7 at 6:17-7:10, are not persuasive. With respect to NRS 338.011(1), Labor Commissioner Tanchek did not appear to have considered or analyzed the actual text of the statute. He made the clichéd observation that if the statute were interpreted too broadly, it could create a problem whereby the “exception swallows the rule.” Then, using a confusing interpretation of NRS 338.011 and NRS 338.080(3), he found that to the extent CBE-552 required “repairs costing more than \$100,000,”

Tancheck clarify the terms of the Interim Order.⁶ The Labor Commissioner did not address the requests for clarification, which prompted both Bombardier and the Union to file lawsuits with the Clark County District Court. The parties, including the Labor Commissioner, stipulated to dismiss the lawsuits without prejudice on August 1, 2011. Exhibit 8. In doing so, they agreed (1) that the Interim Order did not constitute a final decision for purposes of NRS 233B.130, and, (2) that the Interim Order would not limit any party "from asserting the arguments or presenting evidence in support of the arguments and contentions addressed in the Interim Order." *Id.* Clark County District Judge Bare signed the Stipulation on August 5, 2011. *Id.*

The DOA issued a Revised Determination on July 25, 2011. Exhibit 9. Bombardier filed objections to the Revised Determination on August 17, 2011. Exhibit 10. As it explained:

Bombardier concurs with the DOA's conclusion that no prevailing wage payments are due and that the IUEC's complaint should be dismissed. It also concurs with the manner in which the DOA has applied the Interim Order. However, for the reasons set forth in its January 3 and January 24, 2011 briefs, Bombardier maintains that the Determination, as well as the Labor Commissioner's continued countenance of the IUEC's complaint, is improper. None of the work performed by Bombardier employees pursuant to CBE-552 should be deemed covered public work within the meaning of NRS

prevailing wage was owed. As explained below, the Nevada Supreme Court has previously reversed the Labor Commissioner's office for failing to interpret a governing statute in accordance with its text. *See, e.g., Coast Hotels v. State, Labor Comm'n*, 117 Nev. 835, 841 (2001). Because Labor Commissioner Tancheck essentially ignored the text of NRS 338.011(1), his reasoning is not entitled to deference here.

⁶ In an attempt to support his apparent conclusion that NRS 338.011(1) could not be interpreted to mean what it says, Labor Commissioner Tancheck posited a hypothetical situation involving the construction or rehabilitation of airport runways, and claiming that if the exception were interpreted broadly, such work would be exempt, which would be an unreasonable result. Exhibit 7 at 5:1-8. This hypothetical is baseless. First, it is extremely unlikely that such a construction project could be properly approved as a no-bid contract under NRS 332, and for that reason, it would not qualify for the exemption. Second, and most importantly, even if what Commissioner Tancheck posited were true, it *does not matter*. The exemption established in NRS 338.011 is express and unambiguous. The Labor Commissioner does not have the authority to artificially limit its application based on personal speculation. As the United States Supreme Court recognized in *Neal v. United States*, although "there may be little in logic to defend [a] statute's treatment" of an issue, it is up to the legislature to make value judgments and revise its statutes. 516 U.S. 284, 295 (1996) (affirming sentence of individual convicted for distributing LSD, even though the sentence was disproportionately high).

338.010; and, such work is otherwise completely exempt from Chapter 338's prevailing wage requirements [by virtue of] NRS 338.011 and NRS 338.080. The Interim Order's findings that (1) some of the work performed under CBE-552 could constitute "public work" and (2) that neither NRS 338.011 nor NRS 338.080 applies to this matter, are erroneous and contrary to both fact and law. Bombardier therefore objects to the Determination on these grounds.

Id. The Union also filed objections.

The Labor Commissioner conducted a pre-hearing conference regarding the Complaint on June 26, 2012. Thereafter, the parties conducted discovery in accordance with the Labor Commissioner's scheduling order. Discovery closed on February 18, 2013.

V. STATEMENT OF FACTS

This is a narrow motion that requires the Labor Commissioner to interpret two statutes: NRS 338.010(16) and NRS 338.011(1). The facts that are relevant to such an inquiry – whether CBE-552 is a "project" and whether CBE-552 is directly related to the normal operation or normal maintenance of the ATS system – are not in dispute.

A. Background Facts About McCarran's ATS System.

Approximately 40 million travelers utilize McCarran Airport each year. Fifty percent (50%) of the Airport's revenues are derived from the airline fees and charges generated by travelers who arrive at and depart from the different gate areas at the Airport. Walker Depo. 48:3-55:3. Additional revenue is generated by concessionaires and other businesses that are located in the gate areas. *Id.*

Bombardier installed the original ATS train at McCarran Airport in 1985.⁷ Walker Depo. 44:9-45:7. That train system connects Terminal 1 with the "C" Concourse gates. At the time the

⁷ At that time, the business unit serving the Airport was a division of AEG Westinghouse. The APM business was ultimately acquired by Bombardier in 2001 and it has continued to serve the Airport in different capacities.

“C” gates were “initially constructed, [the “C” Concourse] was a 100% satellite terminal and the only way to get there was by train.” Walker Depo.69:12-74:17. Even now, after the Airport constructed a new walking ramp to the “C” Concourse, at least 30% of departing travelers take the ATS to the “C” Concourse, and virtually all of the arriving passengers take the ATS from the concourse to the terminal. *Id.*; *see also* Exhibit 11 (McCarran Map).

Almost half of McCarran’s currently operating gates – fifty-eight of them – are located in the “D” concourse. Exhibit 15. The ATS system servicing the “D” gates was constructed in 1998, and its construction plans were developed with the intention of using the ATS system as the only direct link between the “D” concourse and the terminal. Walker Depo. 46:7-47:4. Unlike the “C” concourse, the “D” Concourse is not physically connected to Terminal 1. *Id.* It is also not physically connected to Terminal 3. *Id.* Passengers who arrive or depart from “D” gates must use the ATS system. In a “normal situation,” passengers go through the “D” security checkpoint, board the ATS train, and then travel to the “D” Concourse. *Id.* at 14:10-19. As Clark County Director of Aviation Randy Walker explained during his deposition, the issue is simple. “You can only get to the D gates via a train either from [Terminal 3] or from [Terminal 1].” *Id.* at 24:11-15. “There’s no way to get [passengers] to the [D] gate area with the trains not working.” *Id.* at 7:13-14. If the trains go down, the only alternative is a bussing system that for all practical purposes, simply cannot accommodate the number of individuals who need to travel to and from the “D” Concourse. *Id.* at 6:14-14:19.

In short, the maintenance and availability of the ATS system is critical to the normal, daily operation of the Airport. “[W]ithout the train system, the D Gates specifically cannot be functional, cannot use them. There’s no effective way to deliver passengers to and from the gate area. [For the C Gates] there’s another way, but it is much less effective, and for Terminal 3,

there is no effective way to provide transportation to our customers.” *Id.* at 92:1-23. As Mr. Walker asserted in a letter to the Nevada Contractor’s Board in 2009:

Please understand that Bombardier was the original equipment manufacturer for the automated transit systems at McCarran Airport and currently maintains those systems. ... The ongoing maintenance of our existing systems ... [is] **vital and integral to the airport’s operation and success.** (emphasis added)

Exhibit 12; *see also* Walker Depo. 91:16-93:4.

B. Bombardier Was The Exclusive Provider of Operations And Maintenance Services For McCarran’s ATS System, And CBE-552 Governed The Terms And Conditions Under Which Those Services Were Provided.

CBE-552, which is the most recent iteration of Bombardier’s operations and maintenance agreement with Clark County was approved by the Clark County Commission on June 3, 2008.⁸ Exhibit 13. The award was issued in accordance with NRS 332.115(1)(a) & (c). Mr. Walker explained that competitive bidding for the Contract would be inappropriate and that approval was proper under NRS 332.115(1) because Bombardier “is the only firm that can supply maintenance services” for the ATS trains at McCarran.⁹ *Id.*

CBE-552 was dedicated to the maintenance of the C, D and T3 trains. Walker Depo. 62:2-63:13. “It covered the ongoing daily maintenance of the train systems. The trains must be

⁸ It is important to note that Clark County negotiates and manages all of its major maintenance contracts in the same way. It contracts with a third party for the maintenance of McCarran’s bus and shuttle system. *See* Exhibit 14, Walker Depo. 10:9-11:18. The work performed on that contract is similar to the work authorized by CBE-552, and it similarly is not considered to be subject to prevailing wage. *Id.* The same is true for Clark County’s elevator maintenance contract, which is handled by Kone and which involves employees who are represented by the International Union of Elevator Constructors. *See* Exhibit 15. Notably, the Union has not challenged that contract, which is inconsistent with the position that it has taken in this case. All of the Airport’s maintenance contracts are considered to be outside the scope of prevailing wage. Walker Depo. 79:12-25.

⁹ The Union has argued that other companies can provide maintenance services for the ATS system. Even if true, this would not create a material issue of fact. Moreover, as argued below, Bombardier does not believe that any alternative service providers exist because those third parties would not have access to the confidential and proprietary information necessary to perform and schedule maintenance tasks. *See infra* p. 22 at fn. 15.

maintained on a daily basis. ... And there are specific maintenance routines that are performed on the trains each night.” Walker Depo. 75:20-76:1. As Mr. Walker explained, the Contract is directly related to the normal operations and normal maintenance of the Airport. *Id.* at 80:19-81:7. The Contract required Bombardier to ensure that the ATS system was available 99.65% of the time on a 24-hour, 365 basis because it was critical to ensure that the “systems are reliable for the efficient operation of the [Airport].” Walker Depo. 93:12-23.

Michael Shaman, the former Vice President of Operations and Maintenance for Bombardier’s systems division, and the current Vice President of Special Projects and Health, Safety and Environment, confirmed CBE-552 is a *maintenance contract*, dedicated to preventative and corrective maintenance.¹⁰ Shaman Depo. 27:14-31:21. While it is possible to euphemistically describe some of the work performed by the Maintenance Technicians as repair in the sense that parts may be checked and replaced, that work is best described as maintenance, because the parts are checked and replaced in accordance with a normal schedule, prior to the part’s catastrophic failure. *Id.*

VI. ARGUMENT

As set forth below, CBE-552 is not a “public works” contract. And, even it is, Chapter 338 contains two exemptions applicable to this dispute, both of which independently warrants dismissal of the Complaint in its entirety.

A. Nevada Statutes Are Interpreted In Accordance With Their Plain Meaning.

This is a case of statutory interpretation. In that regard, the Nevada Supreme Court has repeatedly admonished lower courts and administrative agencies that “words in a statute should be given their plain meaning[.]” *McKay v. Bd. of Supervisors*, 102 Nev. 644, 648 (1986). “When

¹⁰ Mr. Shaman was responsible for Bombardier operations and maintenance contracts throughout the world and worked for the Company for fourteen years. Shaman Depo. 8:2-19.

construing a statute, [the Nevada Supreme Court] looks to the words in the statute to determine the plain meaning of the statute, and this court will not look beyond the express language[.]” *Hernandez v. Bennett-Haron*, 287 P.3d 305, 315 (Nev. 2012) (emphasis added). To that end, a statute also must be construed as to “give meaning to all of [its] parts and language.” *Coast Hotels v. State, Labor Comm’n*, 117 Nev. 835, 841, 34 P.3d 546, 550 (2001) (reversing Labor Commissioner for failing to account for the disjunctive meaning of “or”). If an interpretation imposes a limit on the statutory language which is not supported by the text, or which renders a word in the text meaningless, it cannot be sustained. *Id.* As the Court recently explained, “[t]he preeminent canon of statutory interpretation requires us to ‘presume that [the] legislature says in a statute what it means and means in a statute what it says there.’” *Bldg. Energetix Corp. v. EHE, LP*, 129 Nev. --, 294 P.3d 1228, 1230 (2013) (quoting *BedRoc Limited, LLC v. United States*, 541 U.S. 176, 183 (2004)).

B. The Complaint Must Be Dismissed Because The Contract Does Not Constitute A “Public Work” For Purposes Of NRS 338.010.

Nevada law requires employers to pay prevailing wages to individuals who are employed on covered “public work.” In that regard, Chapter 338 contains a very specific definition of “public work.” NRS 338.010(16) provides:

Public work means any **project** for the new construction, repair or reconstruction of:

- (a) A **project** financed in whole or in part from public money for:
 - (1) Public buildings;
 - (2) Jails and prisons;
 - (3) Public roads;
 - (4) Public highways;
 - (5) Public streets and alleys;
 - (6) Public utilities;
 - (7) Publicly owned water mains and sewers;

- (8) Public parks and playgrounds;
 - (9) Public convention facilities which are financed at least in part with public money; and
 - (10) All other publicly owned works and property.
- (b) A building for the Nevada System of Higher Education of which 25 percent or more of the costs of the building as a whole are paid from money appropriated by this State or from federal money.

(emphasis added).

In short, under NRS 338.010(16), in order to be considered a “public work,” CBE-552 must pertain to a “project.” Because the term “project” is not otherwise defined, that term must be interpreted in accordance with its plain meaning and its contextual place in the statutory framework of Chapter 338. Here, the context establishes that the term is referring to a construction or development project. All of the enumerated examples in the statute concern the construction of buildings and structures, *see* NRS 338.010(16)(1)(1)-(10), and in accordance with the doctrine of *noscitur a sociis* “words are known by – acquire meaning from – the company they keep.” *Bldg. Energetix Corp.*, 294 P.3d at 1238 (interpreting the meaning of a general term in accordance with the enumerated examples contained within the statute). Moreover, the common meaning of the term “public works” refers to “structures, as roads, dams, or post offices, paid for by government funds for public use.”¹¹ DICTIONARY.COM UNABRIDGED BASED ON THE RANDOM HOUSE DICTIONARY, © RANDOM HOUSE, INC. 2013, *available online at* <http://dictionary.reference.com/browse/public+works?s=t> (accessed on March 27, 2013).

As a maintenance contract, CBE-552 and the work performed in accordance with its terms, does not fit within the meaning of “project” as established by NRS 338.010(16).

¹¹ The Cambridge University Dictionary is in accord. It defines “public works” as “the building of roads, hospitals, etc. that is paid for by the government.” CAMBRIDGE UNIVERSITY BUSINESS ENGLISH DICTIONARY, *available online at* <http://dictionary.cambridge.org/us/dictionary/business-english/public-works?q=public+works> (accessed on March 27, 2013).

Customary usage and experience support Bombardier's proffered interpretation of the statute. As noted above, it is not like any of the examples of "public work" that the Legislature enumerated when it enacted the statute. Moreover, CBE-552 and its predecessors have never been treated as prevailing wage projects, including when the maintenance relationship began in 1985. As explained by Mr. Walker during his deposition, public works projects are construction, not maintenance, projects, and such contracts contain milestones, completion requirements, and other kinds of information that is directly tied to the beginning and end of construction work. Walker Depo. 93:21-97:5.

Maintenance work, in contrast, is ongoing. It is perpetual in nature, with no fixed beginning or completion point, and to that end, Clark County's practice is to treat maintenance contracts differently from construction or rehabilitation projects which call for prevailing wage. *Id.* In short, the customary usage of the term "project" is starkly different than the forced reading that the Labor Commissioner would have to adopt in order to bring CBE-552 within coverage of Chapter 338.

This custom and usage is supported by the meaning of the word "project" that is found in dictionaries. Dictionaries define "project" in different ways, but in each instance, the definition concentrates on the fact that a project is a planned undertaking with a specific, defined objective. *See, e.g.,* MERRIAM-WEBSTER DICTIONARY, available online at <http://www.merriam-webster.com/dictionary/project> (accessed on March 27, 2013). In fact, the Merriam-Webster Dictionary uses the example of a "development project" to exemplify the meaning of the term and convey its programmatic and highly scheduled nature. The Cambridge University Dictionary defines "project" as "a piece of planned work or activity that is completed over a period of time and intended to achieve a particular aim," and it includes "construction projects,"

as a primary example. CAMBRIDGE UNIVERSITY ACADEMIC CONTENT DICTIONARY, *available online at http://dictionary.cambridge.org/us/dictionary/american-english/project_1?q=project* (accessed on March 27, 2013).

The reported cases discussing whether a given contract concerns a public work for purposes of Chapter 338 all concern contracts for the construction or improvement of structures and real property. *See, e.g., City of Reno v. Bldg. & Constr. Trades Council of Northern Nev.*, 251 P.3d 718, 719 (Nev. 2011) (construction of retail store with public funds is public work); *City Plan Dev. v. Office of the Labor Comm'r*, 121 Nev. 419, 423 (2005) (holding that the construction of a fire station was a public works project); *Citizens for a Pub. Train Trench Vote v. City of Reno*, 118 Nev. 574, 584 (2002) (discussing construction project); *Garvin v. Ninth Judicial Dist. Court*, 118 Nev. 749, 765 (2002) (construction project).

This definition of “project” is also consistent with other provisions of Chapter 338. For example, NRS 338.010(16)’s reference to financing confirms that the prevailing wage statute is concerned with public works construction projects, not maintenance contracts. Ongoing maintenance contracts are not “financed” with bonds or other long-term debt measures. They are budgeted as normal operating expenses and paid for with normal operating funds. *See, e.g.,* Exhibit 13 (contract approval); Exhibit 15 (Kone contract approval). Similarly, in defining the term “contractor,” which is the term used to refer to employers under the statute, NRS 338.010(3) provides that it is either a “person who is licensed pursuant to the provisions of chapter 624 of NRS” or a “design-build team.” Neither definition is applicable to a maintenance provider like Bombardier, a fact underscored by the definition of contractor in the construction code, NRS Chapter 624. NRS 624.020 states that “contractor” is synonymous with “builder” and can be used to refer to any person who contracts to “construct, alter, repair, add to, subtract

from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project, development or improvement[.]”

Chapter 338 of the Administrative Code supports the same conclusion. It contains no reference whatsoever to maintenance, and it does not define the term “project.” It does, however, use the term in different contexts which show that the word is not intended to capture long-term service contracts like CBE-552. Specifically, NAC 338.231 defines a “[s]uccessfully completed project” as

the contract or the portion of the contract for which the prime contractor was responsible was completed; 1. Within the deadline for completion specified in the contract, as adjusted by any change order or extension of time granted; and 2. In compliance with any remaining contractual requirements, including close-out documents, within 90 days after the substantial completion of the contract.

Obviously, CBE-552 is not “completed” in the sense described here. As Mr. Walker explained, and as the Contract makes clear, it has no milestones or completion targets. It requires Bombardier to satisfy a static performance requirement on a continuing basis: ensure that the ATS system is available for use more than 99% of the time.

NAC 338.231(2)’s reference to substantial completion provides further support. “Substantial completion” means that “the construction of a public work is, in accordance with the contract documents, sufficiently complete that the owner can occupy and utilize the public work for its intended use.” NAC 338.144. CBE-552 does not involve construction, and more specifically, it does not result in the creation of a structure which can be occupied or used by the public. The Contract merely specifies how Bombardier will deliver maintenance services.

In light of the above, there is simply no way to find that a five year long maintenance contract like CBE-552 can fall within the meaning of the term “project.” Doing so would require

the Labor Commissioner to adopt a strained interpretation of the term that is inconsistent with the word's plain meaning, and which cannot be applied in a consistent manner throughout the statute and the administrative code. It therefore cannot be considered "public work."

C. Bombardier Is Entitled To Summary Judgment Because CBE-552 Is Directly Related To The Normal Operation Of McCarran Airport, Or The Normal Maintenance Of Its Property, And Is Therefore Exempt Under NRS 338.011.

As provided in NRS 338.011(1), contracts executed by a local government in accordance with its authority under NRS Chapters 332 or 333 are exempt from NRS Chapter 338's prevailing wage requirements so long as the contract is either: (1) directly related to the local government's operations, or (2) directly related to the normal maintenance of the local government's property. The Contract satisfies both conditions.

1. The Plain Meaning of NRS 338.011 is Readily Ascertainable.

Section 338.011 provides that the requirements of NRS Chapter 338 "do not apply to a contract ... [a]warded in compliance with chapter 332 or 333 of NRS which is directly related to the normal operation of the public body or the normal maintenance of its property." Neither the phrase "normal operation of the public body" nor "normal maintenance of its property" is defined. These are ordinary words, and in Nevada, "words in a statute should be given their plain meaning[.]" *V & S Ry., LLC v. White Pine County*, 211 P.3d 879, 882 (Nev. 2009) (quoting *McKay v. Bd. of Supervisors*, 102 Nev. 644, 648 (1986)). In setting forth the methodology that must be used when interpreting statutes, the Nevada Supreme Court has emphasized that the focus of any interpretation is the text of the statute itself.

When construing a statute, we first examine its plain meaning. In examining the plain meaning of a statute, we read its provisions as a whole, and give effect to each of its words and phrases. When a statute is clear and unambiguous, we give effect to the plain and ordinary meaning of the words and do not resort to the rules of construction.

Davis v. Beling, 278 P.3d 501, 508-509 (Nev. 2012) (quotations and citations omitted).

In this case, the scope of the exemption set forth by NRS 338.011(1) is plain on the face of the statute. A contract which has been authorized by a local government in compliance with NRS Chapter 332 is not subject to Chapter 338's prevailing wage requirements if the contract has at least one of two possible purposes¹²: (1) the normal operation of the public body, or (2) the normal maintenance of the public body's property. Put another way, CBE-552 is exempt from Chapter 338's prevailing wage requirements so long as it was properly ratified under NRS Chapter 332 or Chapter 333 and it can be deemed to be directly related to the normal operation of the DOA or the normal maintenance of the DOA's property.¹³ As set forth below, CBE-552 easily satisfies these conditions.

¹² Because NRS 338.011 is written in the disjunctive – using the word “or” to separate two phrases concerning distinct subject areas – it is clear that the Legislature intended to create two alternative means of satisfying the exemption. See *Coast Hotels & Casinos*, 117 Nev. at 841; see also *State v. Catanio*, 120 Nev. 1030, 1033 (2004) (“By using the disjunctive ‘or,’ the statute clearly indicates that ‘upon’ and ‘with’ have different meanings.”).

¹³ There is no plausible alternative interpretation that can be reconciled with the plain meaning of NRS 338.011's text, and “where the language of a statute is plain and unambiguous, and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself.” *State of Nevada, Division of Insurance v. State Farm*, 995 P.2d 482, 485 (Nev. 2000); see also *State Drywall, Inc. v. Rhodes Design & Dev.*, 127 P.3d 1082, 1086 (Nev. 2006) (“When a statute's language is plain and unambiguous, and its meaning is clear and unmistakable, we may not look beyond the statute for a different meaning or construction.”).

2. CBE-552 Was Approved In Accordance With NRS 332.115(1).

There is no doubt that CBE-552 was approved in accordance with NRS 332.115(1).¹⁴ As set forth in the Clark County Commission Agenda Item attached as Exhibit 13, the Contract was approved by the Clark County Commission on June 3, 2008. It complied with NRS 332.115(1)(a) because Bombardier “is the only firm that can supply maintenance services” for the ATS trains at McCarran.¹⁵ *Id.* The approval complied with subsection (c) because, even if Bombardier were not the only service provider that could handle the County’s maintenance needs, it was, given its experience and technical know-how, the party in the best position to provide maintenance in an efficient manner. Moreover, approval was also appropriate under subsection (d) because the Contract concerned the maintenance of “[e]quipment which, by

¹⁴ The relevant language from NRS 332.115(1) is as follows:

NRS 332.115 Contracts not adapted to award by competitive bidding; purchase of equipment by local law enforcement agency, response agency or other local governmental agency; purchase of goods commonly used by hospital.

1. Contracts which by their nature are not adapted to award by competitive bidding, including contracts for:

(a) Items which may only be contracted from a sole source;

...

(c) Additions to and repairs and maintenance of equipment which may be more efficiently added to, repaired or maintained by a certain person;

(d) Equipment which, by reason of the training of the personnel or of an inventory of replacement parts maintained by the local government is compatible with existing equipment[.]

¹⁵ There is no doubt about this. The licensing provisions of CBE-552 preclude third parties from having access to the technical information required to provide maintenance services. Although the County has now taken this work in-house, it was able to do so only because Bombardier agreed to provide a technical services agreement. As set forth in the Clark County Commission Agenda Item attached as Exhibit 16, the technical services agreement was necessary because the County could not maintain the ATS system without that intellectual property and ongoing assistance.

reason of the training of the personnel or of an inventory of replacement parts maintained by the local government is compatible with existing equipment[.]”¹⁶

No objections to the Contract were filed, and CBE-552 was approved unanimously. Significantly, the Agenda Item specifically notes that the Contract had been “reviewed and approved as to form by the Clark County District Attorney’s Office.” Exhibit 13. Because NRS Chapters 338, 607, and 608 do not delegate to the Labor Commissioner any authority to review local governments’ purchasing decisions under NRS Chapter 332, the County’s determination is conclusive. *See Clark County v. Equal Rights Comm’n*, 107 Nev. 489, 492 (1991) (“agencies have only those powers which the legislature expressly or implicitly delegates”); *City of Reno v. Civil Serv. Comm’n of Reno*, 117 Nev. 855, 858 (2001) (“administrative agencies cannot enlarge their own jurisdiction. The scope of an agency’s authority is limited to the matters the legislative body has expressly or implicitly delegated to the agency.”).

3. CBE-552 Is Directly Related To The Normal Operation Of McCarran Airport.

Bombardier’s ATS systems have been a continuous and integral part of McCarran’s operations and expansion since 1985, when the Company manufactured and installed the first ATS system at the airport to transport passengers to and from the gates located along Concourse C. For the next thirteen years, Bombardier provided maintenance support for that ATS system, and in 1998, the Company was retained to manufacture and install an additional ATS system to service the gates in Concourse D. Thus, it is apparent that as McCarran Airport has developed and expanded its primary plan for transporting passengers to the new areas of the airport, it has done so in total reliance on Bombardier’s ATS system. Because the reliable operation of those

¹⁶ While the award does not explicitly reference NRS 332.115(1)(d), that is immaterial. As the Nevada Supreme Court has repeatedly recognized, it will affirm a lower court’s decision if it “reached the correct result, albeit for different reasons.” *See, e.g., Rosenstein v. Steele*, 103 Nev. 571, 575 (Nev. 1987) (citing *Burroughs Corp. v. Century Steel*, 99 Nev. 464 (1983)).

trains is, by extension, essential to passenger transport, the DOA has entered into a series of maintenance agreements with Bombardier to provide continuous maintenance support.

In 2006, the Department of Aviation announced construction of a new airport terminal – Terminal 3 – to handle McCarran’s ever-expanding passenger load. Intended to be a self-contained facility, its **only** connection to Terminal 1 is an underground ATS linked to the ATS that provides service to Concourse D. Because of Bombardier’s exemplary performance and safety record, the DOA once again selected Bombardier to complete the design-build of this new system. In conjunction with that, the DOA chose to extend Bombardier’s maintenance responsibilities, which lead to the negotiation and execution of CBE-552. The Contract conspicuously omits the provisions required by NRS 338.020 or any other reference to prevailing wage rates.¹⁷

No one is in a better position to describe the Airport’s normal operations, and the ATS system’s role in those operations, than Mr. Walker. And as set forth in detail above, his deposition incontrovertibly established that the ATS system is an integral element of McCarran’s daily operations and that the Contract is therefore directly related to those normal operations. The Airport’s primary function is to facilitate travelers coming to and leaving Las Vegas. Moreover, to the extent the Airport functions as a business enterprise, the vast majority of its

¹⁷ The Seventh Circuit Court of Appeals has recognized in considering whether employees were properly considered exempt under the FLSA that while “it is possible for an entire industry to be in violation of the [FLSA] for a long time without the Labor Department noticing[. . . it is] a more plausible hypothesis [] that the . . . industry has been left alone because the character of its compensation system has been recognized for what it is - a bona fide commission system” by which employees are exempt. *Yi v. Sterling Collision Centers, Inc.*, 480 F.3d 505 (7th Cir. 2007). This reasoning is applicable here. As noted above, Bombardier’s pay rates were not questioned for more than two decades, and a series of contracts that omitted the requirements of NRS 338.020 were approved by the Clark County District Attorney. Further, as noted in Mr. Walker’s testimony and Clark County’s initial determinations, Clark County has consistently handled its maintenance contracts in this way, and there has never been an allegation of impropriety. As in *Yi*, this long history is evidence that the CBE-552 is exempt from Chapter 338’s prevailing wage requirements.

revenues are generated by the fees it collects from the airlines that use its gate areas, and its share of the revenues generated by travelers visiting concessionaires in the gate areas. Neither of these objectives can be accomplished without the continuing availability of the ATS system, and the ATS system could not function without the services provided pursuant to CBE-552.

Indeed, the McCarran Airport site plans confirm what anyone who has traveled by air to Las Vegas already knows. The ATS system is the primary method for moving passengers to and from the "C" and "D" Concourses. The only way to access the "D" Concourse is by ATS train, and the only alternative method of accessing the gate is bussing passengers back and forth from Terminal 1, which would require an extraordinary commitment of personnel and equipment. Although the "C" Concourse has pedestrian access, the bulk of the "C" gates are a significant distance from the main terminal, and walking to those gates takes a considerable amount of time and effort on the part of the passengers. It is apparent that McCarran Airport's normal operations require the ATS system to be available at all times in order to ensure that passengers can efficiently get to and from their flights. CBE-552, which governs the manner in which the ATS system is serviced and made available for passenger use, is therefore directly related to the airport's normal operations.

Although there are is no reported authority defining what constitutes the normal operation of an airport, in general, the Illinois Supreme Court has noted that normal operations means "the standard, or regular operation of the employer's plant," *Travis v. Grabiec*, 52 Ill. 2d 175, 182 (Ill. 1972), and the Missouri Court of Appeals has noted that when a plant is operating at less than 100% capacity, it is "certainly" not engaged in normal operations. *See Laclede Gas Co. v. Labor & Industrial Relations Com.*, 657 S.W.2d 644, 653 (Mo. Ct. App. 1983) ("Normal operations would mean that (sic) conforming to the standard, or regular operation of the employer's plant.

... To hold otherwise, would require this Court to say that the employer did not need the 2,070 employees, or need the existing facilities that were not being used, nor to maintain or replace its equipment.”). Applying the same reasoning to this case requires the Labor Commissioner to find that CBE-552 is exempt. CBE-552 is directly related to the manner in which the ATS system is maintained and made available to McCarran Airport patrons. In fact, the DOA has no other rules or procedures that govern the availability of this vitally important system, and if passengers at McCarran are utilizing alternative methods of going to and from the “C” and “D” Concourses, the airport is “certainly” not engaged in normal operations. *Id.*

Simply put, there is little reason to even discuss the matter of whether CBE-552 is directly related to the normal operation of McCarran Airport. That truth is self-evident. The ATS trains are virtually the only way to travel back and forth from the “C” and “D” Concourses. They are obviously the only way to move large numbers of passengers from Terminal I to the “C” and “D” Concourses in a timely and efficient manner. Because Bombardier’s performance of CBE-552 is the only way to ensure that the ATS system continues to operate in a reliable and appropriate manner, the Contract is directly related to the normal operation of the Airport and it is exempt.

4. The Terms And Conditions of CBE-552 Also Establish That The Contract Is Directly Related To the Normal Operation of McCarran Airport.

The terms and conditions of CBE-552 further substantiate Mr. Walker’s testimony and Bombardier’s claim that the Contract is directly related to the normal operation of McCarran Airport. For example, Section 1.3.5, “Credits for System Availability,” establishes that near perfect reliability – 99.65% – is required to satisfy the terms and conditions of the Contract. As noted above, such a provision is necessary because of the critical importance of the ATS system to the airport’s ability to transport passengers and manage its daily business. Other provisions

which mandate that Bombardier take special precaution to ensure performance under the Contract are in the same vein. For example, Section 1.10 requires Bombardier to employ only "careful and competent" workmen, and forbids the Company from substituting the agreed upon Superintendent without DOA approval. Section 1.21 mandates Bombardier's cooperation in the operation and maintenance of the ATS system and requires monthly meetings to review the performance of the trains and system. Section 2.1.1 requires Bombardier to have technical expertise on site at all times.

The Contract also includes provisions which speak directly to the impact Bombardier's maintenance work has on ATS system availability. Bombardier's fundamental obligation is to perform all work to "assure that [the ATS system] provides safe and reliable service for passengers," and further requires that maintenance activities take place

in such a way that the interference with, or effect upon operation of the ATS system is minimized. To minimize operational impact, maintenance of equipment may necessarily have to be done at night, or in the off-peak periods. Maintenance practices or procedures that could compromise or degrade the operation must be approved by the [DOA] in advance.

Exhibit 1 at Sections 2.1.2 and 2.1.5. Another section provides that any maintenance that **"necessitates a disruption to the normal scheduled operations will require written approval from the [DOA] and coordination with [the DOA] before it is performed."** Section 2.2.6.1 (emphasis added). Finally, the provisions of Exhibit A support the same conclusion, particularly Sections A1.0 and A1.6, which tie financial payment under the Contract to dependable service and provide that the ATS System is "designed for 24 hours a day operation."

Based on these contractual provisions, there can be no doubt that CBE-552 is directly related to the normal operation of DOA's property, which is all that is required to secure application of the exemption found in NRS 338.011(1).

5. CBE-552 Is Directly Related To The Normal Maintenance of County Property.

There is also no question that the terms and conditions of CBE-552 establish that the Contract is "directly related to the normal maintenance" of McCarran Airport and the ATS system, both of which are County property. During the term of the Contract, Bombardier was the *exclusive* provider of maintenance services to the ATS system. If Bombardier did not do the work, no one else could. The "normal maintenance" of the ATS system and the Airport required CBE-552.

There is no reason to unduly extend the length of this Motion with a discussion designed to prove the obvious. Beginning with the Contract's initial statement of work, which states that work performed pursuant to CBE-552 is considered to be "maintenance," virtually every other substantive provision in the Contract memorializes specific commitments that Bombardier has made to ensuring that the ATS system is properly maintained and that necessary maintenance work is performed at appropriate intervals.

In fact, each provision describing the work performed under the Contract refers to the work as "maintenance work," and there is a comprehensive schedule of required maintenance that Bombardier is obligated to perform to ensure that the ATS system remains in good working order. *See* Sections 2.0, 2.1, 2.2; *see also* Schedule A.¹⁸ Further, as Mr. Kingston explained in the revised determination, the DOA's analysis of the work performed by Bombardier employees, as well as interviews with those individuals, confirmed that the employees' primary duties are maintenance tasks directly related to the normal upkeep and servicing of the ATS system and its

¹⁸ The Union's contention that some of the work is "heavy" maintenance or repair is discussed in more detail below. Although there is no doubt that CBE-552 contains provisions requiring more in-depth servicing at different intervals, it is inaccurate to describe that work as anything other than maintenance, and it certainly does not predominate over the other provisions in the Contract.

components. If CBE-552 does not qualify as a contract which is directly related to the normal maintenance of county property, it is impossible to imagine what contract could satisfy NRS 338.011's requirements.

6. The DOA's Determination That CBE-552 Is Directly Related To The Normal Operation And Maintenance Of McCarran Airport Is Entitled To Deference.

As noted above, the Labor Commissioner does not have the authority to determine whether Clark County's approval of a contract complies with NRS Chapter 332. *See* Section IV.B.2. As a corollary, it is also clear that Clark County's assessment of such a contract, including its determination of the contract's purpose and whether it is "directly related to the normal operation of the public body or the normal maintenance of its property" is entitled to deference. The structure of Chapter 332, also called the Local Government Purchasing Act, and Chapter 338 make it apparent that this decision is to be left to the local government – in this case, Clark County – in order to ensure that the local government has freedom and predictability when it evaluates its labor costs and enters into certain contracts.¹⁹ *See, e.g., Sheriff, Clark County v. Luqman*, 101 Nev. 149, 153-154 (1985) (administrative agency authority limited to that delegated by the legislature).

Chapter 332 is self-executing. Its provisions grant local governments' exclusive authority to determine when it is appropriate to enter into agreements under that Chapter's provisions. *See generally Citizens for a Pub. Train Trench Vote v. City of Reno*, 118 Nev. 574, 584 (2002) (the authority "to undertake public work projects has been legislatively delegated to local governments by statute"); NRS Chapter 332; *see also* NRS 607.160(1) (the labor

¹⁹ The Union has previously argued that the legislative history of NRS 338.011 is inconclusive, and that the Legislature never intended for the exemption to cover contracts like Bombardier's. This contention is not supported by the text of the statute, which is the best evidence of the Legislature's intent. Indeed, given that the meaning of NRS 338.011(1) is apparent from its language, it would be improper for the Labor Commissioner to consider any legislative history for any purpose. Doing so would contravene the Nevada Supreme Court's precedent regarding statutory interpretation.

commissioner catchall provision does not apply because Chapter 332 is not a "labor law"). The implicit purpose of this delegation is readily apparent: a local government is in the best position to determine what constitutes normal operation or normal maintenance of its property. Granting some third party such as the Labor Commissioner the right to retroactively impose liability under NRS Chapter 338 through refusal to apply the exemption would frustrate the local government's right under Chapter 332 to opt out of public bidding for contractual relationships that are utterly essential to its ability to deliver basic services. *Cf. Missouri v. City Utilities of Springfield*, 910 S.W.2d 737, 744 (1995) (overly restrictive application of prevailing wage exemptions is not justified). Contractors would be reluctant to enter into such contracts with local governments if they could face significant liability for unpaid prevailing wages simply because the local government made an error in judgment as to the applicability of NRS 338.011(1).

In this case, Clark County exercised this exclusive authority to determine that CBE-552 is directly related to the normal operation and normal maintenance of its property, and is therefore exempt from Chapter 338's requirements under NRS 338.011. Its determination, which considered its historical interpretation of the NRS 338.011 and its own intentions in agreeing to the Contract is entitled to significant deference unless the Union is able to produce convincing evidence that the exemption does not apply. Clark County's power under Chapter 332 would be significantly compromised if the Labor Commissioner is given authority to review this decision.

D. The Objections Lodged By The Union Have No Merit.

1. The Union's Argument That The Contract Contains An Element Of Repair, And Therefore Cannot Be Exempt Under NRS 338.011(1), Has No Support In The Statutory Text.

The Union's primary objection to the application of NRS 338.011(1) has been its contention that the Contract calls for repair, and because repair is covered by the definition of public work found in NRS 338.010, the exemption is inapplicable. There is absolutely no merit to this argument.²⁰

It is not supported by the text of the statute. As noted above, NRS 338.011(1) is written in the disjunctive, and as such, the exemption applies so long as CBE-552 is directly related to *either* the normal operation *or* the normal maintenance of the McCarran Airport. *See Coast Hotels & Casinos*, 117 Nev. at 841 (rejecting attempt to read labor statute written in the disjunctive as conjunctive). Further, there is simply no basis for the Union's position that maintenance and repair are mutually exclusive terms.²¹ *See Missouri*, 910 S.W.2d at 744. Application of the exemption requires only that the contract be directly related to maintenance. It does not, as the Union appears to argue, require that the contract be limited exclusively to

²⁰ The Union has also argued that the exemption set forth in NRS 338.011 must be construed narrowly because the prevailing wage laws are remedial in nature. That presumption "has no application here, where the 'express text' of the statute is clear." *Leslie v. Cap Gemini America, Inc.*, 319 Fed. Appx. 689, 690-691 (9th Cir. 2009) (citing *Jenkins v. Palmer*, 66 P.3d 1119, 1121 (Wash. Ct. App. 2003); *see also Silverstreak, Inc. v. Wash. State Dep't of Labor & Indus.*, 104 P.3d 699, 707 (Wash. Ct. App. 2005) ("While we acknowledge the remedial purposes of the prevailing wage statute and the liberal construction we must give such a statute, we cannot ignore the plain words of the regulation in effectuating the underlying purposes of the regulation."). Limiting the explicit language set forth in NRS 338.011 on the basis of a judicially created presumption violates basic tenets of statutory construction. *See Coast Hotels*, 117 Nev. at 841 (statutes must be interpreted to give meaning to all provisions).

²¹ As the Oxford English Dictionary notes, maintenance and repair are overlapping concepts. It defines maintenance as: "The action of keeping something in working order, in repair, etc.; the keeping up of a building, institution, body of troops, etc., by providing means for equipment, etc.; the state or fact of being so kept up; means or provision for upkeep." OXFORD ENGLISH DICTIONARY, *available online at*: <http://www.oed.com/view/Entry/112568?redirectedFrom=maintenance#eid> (last accessed March 27, 2013).

maintenance. Imposing such an artificial limitation on the scope of NRS 338.011(1), when the plain meaning of the statute provides otherwise, would improperly interfere with the legislature's intent to provide local governments with freedom when contracting for services that are directly related to their normal operations or normal maintenance of their property. *See id.* (rejecting contention that supposed remedial purpose of the Act required broad coverage). Indeed, constricting the scope of the exemption "contradicts the statutory scheme and attempts to broaden the coverage of the Act. Where, as here, there is a direct conflict or inconsistency between a statute and a regulation, the statute must necessarily prevail." *Id.*

In addition, the division between repair and maintenance proposed by the Union is unreasonable. According to the Union's previous arguments, to determine whether NRS 338.011 applies, each particular task would have to be reviewed to determine if it were repair or maintenance. The Union has suggested this determination would depend on the length of time required to perform the work and the cost of different parts used in the maintenance task. Given its text, the Legislature obviously did not draft NRS 338.011 with such a requirement in mind. As noted above, NRS 338.011(1) facilitates local government flexibility in contracting for services that are necessary to its operations so that it can be assured that work will be performed in a timely, efficient and predictable fashion. The suggestion that local governments would be required to pay multiple wage rates to the same employees, and that the wage rate depends on the nature of particular maintenance tasks, the nature of which is inherently unpredictable, would frustrate local government discretion and nullify the exemption.

Even if the Union's contention that CBE-552 constitutes "public work" because it includes elements of repair is taken on its own terms, it does not defeat application of the exception. It is well established that a general definition, such as "public work," cannot trump a

specific statutory exemption. *See, e.g., Stockmeier v. Nev. Dep't of Corr. Psychological Review Panel*, 183 P.3d 133, 136 (Nev. 2008) (“when a specific statute is in conflict with a general one, the specific statute will take precedence.”). The exemption contained in NRS 338.011(1) applies regardless of whether CBE-552 can be deemed public work within the meaning of NRS 338.010 and regardless of how much “repair” work is performed. CBE-552 is exempt so long as it satisfies one of the two alternative conditions of NRS 338.011, and that exemption supersedes the general obligation to pay prevailing wage rates, public work or not. *See Carson-Tahoe Hosp.*, 122 Nev. at 221 (finding work exempt and noting that “[a]pplying some of these provisions while ignoring others would result in the type of lawmaking that must be left to the Legislature.”). The Union’s interpretation would completely nullify the exception and is therefore unacceptable. *See Buckwalter*, 234 P.3d at 922.

2. The Union’s Interpretation Is Not Supported By Legislative History.

The Union has also argued that NRS 338.011(1)’s legislative history suggests that the NRS 338.011’s exemption should have limited application. There are three reasons this argument has no merit.

a. The Labor Commissioner cannot consider legislative history because the meaning of NRS 338.011(1) is plain.

First, regardless of what the legislative history suggests, it would contravene Nevada Supreme Court authority to take it into account. As set forth above, the meaning of NRS 338.011 is readily ascertainable, and therefore the Commissioner cannot consider legislative history. Courts and administrative agencies are not at liberty to amend or repeal a statute under a guise of construction. That is the function of the legislature. “We are governed by laws, not by the intentions of legislators.” *Conroy v. Aniskoff*, 507 U.S. 511, 519 (1993). “The law as it

passed is the will of the majority of both houses, and the only mode in which that will is spoken is in the act itself.” *Id.*

As the U.S. Supreme Court recently explained, when interpreting a statute, a court, or in this case, the Labor Commissioner,

is not tasked with interpreting [the statute] in a way that it believes is consistent with the policy outcome intended by [the legislature]. Nor should this Court's approach to statutory construction be influenced by the supposition that “it is highly unlikely that [the legislature] intended” a given result. [The legislature's] intent is found in the words it has chosen to use. *See West Virginia Univ. Hospitals, Inc. v. Casey*, 499 U.S. 83, 98, 111 S. Ct. 1138, 113 L. Ed. 2d 68 (1991) (“The best evidence of [the legislature's] purpose is the statutory text”). This Court's interpretive function requires it to identify and give effect to the best reading of the words in the provision at issue. Even if the proper interpretation of a statute upholds a “very bad policy,” it “is not within our province to second-guess” the “wisdom of [the legislature's] action” by picking and choosing our preferred interpretation from among a range of potentially plausible, but likely inaccurate, interpretations of a statute. *Eldred v. Ashcroft*, 537 U.S. 186, 222, 123 S. Ct. 769, 154 L. Ed. 2d 683 (2003); *see also TVA v. Hill*, 437 U.S. 153, 194, 98 S. Ct. 2279, 57 L. Ed. 2d 117 (1978) (“Our individual appraisal of the wisdom or unwisdom of a particular course consciously selected by the Congress is to be put aside in the process of interpreting a statute”). “Our task is to apply the text, not to improve upon it.” *Pavelic & LeFlore v. Marvel Entertainment Group, Div. of Cadence Industries Corp.*, 493 U.S. 120, 126, 110 S. Ct. 456, 107 L. Ed. 2d 438 (1989).

Harbison v. Bell, 129 S. Ct. 1481, 1493-1494 (U.S. 2009).

To adopt the Union's reasoning, the Labor Commissioner would have to rewrite NRS 338.011(1) and impose a totally artificial, administratively created limitation that has no support in the statute and which is completely inconsistent with the words the Legislature chose to express its intent. Such action would be contrary to law, especially in a case like this, where the Legislature could not have chosen clearer language.

b. Even if the Labor Commissioner considered legislative history, it supports Bombardier's position.

Strikingly, the legislative history actually supports Bombardier's position.²² NRS 338.011(1) was inserted into Chapter 338 in 1981 due to concern that the prevailing wage laws were being interpreted too expansively and in a way that might frustrate the local government's right to opt-out of competitive bidding requirements when it best served the public interest. The statements that legislators made in committee show that the purpose of Section 338.011 was to facilitate local government purchasing decisions and ensure that local government discretion was not hampered by the financial burdens and competitive bidding requirements imposed by the prevailing wage laws. *See* Exhibit 17. The fact that the legislators discussed monetary limitations on the exemption, and chose not to adopt them, is incontrovertible proof that the exemption was intended to be construed broadly.

In fact, the Legislature confirmed that it meant exactly what it said in 2003. That year, the Legislature enacted a comprehensive amendment of Chapter 338, including NRS 338.011.²³

²² Relevant legislative history from the 1981 legislative session is attached as Exhibit 17.

²³ 2003 Assembly Bill 425 contained several amendments to NRS 338.011. The relevant language is set forth below:

Sec. 3. NRS 338.011 is hereby amended to read as follows:

338.011 The requirements of this chapter do not apply to a contract
~~awarded in compliance with chapter 332 or 333 of NRS which is:~~

~~1. Directly:~~

1. Awarded in compliance with chapter 332 or 333 of NRS which is directly related to the normal operation of the public body or the normal maintenance of its property.

2. Awarded to meet an emergency which results from a natural or man-made disaster and which threatens the health, safety or welfare of the public. If the public body or its authorized representative determines that an emergency exists, a contract or contracts necessary to contend with the emergency may be let without complying with the requirements of this chapter. If such emergency action was taken by the authorized representative, the authorized representative shall report the contract or contracts to the public body at the next regularly scheduled meeting of the public body.

However, it made no change whatsoever to relevant language of subsection (1). It did not qualify or limit the exemption in any way. In doing so, it reaffirmed that the purpose of NRS 338.011 was to give local governments' broad discretion in managing their affairs and contracts which relate directly to their operations. As our Supreme Court has noted, when the legislature considers language in a subsequent amendment, it is presumed to be aware of how the language is being interpreted and applied, and the failure to modify the relevant language is confirmation that the language accurately expresses the legislature's intentions. *See, e.g., Castillo v. State*, 110 Nev. 535, 547 (1994).

c. The Union's attempt to create new legislative history by offering the testimony of a former legislator is meritless.

In pre-hearing briefing, the Union, apparently dissatisfied with the actual legislative record, attempted to bolster its argument by introducing testimony from John E. Jeffrey, a consultant who is frequently hired by labor unions to assist with legislative matters.²⁴ Mr. Jeffrey offered a declaration, which he signed in 2011, which purported to recount and describe the intentions that he and his fellow legislators had thirty years earlier in 1981.

As an evidentiary matter, Mr. Jeffrey's testimony is inadmissible. Mr. Jeffrey cannot testify as to the collective intent of a bicameral legislature, and it would be ridiculous to assume that he could do so. Indeed, it goes without saying that he has no personal knowledge of other legislator's individual intentions, and to the extent that he could describe what those unidentified

Available online at: <http://www.leg.state.nv.us/Statutes/72nd/Stats200319.html#Stats200319> page2414.

²⁴ Among others, Mr. Jeffrey represents the Southern Nevada Building & Construction Trades, of which IUEC Local 18 is a member. *See, e.g.,* Minutes of the State Committee on Governmental Affairs, March 12, 2007, available online at <http://www.leg.state.nv.us/74th/Minutes/Senate/GA/Final/476.pdf> and <http://snbctc.org/affiliates.asp> (SNBACT membership list). He is not a disinterested witness.

legislators said thirty years ago, it would be rank hearsay. His testimony and declaration would therefore be barred from the record by NRS 51.025 (personal knowledge) and 51.035 (hearsay).

As a legal matter, Mr. Jeffrey's statements have no probative value. Court after court has held that the testimony of individual legislators cannot be considered when interpreting a statute, and their reasoning is particularly applicable in a case like this, where a former legislator would purport to give testimony about a handful of discrete events which took place more than thirty years ago.

For example, the Supreme Court of California has routinely prohibited the use of declarations like the one the Union offered during prehearing briefing.²⁵ See *Ross v. RagingWire Telecommunications, Inc.*, 70 Cal. Rptr. 3d 382, 391 (Cal. 2008) ("In construing a statute, we do not consider the motives or understandings of individual legislators who cast their votes in favor of it. Nor do we carve an exception to this principle simply because the legislator whose motives are proffered actually authored the bill in controversy; no guarantee can issue that those who supported his proposal shared his view of its compass."); *California Teachers Assn. v. San Diego Community College Dist.*, 170 Cal. Rptr. 817, 821-822 (1981) (discussing this issue in detail and noting that declarations prepared by a single legislator specifically for use in a particular case are especially unreliable).

Other courts around the country have reached the same conclusion, particularly when, as here, there is an official legislative history. See, e.g., *Wilco Mfg. Co. v. Standard Products Co.*,

²⁵ Earlier, the Union was able to cite one case, *In re Marriage of Bouquet*, 16 Cal. 3d 583, 588 (Cal. 1976), for the proposition that a former legislator's testimony can be probative of legislative intent. *Bouquet* did not support consideration of the declaration offered. It was inapposite. *Bouquet* allowed consideration of a letter sent shortly after a bill was passed and which was formally included in the legislative history, while the declaration in this case was written for the express purpose of gaining an advantage in a contested case, and it was written almost thirty years after the relevant events took place. *Id.* More importantly, *Bouquet* is not good law. It has been overruled by the California Supreme Court. See, e.g., *Ross*, 70 Cal. Rptr. 3d at 391.

409 F.2d 56, 58 (5th Cir. 1969) ("We reject appellant's suggestion that we consider the subsequent declarations of legislators made with reference to this case as authority for the legislature's intent. Once enacted, a statute's construction is a judicial function."). Mr. Jeffrey's individual views, when taken at face value, represent a single individual's personal recollection. It does not, as the Union appears to assert, suggest the NRS 338.011 is limited to work of *de minimis* value. The best evidence of the legislature's intent is the language they chose to express in the statute, not a declaration created almost thirty years later. See *Lavin v. Brunner*, Case No. 1:10-cv-1986, 2010 U.S. Dist. LEXIS 114210, at *6 (N.D. Ohio Oct. 12, 2010) ("as more than thirty years have passed between the legislation enacting Ohio's campaign limits and Senator Meshele's declaration, the court assigns little or no probative value to that declaration.") (*reversed on other grounds Lavin v. Brunner*, Case No. 1:10-cv-1986, 2010 U.S. Dist. LEXIS 114225, at *9 (N.D. Ohio Oct. 27, 2010); *Cadiz v. Agricultural Labor Relations Bd.*, 92 Cal.App.3d 365, 379 (Cal. 1979) ("The declaration of individual legislator's motives and views 'is the weakest and most unreliable kind of indicator as to what the Legislature as a whole intended.'").

If anything, the Union's decision to resort to testimony embellishing events which took place thirty years ago simply underscores the strength of Bombardier's legal position. The meaning of NRS 338.011(1) is obvious and CBE-552 is exempt.

VII. CONCLUSION

For the reasons set forth above, there is no reason to conduct a hearing in this matter. The Union's Complaint is meritless and based on a fundamentally defective interpretation of Chapter 338. Bombardier is entitled to summary judgment.

Dated this 28th day of March, 2013.

JACKSON LEWIS LLP



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CERTIFICATE OF SERVICE

I hereby certify that a copy of Bombardier Transportation (Holdings) USA, Inc.'s Motion for Summary Judgment was served on the 28th day of March, 2013 via U.S. mail to the following:

Commissioner Thoran Towler
Office of the Labor Commissioner
555 East Washington Avenue
Suite 4100
Las Vegas, Nevada 89101

Andrew J. Kahn, Esq.
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1630 South Commerce Street
Suite A-1
Las Vegas, Nevada 89102


An Employee of Jackson Lewis LLP

**DEPOSITION
OF
RANDALL
WALKER**

00140

ER0140

1	BEFORE THE NEVADA STATE LABOR COMMISSIONER
2	LAS VEGAS, NEVADA
3	IN THE MATTER OF:)
4	INTERNATIONAL UNION OF)
5	ELEVATOR CONSTRUCTORS,)
6	Claimant,)
7	vs.)
8	BOMBARDIER TRANSPORTATION)
9	(HOLDINGS) USA, INC.,)
10	Respondent.)
11	CLARK COUNTY DEPARTMENT OF)
12	AVIATION AUTOMATED TRANSIT)
13	SYSTEMS EQUIPMENT - DOA)
14	CONTRACT CBE-552)
15	
16	DEPOSITION OF RANDALL WALKER
17	Taken on Wednesday, September 26, 2012
18	At 9:04 a.m.
19	At 3800 Howard Hughes Parkway, Suite 600
20	Las Vegas, Nevada
21	
22	
23	
24	REPORTED BY: KEVIN WM. DANIEL, FAPR, RDR, CRR, CCR 711
25	Job No. 4902

1 Q. And that has continued?

2 A. Continuous since that point, yes.

3 Q. Okay, thank you. Without spending a long time
4 doing it, could you describe your job duties?

5 A. I'm responsible for the management, operation
6 of the Clark County aviation system, which includes
7 McCarran International Airport and four other general
8 aviation airports.

9 Q. And what are the other four?

10 A. Henderson, North Las Vegas, Jean and Overton.

11 Q. And are your duties with respect to those the
12 same you have with the McCarran?

13 A. Correct.

14 Q. I'd like for you to assume that it's Friday,
15 3:30, you're sitting in your office, your phone rings
16 and somebody says, "We have a complete failure of the
17 tram going to Gate D." What happens from that?

18 A. Well, depends on the assessment of how long
19 it's going to take to get the tram back up again. If
20 they anticipate that the, that it might be a short
21 period of time, then we'll wait. If the anticipation
22 is it's going to be longer than a short period of time,
23 then we would call our staffs and execute our emergency
24 transportation plan for a tram failure for the D Gates.

25 Q. When you said if it's going to be of short

1 duration we'll wait, "wait" means what?

2 A. Means just wait and see if the tram comes back
3 up, which means all the passengers who have processed
4 through the checkpoint will queue up in the train
5 station on the Terminal 1 side waiting to go to D.

6 Q. Okay. If it's a short wait?

7 A. If it's a short, if it's a short wait. We've
8 had very few, but we've had a few situations where
9 we've had both trains down for a very short period of
10 time.

11 Q. Do you try to keep the passengers out of the
12 gate area?

13 A. There's no way to get them to the gate area
14 with the trains not working.

15 Q. But there will be some already in there?

16 A. Yes, and they will be stranded there, not able
17 to come back to, to come to the main terminal for
18 baggage claim or transportation or any of the other
19 things they're looking for.

20 Q. Let's assume it's going to be four or five
21 hours.

22 A. Okay.

23 Q. Then does your procedure change?

24 A. Well, yes. If we believe it's going to be a
25 longer period of time, we have an emergency plan to

1 implement a busing plan that takes people from the
2 Terminal 1 to the D Gates. We have a contract in
3 place. We have our own buses. We have a limited
4 number of our own buses. We have a contract, on-call
5 contract with a private company.

6 It does take a period of time for them to
7 start delivering buses and drivers on-site, and then
8 there is a path of travel where we take the customers
9 to, not the -- a little circuitous, so it will be
10 staff-intensive to basically develop human arrows to
11 get people to the right location, get on the bus and
12 then drop them off at the designated spot at the
13 D Gates, which then they go through the same process to
14 get into the rotunda of the D Gates. And then the
15 reverse for the people at the D Gates wanting to get
16 back.

17 Q. Is the D Gate area shut down?

18 A. No. It would not need to shut down as a
19 result of that. It's just, obviously our goal is to
20 get passengers on a plane and off a plane and to where
21 they want to go, so if there's no transportation from
22 the D Gates to Terminal 1 or vice versa, our purpose
23 for being there kind of breaks down because people
24 don't want to just hang out in the D Gates. They want
25 to get where they want to go.

1 Q. Okay. Now, you said that you have some of
2 your own buses?

3 A. Yes. We have some of our own buses that we
4 use for interterminal shuttle. Not a lot, but we have
5 a few buses --

6 Q. Three or four?

7 A. I don't remember, used to be eight. I don't
8 think it's that many anymore. And there's always some
9 spare buses that are not in service for maintenance and
10 things like that. So we would use those as rapidly,
11 assuming we had staff that we could get very quickly.
12 We always have some certified bus drivers on shift,
13 running our interterminal shuttle, so we would split
14 that as much as possible, degrade the interterminal
15 shuttle to get something on this route until we could
16 get additional resources applied.

17 Q. Do you know who maintains those, the buses you
18 own?

19 A. Our buses, well, we have two sets of buses.
20 We have our rental car shuttle buses, which are
21 different interterminal shuttle, and there are buses,
22 they're owned by us, but they're operated and
23 maintained by a third party, First Transit, and we
24 could draw on those as well. We have 42 buses there.
25 A lot of them usually are in service so we could also

1 draw on those.

2 Our interterminal shuttle buses, they're
3 smaller. I believe, we used to have some bigger ones,
4 I don't believe we have them anymore. The smaller ones
5 are maintained by County Automotive.

6 Q. On the First Transit buses, you have a
7 contract with them with First Transit. Do they operate
8 them, drivers, mechanics, everything?

9 A. Correct. We own the buses, we own the bus
10 maintenance facility in the yard, and we've contracted
11 with them to maintain the buses and to operate the
12 buses and the shuttle system.

13 Q. Do you know, is that contract a prevailing
14 wage contract?

15 A. No. It's not. It's not been procured on a
16 prevailing wage, although -- no, it's not a prevailing
17 wage contract.

18 Q. And you lost me on your interterminal buses,
19 is that what you call them?

20 A. Yes, interterminal shuttles.

21 Q. Shuttles. Who maintains those?

22 A. If, if there are buses, they're maintained by
23 County Automotive. We also have a private company that
24 we use as well. I believe the company now is, it's
25 changed over time, it's Executive, I believe it's

1 Executive that operates some shuttles for us as well
2 because we have shuttles also currently to the economy
3 lot.

4 Q. Again those are drivers that they're providing
5 you?

6 A. No, in that case their buses and their drivers
7 on -- the shuttle service that is provided by private
8 company for part of the interterminal shuttle and for
9 the economy lot is private buses and drivers which were
10 procured through a competitive contract.

11 Q. The second one though is not First Transit?

12 A. No. First Transit is the consolidated rental
13 car facility bus system, and the second one is the
14 economy lot, and then some, part of the interterminal
15 shuttle.

16 Q. Is the contract with the second company a
17 prevailing wage?

18 A. No.

19 Q. You mentioned that in the longer shut down --
20 is there a limit as to when you decide to send out the
21 buses, or do you just play it by ear?

22 A. It's an on-the-moment decision, yes. Whenever
23 we decide to execute the plan.

24 Q. And the emergency plan has a very detailed
25 description of how that's done; does it not?

1 A. It's written up, it's available. The people
2 that would be most familiar with the plan are those
3 that have to execute it, so it would be our terminal
4 operations staff who would have to man all of the areas
5 to get people on and off the buses at both locations
6 and our land side operation group which would have to,
7 which is responsible for all the transportation
8 contracts and operations at the airport.

9 Q. And for the buses that you have, would they be
10 driven by airport employees?

11 A. Only to, very, very, very, very few. I mean
12 we have a limited number of our own buses and a limited
13 number of drivers who are certified CDL drivers.

14 Q. Does that mean that you wouldn't normally be
15 able to use all of your buses?

16 A. No. I'm sure we would not have on staff
17 sufficient people at any given time to drive all the
18 buses. We have very few buses. We have few certified
19 drivers.

20 Q. Fewer drivers?

21 A. You need to be certified to drive a bus for,
22 and you have to have a CDL driver's certification to be
23 able to drive buses for public convenience, so we have
24 a handful of those people.

25 Q. Okay. So the buses are going to transport

1 passengers back and forth to the D Gates in this case?

2 A. Correct.

3 Q. Now, where would the passengers board the
4 buses to go out to the gate?

5 A. You know, I haven't looked at this for a long
6 time, but there's a path of travel that gets them to a
7 level on the ramp side. It's mostly for able-bodied
8 passengers. It involves using stairs, and for
9 handicapped passengers there's an elevator that they
10 would go to and then come to the same location. And
11 then the bus goes to the ramp side and then drops off,
12 if I remember correctly, over on the, it would be the
13 west end of the rotunda, basically the D Gate Train
14 Station, and there's a set of stairs there that take
15 people into the rotunda. Handicapped would have to be
16 taken over a little farther to one of the elevators to
17 go up.

18 Q. So if I understand, people coming out of
19 security now and are supposed to go to the D Gate, they
20 are advised in some way, don't go there, go down this
21 way and go to this particular area; is that correct?

22 A. Not some way. We have a group of employees
23 who would be there and verbally directing people, and
24 we would put up what we call a human arrow, basically,
25 employees every so often to direct people how to get to

1 where they're supposed to go and get to the bus stop.
2 We have somebody at the bus stop to continue to tell
3 them what's going to happen, and they would get on the
4 bus and go to the location, and if they were going from
5 Terminal 1 to the D Gates, go to the D Gates, get off,
6 and then we'd have another gaggle of employees who
7 would then be directing them how to get into the
8 terminal, and then just the reverse for the people
9 going from the D Gates to Terminal 1.

10 Q. Okay. May be speaking the obvious, but in a
11 normal situation if the trams are running, the
12 passengers do not go down to this gathering area?

13 A. No. They go through the checkpoint, the
14 D Gate checkpoint, in this case we're talking about the
15 D Gates, and they go to the D Gate Train Station, get
16 on the train. Ride over. The train drops them off in
17 the rotunda, the D Gates which is at the zero level and
18 they get off, go up the escalators to get to the gate
19 area.

20 Q. And I think you said on, and when you're using
21 the buses, when they get to the rotunda area, there's
22 another area with stairs leading up to the rotunda?

23 A. Well, you mean if they're --

24 Q. Busing.

25 A. If they're busing?

1 A. The terminal is where you would start your
2 journey from your vehicle, whether it's private
3 vehicle, taxicab or bus, whatever it may be. That's
4 where you're going to start your journey. That's where
5 you have the departure and the arrival curbs. That's
6 what we would consider the terminal.

7 The gates can either be, in airport vernacular
8 can either be actually part of the terminal such as T3
9 where we have 14 gates that are integral to the
10 terminal, or they can be satellite facilities, like the
11 D Gates which is the cleanest example. You can only
12 get to the D Gates via a train either from T3 or from
13 T1, and those gates, you have the gate operation there,
14 but that's the only part of the airport experience you
15 have over there is the gates.

16 In Terminal 1 it gets a little more confusing
17 because you can walk to some of them so people don't
18 really think about the fact that A and B Gates are
19 actually satellite facilities themselves as well.

20 Q. Okay. But there are in fact three terminals,
21 are there not?

22 A. No. Well, there are. The old Terminal 2 is
23 now closed down, it's not operational.

24 Q. All right. So before 3 opened, that was
25 considered a terminal also?

1 them, so very few people now ride the train to get to
2 their gates. The train issue is mostly now for people
3 arriving to get to baggage claim. Most people arriving
4 on C Gates would use the train to get to baggage claim
5 to pick up their bags.

6 Q. But can you walk back if you want?

7 A. You can. And in an emergency situation, we
8 would have people walk.

9 Q. The automatic or automated train system has
10 evolved over time, has it not, in terms of the amount
11 of trains and that kind of thing?

12 A. Sure. Yeah. We started with the C Train in
13 1985 and added the D Train in 1998, and we added the
14 Terminal 3 Train in 2012.

15 Q. Now the first tram was at the C Gate?

16 A. Correct.

17 Q. Were you involved in that?

18 A. I was not employed at the airport at that
19 time.

20 Q. Okay. Do you know who built that system?

21 A. Who built the physical infrastructure?

22 Q. Yes.

23 A. No, I don't recall.

24 Q. Or installed it?

25 A. No, I don't recall.

1 Q. Have there been any additions at all to the
2 C Tram, more trains or lengthening it or anything like
3 that?

4 A. No. The length has not changed. We
5 refurbished the trains two or three years ago, where we
6 refurbished, we got new trains, new cars, and the train
7 controls system were upgraded.

8 Q. And who did that work?

9 A. Bombardier was contracted to do that work.

10 Q. And again, what did it consist of?

11 A. New trains, new cars.

12 Q. Brand new cars?

13 A. Brand new cars, and upgrading, as I understand
14 it upgrading the control systems on the track and the
15 electrical and the software that runs the system.

16 Q. Were the trains operating during that time?

17 A. One train set was. It took one train set out
18 at a time. Cars were manufactured, delivered to the
19 site, then one train set was taken out, those cars were
20 replaced, operated, got their ride certificate from the
21 County, and that train was put into service, and then
22 we did the same thing for the second set.

23 Q. While the one was down, you just tried to use
24 the other one to handle all the traffic?

25 A. With the C Gates that was not too difficult,

1 yes, because there's the walking opportunity.

2 Q. Did the airport provide any employees to work
3 on that refurbishment?

4 A. You mean physically do work?

5 Q. Yes.

6 A. No.

7 Q. And D was installed when?

8 A. D was operational in June of 1998 when we
9 opened D Gates for service.

10 Q. And it was built from the ground up?

11 A. Correct.

12 Q. And who did that?

13 A. The train system itself was installed by
14 Bombardier. The physical -- I don't know what you call
15 it, what's the right term -- the concrete that the
16 train rides on, if I remember correctly, that was done
17 by, the contractor was -- it sold out. The two
18 brothers that took over from their father that built
19 all those bridges, what's their name? Do you remember
20 their name? I can't remember the firm's name. I used
21 to. I'm having brain freeze. They're not in business
22 anymore.

23 Q. And they did what?

24 A. They built the physical concrete structure
25 that the train rides on.

1 Q. Okay. But Bombardier installed the guide
2 rails?

3 A. Guide rails and brought in the trains and the
4 software and all that stuff.

5 Q. Did they build the train station?

6 A. No. The train station -- well, that was
7 originally, and then it was expanded, the original
8 train station for D was built I believe by Sletten
9 Construction.

10 Q. And now we have E Gates?

11 A. Now we have E Gates.

12 Q. Now, who constructed E Gate and the tram, the
13 tram?

14 A. Oh, just the tram part?

15 Q. Not the E Gates.

16 A. It was actually, the tunnel was constructed in
17 two separate contracts. Half the tunnel was
18 constructed as part of the D Gate project, and that
19 contractor was -- I can't remember. Metal Valley
20 maybe? I don't remember. The other half was
21 constructed as part of the Terminal 3 ramp side, and
22 that I believe that was done by McCarthy.

23 Q. And how about the tram system?

24 A. The tram system, the train sets, the guide
25 rail, all that was done by Bombardier.

1 Q. I'm going to take a break in a minute, but I
2 want one area I didn't cover.

3 I take it that you calculate revenues for the
4 airport on a yearly basis?

5 A. We estimate what the revenues will be.

6 Q. Okay. But at the end of the year you
7 calculate them so you know what --

8 A. We count the money. We don't calculate, we
9 count.

10 Q. What are the various sources of revenue for
11 the airport?

12 A. About 50 percent of our revenue comes from
13 airline fees and charges, which are landing fees,
14 building rental rates for the space that they occupy
15 within the building itself, and gate use fees. And
16 then the balance of our revenues come from what we call
17 non-airline sources, which are principally what we call
18 concession revenues which includes food, beverage,
19 retail, advertising, slot machines, transportation,
20 such as buses, limos, taxicabs, things like that.

21 Q. Parking lot?

22 A. Parking lot. Yes, parking is part of that
23 revenue source.

24 Q. Now, how do you get revenue from the vendors?

25 A. Charge them rent or a concession fee.

1 Q. Does the fee in any case depend upon the
2 volume of their business?

3 A. Well, the airlines it's based on, not based on
4 volume. For almost everybody else, the preponderance
5 of everybody else is based on a percentage of their
6 gross revenue.

7 Q. And that would include the bars and the --

8 A. Correct.

9 Q. -- all the areas in the D Gate and the
10 satellite areas and all of that?

11 A. Food pays 11 percent, beverages is 17, retail
12 is anywhere between 10 and 22.

13 Q. And do you analyze each of the satellites? In
14 other words, can you tell me, you know, what the
15 revenues were for A and B and C and D?

16 A. We have a report that breaks it down that way,
17 yes.

18 Q. Are you familiar with it?

19 A. I look at it every month, but I couldn't start
20 quoting the figures, no.

21 Q. Is there -- is C always bigger or any way of
22 comparing?

23 A. We usually compare on costs, revenue per
24 in-plane passenger because that tells us how much
25 revenue we're getting on average from each passenger.

1 That's kind of the way that we look at it in the
2 airport business, and we do look at totals, and then we
3 break it down to revenue per in-plane passenger. And
4 so we look at each area to see how concessions are
5 doing, yes, so we, our business division looks at that
6 every month.

7 MR. MOSS: Okay. Let me show you a document.

8 (Exhibit 1 marked)

9 BY MR. MOSS:

10 Q. I'm handing you a document, it's several pages
11 in length. It appears to be a document -- it was taken
12 off the Internet, was it not?

13 MR. TRIMMER: It was attached to one of the
14 briefs that was filed.

15 MR. MOSS: All right.

16 BY MR. MOSS:

17 Q. Do you recognize it?

18 A. Yeah. I've seen it before. I don't remember
19 why it was developed.

20 Q. Would you look, going to page, and the numbers
21 are little weird too, just go three pages in without
22 worrying about the numbers at the bottom.

23 A. A/B concourses?

24 Q. Yes. Now, there are, there's two parts to
25 this. Forget the pictures, but I mean there's a list

1 of things here, and then there's a map that shows
2 presumptively where the people whose number is on the
3 list are located.

4 A. It's a directory.

5 Q. Are all of those things that are listed there
6 in some way or another revenue-producing?

7 A. No, not all of them. You have restrooms
8 there.

9 Q. You don't have to pay?

10 A. Security checkpoint. Wi-fi is not -- well,
11 yes, we do generate money off the wi-fi. Almost all of
12 them, but there are the exceptions, such as restrooms
13 and security checkpoints.

14 Q. Slots, you got a contract with somebody,
15 right?

16 A. Slots do generate lots of money.

17 Q. And shoeshine services, checkpoint non,
18 restaurant non. You don't charge people to recharge?

19 A. We don't charge people but it's branded.
20 Verizon pays us for the branding, so we do get revenue
21 off the recharge zones.

22 Q. Get money out of the pay phones?

23 A. Very little, but yes.

24 Q. Then I take it all the things above other
25 services?

1 A. Mailbox, there's no money off the mailbox.

2 Q. I'm sorry. Anything above in shopping or food
3 and beverage would be one of those vendors that you've
4 had, that has, you have agreements with?

5 A. We receive revenue from every one of those.

6 Q. Okay. Now, would you turn to the next page?
7 And this says C Concourse, and I take it this does the
8 same thing, just depicts C Concourse, correct?

9 A. Correct, and you will notice, since you've
10 been talking about it a lot, there's the train track or
11 the APM track. That's how you get from Terminal 1 to
12 the gates on the train.

13 Q. Explain for me now, there have been some
14 recent -- not recent, but changes in the checkpoints
15 for C; is that right?

16 A. Well, a couple of years ago we opened up a new
17 C Gate checkpoint, which is depicted on this as the C
18 security checkpoint. And then you have an arrow that
19 says "Bridge to A and B Concourses." That was the most
20 recent addition to the checkpoints in this terminal
21 area.

22 Q. So bridge to A and B, you can walk through
23 that area, get to A and B and vice versa?

24 A. Yes.

25 Q. But there's no checkpoint there? You're

1 already past the checkpoint?

2 A. You've come past the checkpoint, and then you
3 would turn east to go to the C Gates or west to go to
4 the bridge to get to B Gates and then the A Gates.

5 Q. And maybe I'm not seeing, okay, C and D
6 security checkpoint is right here?

7 A. Correct. That's the, what I call Old C, and
8 then the D.

9 Q. But it's still there though?

10 A. It is still there.

11 Q. D is new?

12 A. No. C is new. C security checkpoint is the
13 newest checkpoint space that we have in Terminal 1.

14 Q. Now you lost me.

15 A. Okay. If you look at the top of this picture,
16 you've got D Concourse Tram, C/D security checkpoint
17 and C Concourse Tram. There have been no physical
18 addition to that space for a number of years. We added
19 out over the bag claim a number of years ago to expand
20 that area. The newest checkpoint space that we had,
21 you asked for changes in the checkpoint, is the C
22 security checkpoint in Terminal 1, that's our newest
23 checkpoint space. That was added a couple of years
24 ago.

25 Q. That's not on here though?

1 A. Yeah, it is, right here it says "C security
2 checkpoint."

3 MR. KAHN: On the left.

4 THE WITNESS: On the left, that's the newest
5 space. And you see the bridge to A and B Concourses,
6 that's a bridge that is post-security that you can go
7 to the A and B Gates from that checkpoint or the C
8 Gates post-security.

9 BY MR. MOSS:

10 Q. Okay. Next page is D Concourse. Same thing,
11 right?

12 A. Yes.

13 Q. This one doesn't depict --

14 A. Does not depict the train because it's kind of
15 like bird's eye view shot, and in this location the
16 tram is underground.

17 Q. I got it. Okay. Now, just looking without
18 any real study, it looks like D has more facilities
19 than C.

20 A. Oh, it's much bigger. There's 44 gates in D
21 and there are 19 gates in C.

22 Q. And it appears there are more food and
23 beverage?

24 A. Obviously. More gates, more facilities.

25 Q. Does that mean that it's -- well, I don't know

1 if that's fair or not. Is it a higher revenue producer
2 because of that?

3 A. Produces more revenue per passenger, yes.

4 Q. And then the next page Esplanade Level 2, is
5 this 3 or is this --

6 A. This is Terminal 2 -- Terminal 1. This is --
7 if -- this is, if you can see the gray area, it says
8 Ticketing Level 1, so that's Terminal 1 ticketing. You
9 can see where it says "A/B checkpoint" up above on the
10 very part of the building that's kind of the center on
11 the left-hand side.

12 Q. Oh, I see. This is another bird's eye thing
13 looking down?

14 A. Right.

15 Q. I got it.

16 A. So this is pre-security, and you see bag claim
17 over here, to the right, and so baggage claim was
18 lowered, you have that open area where you can look
19 down to baggage claim, and we have what we call the
20 Esplanade which is the area that connects these two
21 which is where the bulk of the food, beverage and
22 retail is in this area, and --

23 Q. This is upstairs?

24 A. This is upstairs, so you can walk from A/B
25 checkpoint out to the garage, you see the bridge to

IN THE SUPREME COURT OF THE STATE OF NEVADA

**BOMBARDIER TRANSPORTATION
(HOLDINGS) USA INC.,**

Appellant,

v.

**NEVADA LABOR COMMISSIONER;
THE INTERNATIONAL UNION OF
ELEVATOR CONSTRUCTORS; and
CLARK COUNTY,**

Respondents.

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**APPELLANT BOMBARDIER TRANSPORTATION
(HOLDINGS) USA INC.'S APPENDIX**

VOLUME 1

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Amended Scheduling Order	January 14, 2013	0091–0093
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Bombardier Transportation (Holdings) USA, Exhibit 4		1989–1990
Bombardier Transportation (Holdings) USA, Exhibit 5		1991–1992
Bombardier Transportation (Holdings) USA, Exhibit 7		1993–2055
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Bombardier Transportation (Holdings) USA, Inc.’s Motion for Summary Judgment	April 8, 2013	0094–0418
Bombardier Transportation (Holdings) USA, Inc. Post-Hearing Brief	December 13, 2013	1406–1467
Bombardier Transportation (Holdings) USA, Inc. Pre-Hearing Brief, List of Witnesses and List of Exhibits	June 3, 2013	0841–1294
Bombardier Transportation (Holdings) USA, Inc. Reply in Support of Motion for Summary Judgment	April 24, 2013	0675–0765
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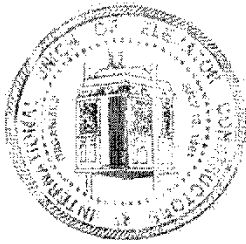
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Hearing Transcript (Volume 3)	June 27, 2013	1661–1774
Hearing Transcript (Volume 4)	June 28, 2013	1775–1810
Hearing Transcript (Volume 5)	September 9, 2013	1811–1884
Hearing Transcript (Volume 6)	September 10, 2013	1885–1928
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International Union of Elevator Constructors Pre-Trial Brief	April 19, 2013	0766–0794
International Union of Elevator Constructors Prevailing Wage Complaint	October 9, 2009	0001–0002
Notice of Entry of Order	August 10, 2011	0045–0054
Notice of Pre-Hearing Conference	May 17, 2012	0037–0039
Order Denying Motion for Summary Judgment	June 3, 2013	0795–0799
Order on International Union of Elevator Constructors’ Petition for Reconsideration	May 18, 2012	0055–0067

Revised Determination of the Clark County Department of Aviation	March 30, 2010	0006–0008
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Stipulated Protective Order, signed by the Labor Commissioner	November 7, 2012	0081–0090
Summary of Legislation History of 1981		3953–4005



International Union of Elevator Constructors

October 9, 2009

Dana A. Brigham
General President

James J. Higgins, Jr.
Assistant General President

Kevin P. Stringer
General Secretary-Treasurer

Vice Presidents

Thaddeus R. Tomei

Donald G. Mitchell

Gerald A. Cluff, Jr.

Ernie L. Brown

Frank J. Christensen

C. Jack Clower

Michael A. Conkin

James R. Biagini

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Columbia, Maryland
21046
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TELEPHONE
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Affiliated with the AFL-CIO

Michael Tanchek
Labor Commissioner
State of Nevada
555 E. Washington Ave., Suite 4100
Las Vegas, NV 89101

Re: Bombardier Transportation (Holdings) USA Inc.

Mr. Tanchek,

Clark County Department of Aviation ("DOA") awarded Contract CBE - 552 ("Contract") (attached) to Bombardier Transportation (Holdings) USA Inc. ("Bombardier") on June 3, 2008 to perform certain work at McCarran International Airport, Las Vegas, Nevada ("Airport"). The work is ongoing as of today.

The DOA did not request a PWP number prior to awarding this project and prevailing wage reports have not been filed by the contractor, Bombardier.

The Prevailing Wage Determination that would be applied to the Contract would have been the 2008 Prevailing Wage Rates for Clark County.

During our investigation, we determined that employees hired to perform repair work under Bombardier's agreement with the Airport have not been compensated when performing repair work as required by NRS 338.

I have made several demands on Bombardier to audit their payroll to determine who should have been compensated according to Nevada's Prevailing Wage Laws and to date Bombardier has failed to comply or rectify the issue on their own.

The DOA along with the Assistant District Attorney, Lee Thompson, as stated during a meeting with Keith Sakelhide, Deputy Labor Commissioner, believes that the Contract was a procurement contract awarded following NRS 332, and is not subject to prevailing wages.

In addition, the DOA has stated NRS 338.011 exempts the Contract because it is for the "normal maintenance of its property." We believe this argument is a non-starter based on the language contained in the Contract. The language describes the "extent of the work" covered by the Contract in Section 2.1.3. Section 2.1.3

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LABOR COMMISSIONER

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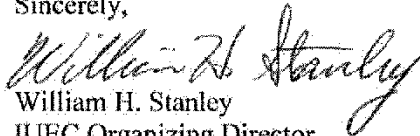
states; "The work under this contract shall include furnishing all labor and material necessary to accomplish the inspection, cleaning, adjustment, maintenance, lubrication, repair, testing, replacement of worn parts, replacement of spare equipment, and repair of spare equipment." The repair component of the Contract requires the contractor, Bombardier, to compensate employees performing the repair at the appropriate prevailing wage rates for elevator constructors.

Additionally, DOA has stated that the Contract is not a "Public Work" contract. Mr. Randy Walker's written statement on this point is as follows: "Prevailing wages only apply to the performance of a "Public Work" Contract. CBE-552 is a maintenance contract for an existing system and is not a "Public Work"." We would argue that because this Contract has an extensive repair element, estimated by the employees performing the work to be as high as 80% of the work, that it is a public work project as defined by NRS 338.010(15).

It is our understanding; individuals performing the repair as defined by the Nevada Revised Statutes and the Contract are required to be compensated accordingly.

The IUEC believes there is sufficient evidence to issue a complaint and is requesting the Labor Commissioner do so.

Sincerely,



William H. Stanley
IUEC Organizing Director
5340 Campbell Road
Las Vegas, Nevada 89149

(702) 645-9250 (o)
(702) 645-8475 (f)
(702) 334-0797 (c)

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LAS VEGAS



McCARRAN INTERNATIONAL AIRPORT

NOV 25 2009

Department of Aviation

RANDALL H. WALKER
DIRECTOR

ROSEMARY A. VASSILIADIS
DEPUTY DIRECTOR

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LAS VEGAS, NEVADA 89111-1005
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E-MAIL: webmaster2@mccarran.com

VIA FACSIMILE AND MAIL

November 24, 2009

Mr. Michael Tanchek
Labor Commissioner
State of Nevada
555 E. Washington Avenue, Suite 4100
Las Vegas, Nevada 89101

Project: ATS Maintenance Contract CBE-552
Subject: Bombardier Transportation Holdings USA, Inc. – IUEC Alleged incorrect payment of prevailing wages for a public work project

Dear Mr. Tanchek:

Pursuant to Nevada Revised Statutes (NRS) 338.070(1) any public body and its officers or agents awarding a contract shall: (a) Investigate possible violations of the provisions of NRS 338.010 to 338.090, inclusive, committed in the course of the execution of the contract, and determine whether a violation has been committed and inform the labor commissioner of any such violations; (b) When making payments to the contractor of money becoming due under the contract, withhold and retain all sums forfeited pursuant to the provisions of NRS 338.010 to 338.090, inclusive or NAC 338.005 to 338.125 inclusive.

An investigation was initiated when the Clark County Department of Aviation received a copy of the Complaint filed by William H. Stanley, Organizing Director for the International Union of Elevator Contractors ("IUEC") from Deputy Labor Commissioner Keith Sakelhide. The Complaint submitted by Mr. Stanley identified the contract listed above and alleged that the employees of Bombardier Transportation Holdings (Bombardier) were performing work for a public work project and not being paid the prevailing wage related to a public work project.

The Clark County Department of Aviation has several significant maintenance contracts for the care of Airport Facilities that rest under the Department's Facilities area of responsibility. Per past practices and our District Attorney's Office interpretation with regard to such maintenance contracts, NRS 338.011 exempts contracts directly related to the normal operation of the county or the normal maintenance of its property. This law



Clark County Board of Commissioners

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Tom Collins • Yvonne Atkinson Gates • Chip Maxfield • Lynette Boggs McDonald • Bruce Woodbury

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Mr. Michael Tanchen
Labor Commissioner
November 24, 2009
Page 2

was passed in 1981 after the Labor Commissioner was applying Chapter 338.010's inclusion of the word "repair" in the definition of public works to require all of the contracts for services entered into under Chapter 332 which had any "repair" component to have to comply with the provisions of Chapter 338. The Attorney General had issued an opinion that maintenance and repair were synonymous.

NRS 338.011 states the legislature's intention to recognize that Chapter 332 has its own requirements and that maintenance contracts entered into under that chapter are not subject to the public works requirements of Chapter 338 even though they include repair as one of the services being provided. NRS 332.115(1)(c) specifically refers to contracts for "additions to and repairs and maintenance," which further demonstrates legislative intent for maintenance contracts to be able to include repairs as part of the scope of work without making the contract subject to the public works project requirements in NRS Chapter 338.

The purpose of maintenance is to care for, preserve and keep in proper condition. It is obvious that maintenance work requires the inclusion of repairs in order to keep things operating and in proper condition. Windows need replacing. Lights need to be kept working. Sprinklers need repair. County vehicles need new brakes and the ATS System needs to be kept in operating condition. This is the case with this maintenance contract. It should be noted that the rehabilitation work needed for this equipment was handled under a separate contract, referred to as Contract 2305, ATS Modernization Project, that was addressed separately from this investigation. With this being said, the individual points outlined in the IUEC complaint are not valid because prevailing wages do not apply to a maintenance contract of this nature.

Further research on other maintenance contracts within the Clark County Department of Aviation and other local government entities has reinforced that this type of contract for maintenance and repair is not a public work.

It is the opinion of the District Attorney's office, Clark County Department of Aviation Purchasing Administration, and myself that this contract is a maintenance and repair

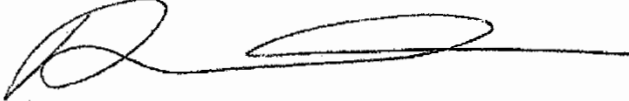
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Mr. Michael Tanchen
Labor Commissioner
November 24, 2009
Page 3

contract governed by NRS Chapter 332 and not a public work project subject to prevailing wage under NRS Chapter 338.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bob Kingston', with a long horizontal flourish extending to the right.

Bob Kingston
Assistant Director, Facilities

cc: Keith Sakelhide, Deputy Labor Commissioner
William H. Stanley, Director of Organizing, International Union of Elevator Constructors
Michael Fetsko, President, Bombardier Transportation Holdings USA, Inc.
E. Lee Thomson, Chief Deputy District Attorney, Clark County District Attorney's Office
Randall Walker, Director, Department of Aviation
Rosemary Vassiliadis, Deputy Director, Department of Aviation
Steven Jay, Airport Engineer, Department of Aviation
Edward Munzing, Purchasing Administrator, Department of Aviation

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ER0005

LAS VEGAS



McCARRAN INTERNATIONAL AIRPORT

Department of Aviation

RANDALL H. WALKER
DIRECTOR

ROSEMARY A. VASSILIADIS
DEPUTY DIRECTOR

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LAS VEGAS, NEVADA 89111-1005
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E-MAIL: webmaster2@mccarran.com

March 30, 2010

Michael Tanchek
Nevada Labor Commissioner
Office of the Labor Commissioner
Department of Business and Industry
State of Nevada
555 E. Washington Avenue, Suite 4100
Las Vegas, NV 89101-1069

Project: ATS Maintenance Contract, Contract #CBE-552
Subject: Bombardier Transportation Holdings USA, Inc. – Alleged Non- Payment of
Prevailing Wages. Revised Determination

Pursuant to Nevada Revised Statute (NRS) 338.070(1) any public body and its officers or agents awarding a contract shall: (a) Investigate possible violations of the provisions of NRS 338.010 to 338.090, inclusive, committed in the course of the execution of the contract, and determine whether a violation has been committed and inform the labor commissioner of any such violations; (b) When making payments to the contractor of money becoming due under the contract, withhold and retain all sums forfeited pursuant to the provisions of NRS 338.010 to 338.090, inclusive.

In as much as this contract was awarded under NRS 332 and not NRS 338, the Clark County Department of Aviation (CCDOA), as a courtesy to the Labor Commissioner conducted an investigation after the CCDOA received a copy of the Complaint filed by William H. Stanley, Organizing Director for the International Union of Elevator Constructors (IUEC) from Deputy Labor Commissioner Keith Sakelhide. The Complaint submitted by Mr. Stanley identified the project listed above and the employees of Bombardier Transportation Holdings (Bombardier) performing work for an alleged prevailing wage project and not being paid the prevailing wage. Additionally, all references cited by Mr. Stanley were legal precedents set outside the state of Nevada and have no bearing on the Nevada Revised Statutes governing Public Works.

A subsequent investigation ensued beginning with a review of the contract issued on July 1, 2008 for Maintenance of Automated Transit System Equipment.



Clark County Board of Commissioners

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Susan Brager • Tom Collins • Chris Giunchigliani • Lawrence Weekly • Bruce Woodbury

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ER0006

March 30, 2010

Additionally, interviews were conducted with Bombardier on site managers as well as most of the Bombardier employees performing the work at McCarran International Airport.

This contract identifies various stages of maintenance and subsequent repairs on the equipment and vehicle control equipment. It is noted that all equipment from the vehicles themselves to parts, spares and tools belong to McCarran International Airport.

This contract is designed to provide minimum down time of the equipment thereby maximizing the safety and availability of the ATS to the airport customers.

The contract identifies Extent of the Work: "The work under this contract shall include furnishing all labor and materials necessary to accomplish the inspection, cleaning, adjustment, preventative maintenance, lubrication, repair, testing, replacement of worn parts and repair of spare equipment for the ATS." This was verified by both Bombardier managers and employees.

Varieties of tasks are involved with this maintenance and repair contract. The preventative maintenance schedules are followed as time is allotted and many of the repair items are noted during these scheduled inspections and maintenance tasks. These repairs are attended to based on severity and time constraints. Other items are identified during normal operations of the trams when a situation occurs that needs immediate attention to ensure safe and continuous operations of these trams.

Throughout the investigation process none of the work appeared to be modernization, upgrades, remodels, etc... All of the work that was identified through interviews and observations was maintenance of the existing equipment and therefore not subject to the provisions of NRS 338.

Pursuant to Nevada Administrative Code (NAC) 338.110, a person who has been served a copy of a determination pursuant to subsection 1 and who is aggrieved by the determination may file a written objection with the labor commissioner within 15 days after the date of service of this determination. Such an objection must be accompanied by a short statement of the grounds for the objection and evidence substantiating the objection. Your objection letter and attachments must be received by the Labor Commissioner within 15 days of receipt of this letter. Mail your objection package directly to:

Labor Commissioner
Office of the Labor Commissioner
555 E. Washington Ave, Ste 4100
Las Vegas, NV 89101

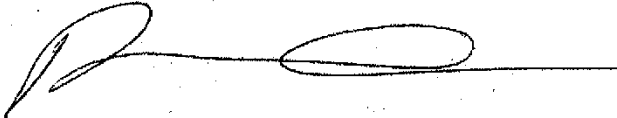
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March 30, 2010

If an objection to this determination is not received by the due date, the Labor Commissioner will issue an Order Affirming the Determination.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'B' followed by a horizontal line and a loop.

Bob Kingston
Assistant Director, Facilities

Attachments:

cc:

Keith Sakelhide, Deputy Labor Commissioner
William H. Stanley, Director of Organizing, International Union of Elevator Constructors
Susan Hobbes, Contracts Manager, Clark County Department of Aviation
E. Lee Thomson, Chief Deputy District Attorney, Clark County District Attorney's Office
Randall Walker, Director, Department of Aviation
Rosemary Vassiliadis, Deputy Director, Department of Aviation
Steven Jay, Airport Engineer, Department of Aviation
Edward Munzing, Purchasing Administrator, Department of Aviation
Mike Moran, Bechtel Infrastructure Corporation

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ER0008

1 **BEFORE THE NEVADA STATE LABOR COMMISSIONER**

2 **CARSON CITY, NEVADA**

FILED

JUN 7 2011

3 IN THE MATTER OF:)

4 INTERNATIONAL UNION OF ELEVATOR)
CONSTRUCTORS, Claimant)

5 vs.)

6 BOMBARDIER TRANSPORTATION (HOLDINGS) USA,)
INC., Respondent)

7 Clark County Department of Aviation)
Automated Transit Systems Equipment)
8 DOA Contract CBE-552)

NEVADA
LABOR COMMISSIONER - CC

INTERIM ORDER

9 Pursuant to the Labor Commissioner's Briefing Order of November 16, 2010 in the
10 above matter, the Parties submitted briefs addressing the issues set out in the Order. The
11 International Union of Elevator Constructors (the Union) filed its Brief on January 3, 2011.
12 Bombardier Transportation (Holdings) USA, Inc. (Bombardier) filed its Brief on January 10,
13 2011. The Union and Bombardier filed Reply Briefs on January 21 and January 26, 2011,
14 respectively. On February 7, 2011, the Clark County Department of Aviation (the County) filed
15 its Response Brief. Finally, the Union filed a Reply to the County's Response Brief on February
16 17, 2011.

17 **DISCUSSION**

18 Nevada Revised Statutes 338.015 establishes the authority of the Labor Commissioner
19 to enforce the provisions of NRS 338.010 through 338.130, inclusive. Thus, this matter is
20 properly before the Labor Commissioner.

21 Ultimately, the question that needs to be decided in this case is what work, if any, that
22 was performed under the Clark County Department of Aviation's (the Airport) Contract for
23 Maintenance of Automated Transit System Equipment CBE-552 required the payment of
24 prevailing wages. CBE-552 contains provisions that call for a variety of work to be performed.
25 Generally, this work falls into the categories of maintenance for the vehicles, guideways,

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1 stations, power distribution, and automatic train controls. Within each of those categories are
2 tasks associated with routine maintenance, scheduled maintenance, and non-scheduled
3 maintenance. In addition, there are provisions for "upgrades and enhancements" and "heavy
4 maintenance and overhaul."

5 In pertinent part, NRS 338.020(1) states that:

6 Every contract to which a public body of this State is a party, requiring the
7 employment of skilled mechanics, skilled workers, semiskilled mechanics,
8 semiskilled workers or unskilled labor in the performance of public work, must
contain in express terms the hourly and daily rate of wages to be paid each of the
classes of mechanics and workers.

9 Clearly this is a contract to which a public body of this State, the County, is a party.
10 Furthermore, the terms of the contract specifically require that Bombardier provide the
11 workmen needed to perform the work. If the contract is for a "public work," then those workers
12 must be paid prevailing wages unless there is some exemption from that requirement. This
13 brings us to the first issue in dispute, whether the work required by the contract is a public
14 work.

15 **Should the complaint filed under DOA Contract 552 be dismissed**
16 **because the contract does not concern "public work" for the purposes**
17 **of NRS 338.010?**

18 NRS 338.010(15)(a) defines a public work:

19 15. "Public work" means any project for the new construction, repair or
20 reconstruction of:

(a) A project financed in whole or in part from public money for:

21 (1) Public buildings;

22 (2) Jails and prisons;

(3) Public roads;

23 (4) Public highways;

(5) Public streets and alleys;

24 (6) Public utilities;

(7) Publicly owned water mains and sewers;

25 (8) Public parks and playgrounds;

(9) Public convention facilities which are financed at least in part with public
money; and

(10) All other publicly owned works and property.

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1 The contract makes it quite clear that the County is the owner of the Automated Transit
2 System (ATS). However, even though subsection 10 appears to provide an expansive definition
3 of publicly owned works and property, subsections 1 through 9 provide specific examples of the
4 types of projects contemplated in the statute. A common characteristic shared by the specific
5 examples is that they are all fixed works. While the guideways, stations, power distribution
6 systems and automatic train control systems are commonly considered fixed works, expanding
7 that definition to include mobile equipment like the ATS cars or fire trucks, police cars, snow
8 plows and busses goes beyond the scope of the statute.

9 Nevada prevailing wage rates include provisions for work on mobile equipment such as
10 heavy machinery mechanics and equipment greasers under the Operating Engineers
11 classification. However, those classifications pertain to workers who maintain the construction
12 contractors' equipment in order avoid equipment problems that could interfere with
13 construction. The ATS cars are distinguishable because they are not used in the construction
14 process.

15 Work involving the guideways, stations, and power distribution and automatic train
16 control systems, as "fixed works," is fairly construed as being the type of public work
17 contemplated in the statutes. Work performed on the ATS cars is not.

18 **Should the complaint filed under DOA Contract 552 be dismissed**
19 **because work performed under that contract is exempt pursuant to**
20 **the provisions of NRS 338.011, as work directly related to the normal**
operations or normal maintenance of the airport?

21 The County argues that prevailing wage issues arising from contracts issued pursuant to
22 NRS Chapter 332 are beyond the jurisdiction of the Labor Commissioner. The County is free to
23 use whatever legal process it has at its disposal to enter into agreements with contractors to
24 perform work or provide services, including NRS Chapter 332. However, placing the statute
25 concerning the exemption squarely within those statutes enforced by the Labor Commissioner

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1 requires the Labor Commissioner to determine when and under what circumstances the
2 exemption will apply, even if that contract is entered into pursuant to NRS Chapter 332. This is
3 one of the reasons that NRS 338.013(1) states:

4 A public body that undertakes a public work shall request from the Labor
5 Commissioner, and include in any advertisement **or other type of**
6 **solicitation**, an identifying number with a designation of the work. That
7 number must be included in any bid **or other document** submitted in response
8 to the advertisement **or other type of solicitation**. (emphasis added)

9 It is irrelevant what kind of procurement process the public body uses to enter into a
10 contract to undertake a public work.

11 The general rule under NRS 338.020 is that prevailing wages must be paid on every
12 contract entered into by a public body that requires workers to under take new construction,
13 repair or reconstruction on a public work. There are no exceptions embedded within that
14 statutory provision. However, the Legislature determined that not all projects that might
15 otherwise qualify as public works should be subject to prevailing wages and established some
16 exceptions. The exemption that pertains to NRS Chapter 332 is found at NRS 338.011, which
17 states:

18 The requirements of this chapter do not apply to a contract:

- 19 1. Awarded in compliance with chapter 332 or 333 of NRS **which is directly**
20 **related to the normal operation of the public body or the normal**
21 **maintenance of its property**. (emphasis added)

22 One of the points raised by the parties concerns whether there is a distinction between
23 "normal operation" and "normal maintenance." There is, but it is not of any particular
24 significance in this matter even though they are addressed separately in the statute. The normal
25 operation of the McCarran Airport is a complex operation. It involves a vast array of tasks, the
majority of which have no relationship to the requirement to pay prevailing wages. There are
many aspects of the day-to-day business of the airport that do not involve maintenance.

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1 To say that any contract that is somehow related to the normal operation of a public
2 facility fully exempts the owner from requiring the payment of prevailing wages creates an
3 exemption that consumes the general rule. By way of example, safe and serviceable runways are
4 necessary for the normal operation of an airport. Concluding that that building a new runway
5 or undertaking major structural repairs on existing runways would be exempt from prevailing
6 wages as being related to the "normal operation" of the airport would undermine and frustrate
7 the intent of the prevailing wage statutes. It would not be a reasonable conclusion. Such is the
8 case with the ATS.

9 Normal maintenance can reasonably be expected to be included as part of the facility's
10 normal operations, but are more narrowly focused and is best viewed as a subset of the normal
11 operations of the airport. A maintenance contract is more likely to trigger a prevailing wage
12 when some of the work involved in maintaining the facility can be characterized as new
13 construction, repair or reconstruction of the airport's infrastructure.

14 Some parties appear to believe that applying prevailing wage requirements to what is
15 ostensibly denominated as a "maintenance" contract is an all or nothing proposition; either it is
16 all subject to prevailing wages or none of it is. Such is not the case for at least two reasons.

17 First of all, there is a wide range of activities that are undertaken in the course of
18 maintenance. The contract, for example, mentions such things as the "periodic washing of the
19 guideway," the lubrication, adjustment, and cleaning of control equipment, and "station door
20 adjustments." None of those items would be subject to prevailing wages because they are not
21 new construction, reconstruction or repair. On the other hand, something like "running surface
22 repair-excluding local patch work" could require extensive and expensive repairs.

23 A second reason is that, maintenance contracts, by their nature, have a degree of
24 uncertainty when it comes to repairs. For example, during the term of the maintenance
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1 contract it could turn out that nothing needed to be repaired or reconstructed. In that case,
2 there wouldn't be an issue because no work that was subject to prevailing wage was undertaken.

3 In interpreting the statute, the Labor Commissioner's Office takes the position that there
4 is a third way. Some work that is performed under a maintenance contract is subject to
5 prevailing wage and some is not. It depends on the circumstances. It would not be unusual for
6 a problem requiring repairs to be discovered in the course of normal maintenance. In those
7 cases, it is the long-established practice of the Labor Commissioner to analyze the repair that is
8 being made. In many cases where a maintenance agreement or contract is involved, the repairs
9 tend to be minor in that the total cost of making the repair is less than \$100,000. (See NRS
10 338.080)

11 It is clear from the statutes that the Legislature intended to give public bodies some
12 flexibility and relief from the paying prevailing wages on routine maintenance. At the same
13 time, the Legislature clearly intended that repairs costing more than \$100,000 would be subject
14 to the payment of prevailing wages.

15 **Should the complaint filed under DOA Contract 552 be dismissed**
16 **because Bombardier Transportation (Holdings) USA, Inc. is a**
17 **railroad company within the meaning of NRS 338.080, and therefore**
18 **exempt from NRS Chapter 338's prevailing wage requirements?**

19 Bombardier and the County also argue that the work is exempt under the railroad
20 company exemption found at NRS 338.080(1). This exemption permits railroad companies to
21 perform work on publicly owned property using their own crews and building to their own
22 standards without triggering the prevailing wage requirements. This is related to activities such
23 as upgrading rail crossings.

24 By way of disclosure, the Labor Commissioner has ridden the ATS serving Terminals C
25 and D on numerous occasions. Furthermore, he spent five years as the Assistant Staff Counsel
at the Nevada Public Service Commission with the primary responsibility for regulating

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1 railroads pursuant to NRS Chapter 705. In addition, he spent a year and half on the legal staff
2 of Washington Corporations, the predecessor to the URS (aka Washington Group International)
3 referred to in the Union's Reply Brief and owner of Montana Rail Link. The Labor
4 Commissioner is well aware of what a railroad is and the ATS is not one. The exemption for
5 railroad companies is not applicable in this case.

6 While the ATS does share some of the characteristics of a "monorail," the definition of a
7 monorail in NRS 705.650(2) specifically states that the definition "[D]oes not include a system
8 to transport passengers between two end points with no intermediate stops." Thus, the
9 monorail exemption in NRS 705.690(1) would not apply to the ATS, which have no
10 intermediate stops.

11 **Can the Labor Commissioner consider the Union's contention that the employees**
12 **are entitled to be compensated at the elevator constructor rate, or is he barred**
13 **from doing so in the context of this contested case because it would require a**
14 **substantial modification of the application of that wage classification?**

15 Prevailing wages are paid based on the type of work that is being performed on the
16 project. If the work is properly construed as falling into the elevator constructor classification,
17 then that is the rate that should be paid. On the other hand, if the work being performed
18 properly falls into another classification, then that is the rate to be paid.

19 This can be illustrated hypothetically. During the course of a routine inspection, it is
20 discovered that a concrete pillar supporting the guideway is defective and needs be replaced.
21 The construction of the pillar may require the use of carpenters to build the forms, iron workers
22 to tie the rebar, cement masons to handle to concrete work, and laborers to provide assistance
23 where necessary. In that case, the prevailing wage rates to be paid would be based on those
24 classifications since those are the classifications that routinely used perform those tasks.
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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this date, I deposited into the U.S. Mail, postage prepaid thereon, a copy of the foregoing ORDER to the persons listed below at their last known addresses:

Eldon Lee Thomson, Esquire
Clark County District Attorney's Office
500 S. Grand central Pkwy., Ste. 5075
Las Vegas, NV 89106

Bob Kingston, Assistant Director, Facilities
Department of Aviation
P.O. Box 11005
Las Vegas, NV 89111-1005

Andrew J. Kahn, Esquire
McCracken, Stemerman & Holsberry
1630 S. Commerce, Suite A-1
Las Vegas, NV 89102

William H. Stanley
IUEC Organizing Director
5340 Campbell Road
Las Vegas, NV 89149

Gary C. Moss, Esquire
Jackson Lewis LLP
3960 Howard Hughes Parkway, Suite 450
Las Vegas, NV 89169

Bombardier Transportation (Holdings) USA, Inc.
1501 Lebanon Church Road
Pittsburgh, PA 15236

DATED this 7 day of June, 2011


An Employee of the Nevada State Labor Commissioner

00017

McCRACKEN, STEMERMAN & HOLTZBERRY

Attorneys at Law

August 18, 2011

Las Vegas

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Sarah Grossman-Schwartz (CA, NV)

VIA FAX AND OVERNIGHT MAIL
(775) 687-6409; (702) 486-2660

Labor Commissioner
675 Fairview Drive Suite 226
Carson City, NV 89701

Keith Sakelhide, Deputy Labor Commissioner
Office of the Labor Commissioner
555 E. Washington Ave. Suite 4100
Las Vegas, NV 89101

RE: *Appeal by IUEC of Clark County DOA Determination
Bombardier ATS Contract CBE 552*

Dear Office of the Commissioner:

Complainant IUEC hereby appeals the above determination dated July 25, 2011 but not received until 8/5/11. The County concluded that repairs under this contract are under \$100,000 and hence exempt under NRS 338.080(3),¹ but the County committed several major errors in its calculations:

(1) The legal test for the exemption is based on the total multi-year contract period, not based on how much repair work was done to date, but the County only looked at the latter. The County should have projected its repair costs for the entire duration of the contract which runs at least until July 2013, more likely 2018. Planned right now for the immediate future is replacement of 80 door motors in the stations which will significantly increase the total cost of repairs under the contract. Moreover, the amount of repair work will grow by one-third along with the overall work once the Terminal 3 ATS comes online soon.

(2) The County only counted hourly wage costs, neglecting all the benefit costs (approximately 47%) and all of Bombardier's overhead costs (such as parts, supervision and profit margin, totaling at least 40% on top of total labor costs). The law requires the County and Labor Commissioner consider total costs in determining the contract value, not merely hourly wage costs.

¹ This exempts "Any contract for a public work whose cost is less than \$100,000. A unit of the project must not be separated from the total project, even if that unit is to be completed at a later time, in order to lower the cost of the project below \$100,000."

RECEIVED

AUG 19 2011

NEVADA
LABOR COMMISSIONER-CC

RECEIVED

AUG 23, 2011

NEVADA
LABOR COMMISSIONER-L

San Francisco

Davis, Cowell & Bove, LLP
595 Market Street, Suite 1400
San Francisco, California 94108
415.997.7200
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11-000000-000000

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ER0018

McCRAFTEN, STEMERMAN & HOSBERRY

Labor Commissioner
Keith Sakelhide, Deputy Labor Commissioner
Page 2
August 18, 2011

(3) The County claims the repair work done by Truesdel and Morse Electric does not count, but this work was arranged for and supervised by Bombardier rather than directly by the County, and is more properly considered part of the same project under the "non-separation" clause in NRS 338.080(3).

(4) The County failed to count the hours spent by Bombardier employees in assisting with the Truesdel and Morse repair work by escorting them, handling lockout/tagout, instructing them on system details, checking their work, and sometimes giving more hands-on assistance.

(5) The County failed to count other repairs done by Bombardier employees because it used an incomplete log. Other more complete logs are available. Exhibit D hereto is a sample of such logs, which include repairs done by Morse with aid from Bombardier employees in 2011 improperly omitted from the County determination.

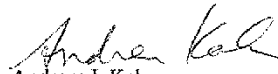
Corrected calculations of total repair costs are shown in Exhibit A, and are at least five times higher than the \$100,000 threshold.

This appeal is supported by the enclosed declarations of William Stanley and Bombardier employees.

Finally, the County determination should include backpay for repairs on the ATS vehicles themselves for the reasons set forth in our prior petition for reconsideration.

We request a hearing on these issues pursuant to the *Baldonado* decision and other law.

Respectfully,


Andrew J. Kahn
Attorney for IUEC

cc: Paul Trimmer/Gary Moss, Counsel for Bombardier
E. Lee Thomson, District Attorney's office
Robert Kingston, Clark County Dept. of Aviation



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ER0019

DECLARATION OF WILLIAM STANLEY IN SUPPORT OF IUEC APPEAL

I, William Stanley, declare:

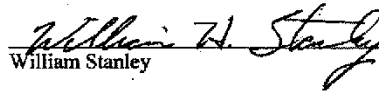
1. I am an IUEC representative who has worked closely with the Bombardier employees as their representative for over one year. Bombardier and employees supplied me data on its labor costs which included the fact that benefits for 2010 cost \$12.53, including health, retirement, vacation, workers comp, FICA, and Medicare benefits, which was 47% of the hourly wage rate. In making a presentation to the County Commissioners several months ago I testified that Bombardier's overhead was 42 percent which I calculated by comparing the labor costs to the total contract amount. None of these actual costs to the County were included by the County DOA in its recent determination.
2. I calculated the true cost of repairs in Exhibit A which accurately reflects those costs under normal cost estimating principles. I am familiar with such principles from my work in management for Otis Elevator and as an IUEC negotiator for more than 10 years. To determine the hourly cost of Contract CBE-552 I took the total number of employees, multiplied by 2080 hours (because the workers work fulltime), and divided that into the total contract price for each year minus supplies and cleaning expenses. I then for sake of simplicity averaged those figures over the five years. A true and correct copy of my calculations of hourly cost is attached hereto as Exhibit B. This significantly underestimates the true hourly cost because under the CBE-552 contract, Bombardier gets 5% more each year from the County and has a broader scope of work in the later years of this contract (such as T3, which CBE 552 reflects as increasing the work and cost by one-third).
3. Bombardier's current and recent past technicians have told me (and said they will testify under oath to and I believe) the other facts contained in Exhibit A: for example, that they have been told by Bombardier that they must replace approximately 80 door motors in the stations in the next several months; that these parts cost the amounts shown and take the labor time shown; that the scope of work and other arrangements for repairs by Truesdel and Morse were arranged by Bombardier not the County, and that Bombardier techs have spent an average of 8 hours per visit with the repairmen sent by Truesdel because they must escort them on premises, handle the lockout/tagout process for these repairs, provide information about the system to those workers, and check the repairs at the end. They assisted me in preparing the list of repair tasks in Exhibit A by analyzing three separate logs compiled by Bombardier techs. The three logs were the "Pass-down Log", the "Parts Repair Log", and the "Wayside Log" cited by the County. By analyzing the three separate logs, a more complete assessment of the actual repairs was compiled. Attached hereto as Exhibit C are true and correct copies of relevant portions of the Pass-down Log showing work done by Bombardier techs assisting the repair work of Morse.

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ER0020

Attached hereto as Exhibit D is a true and correct copy of a portion of the website of a third party parts supplier that sells parts used by Bombardier which I used to determine the cost of certain parts.

I declare under penalty of perjury of the laws of Nevada that the foregoing factual statements are true and correct. Executed this 17th day of August, 2011.


William Stanley

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ER0021

**DECLARATION OF BOMBARDIER EMPLOYEES RE REPAIRS OF STATIONS AND
GUIDEWAYS AT MCCARRAN AIRPORT**

The undersigned hereby declares:

1. I have been a technician employed by Bombardier at McCarran Airport and have reviewed the County's determination as to the amount and costs of repair work we did, and it substantially undercounts the amount of time that we techs spent on repair of the guideways and stations. The correct amounts of time and costs are shown in the spreadsheet prepared by Bill Stanley. For example, there were many more autolocks replaced than is shown by the County's report, as the County report used the wayside logbook but Bombardier employees were not tasked with recording every last repair in such book, but instead were required to and did log in bad autolocks when they came back into the shop, so the shop logbook is more comprehensive and more accurate, and is used in Mr. Stanley's spreadsheet. In addition, the total time taken for such repair was around 2.5 hours average per autolock not the one hour shown by the County, because one could not do this repair without taking the vehicle off line and performing the necessary safety procedures and then undoing these procedures after the autolock had been replaced, and then the autolock had to be refurbished in the shop by, for example, replacing various parts in it.
2. We employees received various benefits and Bombardier had costs for equipment, supplies, supervision and other overhead, but those are missing from the County's determination. Several of us ordered parts as part of our work, and we reported to Mr Stanley the true costs for parts that their sellers charged.

3. We Bombardier techs assisted with the repairs done by Truesdell and Morse Electric by helping arrange those, escorting their workers, explaining parts of the system to them, doing lockout/tagout in connection with their work, checking their work and restarting the system. In addition, we spent additional hours on the Morse project directly assisting it with its work due to the urgency of such work (restoring power to the guideway which was shut down due to this problem).
4. There has also been other work not counted in Mr. Stanley's spreadsheet that one could consider "repair" of the system outside the trains themselves such as numerous shutdowns to reboot and update the system software which are not shown there.

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


SIGNATURE Mark W. McGhee Aug. 17 2011
PRINT NAME AND DATE


SIGNATURE Matthew D. McCullough 8-17-11
PRINT NAME AND DATE


SIGNATURE Nicholas E. Banas 8-17-11
PRINT NAME AND DATE


SIGNATURE Kenneth D. DePiero 8-17-11
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SIGNATURE Veronique K. McClellan 1/08/17/2011
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SIGNATURE Craig Rasmussen 8-17-2011
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Repair	1 Year Period			Unit	Hours			C & D System			Parts Costs			
	Date(s)	Months	Number of Times Replaced and/or Repaired		Hrs Ea	Total Hrs To Date	Months	Number of Times Projected to be Replaced and/or Required	Hours	Months	Number of Times Projected to be Replaced and/or Required	Hours	Each	Extended
System Wide Repairs														
Door Processor Control Module	6/10 - 7/11	13	15	1	15	37	42.00	42.00	12	4.62	4.62	\$ 1,765.86	\$ 83,538.76	
Door Guides	7/08 - 7/11	36	36	0.5	18	60	30.00	30.00	12	4.00	4.00	\$ 12.00	\$ 768.00	
AutoLock (Remove/Replace/Rebuild) (see note 2)	1/10 - 7/11	19	188	2.5	470	42	415.58	1038.58	12	39.58	98.95	\$ 50.00	\$ 22,527.89	
Roller Springs (Unthreaded spacers)	8/8 - 7/11	35	6	3	18	59	10.11	30.34	12	0.69	2.00	\$ 189.00	\$ 2,041.20	
Door "Gear Motor/Braider" (Remove/Replace/Rebuild)	8/10 - 7/11	12	28	3	84	35	81.67	245.00	12	9.33	28.00	\$ 1,239.20	\$ 112,697.20	
Expansion Bolt Replacement	08/09 - 7/11	36	8	6	48	47	10.44	62.67	12	0.89	5.33	\$ 45.00	\$ 510.00	
Guideway Repairs (see note 1)	8/09 - 7/11	36	3	1.5	4.5	47	3.92	5.88	12	0.33	0.50	\$ 100.00	\$ 425.00	
Door Hanger Rollers & Rebuild	8/09 - 7/11	36	2	2.5	5	47	2.61	5.55	12	0.22	0.56	\$ 40.50	\$ 688.80	
Work In Progress or Completed														
Door "Gear Motor/Braider" Remain:	In Progress		80	2	160			160.00				\$ 1,239.20	\$ 99,136.00	
Close Lock Manual Switch Bracket Retrofit	Completed		24	0.75	24			24.00				\$ 40.00	\$ 1,280.00	
Replace Close Lock Manual Switch Bracket	Completed		20	0.5	10			14.50				\$ 40.00	\$ 1,160.00	
"C" Door Guides (Change all Door Guides "C" System)	In Progress		64	2	128			128.00				\$ 138.00	\$ 8,832.00	
"D" Door Guides (Change all Door Guides "D" System)	In Progress		156	0.5	78			78.00				\$ 12.00	\$ 1,872.00	
"D" Door Hanger Rollers & Rebuild	In Progress		94	2	188			188.00				\$ 40.50	\$ 23,842.00	
Updated Pinpoint on all Door Sets	Completed		80	0.51	20			20.00				\$ 15.00	\$ 3,000.00	
Replace Door Lock on North Main	Completed		1	0	0			0.00				\$ 15.00	\$ 3,000.00	
Installed New Locks on all C Overhead Door Frames	Completed		160	0.25	40			40.00				\$ 15.00	\$ 3,000.00	
Repaired all Ex-handles	Completed		48	0.5	24			24.00				\$ 15.00	\$ 3,000.00	
Asset Vendor Repairs														
Guideway Repair (Trunked) - Remove V-bulbs from Service		5 Occurrences	5	8	40			40.00				\$ 40.50		
Recoat Lock Out and Tag Out	(see note 3)													
Morse Electric (C Rail Power Cable Replacement)		7 Hours 4 Men		28	28			28.00						
September 9, 2010 C Rail Power Cable Replacement		3 Hours 3 Men		15	15			15.00						
June 1, 2011 Fiber Optic Repair		7 Hours 3 Men		21	21			21.00						
June 18, 2011 C Rail Power Cable Failure		4 Men 2 Hours		8	8			8.00						
July 7, 2011 C Rail Power Cable Repair														
Shop Equipment Repairs														
Shop Fan	5/9 - 7/11	22	8	1	8	46	16.73	20.55	12	1.45	1.45	\$ 5.00	\$ 90.91	
Shop Lights	6/8 - 8/11	38	6	6	6	61	9.63	13.26	12	0.63	0.63	\$ 5.00	\$ 51.32	
Shop Vacuum	6/8 - 8/11	38	5	1	4	61	6.42	8.64	12	0.42	0.42	\$ 5.00	\$ 34.21	
Shop Regulators	6/10 - 7/11	13	10	1.5	15	37	28.46	96.92	12	3.08	4.62	\$ 3.00	\$ 157.95	
Totals												2406.13	149.13	\$ 361,352.68

2. The \$50.00 parts is an estimate based on the overall cost of parts required to rebuild.

3. Morse Electric was called to the site on three different occasions. On September 9, 2010, 1st Shift W. McGhee Rail Power Feed failure. June 1, 2011, 1st Shift V. McClain Fiber Optic Repair

June 18, 2011, 1st Shift M. McCullough Power Rail Orange Collector Shoe damage. July 7, 2011, 3rd Shift A. Urbina Required temporary fix initiated on June 18, 2011

Parts and Morse Electric Costs Unknown

*Does not include 2011 Morse repairs-data unavailable

Total Hours	2,655.26
Total Parts	\$ 361,352.68
Total Labor	\$ 181,091.07
Sub-total	\$ 542,443.76
Contracted Vendor Repairs*	\$ 62,509.00
Grand Total	\$ 604,952.76

Contract Year	Contract Amount	Parts	Vehicle Cleaning	Net Contract Value	Field Employees	Employee Hours Annually	Total Employees Annually	Billable Rate
July 1, 2008 - June 1, 2009	\$ 2,712,145.00	\$ 271,214.50	\$ 70,000.00	\$ 2,370,930.50	17.5	2080	36400	\$ 65.14
July 1, 2009 - June 1, 2010	\$ 2,789,085.00	\$ 278,808.50	\$ 70,000.00	\$ 2,439,276.50	17.5	2080	36400	\$ 67.01
July 1, 2010 - June 1, 2011	\$ 2,524,702.00	\$ 292,470.20	\$ 70,000.00	\$ 2,562,231.80	17.5	2080	36400	\$ 70.39
July 1, 2011 - June 1, 2012	\$ 3,070,937.00	\$ 307,093.70	\$ 70,000.00	\$ 2,693,843.30	17.5	2080	36400	\$ 74.01
July 1, 2012 - July 1, 2013	\$ 3,224,483.00	\$ 322,448.30	\$ 70,000.00	\$ 2,832,034.70	17.5	2080	36400	\$ 77.80
							Average	\$ 70.87

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ER0026

09-09-10 1ST M.W.MCGHEE

TECHS ON DUTY: MDM, NB, MM (M1)

HANDBACK STATUS: NONE

1) DAILIES COMPLETE. C8 #1 END RIDES HIGH. C5 TIRE 5 TO WEAR BAR. (CREW)

2) REC'D 2 SPRAY BOTTLES AND 2 CONTAINERS OF GOO GONE, 12 BOTTLES OF BRAKE KLEEN, AND 500 RED AND GREEN TAGS. (MDM)

3) REC'D 4 PINION SEALS AND 20 HIGH PRESS HEAD FELTS FROM BOMBARDIER. (MDM)

4) TDAS AT 5 SAT. B1 1/2 HAD NO C/L. KEYED OFF AND POSTED SIGN. (CREW)

5) @ AROUND 1:00 GOT A CALL FROM C.C. ABOUT THE WEST TRAIN STOPPED AT SAT AND NOT HAVING ANY RAIL POWER. AWB OPENED WITH A GROUND FAULT. BEGAN TO TROUBLESHOOT FIRST BY OPENING LCB BREAKERS ON C3 AND C4. <<>>

08-10-11 SHIFT STATUS & ACTION ITEMS Page802

DATE DUTIES ENTERED BY

5) CONT. CLOSED BREAKER AND AWB OPENED AGAIN WITH A GROUND FAULT. THEN ISOLATED SHOES ON BOTH C3 AND C4 WITH THE SAME RESULT. WALKED THE TRACK TO LOOK FOR PROBLEMS (CHAFING WIRES TO GND, CLAMSHELLS, ETC) AND FOUND NONE. CALLED ELECTRICIANS TO RACK OUT FWB SO WE COULD OHM OUT RAILS. C PHASE RAIL SHOWED 6 OHMS TO GROUND. DISCONNECTED C PHASE POWER FEEDS TO RAIL AND C PHASE RAIL WAS NO LONGER GROUNDED. THE C PHASE POWER FEEDS SHOWED A SHORT TO GROUND. MEL CALLED LARRY AND ARRANGED MORSE ELECTRIC TO BEGIN REPAIR. (CREW)

00027

ER0027

06-01-11 1ST V K MCCLAIN

TECHS ON DUTY: KD(M1), MM, MDM, NB, TS, VM

HANDBACK STATUS: NONE

1) RECEIVED IN FROM GRAINGER 6 BAGS OF PK20 TUBE HEAT SHRINK. (TA)

2) ATTENDED TOOL BOX MEETING. (CREW)

3) TRASH RUN. (KD,TS)

4) COMPANY TRUCK HAD TPMS INDICATION ON DASH. AIRED ALL TIRES FROM 28PSI TO 35PSI. (KD,TS)

5) ESCORTED STARTUP ENGINEER AND MORSE ELECTRIC AROUND D-SAT FOR FIBER

OPTIC REPAIRS. (NB, MDM, MM)

6) DID 7 DAY PM ON SOUTH TRAIN: NOTHING NEW TO REPORT. (MDM, MM, NB)

7) LOOKED AT C8 MOTORBOX. USING A MULTIMETER, NOTED LH B5 AUX CONTACTS WOULD OCCASIONALLY JUMP WHEN SIMULATING WHACKING THE MOTORBOX. REMAINING AUX CONTACTS WOULD STAY STEADY. CHANGED AUX CONTACT ARM ONLY. (KD,TS,TA)

8) COMPLETED REBUILDING AND TESTING A DOOR OPERATOR. CHANGED OUT MOTOR FOR BINDING ON PINION GEAR. (TS)

9) NOTED AIR LEAKING FROM MAINTENANCE SHOP REGULATOR BOWL. REPLACED BOWL AND O-RING TO CORRECT. (TS)

10) SATISFACTORILY TESTED (2) FSE VALVES. (VM)

11) DAILIES COMPLETED: LOW BATT ALARM ON D-GENERATOR PLC. (CREW) F6<<<<<

12) TESTED 3 PRESSURE WAVE SWITCHES THAT HAD BEEN REMOVED 2 FAILED AND HAD BURNT CONTACT ARMS AND 1 NFF. (KD)

13) @ 1713 NOTIFIED BY CC OF TRAIN DELAYED AT W/S. DR CMDS WOULD NOT WORK. FOUND B2 DRS 7/8 MALF AND OPEN. CLOSED AND TRAIN LEFT ATO @ 1719. ALARM WAS FOR STATION DR C/L SEAL BROKEN. (KD, MM, NB, TS)

14) @1920, CC REPORTED A C-GATE DOOR ALARM AND HELD TRAMS IN STATION. CLEARED AT 1930 (CREW)

15) TOOK PLASTIC TO MIA RECYCLE STATION. (KD, TS)

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ER0028

06-18-17 1ST M.D.MCCULLOUGH

DUTY TECHS: MDM (M1), NB, MM

HANDBACK STATUS: NONE

1) DAILIES COMPLETE. (CREW)

2) AT 906 NORTH STOPPED ON THE GUIDEWAY DUE TO LOSS OF C&L AT THE SAT. RODE THE SOUTH DOWN AND FOUND B1 5/6 W/ NO C&L, SHOOK DOOR AND ISSUED REMOTE RESET. TRAIN MADE IT ALL THE WAY TO THE STATION AND STOPPED SHORT BECAUSE B1 5/6 LOST C&L AGAIN. BERTHED TRAIN MANUALLY. TRAIN BACK IN OPERATION AT 9:15. KEYED OFF DOOR AND POSTED SIGN (AUTOLOCK NEEDS REPLACEMENT). (NB)

3) WHILE RECOVERING NORTH, SOUTH GOT STUCK AT SAT WITH NO C&L. FOUND B1 1/2 AUTOLOCK TO BE THE PROBLEM, KEYED OFF DOOR AND POSTED SIGN. (NB)

4) AT 1257 CC CALLED WITH A LOSS OF TRACK POWER ON THE EAST. <<<<F8>>>>

4) CONT. TRAM STOPPED JUST OUTSIDE OF MAIN. FEB SHOWED OPEN. TRIED TO CLOSE FEB AND IT DID NOT CLOSE. WENT TO TRAM TO EVACUATE THE PAX. WALKED THE WALKWAY TO LOOK FOR OBVIOUS SIGNS OF WHAT COULD CAUSE THE BREAKER TO OPEN. THE POWER FEED CLOSER TO THE SAT HAD TWO PHASES OF THE POWER WIRE RIPPED OUT OF THE CLAMSHELL. CALLED MEL AND HE BROUGHT IN MORSE ELECTRIC FOR A REPAIR. MORSE TEMPORARILY SPLICED THE TWO DAMAGED POWER FEEDS. SEE PICTURES ON LASCOMM DRIVE. PULLED THE EAST IN STATION FOR UNDERCAR INSPECTION. FOUND C1 #2 END A/C PHASE COLLECTOR TREE MANGLED. REPLACED ALL AND RETURNED TO SERVICE AT 1859. (CREW)

5) TOOK NORTH DOWN FOR EARLY MAINT TIME. (CREW)

6) TDAS AT NORTH SAT @ 1417. DOOR COMMANDS AND IT LEFT AT 1421. DELAY CAUSED BY PAX. (CREW)

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ER0029

07-07-11 3RD A N URBINA

DUTY TECHS: RDK(M-1),DE,PT,MJ,CR,RV,AU

HANDBACK STATUS: NONE

1) S/M B2 1/2 PERFORMED FIS, ADJUSTED PARAMETERS, AND CYCLE TESTED W/O ANY FAULTS. REMOVED SIGN AND RETURNED DR SET TO SERVICE. (AU,CR)

2) E/M B1 3/4 REPLACED AUTO LOCK, HAD TO PLACE SHIM BEHIND AUTOLOCK, AND CYCLE TESTED W/O ANY ISSUES. RETURNED DR SET TO SERVICE. REPLACEMENT LOGGED IN MAINTENANCE BOOK. (MJ,RV)

3) LOOKED AT C-1 LEAF 7 FOR CONSTANT SAFETY EDGE. COULDN'T FIND ANYTHING WRONG WITH THE DOOR. RAILS LOOKED CLEAN AND ROLLERS WERE IN GOOD SHAPE. TESTED WITH A METER AND IT PASSED. RAN DOOR WITH NO PROBLEMS. PUT BACK IN
DATE DUTIES ENTERED BY

SERVICE. (RV,MJ)

>>>F6>>>

4) AT 00:29 HAD SOUTH TRAIN DELAYED AT MAIN. FOUND BERTH-1 3/4 MALFUNCTION LED LIT. KEYED OFF TO CLEAR TRAIN AT 00:30. TURNED ON AND WATCHED DOORS SLAM INTO ENDSTOPS AND MALF AGAIN. CHOSE TO TURN OFF. A FEW HOURS LATER WE CYCLED 120VAC AND DOOR SEEMS TO HAVE RETURNED TO NORMAL OPERATION. (RK,AU)

5) COMPLETED PM-301 ON THE NORTH. (PT,RK,RV,MJ)

6) COMPLETED PM-301 ON THE EAST. (CR,RV,RK)

7) COMPLETED PM-507 (BATTERY CONDUCTANCE) ON NORTH TRAIN. REPLACED LEFT HAND BATTERY ON CAR-5 FOR POOR READINGS. (DE,AU)

8) REBOOTED C AND D STRATUS SERVERS. ALSO RESTARED SCIC/RCIC CABINET

00030

ER0030

7-7-11
p. 2

COMPUTERS. (MJ,RV,RK)

F6>

9) DAILIES COMPLETED ON THE SYSTEM. (RK,PT,DE)

1ST M W MCGHEE

TECHS ON DUTY: MDM, NB, MM (M1)

HANDBACK STATUS: NONE

1) AROUND 9:30 M300 OPENED AT THE NORTH MAIN. HELD TRAIN AT MAIN W/ AN OPEN
DOOR @ 9:37, CLOSED BREAKER IN LOCAL, ISSUED CLOSE DOOR, TDAS 9:44.

(MWM,RDK,DE,TA)

2) CC CALLED W/TDAS E SAT AT 1354. RESPONDED TO FIND B1 DOOR 3/4 STUCK
OPEN WITHOUT MALF. KEYED OFF AND POSTED SIGN. CLEARED AT 1400. (MDM)

3) AVAILABILITY FOR THE WEEK ENDING 7/3/11 IS 0.9995. (TA)

AVAILABILITY FOR THE MONTH OF JUNE IS 0.9966

4) REBUILT 2 COLLECTOR TREES. (MDM)

<<<<>>>>

5) TURNED OFF DOOR SET 3/4 B 1 E/M FOR CONSTANT OBSTRUCTION (MM)

6) NO DEP E/M X 2 LESS THAN 3 MINUTES (SEE ITEM 5) (MM)

7) DAILIES COMPLETE. (CREW)

8) CC CALLED WITH A TDAS N SAT @1924. ISSUED MANY DOOR COMMANDS TO NO
AVAIL. RODE SOUTH DOWN TO FIND C7 DOOR 5 WITH A CONSTANT EDGE CONTACT.
KEYED OFF DOOR AND THE TRAM LEFT AT 1931. POSTED A SIGN. (MDM, NB)

3RD M A JOHNSON

DUTY TECHS: MJ,AU,PT,DE

HANDBACK STATUS: NONE

00031

ER0031

7-7-11
p. 5

1) POWERED DOWN BOTH THE EAST & WEST RAILS FOR MORSE ELECTRIC TO COMPLETE
THEIR WORK ON THE GUIDEWAYS @ 11:10. THEY CUT BACK THE SLACK TO THE
AFFECTED CLAM-SHELL AREAS ON THE WEST & RETERMINATED THE CABLES. ON THE
EAST THEY PULLED THE EXCESS CABLE FROM THE JUNCTION BOX (UNDER THE WEST) &

DATE: DUTIES: ENTERED BY:

GOT RID OF THE SPLICE & SLACK. THE EAST IS NOW ONE CONTINUOUS CABLE.
POWERED UP BOTH RAILS & RAN TRAINS TO ENSURE NO PROBLEM. WE PUT THE WEST
BACK IN SERVICE @ 1:16 AM. KEPT EAST OOS FOR MAINTENANCE. (CREW)

2) LOOKED AT E/S B1 3/4 FOR MALF ON OPEN. RESET 120V, PERFORMED FIS,
ADJUSTED PARAMETERS, CYCLED TESTED WITH NO ISSUES. DOOR BACK IN SERVICE.
(MJ,AU) >>>F6>>>

3) LOOKED AT E/M B1 3/4 FOR CONSTANT OBSTRUCTION. RESET 120V, PERFORMED FIS,
ADJUSTED PARAMETERS, CYCLED TESTED WITH NO ISSUES. DOOR BACK IN
SERVICE. (MJ,AU)

4) REPLACED EDGE CONTACT ROLLER ON CAR-7 LEAF-5. TESTED GOOD, RETURNED DOOR
TO SERVICE. (PT)

5) DAILIES COMPLETED ON SYSTEM. (CREW)

6)

07-08-11 1ST M D MCCULLOUGH

DUTY TECHS: NB (M1), MM, MDM

HANDBACK STATUS: NONE

00032

ER0032

A black and white photograph of a Stanley hand saw. The blade is partially visible on the left, showing teeth and markings. The handle is dark wood or plastic. A label on the handle reads "STANLEY" at the top, followed by "Hand Saw" and "No. 1". Below this, there's a small rectangular label with "STANLEY" and "No. 1" repeated.

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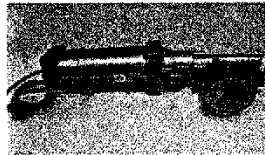
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BEFORE THE NEVADA STATE LABOR COMMISSIONER

FILED

CARSON CITY, NEVADA

MAY 17 2012

IN THE MATTER OF:)
)
INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS,)
Claimant,)
)
vs.)
)
BOMBARDIER TRANSPORTATION (HOLDINGS) USA, INC.,)
Respondent.)
)
Clark County Department of Aviation Automated Transit)
Systems Equipment – DOA Contract CBE-552)
)

NEVADA
LABOR COMMISSIONER – CC

**NOTICE OF PRE-HEARING
CONFERENCE**

In response to a complaint filed by the International Union of Elevator Constructors ("IUEC"), the Clark County Department of Aviation ("DOA") conducted an investigation and issued a Determination dated November 24, 2009 ("Original Determination") concerning certain work performed at an alleged prevailing wage project at the McCarran International Airport, Las Vegas, Nevada under the DOA's Contract for Maintenance of Automated Transit System Equipment (Contract CBE-552) for which the workers were not paid the prevailing wage. On approximately December 17, 2009, the IUEC objected to the Original Determination. Subsequently, the Office of the Labor Commissioner directed the DOA to review the IUEC's objections to the Original Determination and to respond accordingly.

Thereafter, the DOA issued a Determination dated March 30, 2010 ("Second Determination"); the Labor Commissioner issued an Interim Order on June 7, 2011; and the DOA issued a Determination dated July 25, 2011 ("Third Determination") to which the IUEC objected on approximately August 18, 2011.


NOW, THEREFORE, NOTICE IS HEREBY GIVEN, pursuant to Nevada Administrative Code 607.300, that the parties in this matter shall appear before the Labor Commissioner at a pre-hearing conference commencing at 1:30 p.m. on June 26, 2012, at the Office of the Labor Commissioner, 555 E. Washington Avenue, Suite 4100, Las Vegas, NV 89101 concerning a discovery and hearing schedule to

00037

ER0037

1 be set by the Labor Commissioner on the IUEC's objections to the Third Determination and to discuss
2 evidentiary and/or procedural issues relating to this matter.

3 Dated this 17 day of May, 2012.

4
5 
6 THORAN TOWLER
7 Labor Commissioner
8 State of Nevada
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ER0038

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this date, I deposited into the U.S. Mail, postage prepaid thereon, a copy of the foregoing Notice of Pre-Hearing Conference to the persons listed below at their last known addresses:

Eldon Lee Thomson, Esq.
Clark County District Attorney's Office
500 S. Grand Central Pkwy.
Suite 5075
Las Vegas, NV 89106

Bob Kingston, Assistant Director, Facilities
Department of Aviation
P.O. Box 11005
Las Vegas, NV 89111-1005

Andrew J. Kahn, Esq.
McCracken, Stemerman & Holsberry
1630 S. Commerce Street
Suite A-1
Las Vegas, NV 89102


William H. Stanley
IUEC Organizing Director
5340 Campbell Road
Las Vegas, NV 89149

Gary C. Moss, Esq.
Jackson Lewis, LLP
3960 Howard Hughes Parkway
Suite 450
Las Vegas, NV 89169

Moss
JACKSON LEWIS, LLP
3800 HOWARD HUGHES
PKWY., STE. 600
LV, NV 89169-5965

Bombardier Transportation (Holdings) USA, Inc.
1501 Lebanon Church Road
Pittsburgh, PA 15236

Dated this 17 day of May, 2012.


An Employee of the Nevada
State Labor Commissioner

00039

ER0039



July 25, 2011

Michael Tanchek
Nevada Labor Commissioner
Office of the Labor Commissioner
Department of Business and Industry
State of Nevada
675 Fairview Drive, Suite 226
Carson City, NV 89701

Department of Aviation

RANDALL H. WALKER
DIRECTOR

ROSEMARY A. VASSILIADIS
DEPUTY DIRECTOR

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JUL 27 2011

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Project: ATS Maintenance Contract, Contract #CBE-552
Subject: Bombardier Transportation Holdings USA, Inc. – Alleged Non- Payment of
Prevailing Wages Determination Revision Number 2

Pursuant to Nevada Revised Statute (NRS) 338.070(1) any public body and its officers or agents awarding a contract shall: (a) Investigate possible violations of the provisions of NRS 338.010 to 338.090, inclusive, committed in the course of the execution of the contract, and determine whether a violation has been committed and inform the labor commissioner of any such violations; (b) When making payments to the contractor of money becoming due under the contract, withhold and retain all sums forfeited pursuant to the provisions of NRS 338.010 to 338.090, inclusive.

This second revised determination is filed in response to your Interim Order issued on June 7, 2011. This determination is a culmination of an extensive review of previously filed determinations as well as an exhaustive examination of all work done under this contract to the fixed assets defined in the Interim Order.

The previous determinations were focused mainly on the maintenance of the Trams or the "Non-Fixed" aspect of the contract. This was also the main focus of the International Union of Elevator Constructors (IUEC) complaint regarding this contract. The previous investigation and subsequent interviews with Bombardier employees also focused on the vehicle maintenance with very little emphasis on the fixed assets.

This current investigation focused on the "fixed" assets as identified in the Interim Order. Bombardier employees did perform routine maintenance such as cleaning, lubrication, repairs, replacements and minor adjustments on the station or wayside doors (see attached spreadsheet), they also made minor adjustments to the power rail for the tracks



Clark County Board of Commissioners

Rory Reid, Chair • Chip Maxfield, Vice Chair
Susan Brager • Tom Collins • Chris Ciunchigliani • Lawrence Weekly • Bruce Woodbury

00040

ER0040

July 25, 2011

that guided the vehicles. Additionally, Bombardier employees swapped computer boards and performed some programming on the automatic train control systems.

All other maintenance to the power distribution systems, guideways and rails were performed by other contractors using purchase orders independent of contract CBE-552 which were paid directly to those contractors by the Department of Aviation. To date, these purchase orders collectively have not exceeded the \$100,000.00 limitation as stipulated in NRS 338.080. Additionally, as each purchase order was issued independent of the contract and the other purchase orders, they might be considered as separate contracts (see attached spreadsheet). In any event, the work was not performed by Bombardier's employees.

Additionally, under the Department of Aviation Contract Number 2305, the wayside station doors were upgraded by Stanley Access Technologies. Because of the upgrades to both the Trams themselves and the wayside doors there was a one year warranty on both the trams and the wayside doors that was in effect during the duration of the CBE-552 Maintenance Contract. Any work performed under the warranty period is considered post construction and is not cover under NRS 338. This information is included in the attached spreadsheet.

Based on the reassessment of the work performed under DOA Contract CBE-552, as stipulated in the Interim Order from the Office of the Labor Commissioner dated June 7, 2011, it is the determination of the CCDOA that this complaint be dismissed.

Pursuant to Nevada Administrative Code (NAC) 338.110, a person who has been served a copy of a determination pursuant to subsection 1 and who is aggrieved by the determination may file a written objection with the labor commissioner within 15 days after the date of service of this determination. Such an objection must be accompanied by a short statement of the grounds for the objection and evidence substantiating the objection. Your objection letter and attachments must be received by the Labor Commissioner within 15 days of receipt of this letter. Mail your objection package directly to:

Labor Commissioner
Office of the Labor Commissioner
675 Fairview Drive, Suite 226
Carson City, NV 89701

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LABOR COMMISSIONER-CC

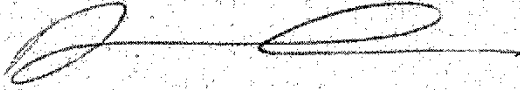
Nonpayment of Prevailing Wage Revision 2
Bombardier Transportation Holding USA, Inc.

00041**ER0041**

July 25, 2011

If an objection to this determination is not received by the due date, the Labor Commissioner will issue an Order Affirming the Determination.

Sincerely,



Bob Kingston
Assistant Director, Facilities

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JUL 27 2011

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LABOR COMMISSIONER-CL

cc:

Keith Sakelhide, Deputy Labor Commissioner
William H. Stanley, Director of Organizing, International Union of Elevator Constructors
E. Lee Thomson, Chief Deputy District Attorney, Clark County District Attorney's Office
Randall Walker, Director, Department of Aviation
Rosemary Vassiliadis, Deputy Director, Department of Aviation
Andrew J. Kahn, Esquire, McCracken, Stemerman & Holsbery
Gary C. Moss, Esquire, Jackson Lewis LLP
Bombardier Transportation (Holdings) USA, Inc.

Attachment: Contract CBE-552 Maintenance and Repair of Fixed Assets

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JUL 27 2011

Bombardier Transportation Holdings USA, Inc.									
Contract CBE-552 Maintenance of Automated Transit System Equipment									
Employee Classifications and Pay Rates									
Name		2008		2009		2010		2011	
Last Name	First Name	Classification	Hourly Rate	Classification	Hourly Rate	Classification	Hourly Rate	Classification	Hourly Rate
Ayers	Charles	A Tech	\$29.82	A Tech	\$29.82	A Tech	\$29.82	N/A	\$0.00
Banas	Nicholas	C Tech	\$18.68	C Tech	\$18.68	C Tech	\$18.68	C Tech	\$18.68
DePiero	Kenneth	Tech Admin	24.48	C Tech	24.48	C Tech	24.48	C Tech	24.48
Estrada	Daniel	A Tech	\$27.71	A Tech	\$27.71	A Tech	\$27.71	A Tech	\$27.71
Karpa	David	C Tech	\$25.42	C Tech	\$25.42	C Tech	\$25.42	N/A	\$0.00
Keeran	Robert	B Tech	\$26.44	B Tech	\$26.44	B Tech	\$26.44	B Tech	\$26.44
McClain	Vernon	C Tech	\$21.25	C Tech	\$21.25	C Tech	\$21.25	C Tech	\$21.25
McCullough	Matthew	C Tech	\$23.80	C Tech	\$23.80	C Tech	\$23.80	C Tech	\$23.80
McGhee	Mark	C Tech	\$23.26	C Tech	\$23.26	C Tech	\$23.26	C Tech	\$23.26
Rasmussen	Craig	C Tech	\$18.46	C Tech	\$18.46	C Tech	\$18.46	C Tech	\$18.46
Schneider	Anthony	B Tech	\$26.44	B Tech	\$26.44	B Tech	\$26.44	B Tech	\$26.44
Thomas	Peter	C Tech	\$19.80	C Tech	\$19.80	C Tech	\$19.80	C Tech	\$19.80
Urbina	Aaron	C Tech	\$18.68	C Tech	\$18.68	C Tech	\$18.68	C Tech	\$18.68
Valentine	Ricky	C Tech	\$21.39	C Tech	\$21.39	C Tech	\$21.39	C Tech	\$21.39
Johnson	Mike	N/A	N/A	N/A	N/A	C Tech	18.00	C Tech	19.19
Krauch	Erik	N/A	N/A	N/A	N/A	C Tech	\$ 18.00	C Tech	19.19
Corvin	Andrew	C Tech	\$ 18.00	C Tech	\$ 18.00	N/A	\$ -	N/A	\$ -
Smith	Garrett	C Tech	\$ 18.00	C Tech	\$ 18.00	N/A	\$ -	N/A	\$ -
Custodio	Ivan	C Tech	\$ 18.00	C Tech	\$ 18.00	N/A	\$ -	N/A	\$ -
Dahlin	Eric	C Tech	\$ 18.00	C Tech	\$ 18.00	N/A	\$ -	N/A	\$ -
Rodriguez	Dennis	C Tech	\$ 18.00	C Tech	\$ 18.00	N/A	\$ -	N/A	\$ -
Rowell	Daina	C Tech	\$ 19.05	N/A	\$ -	N/A	\$ -	N/A	\$ -

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ER0043

Contract CBE-552 Maintenance and Repair of Fixed Assets

	Stopped Revenue Service	New Vehicle Start Revenue Service	New Vehicle Warranty End	Start of CBE-552 Contract Not Including Rehab Time or Warranty Period
East Car 1 Car 2	1-Mar-08 1-Mar-08	9/14/2008 9/14/2008	9/14/2009 9/14/2009	9/14/09 to Present 9/14/09 to Present
West Car 3 Car 4	18-Sep-08 18-Sep-08	12/19/2008 12/19/2008	12/19/2009 12/19/2009	(7/1/08 to 9/18/08) & (12/19/09 to Present) (7/1/08 to 9/18/08) & (12/19/09 to Present)
North Car 5 Car 6 Car 7	3-Feb-09 3-Feb-09 3-Feb-09	2/21/2009 2/21/2009 2/21/2009	2/21/2010 2/21/2010 2/21/2010	(7/1/08 to 2/3/09) & (2/21/10 to Present) (7/1/08 to 2/3/09) & (2/21/10 to Present) (7/1/08 to 2/3/09) & (2/21/10 to Present)
South Car 8 Car 9 Car 10	24-Apr-09 24-Apr-09 24-Apr-09	5/7/2009 5/7/2009 5/7/2009	5/7/2010 5/7/2010 5/7/2010	(7/1/08 to 4/24/09) & (5/7/10 to Present) (7/1/08 to 4/24/09) & (5/7/10 to Present) (7/1/08 to 4/24/09) & (5/7/10 to Present)

During the time frames listed above there were no major repairs done to fixed facilities by Bombardier employees.

All work on fixed facilities (Guideways, station doors or wayside train control equipment) was in the form of inspections, cleaning, replacing missing hardware or tightening of loose hardware.

As of July, 5 2011 the following failed fixed (wayside) station door components were replaced for the time periods above by Bombardier employees: (data from Bombardier Wayside log book)

C-System	Number of Times Replaced	Approximate Labor Cost **	D-System	Number of Times Replaced	Approximate Labor Cost **
* Auto-Locks	45	\$ 1,022.58	* Auto-Locks	91	\$ 2,022.93
# Motor	14	\$ 456.83	# Motor	8	\$ 266.76
+ Controller	6	\$ 133.38	+ Controller	8	\$ 177.84
Totals		\$ 1,622.79			\$ 2,467.53
Contract Total Fixed Asset Costs to Date by Bombardier Employees					\$ 4,090.32

** = Average rate of pay at \$22.23
 * = One Technician per hour
 # = One Technician per hour and one half
 + = One Technician per hour

All repairs on fixed facilities such as guideways has always been done by other contractors independent of Contract CBE-552 under separate purchase orders independent of each other and paid directly by DOA

Date	Contractor	Work Completed	Cost
7/15/2008	Truesdel	Guideway Work	\$ 14,050.00
3/31/2009	Truesdel	C-guideway drain and stair concrete work.	\$ 16,320.00
8/4/2008	Truesdel	South guideway concrete work.	\$ 4,468.00
9/21/2010	Truesdel	D-guideway broken bolts & missing hardware.	\$ 8,280.00
11/10/2010	Truesdel	D-guideway missing fabrica pads, broken washers & concrete repair.	\$ 16,404.00
9/9/2010	Morse Electric	C rail power cable replacement	\$ 2,987.00
Total To Date			\$ 62,509.00

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JUL 27 2011

NEVADA
COMMISSIONER-CC

00044

ER0044

1 **NEO**
2 Gary C. Moss, Bar Number 4340
3 moss@jacksonlewis.com
4 Paul T. Trimmer, Bar Number 9291
5 trimmerp@jacksonlewis.com
6 **JACKSON LEWIS LLP**
7 3960 Howard Hughes Parkway, Suite 450
8 Las Vegas, Nevada 89169
9 Telephone: (702) 921-2460
10 Facsimile: (702) 921-2461
11 Attorneys for *Bombardier Transportation (Holdings)*
12 *USA, Inc.*

13
14
15 **EIGHTH JUDICIAL DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 **BOMBARDIER TRANSPORTATION**
18 **(HOLDINGS) USA, INC.,**

19 **Petitioner,**

20 **v.**

21 **NEVADA LABOR COMMISSIONER, a**
22 **Nevada Administrative Agency; THE**
23 **INTERNATIONAL UNION OF**
24 **ELEVATOR CONSTRUCTORS, an**
25 **unincorporated association; CLARK**
26 **COUNTY, a political subdivision of the**
27 **State of Nevada,**

28 **Respondent.**

29 * * *

30 **INTERNATIONAL UNION OF**
31 **ELEVATOR CONSTRUCTORS,**

32 **Petitioner-Plaintiff,**

33 **v.**

34 **LABOR COMMISSIONER, STATE OF**
35 **NEVADA; BOMBARDIER**
36 **TRANSPORTATION (HOLDINGS) USA,**
37 **INC.; COUNTY OF CLARK,**
38 **DEPARTMENT OF AVIATION,**

39 **Defendants.**

Case No.: A-11-644596-J
Dept. No.: XXXII

NOTICE OF ENTRY OF ORDER

Case No.: A-11-644400-J
Dept. No.: XXXII

PLEASE TAKE NOTICE that the Order granting the Stipulation to Dismiss Without Prejudice was entered in the above-captioned matters on August 9, 2011. A true and correct copy is attached hereto as Exhibit A.

Dated this 10th day of August, 2011.

JACKSON LEWIS LLP

/s/ Paul T. Trimmer

Gary C. Moss

Paul T. Trimmer

3960 Howard Hughes Parkway, Suite 450

Las Vegas, Nevada 89169

*Attorneys for Bombardier Transportation (Holdings)
USA, Inc.*

1 CERTIFICATE OF SERVICE

2 I hereby certify that I am an employee Jackson Lewis LLP and that on this 10th day of
3 August, 2011, I caused to be sent via U.S. Mail, postage prepaid, a true and correct copy of the
4 above and foregoing **NOTICE OF ENTRY OF ORDER** properly addressed to the following:

5 Andrew J. Kahn
6 McCracken, Stemerman & Holsberry
7 1630 South Commerce Street
8 Suite A-1
9 Las Vegas, Nevada 89102
Attorneys for IUEC

Catherine Cortez Masto
Michael D. Wymer
Office of the Attorney General
555 East Washington Avenue
Suite 3900
Las Vegas, Nevada 89101
Attorneys for Nevada Labor Commissioner

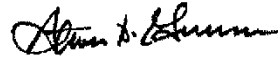
10 David Roger
11 E. Lee Thomson
12 Office of the District Attorney
13 500 S. Grand Central Parkway
14 P. O. Box 552215
15 Las Vegas, Nevada 89155-2215
Attorneys for Clark County, Nevada

16 /s/ Rae J. Christakos
17 Employee of Jackson Lewis LLP
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EXHIBIT A

00048

ER0048


CLERK OF THE COURT

STIP
Gary C. Moss, Bar Number 4340
moss@jacksonlewis.com
Paul T. Trimmer, Bar Number 9291
trimmerp@jacksonlewis.com
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3960 Howard Hughes Parkway, Suite 450
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Attorneys for *Bombardier Transportation (Holdings)*
USA, Inc.

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

**BOMBARDIER TRANSPORTATION
(HOLDINGS) USA, INC.,**

Petitioner,

v.

**NEVADA LABOR COMMISSIONER, a
Nevada Administrative Agency; THE
INTERNATIONAL UNION OF
ELEVATOR CONSTRUCTORS, an
unincorporated association; CLARK
COUNTY, a political subdivision of the
State of Nevada,**

Respondent.

**INTERNATIONAL UNION OF
ELEVATOR CONSTRUCTORS,**

Petitioner-Plaintiff,

v.

**LABOR COMMISSIONER, STATE OF
NEVADA; BOMBARDIER
TRANSPORTATION (HOLDINGS) USA,
INC.; COUNTY OF CLARK,
DEPARTMENT OF AVIATION,**

Defendants.

Case No.: A-11-644596-J
Dept. No.: XXXII

**STIPULATION TO DISMISS WITHOUT
PREJUDICE AND ~~(PROPOSED)~~ ORDER**

Case No.: A-11-644400-J
Dept. No.: XXXII

Bombardier Transportation (Holdings) USA, Inc. ("Bombardier"), the International Union of Elevator Constructors ("IUEC"), Clark County, Nevada ("Clark County") and the Nevada

-1-

JACKSON LEWIS LLP
LAS VEGAS

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ER0049

1 Labor Commissioner ("Labor Commissioner") (collectively the "Parties") are parties in two
2 different actions filed in the Eighth Judicial District Court. Both actions are pending before
3 Department XXXII, and both are captioned as Petitions for Judicial Review or, in the Alternative,
4 Requests for Writs of Mandamus. The action filed by Bombardier is Case No. A-11-644596-J.
5 The action filed by the IUEC is Case No. A-11-644400-J (collectively the "Actions").
6

7 In accordance with the provisions below, the Parties hereby stipulate to dismiss the
8 Actions without prejudice.

9 1. On June 7, 2011, the Labor Commissioner issued an Interim Order for the purpose
10 of resolving a number of disputed issues in a pending administrative action entitled: "In the
11 Matter of: International Union of Elevator Constructors, Claimant, vs. Bombardier Transportation
12 (Holdings) USA, Inc., Respondent, Re: Clark County Department of Aviation Automated Transit
13 System Equipment DOA Contract CBE-552."
14

15 2. The IUEC filed a Petition for Reconsideration of the Interim Order with the Labor
16 Commissioner on June 20, 2011.

17 3. Bombardier filed a Request for Clarification of the Interim Order on June 20,
18 2011.

19 4. Both documents sought clarification of a number of issues including, among other
20 things, whether the Interim Order constituted a final decision for purposes of judicial review
21 under the Nevada Administrative Procedure Act, NRS Chapter 233B, whether the Interim Order
22 prohibited the parties from continuing to maintain certain positions during the administrative
23 action, and whether the Interim Order could otherwise be considered final and subject to appeal
24 under Nevada law.
25

26 5. The Labor Commissioner did not rule and, to this date, has not ruled, on either the
27 IUEC's Petition for Reconsideration or Bombardier's Request for Clarification.
28

1 6. As a result, both Bombardier and the IUEC sought review of the Interim Order.
2 The IUEC filed Case No. A-11-644400-J on July 5, 2011. Bombardier filed Case No. A-11-
3 644596-J, on July 7, 2011.

4 7. Both Actions were filed, in part, out of concern that the Interim Order constituted a
5 final decision pursuant to NRS 233B.130, and therefore, an aggrieved party was obligated to seek
6 judicial review within 30 days of the Interim Order or be barred from doing so in the future.

7 8. The Labor Commissioner, through his counsel, the Nevada Attorney General,
8 represents that the Interim Order is not a final decision for purposes of NRS 233B.130 and further
9 represents that the Labor Commissioner will not argue that the Interim Order is otherwise final
10 under Nevada law.

11 9. For those reasons, the Parties represent and agree that they will not contend in the
12 future the Interim Order is a final decision for purposes of NRS 233B.130 or otherwise final
13 under Nevada law, nor will a Party contend that any other Party is barred from appealing or
14 seeking review of any of the apparent determinations set forth in the Interim Order because that
15 Party or one or more of the other Parties failed to pursue judicial review of the Interim Order at
16 this time.

17 10. The Parties further agree that in the event further administrative proceedings
18 regarding the underlying administrative action are required, including, but not limited to, an
19 administrative hearing, neither Bombardier, Clark County, nor the IUEC will be barred from
20 asserting the arguments or presenting evidence in support of the arguments and contentions
21 addressed in the Interim Order.

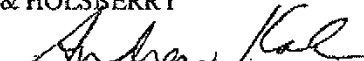
22 11. Accordingly, the Parties stipulate to dismiss the Actions without prejudice,
23 returning this matter to the Labor Commissioner for final resolution.
24
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28

1 Dated this 29th day of July, 2011.

2 JACKSON LEWIS LLP

McCRACKEN, STEMERMAN
& HOLSBERRY

3 



4 Gary C. Moss
5 Paul T. Trimmer
6 3960 Howard Hughes Parkway
7 Suite 450
8 Las Vegas, Nevada 89169
9 Attorneys for Bombardier

Andrew J. Kahn
1630 South Commerce Street
Suite A-1
Las Vegas, Nevada 89102
Attorneys for IUEC

10 NEVADA LABOR COMMISSIONER

CLARK COUNTY, NEVADA

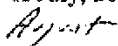
11 Catherine Cortez Masto
12 Michael D. Wymer
13 Office of the Attorney General
14 555 East Washington Avenue
15 Suite 3900
16 Las Vegas, Nevada 89101
17 Attorneys for Nevada Labor Commissioner

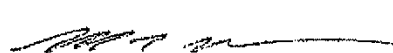
David Roger
E. Lee Thomson
Office of the District Attorney
500 S. Grand Central Parkway
P. O. Box 552215
Las Vegas, Nevada 89155-2215
Attorneys for Clark County, Nevada

18 **ORDER**

19 IT IS HEREBY ORDERED that the Parties' Stipulation to Dismiss Without Prejudice
20 in the above-captioned matters is GRANTED.

21 Dated this 5th day of July, 2011.





District Court Judge, Department XXXII

22 Respectfully submitted by:

FOR BARE
ROB BARE
DISTRICT COURT, DEPARTMENT 32
JUDGE, DISTRICT COURT, DEPARTMENT 32

23 JACKSON LEWIS LLP

24 

25 Gary C. Moss
26 Paul T. Trimmer
27 3960 Howard Hughes Parkway
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Attorneys for
Bombardier Transportation (Holdings) USA, Inc.

1 Dated this ____ day of July, 2011.

2 JACKSON LEWIS LLP

McCRACKEN, STEMERMAN
& HOLSBERRY

3
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10 *Attorneys for Bombardier*

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11 NEVADA LABOR COMMISSIONER

CLARK COUNTY, NEVADA

12 *Michael D. Wymer 8/1/11*
13 Catherine Cortez Masto
14 Michael D. Wymer
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18 Las Vegas, Nevada 89101
19 *Attorneys for Nevada Labor Commissioner*

David Roger
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P. O. Box 552215
Las Vegas, Nevada 89155-2215
Attorneys for Clark County, Nevada

20 **ORDER**

21 **IT IS HEREBY ORDERED** that the Parties' Stipulation to Dismiss Without Prejudice
22 in the above-captioned matters is **GRANTED**.

23 Dated this ____ day of July, 2011.

24 _____
District Court Judge, Department XXXII

25 Respectfully submitted by:

26 JACKSON LEWIS LLP

27 _____
28 Gary C. Moss
Paul T. Trimmer
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Bombardier Transportation (Holdings) USA, Inc.*

JACKSON LEWIS LLP
LAS VEGAS

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1 Dated this ____ day of July, 2011.

2 JACKSON LEWIS LLP

McCRACKEN, STEMERMAN
& HOLSBERY

3
4 _____
5 Gary C. Moss
6 Paul T. Trimmer
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10 *Attorneys for Bombardier*

Andrew J. Kahn
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Attorneys for IUEC

11 NEVADA LABOR COMMISSIONER

CLARK COUNTY, NEVADA--

12 _____
13 Catherine Cortez Masto
14 Michael D. Wymer
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18 Las Vegas, Nevada 89101
19 *Attorneys for Nevada Labor Commissioner*

David Roger
E. Lee Thomson
Office of the District Attorney
500 S. Grand Central Parkway
P. O. Box 552215
Las Vegas, Nevada 89155-2215
Attorneys for Clark County, Nevada

20 **ORDER**

21 **IT IS HEREBY ORDERED** that the Parties' Stipulation to Dismiss Without Prejudice
22 in the above-captioned matters is **GRANTED**.

23 Dated this ____ day of July, 2011.

24 _____
25 District Court Judge, Department XXXII

26 Respectfully submitted by:

27 JACKSON LEWIS LLP

28 _____
Gary C. Moss
Paul T. Trimmer
3960 Howard Hughes Parkway
Suite 450
Las Vegas, Nevada 89169
*Attorneys for
Bombardier Transportation (Holdings) USA, Inc.*

JACKSON LEWIS LLP
LAS VEGAS

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ER0054

1 **BEFORE THE NEVADA STATE LABOR COMMISSIONER**

2 **CARSON CITY, NEVADA**

FILED

3 IN THE MATTER OF:)

MAY 18 2012

4 INTERNATIONAL UNION OF ELEVATOR)
5 CONSTRUCTORS,)
6 Claimant,)

NEVADA
LABOR COMMISSIONER - CC

7 vs.)

**ORDER ON IUEC'S PETITION
FOR RECONSIDERATION ON
ISSUE OF APM CAR REPAIR**

8 BOMBARDIER TRANSPORTATION (HOLDINGS) USA,)
9 INC.,)
10 Respondent.)

11 Clark County Department of Aviation Automated Transit)
12 Systems Equipment – DOA Contract CBE-552)

13 Whereas, on June 7, 2011, the Labor Commissioner issued an Interim Order on the
14 issues set out in the November 16, 2010 Labor Commissioner's Briefing Order. A true and
15 correct copy of the Interim Order is attached hereto as **Exhibit "1"** and incorporated herein by
16 reference;

17 Whereas, on approximately June 20, 2011, the International Union of Elevator
18 Constructors ("IUEC") filed its Petition for Reconsideration on Issue of APM Car Repair relating
19 to the conclusion in the Interim Order that some provisions of the Contract for Maintenance of
20 Automated Transit System Equipment CBE-552 entered into by the Clark County Department
21 of Aviation ("DOA") and Bombardier Transportation (Holdings) USA, Inc. ("Bombardier")
22 "include repair of items that are not "public works" such as the vehicles...;"

23 Whereas, on approximately June 28, 2011, Bombardier filed its Opposition to IUEC's
24 Petition for Reconsideration;

25 Whereas, on approximately June 29, 2011, Clark County filed its Opposition to IUEC's
26 Petition for Reconsideration on Issue of APM Car Repair; and

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1 Whereas, on approximately July 1, 2011, IUEC filed its Preliminary Reply in Support of
2 Petition for Reconsideration.

3 **NOW, THEREFORE**, in consideration of the foregoing, it is hereby ordered that IUEC's
4 Petition for Reconsideration on Issue of APM Car Repair is denied.

5 Dated this 18 day of May, 2012.

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8 _____
9 THORAN TOWLER
10 Labor Commissioner
11 State of Nevada
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EXHIBIT "A"

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ER0058

1 **BEFORE THE NEVADA STATE LABOR COMMISSIONER**

2 **CARSON CITY, NEVADA**

FILED

JUN 7 2011

3 IN THE MATTER OF:)
4 INTERNATIONAL UNION OF ELEVATOR)
CONSTRUCTORS, Claimant)
5 vs.)
6 BOMBARDIER TRANSPORTATION (HOLDINGS) USA,)
INC., Respondent)
7 Clark County Department of Aviation)
Automated Transit Systems Equipment)
8 DOA Contract CBE-552)

NEVADA
LABOR COMMISSIONER - CC

INTERIM ORDER

9 Pursuant to the Labor Commissioner's Briefing Order of November 16, 2010 in the
10 above matter, the Parties submitted briefs addressing the issues set out in the Order. The
11 International Union of Elevator Constructors (the Union) filed its Brief on January 3, 2011.
12 Bombardier Transportation (Holdings) USA, Inc. (Bombardier) filed its Brief on January 10,
13 2011. The Union and Bombardier filed Reply Briefs on January 21 and January 26, 2011,
14 respectively. On February 7, 2011, the Clark County Department of Aviation (the County) filed
15 its Response Brief. Finally, the Union filed a Reply to the County's Response Brief on February
16 17, 2011.

17 **DISCUSSION**

18 Nevada Revised Statutes 338.015 establishes the authority of the Labor Commissioner
19 to enforce the provisions of NRS 338.010 through 338.130, inclusive. Thus, this matter is
20 properly before the Labor Commissioner.

21 Ultimately, the question that needs to be decided in this case is what work, if any, that
22 was performed under the Clark County Department of Aviation's (the Airport) Contract for
23 Maintenance of Automated Transit System Equipment CBE-552 required the payment of
24 prevailing wages. CBE-552 contains provisions that call for a variety of work to be performed.
25 Generally, this work falls into the categories of maintenance for the vehicles, guideways,

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1 stations, power distribution, and automatic train controls. Within each of those categories are
2 tasks associated with routine maintenance, scheduled maintenance, and non-scheduled
3 maintenance. In addition, there are provisions for "upgrades and enhancements" and "heavy
4 maintenance and overhaul."

5 In pertinent part, NRS 338.020(1) states that:

6 Every contract to which a public body of this State is a party, requiring the
7 employment of skilled mechanics, skilled workers, semiskilled mechanics,
8 semiskilled workers or unskilled labor in the performance of public work, must
contain in express terms the hourly and daily rate of wages to be paid each of the
classes of mechanics and workers.

9 Clearly this is a contract to which a public body of this State, the County, is a party.
10 Furthermore, the terms of the contract specifically require that Bombardier provide the
11 workmen needed to perform the work. If the contract is for a "public work," then those workers
12 must be paid prevailing wages unless there is some exemption from that requirement. This
13 brings us to the first issue in dispute, whether the work required by the contract is a public
14 work.

15 **Should the complaint filed under DOA Contract 552 be dismissed**
16 **because the contract does not concern "public work" for the purposes**
of NRS 338.010?

17 NRS 338.010(15)(a) defines a public work:

18 15. "Public work" means any project for the new construction, repair or
reconstruction of:

19 (a) A project financed in whole or in part from public money for:

20 (1) Public buildings;

(2) Jails and prisons;

21 (3) Public roads;

(4) Public highways;

22 (5) Public streets and alleys;

(6) Public utilities;

23 (7) Publicly owned water mains and sewers;

(8) Public parks and playgrounds;

24 (9) Public convention facilities which are financed at least in part with public
money; and

25 (10) All other publicly owned works and property.

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1 The contract makes it quite clear that the County is the owner of the Automated Transit
2 System (ATS). However, even though subsection 10 appears to provide an expansive definition
3 of publicly owned works and property, subsections 1 through 9 provide specific examples of the
4 types of projects contemplated in the statute. A common characteristic shared by the specific
5 examples is that they are all fixed works. While the guideways, stations, power distribution
6 systems and automatic train control systems are commonly considered fixed works, expanding
7 that definition to include mobile equipment like the ATS cars or fire trucks, police cars, snow
8 plows and busses goes beyond the scope of the statute.

9 Nevada prevailing wage rates include provisions for work on mobile equipment such as
10 heavy machinery mechanics and equipment greasers under the Operating Engineers
11 classification. However, those classifications pertain to workers who maintain the construction
12 contractors' equipment in order avoid equipment problems that could interfere with
13 construction. The ATS cars are distinguishable because they are not used in the construction
14 process.

15 Work involving the guideways, stations, and power distribution and automatic train
16 control systems, as "fixed works," is fairly construed as being the type of public work
17 contemplated in the statutes. Work performed on the ATS cars is not.

18 **Should the complaint filed under DOA Contract 552 be dismissed**
19 **because work performed under that contract is exempt pursuant to**
20 **the provisions of NRS 338.011, as work directly related to the normal**
operations or normal maintenance of the airport?

21 The County argues that prevailing wage issues arising from contracts issued pursuant to
22 NRS Chapter 332 are beyond the jurisdiction of the Labor Commissioner. The County is free to
23 use whatever legal process it has at its disposal to enter into agreements with contractors to
24 perform work or provide services, including NRS Chapter 332. However, placing the statute
25 concerning the exemption squarely within those statutes enforced by the Labor Commissioner

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1 requires the Labor Commissioner to determine when and under what circumstances the
2 exemption will apply, even if that contract is entered into pursuant to NRS Chapter 332. This is
3 one of the reasons that NRS 338.013(1) states:

4 A public body that undertakes a public work shall request from the Labor
5 Commissioner, and include in any advertisement **or other type of**
6 **solicitation**, an identifying number with a designation of the work. That
number must be included in any bid **or other document** submitted in response
to the advertisement **or other type of solicitation**. (emphasis added)

7 It is irrelevant what kind of procurement process the public body uses to enter into a
8 contract to undertake a public work.

9 The general rule under NRS 338.020 is that prevailing wages must be paid on every
10 contract entered into by a public body that requires workers to under take new construction,
11 repair or reconstruction on a public work. There are no exceptions embedded within that
12 statutory provision. However, the Legislature determined that not all projects that might
13 otherwise qualify as public works should be subject to prevailing wages and established some
14 exceptions. The exemption that pertains to NRS Chapter 332 is found at NRS 338.011, which
15 states:

16 The requirements of this chapter do not apply to a contract:

17 1. Awarded in compliance with chapter 332 or 333 of NRS **which is directly**
18 **related to the normal operation of the public body or the normal**
maintenance of its property. (emphasis added)

19 One of the points raised by the parties concerns whether there is a distinction between
20 "normal operation" and "normal maintenance." There is, but it is not of any particular
21 significance in this matter even though they are addressed separately in the statute. The normal
22 operation of the McCarran Airport is a complex operation. It involves a vast array of tasks, the
23 majority of which have no relationship to the requirement to pay prevailing wages. There are
24 many aspects of the day-to-day business of the airport that do not involve maintenance.
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1 To say that any contract that is somehow related to the normal operation of a public
2 facility fully exempts the owner from requiring the payment of prevailing wages creates an
3 exemption that consumes the general rule. By way of example, safe and serviceable runways are
4 necessary for the normal operation of an airport. Concluding that that building a new runway
5 or undertaking major structural repairs on existing runways would be exempt from prevailing
6 wages as being related to the "normal operation" of the airport would undermine and frustrate
7 the intent of the prevailing wage statutes. It would not be a reasonable conclusion. Such is the
8 case with the ATS.

9 Normal maintenance can reasonably be expected to be included as part of the facility's
10 normal operations, but are more narrowly focused and is best viewed as a subset of the normal
11 operations of the airport. A maintenance contract is more likely to trigger a prevailing wage
12 when some of the work involved in maintaining the facility can be characterized as new
13 construction, repair or reconstruction of the airport's infrastructure.

14 Some parties appear to believe that applying prevailing wage requirements to what is
15 ostensibly denominated as a "maintenance" contract is an all or nothing proposition; either it is
16 all subject to prevailing wages or none of it is. Such is not the case for at least two reasons.

17 First of all, there is a wide range of activities that are undertaken in the course of
18 maintenance. The contract, for example, mentions such things as the "periodic washing of the
19 guideway," the lubrication, adjustment, and cleaning of control equipment, and "station door
20 adjustments." None of those items would be subject to prevailing wages because they are not
21 new construction, reconstruction or repair. On the other hand, something like "running surface
22 repair-excluding local patch work" could require extensive and expensive repairs.

23 A second reason is that, maintenance contracts, by their nature, have a degree of
24 uncertainty when it comes to repairs. For example, during the term of the maintenance
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1 contract it could turn out that nothing needed to be repaired or reconstructed. In that case,
2 there wouldn't be an issue because no work that was subject to prevailing wage was undertaken.

3 In interpreting the statute, the Labor Commissioner's Office takes the position that there
4 is a third way. Some work that is performed under a maintenance contract is subject to
5 prevailing wage and some is not. It depends on the circumstances. It would not be unusual for
6 a problem requiring repairs to be discovered in the course of normal maintenance. In those
7 cases, it is the long-established practice of the Labor Commissioner to analyze the repair that is
8 being made. In many cases where a maintenance agreement or contract is involved, the repairs
9 tend to be minor in that the total cost of making the repair is less than \$100,000. (See NRS
10 338.080)

11 It is clear from the statutes that the Legislature intended to give public bodies some
12 flexibility and relief from the paying prevailing wages on routine maintenance. At the same
13 time, the Legislature clearly intended that repairs costing more than \$100,000 would be subject
14 to the payment of prevailing wages.

15 **Should the complaint filed under DOA Contract 552 be dismissed**
16 **because Bombardier Transportation (Holdings) USA, Inc. is a**
17 **railroad company within the meaning of NRS 338.080, and therefore**
18 **exempt from NRS Chapter 338's prevailing wage requirements?**

19 Bombardier and the County also argue that the work is exempt under the railroad
20 company exemption found at NRS 338.080(1). This exemption permits railroad companies to
21 perform work on publicly owned property using their own crews and building to their own
22 standards without triggering the prevailing wage requirements. This is related to activities such
23 as upgrading rail crossings.

24 By way of disclosure, the Labor Commissioner has ridden the ATS serving Terminals C
25 and D on numerous occasions. Furthermore, he spent five years as the Assistant Staff Counsel
at the Nevada Public Service Commission with the primary responsibility for regulating

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1 railroads pursuant to NRS Chapter 705. In addition, he spent a year and half on the legal staff
2 of Washington Corporations, the predecessor to the URS (aka Washington Group International)
3 referred to in the Union's Reply Brief and owner of Montana Rail Link. The Labor
4 Commissioner is well aware of what a railroad is and the ATS is not one. The exemption for
5 railroad companies is not applicable in this case.

6 While the ATS does share some of the characteristics of a "monorail," the definition of a
7 monorail in NRS 705.650(2) specifically states that the definition "[D]oes not include a system
8 to transport passengers between two end points with no intermediate stops." Thus, the
9 monorail exemption in NRS 705.690(1) would not apply to the ATS, which have no
10 intermediate stops.

11 **Can the Labor Commissioner consider the Union's contention that the employees**
12 **are entitled to be compensated at the elevator constructor rate, or is he barred**
13 **from doing so in the context of this contested case because it would require a**
14 **substantial modification of the application of that wage classification?**

15 Prevailing wages are paid based on the type of work that is being performed on the
16 project. If the work is properly construed as falling into the elevator constructor classification,
17 then that is the rate that should be paid. On the other hand, if the work being performed
18 properly falls into another classification, then that is the rate to be paid.

19 This can be illustrated hypothetically. During the course of a routine inspection, it is
20 discovered that a concrete pillar supporting the guideway is defective and needs be replaced.
21 The construction of the pillar may require the use of carpenters to build the forms, iron workers
22 to tie the rebar, cement masons to handle to concrete work, and laborers to provide assistance
23 where necessary. In that case, the prevailing wage rates to be paid would be based on those
24 classifications since those are the classifications that routinely used perform those tasks.
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1 CONCLUSION

2 The Airport and Bombardier have entered into a contract for maintaining the ATS at the
3 McCarran Airport in Las Vegas, Nevada. Some provisions in the contract include the repair of
4 "public works" such as the guideway, while other provisions include repair of items that are not
5 "public works" such as the vehicles. In some cases, the cost of the repair to the "public works"
6 may be anticipated to exceed \$100,000. As that work is performed, the rates that need to be
7 paid would be those that are associated with the specific type of work that is being undertaken.

8 THEREFORE, it is Ordered that the Clark County Department of Aviation reopen their
9 investigation and assess the work performed under DOA Contract CBE-552 in a manner
10 consistent with the findings set forth in this Order and upon concluding that investigation, the
11 Clark County Department of Aviation shall issue a revised Determination.

12 DATED THIS 7th DAY OF JUNE 2011.

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15 MICHAEL TANCHEK
16 Labor Commissioner
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2 **CERTIFICATE OF MAILING**

3 I HEREBY CERTIFY that on this date, I deposited into the U.S. Mail, postage prepaid
4 thereon, a copy of the foregoing ORDER to the persons listed below at their last known
5 addresses:

6 Eldon Lee Thomson, Esquire
7 Clark County District Attorney's Office
8 500 S. Grand central Pkwy., Ste. 5075
9 Las Vegas, NV 89106

10 Bob Kingston, Assistant Director, Facilities
11 Department of Aviation
12 P.O. Box 11005
13 Las Vegas, NV 89111-1005

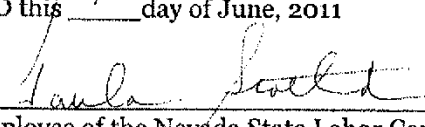
14 Andrew J. Kahn, Esquire
15 McCracken, Stemerma & Holsberry
16 1630 S. Commerce, Suite A-1
17 Las Vegas, NV 89102

18 William H. Stanley
19 IUEC Organizing Director
20 5340 Campbell Road
21 Las Vegas, NV 89149

22 Gary C. Moss, Esquire
23 Jackson Lewis LLP
24 3960 Howard Hughes Parkway, Suite 450
25 Las Vegas, NV 89169

Bombardier Transportation (Holdings) USA, Inc.
1501 Lebanon Church Road
Pittsburgh, PA 15236

DATED this 7 day of June, 2011

21 
22 _____
23 An Employee of the Nevada State Labor Commissioner
24
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Andrew Kahn
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Fax: (702) 386-9848
Email: ajk@dcbsl.com
Attorneys for Claimant IUEC

**BEFORE THE LABOR COMMISSIONER
OF THE STATE OF NEVADA**

INTERNATIONAL UNION OF
ELEVATOR CONSTRUCTORS (IUEC)

Claimant/Objector

and

BOMBARDIER

Respondent/Employer

RE: CLARK COUNTY DEPT. OF
AVIATION CONTRACT CBE 552

**IUEC'S PREHEARING
CONFERENCE MEMORANDUM**

Date: June 26, 2012

Time: 1:30pm

Location: OLC, Las Vegas

I. INTRODUCTION

This case arises from a claim filed by IUEC in 2009 claiming that the technicians who repair the Automated People Mover (APM) system at McCarran Airport are doing work covered by Nevada's prevailing wage law but were underpaid (being paid about half as would be required for unskilled Laborers and much less than Elevator Constructors, whose IUEC collective bargaining agreement expressly includes APM work within its scope of work). Bombardier claims this work falls within the railroad and

normal maintenance exemptions. After a preliminary ruling by Commissioner Tanchek, the County Department of Aviation ("DOA") looked only at the work on the stations and guideways (not the vehicles) and determined the amount of work there on repair (as opposed to maintenance) was under \$100,000. IUEC appealed that determination arguing both that vehicle repair is covered work, and that non-vehicle repairs came to several times over \$100,000.

II. SUMMARY OF ISSUES FOR HEARING:

1. Is APM car repair covered work under NRS Chapter 338 (was it "public work"? was it all exempt as "normal maintenance" or railroad work?)
2. If car repair is not covered, was there repair (as opposed to maintenance) over \$100,000 on stations and guideways?
3. If there was covered work, what is the proper job classification to apply?

Based on decisions on these issues by the Commissioner, the County Department of Aviation can then determine how much backpay is due.

III. RECENT DEVELOPMENTS

As of early May, Bombardier no longer employs the APM technicians here, as the County DOA took over as the employer for this function. One of the likely worker witnesses, Mark McGhee, was denied severance pay by Bombardier to which IUEC and counsel believe him entitled to under the Company's severance plan (approximately \$26,000). He attempted to file a wage claim with the Commissioner's office but was told it does not handle severance pay claims. We suggest any settlement talks encompass this issue as well.

In the 9 months between the appeal and Bombardier ceasing work, it did a substantial number of additional unscheduled repairs on the stations, including over 3000 hours of work on the wayside doors which cost the County over \$220,000 on labor alone (including wages, benefits and Bombardier's margin).

IV. SUPPLEMENTAL AUTHORITIES ON WHY APM CAR REPAIR WORK IS COVERED "PUBLIC WORK"

As noted in prior papers, the Denver Civil Service Board held the Elevator Repairman wage rate was required for airport APM repair, and did so under a local law which similarly required prevailing wage only for "public work". See Denver Revised Municipal Code section 20-76 at <http://www.denvergov.org/auditor/PrevailingWage/tabid/378294/Default.aspx> and Denver Wage Determinations (12/1/11) at pp. 6-7 (Transit Technician / Elevator Mechanic/Repairer at www.denvergov.org/Portals/3/documents/PW_CSA_Mod_99_12_01_11.pdf).

"Public work" under Davis Bacon has since shortly after its adoption been officially construed as not requiring the work be a fixture. In practice Nevada law has received the same interpretation: for example, on-site work on rolling batch plants to prepare concrete or asphalt has repeatedly been covered by prevailing wage requirements, including at McCarran Airport.

However, if somehow Nevada prevailing wage law is construed to require a "fixture", this not require actually bolting the object down. See *Fondren v. K/L Complex, Ltd.*, 106 Nev. 705, 710, 800 P.2d 719, 722 (1990) ("annexation" prong of legal definition of fixture can be met not only by actual attachment but also "constructive" attachment:

"The annexation test is met where the chattel is actually or constructively joined to the real property."). Numerous recent cases confirm that objects too large and heavy to readily move elsewhere for which real property was adapted (like APM cars) are "fixtures" even though not bolted down. For example, the Virginia Supreme Court recently reaffirmed that cars used in a coal-hauling system on a landowner's property were "fixtures" in *Taco Bell v. Commonw. Transp. Comm'r*, 710 S.E.2d 478, 481-82 (Va. 2011):

While the evidence is uncontroverted that all of these items are moveable, whether an item can be removed from the realty is not the test for establishing whether or not it is a fixture. *Danville Holding Corp.*, 178 Va. at 232, 16 S.E.2d at 349. For example, in *State Highway & Transportation Commissioner v. Edwards Co.*, 220 Va. 90, 92-94, 255 S.E.2d 500, 502-03 (1979), the landowner contended that items such as a coal conveyor system, scales, advertising signs, underground storage tanks and railroad siding tracks used by a coal and fuel oil distribution company were personally not subject to condemnation because the items were moveable and could be relocated. The trial court agreed, *id.* at 93, 255 S.E.2d at 502, but this Court, applying the *Danville Holding Corp.* test, reversed, holding that the items were "adapted to and used for the purpose to which the property was devoted" and that the facts and circumstances were "strong indicia of the landowner's permanency of enterprise and, we believe, conclusively establish [the company's] intent to make such machinery and equipment a permanent accession to its realty despite [the] landowner's present disavowals of such intent." *Id.* at 95-96, 255 S.E.2d at 503.

Accord, *Searle v. Town of Bucksport*, 3 A.3d 390, 396 (Me. 2010):

Physical annexation occurs when an object is affixed to the realty, see *Bangor-Hydro Electric Co.*, 226 A.2d at 376, or **simply through the object's sheer weight**, *Hinkley & Egery Iron Co. v. Black*, 70 Me. 473, 480 (1880); see also *United States v. County of San Diego*, 53 F.3d 965, 968 (9th Cir.1995) (concluding that a nuclear device weighing between 400 and 500 tons was annexed to the ground by gravity); *Pritchard Petroleum Co. v. Farmers Co-op. Oil*

& Supply Co., 117 Mont. 467, 161 P.2d 526, 531 (1945) (finding that four-ton tanks held in place by their weight were affixed to the ground).

Accord, *General Motors Corp. v. City of Linden*, 20 N.J.Tax 242, 324 (N.J.Tax 2002):

in *United States v. San Diego Cty.*, 53 F.3d 965 (9th Cir.1995), the court, applying California law, relied on *Seatrail Terminals* in holding that a nuclear device weighing 400 to 500 tons was a fixture subject to ad valorem tax. The court stated as follows: "A device can be, and in this case clearly is, annexed to the property through gravity... The real estate has also been modified to accommodate the device. Tunnels have been dug and a reinforced concrete flooring has been installed. Thus the property has been adapted for the device." *Id.* at 968 (citation omitted). The Oregon Tax Court interpreted a statute defining real property as including machinery and equipment "affixed" to mean that "large items may be found constructively 'affixed' to the land or buildings merely by virtue of their weight and size." *Seven-Up Bottling Co. of Salem v. Department of Revenue*, 10 Or.Tax 400 (1987) (citation omitted).

Because California and Oregon have statutory standards different from the language of N.J.S.A. 54:4-1, the decisions of their courts do not provide definitive guidance in interpreting the New Jersey standard. However, the courts' analyses, when considered with the dictionary definitions, and the regulation of the New Jersey Division of Taxation, assist in defining "affixed" as used in N.J.S.A. 54:4-1. Based on all of the foregoing, I conclude that whether an item of personal property is "affixed" should be determined as follows. Where the item is physically attached or fastened, for example, by welding, cement, bolt, screw, or other material or device, to a building, or to land, the item will be deemed affixed within the meaning of the statute. **An item of personal property not physically attached or fastened to a building or land will be deemed affixed where the item is sufficiently large and heavy that gravity alone holds it in place and the building or land has been specially modified or adapted to accommodate or enclose the item.**

Accord, *In re Heflin*, 326 B.R. 696, 702 (Bkrcty.W.D.Ky. 2005):

The air conditioner, weighing several tons, was not the type that could be easily moved. Simply because an item could possibly be removed does not prevent it from becoming a fixture. The question is whether an item, as a whole, was intended to be part of the larger property.

Applying this law, the Bombardier APM cars were fixtures at McCarran: the Airport was extensively modified just for them (starting with a multi-million-dollar concrete guideway that many other APM vehicles cannot use). The McCarran cars were specially adapted for this particular installation and extensively modified for this installation after their arrival. These cars each weigh several tons and are so large that a special crane is required to take them off the back of special trucks to lower them onto the guideway, each move costing many hundreds of thousands of dollars. (This is not like a public bus which easily could be driven from Nevada to another state and repainted for use by someone else there). There is no history of moving Bombardier APM cars to another site for use after having been installed at their first site: instead they are just used at their original site until they go off to the scrapyard. The fact these APM cars move during their daily operation makes them no different than elevator cars and escalator steps in a public building, all doors in a public building, all washroom fixture handles, and all track lighting in public buildings – all work long deemed covered by prevailing wage law. The APM's movement is confined to a single public facility, further distinguishing this situation from repair of city cars and buses.

Therefore after hearing, the repair of APM cars should be deemed work covered by prevailing wage law, which would obviate the need to spend large amounts of hearing time on calculating the costs of repairing guideways and station doors.

Dated: June 18, 2012

Respectfully submitted,

McCRACKEN, STEMERMAN & HOLSBERY

By: Andrew J. Kahn
Andrew J. Kahn
Attorneys for Claimant IUEC

CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2012, the undersigned sent via United States Postal Service, in a sealed envelope with postage fully pre-paid thereon, a true and correct copy of the foregoing **IUEC'S PREHEARING CONFERENCE MEMORANDUM** in an envelope or package. It was addressed as follows:

Gary C. Moss
Paul T. Trimmer
JACKSON LEWIS
3960 Howard Hughes Parkway
Suite 450
Las Vegas, NV 89169

Eldon Lee Thompson
Clark County District Attorney's Office
500 S. Grand Central Parkway, Suite 5075
Las Vegas, NV 89106

I declare under penalty of perjury under the laws of the State of Nevada and United States of America that the foregoing is true and correct. Executed on this 18TH day of June, 2012.


Joyce Archain

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ER0075

1 **BEFORE THE NEVADA STATE LABOR COMMISSIONER**

2 **LAS VEGAS, NEVADA**

FILED

JUN 27 2012

**NEVADA
LABOR COMMISSIONER - CC**

3 IN THE MATTER OF:)

4 INTERNATIONAL UNION OF ELEVATOR)
5 CONSTRUCTORS,)
6 Claimant,)

7 vs.)

8 BOMBARDIER TRANSPORTATION (HOLDINGS) USA,)
9 INC.,)
10 Respondent.)

11 Clark County Department of Aviation Automated Transit)
12 Systems Equipment – DOA Contract CBE-552)

SCHEDULING ORDER

13 This Scheduling Order is issued pursuant to Rule 16(b) of the Nevada Rules of Civil
14 Procedure ("NVCP").

15 On June 26, 2012, the Labor Commissioner held a pre-hearing conference at the Office
16 of the Labor Commissioner at 555 E. Washington Avenue, Suite 4100, Las Vegas, NV 89101
17 relating to a discovery and hearing schedule to be set by the Labor Commissioner in this
18 matter.

19 Appearances at the pre-hearing conference included Andrew J. Kahn, Esq.,
20 representing the International Union of Elevator Constructors ("IUEC"); Eldon Lee Thomson,
21 Esq., representing Clark County; and Gary C. Moss, Esq. and Paul T. Trimmer, Esq.,
22 representing Bombardier Transportation (Holdings) USA, Inc. ("Bombardier").

23 At the pre-hearing conference, counsel addressed the anticipated course of proceedings
24 in this action.

25 The following issues were identified as being the basis for the hearing:

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