

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY DEPARTMENT OF
AVIATION,

Appellant,

VS.

SOUTHERN NEVADA LABOR
MANAGEMENT COOPERATION
COMMITTEE, AND OFFICE OF THE
LABOR COMMISSIONER,

Respondent.

NO: 83252

District Court

Case No: A-18-781866-J

OPPOSITION TO MOTION TO STAY

(Filed as an emergency motion on Friday,
July 23, 2021)

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Jul 30 2021 04:05 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

The Southern Nevada Labor Management Cooperation Committee ("LMCC") hereby
responds to the Clark County Department of Aviation's ("DOA") Motion to Stay.

Dated July 30, 2021.

CHRISTENSEN JAMES & MARTIN

By: /s/ Evan L. James

Evan L. James, Esq. (7760)

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Attorneys for Respondent

NRAP 26.1 DISCLOSURE

In accordance with NRAP 26.1, the undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualifications or recusal.

1. LMCC is a federal Taft-Hartley trust fund existing under the authority of 29 U.S.C. §§ 175a(a) and 186(c)(6) and pursuant to a collective bargaining agreement (“CBA”) between the International Union of Painters and Allied Trades District Council No. 16, Local Union No. 159 (“Union”) and various contractors and construction trade organizations and is not affiliated with any corporation. The names of the current Trustees or alternate Trustees who manage the LMCC are Robert Williams, Daniel Lincoln, Jason Lamberth, Thomas Pfundstein, Terry Mayfield, Albert Carrillo, Harold Daly, and Mike Davis.
2. The only law firm that has appeared or is expected to appear for LMCC in this case is Christensen James & Martin, 7440 W. Sahara Ave., Las Vegas, Nevada 89117.
3. If litigant is using a pseudonym, the litigant’s true name: N/A

I. FACTS¹

DOA put out for bid a contract to replace 12,000 square feet (about the size of two football fields) of carpet and 5,000 linear feet (about a mile) of base cove. App. at 2 ¶3, 4-7. The materials for the project – not including labor – cost One Million Three Hundred Thousand Six Hundred Dollars (\$1,300,600.00).² *Id.* at 6-7. DOA called it maintenance. *Id.* at 4-5, 8-12, 14:9-11, 15:8-24. LMCC objected and filed a complaint with the Nevada Labor Commissioner (“LC”) asserting that the contract was not maintenance and governed by NRS 338 et seq. *Id.* at 2 ¶3. During the administrative proceedings, LC requested wage and hour records. *Id.* at 64 ¶4, 70, (“A request for records/information from the Labor Commissioner to the Clark County Department of Aviation has been pending for several years”). DOA never disclosed the wage and hour records. *Id.* DOA argued to LC and the district court that the work was maintenance. *Id.* at 4-5, 8-12, 14:9-11, 15:8-24. It also argued to LC that NRS 338 did not apply because its money is not public money. *Id.* at 205, 11. LC found in favor of DOA, so LMCC filed a petition for judicial review. The Court granted the petition and ordered LC to calculate wages due. *Id.* at 28:25-26, 29:1-12, 41 ¶4. LC is concerned that wage records and claimants are being lost and wants to perform the calculations. *Id.* at 3 ¶5, 64 ¶4, 70. DOA filed a motion to stay in the district court that was denied because the court believes judicial economy will be served by allowing LC to perform the calculations. *Id.* at 2 ¶2. LMCC prepared a proposed order that was approved, by LC, refused to sign by DOA, and submitted to the district court. *Id.* 2 ¶1.

¹ An Appendix of Documents is being filed herewith. Because multiple exhibits exist and duplication of exhibit designations such as A or B becomes confusing, all citations are to Appendix Bates numbers, e.g. “App. 400.”

² Carpet costs alone indicate repairs and not maintenance was to take place.

II. STANDARD OF REVIEW

Motions for a stay or injunction before this Court are governed by NRAP 8. As for proceedings from the district court, “This court reviews a district court's interpretation of a statute or court rule ... de novo, even in the context of a writ petition.” *State ex rel. Cannizzaro v. First Judicial Dist. Court*, 466 P.3d 529, 531 (Nev. 2020) (quoting *Marquis & Aurbach v. Eighth Judicial Dist. Court*, 122 Nev. 1147, 1156, 146 P.3d 1130, 1136 (2006)).

III. ARGUMENT

1. Governments are not entitled to a stay as a matter of right.

A. Language in NRCP 62(d)(2) establishes that governments – or any party – are not entitled to a stay as a matter of right.

Stays must be approved by the court even when a bond is posted. “Unless the court orders otherwise, the stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security.” NRCP 62(d)(2). The language “unless the court orders otherwise” indicates that a district court has discretion regarding approval, implementation and application of a requested stay. The only limitation on that discretion is that if a party post a bond – or in the case of a government pursuant to NRCP 62(e) – the district court cannot at use the lack of security as the basis for denying the stay. There may be other reasons to deny a stay, but lack of security is not one of them for governments and nothing in NRCP 62(e) negates the “unless the otherwise orders” language of NRCP 62(d)(2).

B. The *Coroner* case shows that governments are not entitled to a stay as a matter of right.

The *Coroner* case shows that no stay as a matter of right exists. The *Coroner* court held,

We conclude that NRCP 62(d) must be read in conjunction with NRCP 62(e), such that, **upon motion**, state and local government appellants are *generally* entitled to a stay of a **money judgment** pending appeal, *without needing to post a supersedeas bond or other security*. Further, in this case,

LVRJ concedes that **no irreparable or serious harm** will ensue if the stay is granted.

Clark Cty. Office of the Coroner/Medical Exam'r v. Las Vegas Review-Journal, 134 Nev. 174, 177-78, 415 P.3d 16, 19 (2018) (emphasis added). The adverb “generally” is not absolute. The dictionary definition of “generally” includes “without reference to or disregarding particular persons, things, situations, etc., that may be an exception.” See <https://www.dictionary.com/browse/generally>. *Coroner* established a general rule applicable to money judgments but subject to exceptions, which is consistent with NRCP 62(d)(2)’s “unless the court otherwise orders” language.

The *Coroner* court drew heavily from federal court analysis. The United States Supreme Court has declared, “A stay is not a matter of right, even if irreparable injury might otherwise result.” *Nken v. Holder*, 556 U.S. 418, 433, 129 S.Ct. 1749, 173 L.Ed.2d 550 (2009) (quoting *Virginian R. Co. v. United States*, 272 U.S. 658, 672, 47 S.Ct. 222, 71 L.Ed. 463 (1926)). The court noted that a stay is “an exercise of judicial discretion ... dependent upon the circumstances of the particular case.” *Id.* To that vein, none of the federal court decisions relied upon by the *Coroner* court held that a district court must rubber stamp a government’s stay motion brought pursuant to FRCP 62(d). Stated differently, a district court retains discretion to grant or deny a motion to stay, but a district court cannot use a government’s non-posting of a supersedeas bond as the basis for denying a motion to stay a money judgment. The *Coroner* case has a very narrow holding and did not abrogate a district court’s responsibility to evaluate what effect a stay may have. Indeed, even *Coroner* noted one reason for not granting a stay, the possibility of prejudice.

C. DOA’s application of *Coroner* creates absurd procedures and negates rule language.

A narrow reading of *Coroner* is necessary to avoid an absurdity. DOA argues that *Coroner*’s holding is broad, so broad that NRCP 62(e)’s excusing governments from posting a

supersedeas bond automatically entitles the government to a stay in all matters. Yet, *Coroner's* holding explicitly states that a stay may only be obtained “upon motion” to the district court. *Coroner* at 177, 19. If NRCP 62(d) and (e) operate as an automatic stay for governments, why is it necessary to obtain a stay “upon motion?” Such an application of the *Coroner* holding is an absurdity, i.e., the stay operates automatically as a matter of right but you cannot have the stay until the court says so. Why waste everyone’s time asking the court if no discretion is present?

DOA’s broad applicant of *Coroner* negates NRCP 62(d)(2) language that expressly vests discretion in the court to grant, deny, or specify the terms of a stay. “Whenever possible, the Nevada Supreme Court will interpret a rule or statute in harmony with other rules and statutes. And when possible, the supreme court construes statutes such that no part of the statute is rendered nugatory or turned to mere surplusage.” *Albios v. Horizon Cmty., Inc.*, 122 Nev. 409, 414, 132 P.3d 1022, 1025 (2006). The “unless the court orders otherwise” language of NRCP 62(d)(2) is negated by DOA’s argument that NRCP 62(d)(2) and (e) create a stay as a matter of right. That type of case and rule application is not allowed.

D. Other cases show that a judgment against governments may be stayed.

In 1958 the Nevada Tax Commission sought a stay. The Supreme Court said,

It is conceded by both parties that the granting or denial of the present motion lies within the sound discretion of the court. Giving consideration to the probable nature of the issues upon the merits of the appeal and to the balancing of public and private interests here involved, we conclude that the motion for the stay pending appeal should be granted under the circumstances of this case.

Nev. Tax Comm'n v. Mackie, 74 Nev. 273, 276, 330 P.2d 496, 497 (1958). The *Mackie* case and the *Coroner* case holdings are similar in that they both indicate that a court must consider what effects a stay may have. The obvious implication (as applicable to DOA’s argument) is that a

governmental agency does not get a stay as a matter of right. Nevada's jurisprudence has consistently called for courts to weigh the possible effects of a requested stay.

The *Mackie* case and the *Coroner* case are different in that *Mackie* is much broader than *Coroner*. *Mackie* – which is still good law – premises a stay on the balance of public and private interests. By its own language, *Coroner* is limited to when the government seeks to stay collection of a “money judgment.” Unlike, *Coroner*, DOA is not seeking to stay a money judgment. Rather, DOA seeks a stay to preserve the “status quo,” a status quo that according to LC and confirmed by DOA runs the risk of evidence spoliation. *See App.* at 70.

Nothing in NRC 62 nor Nevada jurisprudence, to LMCC's knowledge, grants a governmental entity a right to the spoliation of evidence. Such a right, if created by the Supreme Court, would in the present case violate Nevada labor policy as declared by the Legislature:

The Legislature hereby finds and declares that the health and welfare of workers and the employment of persons in private enterprise in this State are of concern to the State and that the health and welfare of persons required to earn their livings by their own endeavors require certain safeguards as to hours of service, working conditions and compensation therefor.

NRS 608.005. As DOA's appeal is an effort to avoid legally required “compensation” of workers as required by NRS 338 et seq., any procedural right that it may enjoy regarding a stay must yield to the Nevada's declared policy of protecting worker's wages. Frankly, it is inexcusable for a governmental entity to promote the possibility of evidence spoliation in relation to wage claims.

2. This Court should, like the district court, deny DOA's motion to stay because the conditions for a stay are not present.

A. The district court determined that *Coroner* did not apply.

The district court determined that *Coroner* did not apply because no money judgment is at issue. That is a sound reading given *Coroner's* analysis is premised upon a money judgment.

B. The district court weighed general factors applicable to stay motions in determining that a stay was not warranted.

The district court denied the motion to stay because it found that judicial economy will be served by allowing LC to collect wage records, identify potential wage claimants, and calculate potential wage claims while DOA's appeal is pending. Inherent to the district court's determination is that none of those activities affect the substance of DOA's appeal nor do they prejudice any future rights DOA may have on a possible remand. DOA has not shown otherwise.

Indeed, during the hearing before the district court and on the record, LMCC stipulated – as it does so here again – that LC's activities shall not serve to prejudice DOA should the Supreme Court grant DOA's appeal in whole or in part. DOA's rejection of LMCC's proposed stipulation and LC's goal of maintaining the status quo by preserving evidence bolsters a conclusion that DOA's primary goal for the stay is to have wage evidence and claimants lost to the sands of time.

C. DOA has not met its burden of persuasion required by NRAP 8(c).

The typical standard employed by the Supreme Court when considering a stay is as follows:

In deciding whether to issue a stay or injunction, the Supreme Court or Court of Appeals will generally consider the following factors: (1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

NRAP 8(c).

i. LC's activities will not defeat the object of the appeal.

First, LMCC has already stipulated that LC's calculation will have no preclusive effect pending the appeal. Rather, calculations of the unpaid wages are needed to identify potential wage claimants. Should she need to do so, LC may adjust her wage calculations as needed in the future.

Second, DOA's declaration that LC's authority was is improperly limited is wrong. LC was given no discretion to exclude wages from the contract work on a piecemeal basis under the pretense of maintenance. The district court ordered, "In making any such determinations [on the value of unpaid wages], the OLC must not separate the Project into smaller units as doing so is in violation of Nevada law." App. at 41:15-16. That command was premised upon the district court's conclusion that "[t]he law does not allow the DOA to bid large repair projects to be completed through smaller projects purported to qualify as 'maintenance.'" *Id.* at 40:20-22 (citing *Bombardier*). Yet, that is exactly what DOA demands from the Supreme Court in its appeal, authorization to have a large repair contract broken into pieces so that NRS 338 may be avoided.

ii. DOA has supplied no evidence of irreparable harm.

None of DOA's two claimed harms are viable nor are they supported by evidence. DOA's first claimed harm that it will "potentially face a significant monetary judgment if the OLC's proceedings are not stayed" (Motion at 6:2-4) is no harm at all because DOA faces that likelihood even if a stay is not issued. Indeed, possible monetary judgments are inherent to litigation.

DOA's second claimed harm that it "will be subject to two simultaneous and conflicting proceedings in two forums" (Motion at 6:11-12) is wrong because the production of wage records, the identification of wage claimants, and LC's use of math to determine the value of unpaid wages is a necessity regardless the arguments on appeal. Moreover, LMCC stipulates LC's calculations are subject to reconsideration should a remand from this Court occur.

iii. The loss of evidence is significant harm.

DOA's willingness to incur evidence spoliation begs the question of why it is willing to do so. The only answer conceivable to LMCC is that DOA believes LC will find wage payments due regardless of this Court's decision on the appeal. Thus, DOA must believe that the loss of wage

records and claimants is a good way of limiting liability. DOA's argument that it has no access to records is wrong as well. DOA's contract declares, "The successful Bidder shall provide the OWNER, within 14 calendar days of the OWNER's request, a report to validate that the price(s) charged are in accordance with the price(s) offered on the successful Bidder's Bid Form." App. at 76 ¶17. As the contract was for labor, the audit of invoices means that DOA has a right to review source documents that establish the propriety of the contractor's employee time spent on the job as detailed on a submitted invoice, e.g., the expected report would show employees performing the work, the time spent performing the work, and wages paid.

In addition, DOA's argument that it was not required to keep certified payroll reports because the contract was not a public works contract is untenable. The district court concluded, "Accepting an argument allowing the DOA to incrementally finish the Project's scope of work 'would run afoul of NRS Chapter 338's purpose and would allow parties to insulate themselves from the statutes' applicability by simply including repair work in a maintenance contract." App. at 40:17-20, *quoting Bombardier* at 254. In effect, DOA argues to this Court that its violation of NRS 338 justifies a further violation of NRS 338.070(5)(a)(6) (requiring the government to "keep or cause to be kept: The actual per diem, wages and benefits paid to the worker."). Breaking one law does not excuse the breaking of another.

iv. DOA is not likely to succeed on its appeal.

DOA's argument that it is likely to succeed on appeal because the district court found the "project was 'not maintenance' without *any* evidence in the record actually describing the work" (Motion at 8:4-5) is much different than the following argument it made to the district court:

In its Opening Memorandum of Points and Authorities, the LMCC argues that the DOA "abandoned its normal maintenance defense" in favor of the public money argument that is primarily at issue. *See* LMCC Memo at p. 1, ln. 20-26. Nothing could be further from the truth, and the DOA objects to

this mischaracterization of the administrative record. During the course of the Labor Commissioner's review of the complaint, the DOA raised numerous arguments to dispute LMCC's alleged violations of NRS Chapter 338, including the point that the carpet maintenance contract is not subject to prevailing wages because it pertains to the normal maintenance of the DOA's property. At no time did the DOA abandon or waive this argument, which may be found, in its entirety, in the administrative record. See AAR 0221-0225.

App. at 15:8-17. Moreover, DOA sent a February 12, 2018 letter to LC specifically describing the contract (which is also in the record), the scope of work (installation of 12,000 yards of carpet and 5,000 linear feet of base cove), and that the carpet was expected to be replaced over a period of twelve months in small increments. That letter even described how breaking the project into increments helped avoid NRS 338: To wit: "Since each of these areas is separate, the cost of the material and labor is significantly below the \$250,000 threshold set forth for determining prevailing wages under NRS Chapter 338." App. at 5.

The district court may set aside an agency's decision if it is "[c]learly erroneous in view of reliable, probative and substantial evidence on the **whole** record." NRS 233B.135(3)(e) (emphasis added). The district court clearly relied upon evidence from the whole record as well as DOA's argument that the contract was a maintenance contract. The district court concluded differently. Given that DOA's argument regarding the district court's use of the record is flatly wrong, this Court cannot say that DOA is likely to succeed on appeal.

III. CONCLUSION

It is proper to deny DOA's motion for stay for the reasons stated above.

Dated July 30, 2021.

CHRISTENSEN JAMES & MARTIN

By: /s/ Evan L. James
Evan L. James, Esq. (7760)
7440 W. Sahara Avenue
Las Vegas, NV 89117
Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on the date the above document was filed with the Court, it was served in accordance with NRAP 25(c)(1)(E) upon the following individuals:

Mark J. Ricciardi, Esq.	mricciardi@fisherphillips.com
Allison L. Kheel, Esq.	akheel@fisherphillips.com
Andrea Nichols, Esq.	anichols@ag.nv.gov

/s/ Evan L. James
Evan L. James, Esq.

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY DEPARTMENT OF
AVIATION,

Appellant,

VS.

SOUTHERN NEVADA LABOR
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APPENDIX OF DOCUMENTS TO
OPPOSITION TO MOTION TO STAY

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3. Admin. Record Excerpts, Fisher Phillips Letter dated March 12, 2018, App. 8 – 12.
4. Excerpts from Clark County Department of Aviation’s Reply Memorandum of Points and Authorities to Petition for Judicial Review, App. 13 – 16.
5. Motion to Stay (1) Enforcement for Order on Motion for Reconsideration, (2) Enforcement of Order Granting Petition for Judicial Review, and (3) Any Proceedings Before the Office of the Labor Commissioner, App. 17 – 57.
6. Opposition to Motion to Stay (1) Enforcement for Order on Motion for Reconsideration, (2) Enforcement of Order Granting Petition for Judicial Review, and (3) any Proceedings Before the Labor Commissioner, App. 58 – 70.
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8. Admin. Record Excerpts, Invitation to Bid / Contract Requirements, App. 74 – 76.

DECLARATION OF EVAN L. JAMES

I, Evan L. James, hereby declare as follows:

1. Each of the documents identified in the Table of Contents of the Appendix of Documents and contained in the Appendix of Documents are true and correct copies of what they are purported to be. Each of the documents, excepting the proposed order, were filed in the district court proceedings. The proposed order was prepared at the direction of the district court and presented to the district court after review by attorneys. Counsel for the Labor Commissioner approved the proposed order. Counsel for the Department of Aviation did not.
2. The district court judge made clear during the hearing that her decision on the Department of Aviation's Motion to Stay was not focused on the spoliation of evidence argument. She indicated that denial of the motion was proper under the general factors considered when deciding a motion to stay. She indicated that given the nature of the Labor Commissioner's duties under her order, the collecting wage records and the identifying claimants through the calculation of wages was a process that under the circumstances of this case will promote efficiency. She determined that the case of *Clark Cty. Office of the Coroner/Medical Exam'r v. Las Vegas Review-Journal*, 134 Nev. 174, 177-78, 415 P.3d 16, 19 (2018) was not applicable because a money judgment is not at issue.
3. As to the contract in question before the Court, the Department of Aviation called the replacement of 12,000 square feet (which is about the size of two football fields) of carpet and 5,000 linear feet (which is about one mile) of base cove maintenance. The Southern Nevada Labor Management Cooperation Committee ("LMCC") objected and filed an administrative complaint with the Labor Commissioner.

4. The Labor Commissioner ruled in favor of the Department of Aviation, so the LMCC filed a petition for judicial review that was granted by the district court with instructions to the Labor Commissioner to calculate unpaid wages as required by NRS 338's prevailing wage requirements.
5. The calculations are necessary because the Department of Aviation has failed to give the Labor Commissioner wage records as requested, a fact confirmed in the Labor Commissioner's email dated July 12, 2021. In that email, the Labor Commissioner indicated that she shares the LMCC's concerns that wage evidence and wage claimants may be lost due to the non-production of documents and the passage of time.

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

Executed on July 30, 2021.

Evan L. James

February 12, 2018

Mary M. Huck
Deputy Labor Commissioner
Office of the Labor Commissioner
3300 West Sahara Avenue, Suite 225
Las Vegas, NV 89102

RE: Bid 17-604273 - Carpet and Base Cove Installation Information

Dear Ms. Huck:

This letter is in response to your email dated January 25, 2018, in which you requested the material costs for the carpet maintenance bid in question. As we explained to you during our meeting on January 10, 2018, the contract in question is not subject to prevailing wages under NRS Chapter 338 because the carpet maintenance at issue is not a "public work" as that term is defined or understood under NRS Chapter 338. Instead, the contract is related to the ongoing maintenance of worn carpet tiles in various areas and as needed throughout McCarran International Airport. Therefore, the Department of Aviation properly bid the contract as a maintenance contract pursuant to NRS Chapter 332. In fact, this is the third time we have bid this carpet maintenance work pursuant to NRS Chapter 332 and it has never been an issue in the past. Under NRS Chapter 332, there are no prevailing wage requirements; accordingly, any material costs for maintenance performed under a contract issued pursuant to NRS Chapter 332 would not serve any purpose for determining whether prevailing wages apply.

However, in an effort to accommodate your request, please see the information below regarding the Department of Aviation's estimate for the material costs associated with the maintenance contract at issue. Bid form copies showing our current material pricing are also attached.

- The bid allows for the installation of not to exceed 12,000 square yards of carpet and not to exceed 5,000 linear feet of base cove over the course of one (1) year.
- The current cost of carpet tiles ranges from \$26.75 to \$54.39 per square yard. Our most commonly used carpet tile costs \$26.75 per square yard. Additionally, the not to exceed 12,000 square yards is merely an estimate since the ongoing evaluation of the carpet condition is not known at the time our maintenance requirements are bid. Carpet will be replaced on a case by case basis over the course of one (1) year.
- As an example, our passenger hold rooms are approximately 240 square yards each. We may replace carpet in three (3) hold rooms one month, one (1) hold room the following month, five (5) hold rooms the following month, and not replace any carpet for the next several months. From month to month, we don't know how many rooms will require replacement. Historically, the carpet has been replaced as often as annually or as infrequently as every 8-10 years in some areas. It is unlikely that we will install 12,000 square yards of carpet under this bid.

- Using the previous example, if an average of 1,000 square yards of carpet was replaced each month, the material cost would be between \$26,750 for the most commonly used carpet tiles and \$54,390 for the most expensive tiles. Since each of these areas is separate, the cost of the material and labor is significantly below the \$250,000 threshold set forth for determining prevailing wages under NRS Chapter 338. (However, and as noted above, it is our opinion that neither NRS Chapter 338 nor its prevailing wage requirement apply in this matter in the first place).
- Based on our carpet maintenance schedule, we look at each area for wear and tear and also aesthetic and safety issues (as a result of spills, damage, etc.). During the course of normal operations, some of our high traffic areas require maintenance due to aesthetic or safety reasons. If an area is scheduled for replacement, we review the condition of the existing carpet to determine if replacement is needed. Often, the carpet is still in acceptable condition and is therefore not replaced.
- Carpet is replaced in the overnight hours to minimize impact on airport operations. This bid is critical to providing carpet maintenance to augment our in-house staff and ensure carpet tiles can be replaced during off peak hours to minimize passenger disruption and delays.
- All carpet installation performed as part of this bid is budgeted for as a part of our operations and maintenance budget. Our operations and maintenance budget is approved annually by our airline partners and charged to them through our airport rates and charges. All costs associated with operating the airport are paid for by the airlines, airport tenants, and concessionaires. Since the airport is a self-funded enterprise fund, none of these costs are sourced from public funds.

Please feel free to contact me if you have any questions or need anything else.

Sincerely,



Ed Munzing
Airport Manager – Purchasing and Service Contracts

EGM/bc-t

cc: Timothy Baldwin, Deputy District Attorney
File

Enclosures (2)

CLARK COUNTY, NEVADA

FLOORING SOLUTIONS OF NV INC

Name of Firm dba FSI

BID FORM
BID NO. 13-602974
ANNUAL REQUIREMENTS CONTRACT FOR FLOORING TILES & ADHESIVES
ADDENDUM NO. 2

This bid is submitted in response to the OWNER's Invitation to Bid and is in accordance with all conditions and specifications in this document.

LOT I TANDUS FLOORING PRODUCTS & ADHESIVES CUSTOM CARPET					
NO SUBSTITUTE					
ITEM NO.	DESCRIPTION	UNIT OF PURCHASE	ESTIMATED QUANTITY	UNIT PRICE	EXTENDED TOTAL
1	Tandus Flooring, Abrasive Action ER3 18" and 36" modular tile	Square Yard	2,500	\$ 48.35	\$ 120,875.00
2	Tandus Flooring, Flexus Accents II #05112 Solid border carpet, Flex Air RS, 18" and 36" modular tile	Square Yard	2,500	\$ 54.39	\$ 135,975.00
3	Tandus Flooring, Paradox #02819 Flex Air RS, 18" and 36" modular tile	Square Yard	5,000	\$ 42.69	\$ 213,450.00
4	Tandus Flooring, Illusory, Flex Air RS, 18" and 36" modular tile	Square Yard	5,000	\$ 49.15	\$ 245,750.00
5	Standard, Tandus Flooring, Flex Air RS, 18" and 36" modular tile	Square Yard	5,000	\$ 37.93	\$ 189,650.00
6	Tandus Flooring, C-14E Pressure Sensitive Adhesive	4 Gallon Pail	100	\$ 89.99	\$ 8,999.00
7	Unspecified Tandus items				\$ 20,000.00
LOT I (ITEMS 1 THROUGH 7):					\$ 934,699.00

LOT II MILLIKEN CARPET & ADHESIVE CUSTOM CARPET					
NO SUBSTITUTE					
ITEM NO.	DESCRIPTION	UNIT OF PURCHASE	ESTIMATED QUANTITY	UNIT PRICE	EXTENDED TOTAL
1	Milliken Custom CxC, 36"x36"	Square Yard	10,000	\$ N/A	\$ N/A
2	Milliken Midnight Sparkle, 36"x36"	Square Yard	10,000	\$ N/A	\$ N/A
3	Milliken Earth Guard	Square Yard	10,000	\$ N/A	\$ N/A
4	Milliken Earth Guard Return Freight	Return Batch (640 square yards/8 pallets)	15	\$ N/A	\$ N/A
5	Milliken Coir Palm	Square Yard	1,000	\$ N/A	\$ N/A
6	Milliken Adhesive	4 Gallon Pail	100	\$ N/A	\$ N/A
7	Unspecified Milliken items				\$ 20,000.00
LOT II (ITEMS 1 THROUGH 7):					\$ N/A

CLARK COUNTY, NEVADA

Rubenstein's Contract Carpets LLC.
Name of Firm

**BID FORM
BID NO. 13-602974
ANNUAL REQUIREMENTS CONTRACT FOR FLOORING TILES & ADHESIVES
ADDENDUM NO. 2**

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2	Tandus Flooring, Flexus Accents II #05112 Solid border carpet, Flex Air RS, 18" and 36" modular tile	Square Yard	2,500	\$	\$
3	Tandus Flooring, Paradox #02819 Flex Air RS, 18" and 36" modular tile	Square Yard	5,000	\$	\$
4	Tandus Flooring, Illusory, Flex Air RS, 18" and 36" modular tile	Square Yard	5,000	\$	\$
5	Standard, Tandus Flooring, Flex Air RS, 18" and 36" modular tile	Square Yard	5,000	\$	\$
6	Tandus Flooring, C-14E Pressure Sensitive Adhesive	4 Gallon Pail	100	\$	\$
7	Unspecified Tandus Items				\$ 20,000.00
LOT I (ITEMS 1 THROUGH 7):					\$

LOT II MILLIKEN CARPET & ADHESIVE CUSTOM CARPET					
NO SUBSTITUTE					
ITEM NO.	DESCRIPTION	UNIT OF PURCHASE	ESTIMATED QUANTITY	UNIT PRICE	EXTENDED TOTAL
1	Milliken Custom CxC, 36"x36"	Square Yard	10,000	\$ 46 ⁰⁰	\$ 460,000 ⁻
2	Milliken Midnight Sparkle, 36"x36"	Square Yard	10,000	\$ 39 ⁵⁰	\$ 395,000 ⁻
3	Milliken Earth Guard	Square Yard	10,000	\$ 32 ⁶⁰ *	\$ 326,000 ⁻
4	Milliken Earth Guard Return Freight	Return Batch (640 square yards/8 pallets)	15	\$ 2,240 ⁻	\$ 33,600 ⁻
5	Milliken Colir Palm	Square Yard	1,000	\$ 39 ⁵⁰	\$ 39,500 ⁻
6	Milliken Adhesive	4 Gallon Pail	100	\$ 125 ⁻	\$ 12,500 ⁻
7	Unspecified Milliken Items				\$ 20,000.00
LOT II (ITEMS 1 THROUGH 7):					\$ 1,286,600

Clark County Department of Aviation - 7/1/2013

Revised- 21

* ORDERS 500 sq. yd 999 sq. yd 2# 32⁶⁰/sq.
1000 sq. yd. PLUS ORDERS 2# 26⁷⁵/sq.

8218
App. - 007



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March 12, 2018

VIA E-MAIL & U.S. MAIL

Mary M. Huck, Deputy Labor Commissioner
Department of Business & Industry
Office of the Labor Commissioner
3300 West Sahara Ave., Ste. 225
Las Vegas, NV 89102
mhuck@labor.nv.gov

Re: Clark County Department of Aviation / Case No. NLC-17-001486
Our Matter No. 13790.0064

Dear Ms. Huck:

The Clark County Department of Aviation (CCDA) has asked me to assist it with this matter. In your email of February 26 you stated that the CCDA's "response relies upon no prevailing wage requirements being required under NRS Chapter 332. The Commissioner would like you to cite the specific provision of 332 that you are referring to." Set out below is the CCDA's response to your request.

As an initial matter, NRS Chapter 338 (including its prevailing wage requirement) is explicitly excluded from contracts issued under NRS Chapter 332 related to the normal maintenance of property. Specifically, NRS 338.011 provides in pertinent part as follows:

NRS 338.011 Applicability: Contracts related to normal operation and normal maintenance; contracts related to emergency. The requirements of this chapter do not apply to a contract:

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.

NRS 332's only mention of prevailing wages is as follows:

NRS 332.390 Prevailing wage requirement; duty of qualified service company to furnish bonds before entering into certain performance contracts.

Fisher & Phillips LLP

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1. If a performance contract entered into pursuant to NRS 332.300 to 332.440, inclusive, requires the employment of skilled mechanics, skilled workers, semiskilled mechanics, semiskilled workers or unskilled labor to perform the performance contract, the performance contract must include a provision relating to the prevailing wage as required pursuant to NRS 338.020 to 338.090, inclusive.
2. Before a qualified service company enters into a performance contract pursuant to NRS 332.300 to 332.440, inclusive, that exceeds \$100,000, the qualified service company must furnish to the contracting body any bonds required pursuant to NRS 339.025. The provisions of chapter 339 of NRS apply to any performance contract described in this subsection.

Therefore, the prevailing wage laws set forth in NRS 338 are only applicable to NRS 332 for "performance contracts" involving any type of labor, including "unskilled labor."

NRS 332 has a section entitled "PERFORMANCE CONTRACTS FOR OPERATING COST-SAVINGS MEASURES." (NRS 332.300 – NRS 332.440)

The term "performance contract" means a written contract between a local government and a qualified service company for the evaluation, recommendation and implementation of one or more operating cost-savings measures." (NRS 332.340)

The term "operating cost-savings measure" is defined as follows in NRS 332.330:

1. Means any improvement, repair or alteration to a building, or any equipment, fixture or furnishing to be added or used in a building that is designed to reduce operating costs, including, without limitation, those costs related to electrical energy and demand, thermal energy, water consumption, waste disposal and contract-labor costs, and increase the operating efficiency of the building for the appointed functions that are cost-effective.
2. Includes, without limitation:
 - (a) Operational or maintenance labor savings resulting from reduced costs for maintenance contracts as provided through reduction of required maintenance or operating tasks, including, without limitation, replacement of filters and lighting products, and equipment failures.
 - (b) Investment in equipment, products and materials, and strategies for building operation, or any combination thereof, designed to reduce energy and other utility expenses, including, without limitation:

(1) Costs for materials and labor required to replace old equipment with new, more efficient equipment.

(2) Storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed or coated windows or doors, reductions in glass area, and other modifications to windows and doors that will reduce energy consumption.

(3) Automated or computerized energy control systems.

(4) Replacement of, or modifications to, heating, ventilation or air-conditioning systems.

(5) Replacement of, or modifications to, lighting fixtures.

(6) Improvements to the indoor air quality of a building that conform to all requirements of an applicable building code.

(7) Energy recovery systems.

(8) Systems for combined cooling, heating and power that produce steam or other forms of energy, for use primarily within the building or a complex of buildings.

(9) Installation of, or modifications to, existing systems for daylighting, including lighting control systems.

(10) Installation of, or modification to, technologies that use renewable or alternative energy sources.

(11) Programs relating to building operation that reduce operating costs, including, without limitation, computerized programs, training and other similar activities.

(12) Programs for improvement of steam traps to reduce operating costs.

(13) Devices that reduce water consumption in buildings, for lawns and for other irrigation applications.

(14) Any additional improvements to building infrastructures that produce energy and operating cost savings, significantly reduce energy consumption or

increase the operating efficiency of the buildings for their appointed functions, provided that such improvements comply with applicable building codes.

(15) Trash compaction and waste minimization.

(16) Ground source systems for heating and cooling.

(c) Investment in educational programs relating to the operation and maintenance of any equipment installed to reduce operating costs.

3. Does not include the construction of a new building or any addition to a building that increases the square footage of the building."

The term "operating cost-savings" is defined as follows in NRS 332.320:

"Operating cost savings" means any expenses that are eliminated or avoided on a long-term basis as a result of the installation or modification of equipment, or services performed by a qualified service company. The term does not include any savings that are realized solely because of a shift in the cost of personnel or other similar short-term cost savings.

Here, the contract at issue is for carpet maintenance, i.e., worn carpeting will be replaced with new carpeting of a similar style. As such, there are absolutely no "operating cost-savings measures" being attempted, utilized or that will be realized under this contract. In other words, replacing carpet tiles with similar carpet tiles does not fall within the definition (or even the spirit) of either the term "operating cost-savings measure" or the term "operating cost-savings."

In sum, prevailing wages are only required under NRS 332 within the narrowly defined category of "performance contracts." The contract at issue is for the "the normal maintenance of [the DOA's] property" and it is not a "performance contract." Accordingly, this contract is not subject prevailing wages under either NRS 338 or NRS 332.

Although your question was directed specifically at NRS 332, please note that there is an independent reason that the prevailing wage obligations under NRS 338 do not apply to this situation. The work in question is not a "Public Work" subject to NRS 338 because it was not "financed in whole or in part from public money". See NRS 338.010 (16).

Mary M. Huck, Deputy Labor Commissioner
Office of the Labor Commissioner
March 12, 2018
Page 5

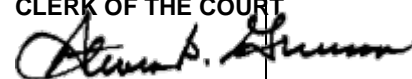
If you or the Labor Commissioner have any another questions or doubts about the CCDA's position, I would appreciate an opportunity to meet in person and discuss this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mark J. Ricciardi', with a stylized flourish at the end.

Mark J. Ricciardi, Esq.
Regional Managing Partner
For FISHER & PHILLIPS LLP

MJR:es



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DISTRICT COURT
CLARK COUNTY, NEVADA

SOUTHERN NEVADA LABOR)	Case No. A-18-781866-J
MANAGEMENT COOPERATION)	
COMMITTEE, by and through its Trustees)	Department No.: 25
Terry Mayfield and Chris Christophersen,)	
)	CLARK COUNTY DEPARTMENT
Petitioner,)	OF AVIATION'S REPLY
)	MEMORANDUM OF POINTS
vs.)	AND AUTHORITIES TO
)	PETITION FOR JUDICIAL
)	REVIEW
CLARK COUNTY NEVADA,)	
DEPARTMENT OF AVIATION, a political)	
subdivision of the State of Nevada; and THE)	
OFFICE OF THE LABOR)	
COMMISSIONER,)	
)	
Respondents.)	
)	

Respondent, Clark County Department of Aviation, ("Respondent" or the
"DOA"), by and through its counsel, Fisher & Phillips, LLP, hereby files this Reply
Memorandum of Points and Authorities in response to Petitioner's Opening
Memorandum of Points and Authorities for its Petition for Judicial Review as follows:

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I. JURISDICTIONAL STATEMENT	5
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A. The Labor Commissioner’s determination must be affirmed because the carpet maintenance contract pertains to the normal maintenance of the DOA’s property.	8
B. The Labor Commissioner’s determination must be affirmed because the carpet maintenance contract was not financed by public money.	10
1. Under Nevada law, the carpet maintenance project cannot constitute a “public work” because it is not financed by public money.	10
2. The LMCC mischaracterizes the definition of “public money.”	12
a. “Public money,” as defined by NRS 356.330(1), does not apply to the prevailing wage law under NRS Chapter 338.	13
b. NRS Chapter 496, the statutory scheme governing municipal airports, undermines the LMCC’s argument.	14
c. The LMCC’s overbroad argument that “property means money” lacks merit and obfuscates the true issue.	15
d. Even with the limited authority on prevailing wage law, the LMCC blatantly misconstrues the holding of each case.....	16
C. The DOA pays the prevailing wage on multiple projects, where appropriate, but it is not appropriate to pay the prevailing wage here because the carpet maintenance contract is a normal maintenance contract.	18
VII. CONCLUSION	19
CERTIFICATE OF COMPLIANCE	20

1 to the agency's view of the facts, are entitled to deference, and will not be disturbed if
2 they are supported by substantial evidence.” *Department of Motor Vehicles v. Jones-*
3 *West Ford, Inc.*, 114 Nev. 766, 962 P.2d 624 (1998).

4 **VI. ARGUMENT**

5 **A. The Labor Commissioner's determination must be affirmed because**
6 **the carpet maintenance contract pertains to the normal maintenance**
7 **of the DOA's property.**

8 In its Opening Memorandum of Points and Authorities, the LMCC argues that the
9 DOA “abandoned its normal maintenance defense” in favor of the public money
10 argument that is primarily at issue. *See* LMCC Memo at p. 1, ln. 20-26. Nothing could
11 be further from the truth, and the DOA objects to this mischaracterization of the
12 administrative record. During the course of the Labor Commissioner's review of the
13 complaint, the DOA raised numerous arguments to dispute LMCC's alleged violations of
14 NRS Chapter 338, including the point that the carpet maintenance contract is not subject
15 to prevailing wages because it pertains to the normal maintenance of the DOA's property.
16 At no time did the DOA abandon or waive this argument, which may be found, in its
17 entirety, in the administrative record. *See* AAR 0221-0225. The DOA reiterates this
18 argument here and summarizes it below.

19 Notwithstanding the fact that the carpet maintenance contract was not financed
20 by public money, the Labor Commissioner's determination must still be affirmed on the
21 basis that the contract pertains to the normal maintenance of the DOA's property. NRS
22 Chapter 338, including its prevailing wage requirement, is explicitly excluded from
23 contracts issued under NRS Chapter 332 related to the normal maintenance of property.
24 *See* NRS 338.011(1). Specifically, NRS 338.011 provides in pertinent part as follows:

25 NRS 338.011 Applicability: Contracts related to normal
26 operation and normal maintenance; contracts related to emergency. The
requirements of this chapter do not apply to a contract:

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

1 contradicts NRS Chapter 332 and the explicit exception created in NRS 338.011(1). The
2 airport's operations, and the traveling public's experience at the airport, should not suffer,
3 merely due to the LMCC's improper interpretation of prevailing wage law.

4 **VII. CONCLUSION**

5 Based on the foregoing, the DOA respectfully requests that this Court deny the
6 LMCC's Petition for Judicial Review and affirm the Labor Commissioner's
7 determination.

8 Dated this 25th day of February, 2019.

9 FISHER & PHILLIPS LLP

10 /s/ Mark J. Ricciardi, Esq.

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12 HOLLY E. WALKER, ESQ.

13 300 South Fourth Street

14 Suite 1500

15 Las Vegas, Nevada 89101

16 Attorneys for Respondent

17 Clark County Department of Aviation

Heather S. Smith

CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

SOUTHERN NEVADA LABOR
MANAGEMENT COOPERATION
COMMITTEE, by and through its
Trustees Terry Mayfield and Chris
Christophersen,

Petitioner,

vs.

CLARK COUNTY NEVADA,
DEPARTMENT OF AVIATION, a
political subdivision of the State of
Nevada; and THE OFFICE OF THE
LABOR COMMISSIONER,

Respondents.

Case No. A-18-781866-J

Department No.: 25

**MOTION TO STAY
(1) ENFORCEMENT OF
ORDER ON MOTION FOR
RECONSIDERATION,
(2) ENFORCEMENT OF
ORDER GRANTING PETITION
FOR JUDICIAL REVIEW, AND
(3) ANY PROCEEDINGS
BEFORE THE OFFICE OF THE
LABOR COMMISSIONER ON
AN ORDER SHORTENING
TIME**

Hearing Requested

Respondent Clark County Department of Aviation ("DOA"), by and through its undersigned counsel, hereby moves this Court for an order staying the following: (1) enforcement of the June 25, 2021 Order ("Order") on Clark County Department of Aviation's Motion for Reconsideration; (2) enforcement of the February 4, 2020 ("February Order") Order granting the Southern Nevada Labor Management

1 Cooperation Committee ("LMCC")'s Petition for Judicial Review; and (3) any actions
2 of the Nevada Office of the Labor Commissioner ("OLC") in connection with Case No.
3 NLC-17-001486 pending resolution of the DOA's appeal of this matter to the Supreme
4 Court of Nevada. The DOA further moves this Court, pursuant to EDCR 2.26, for an
5 Order Shortening Time on which a hearing is to be held and a decision issued on the
6 DOA's Motion for a Stay (hereinafter "Motion" or "Motion to Stay")

7 This Motion is made and based on the pleadings and papers on file herein,
8 together with the following Memorandum of Points and Authorities.

9 Dated this 16th day of July, 2021.

10 Respectfully submitted,

11 FISHER & PHILLIPS LLP

12 /s/ Allison L. Kheel, Esq.

13 MARK J. RICCIARDI, ESQ.

14 ALLISON L. KHEEL, ESQ.

15 300 S. Fourth Street, Suite 1500

16 Las Vegas, NV 89101

17 Attorneys for Respondent Clark County

18 Department of Aviation

19 **ORDER SHORTENING TIME ON CLARK COUNTY DEPARTMENT OF**
20 **AVIATION'S MOTION TO STAY (1) ENFORCEMENT OF ORDER ON**
21 **MOTION FOR RECONSIDERATION, (2) ENFORCEMENT OF ORDER**
22 **GRANTING PETITION FOR JUDICIAL REVIEW, AND (3) ANY**
23 **PROCEEDINGS BEFORE THE OFFICE OF THE LABOR COMMISSIONER**

24 The Court having considered the Motion for Order Shortening Time on the
25 Motion To Stay filed by DOA and finding that good cause exists to hear said Motion on
26 an expedited basis, the Court otherwise being fully advised in the premises and good
27 cause appearing therefor,

28 IT IS HEREBY ORDERED that a hearing on the DOA's Motion to Stay
Enforcement be held on July _____, 2021 at the hour of _____ before the
Honorable District Court Judge Kathleen Delaney, Department 25 of the Regional Justice
Center at 200 Lewis Avenue, Las Vegas, Nevada. This Order shall be served on the OLC

1 and LMCC promptly by personal or electronic service. The OLC and the LMCC will
2 have until July _____, 2021 at 5:00 p.m. to file an opposition, ~~and the DOA will have~~
3 ~~until July _____, 2021 at 5:00 p.m. to file a reply brief.~~

4 DATED this _____ day of July, 2021.

Dated this 16th day of July, 2021

5
6 
DISTRICT COURT JUDGE
KATHLEEN DELANEY

7 Submitted by:
8 FISHER & PHILLIPS LLP

ED9 CAC E462 5F96
Kathleen E. Delaney
District Court Judge

9 By /s/ Allison L. Kheel, Esq.
10 Mark J. Ricciardi, Esq.
11 Allison L. Kheel, Esq.
12 300 South Fourth Street, Suite 1500
13 Las Vegas, Nevada 89101
14 *Attorneys for Respondent*
15 *Clark County Department of Aviation*

16 **NOTICE OF MOTION**

17 PLEASE TAKE NOTICE that the CLARK COUNTY DEPARTMENT OF
18 AVIATION'S MOTION TO STAY (1) ENFORCEMENT OF ORDER ON MOTION
19 FOR RECONSIDERATION, (2) ENFORCEMENT OF ORDER GRANTING
20 PETITION FOR JUDICIAL REVIEW, AND (3) ANY PROCEEDINGS BEFORE THE
21 OFFICE OF THE LABOR COMMISSIONER ON AN ORDER SHORTENING will be
22 heard before District Court Judge Kathleen Delaney in Department 25 on the _____ day
23 of July, 2021 at the hour of _____ a.m./p.m.

24 DATED this _____ day of July, 2021.

25 FISHER & PHILLIPS LLP

26 /s/ Allison L. Kheel, Esq.
27 MARK J. RICCIARDI, ESQ.
28 ALLISON L. KHEEL, ESQ.
300 S. Fourth Street, Suite 1500
Las Vegas, NV 89101
Attorneys for Respondent Clark County
Department of Aviation

**MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF MOTION TO STAY ENFORCEMENT**

I. ARGUMENT

A. Stay Pending Appeal Must Issue As A Matter of Right

The February Order granting the Petition for Judicial Review is a final judgment of the District Court and immediately appealable under Nevada Rule of Appellate Procedure (“NRAP”) 3A(b)(1). Nevada Rule of Civil Procedure (“NRCP”) 62 authorizes the District Court to stay the enforcement of a judgment pending appeal.¹ NRAP 8(a)(1) requires any party aggrieved by a judgment or order of the District Court to first seek a stay from the issuing court pending appeal. A stay to preserve the *status quo* and prevent enforcement of the challenged final judgment is presumptively reasonable and must be granted as a matter of right. *Clark County Office of Coroner/Medical Examiner v. Las Vegas Review Journal*, 134 Nev. 174, 176-177 (2018). Under NRCP 62(e), when an appeal is taken by the State or by any county, city, town, or other political subdivision of the State, the requested stay of the operation or enforcement of the judgment should issue without requiring a bond, obligation, or other security from the appellant. *Id.* at 176-177. As the DOA is a local government entity and political subdivision of Clark County, the requested stay must issue as a matter of right without requiring the DOA to post a bond.

B. The Court Should Hold A Hearing And Issue A Stay On An Order Shortening Time

EDCR. 2.26 allows for motions to be heard on an expedited basis on a showing of “good cause.” As set forth in the Declaration of Allison L. Kheel, Esq. (hereinafter “Kheel Decl.” and attached hereto as **Exhibit C**), and based on the content thereof, good cause exists for hearing the Motion and issuing a stay on an expedited basis because allowing the OLC to hold a hearing and make a determination while the DOA is seeking review of the Decision of the District Court and arguing that the Decision inappropriately

¹ The DOA has filed its appeal in the alternative and seeks in as an alternative to the appeal a writ of prohibition to prohibit the District Court from exercising jurisdiction beyond its statutory authority on the petition for judicial review.

1 narrowed the authority of the OLC to fully consider this matter on remand would
2 necessarily result in prejudice to the DOA and the potential for simultaneous litigation
3 and conflicting orders. In the interest of judicial efficiency, the Court should hear the
4 Motion for a Stay on an expedited basis so the decision to grant or deny a stay can be
5 decided prior to the prehearing conference presently set for July 26, 2021.

6 Contemporaneous with submitting this Motion, the DOA has filed its Notice of
7 Appeal seeking review of the District Court's June 25, 2021 Order on Clark County
8 Department of Aviation's Motion for Reconsideration (hereinafter the "Order") for abuse
9 of discretion and manifest disregard of the law² and of the substantial evidence in the
10 Record. *See* Order attached hereto as **Exhibit A**. The Order purports to clarify and
11 modify its prior Order entered February 4, 2020 ("February Order") (the "Order" and the
12 "February Order" collectively referred to as the "Decision") to address issues identified
13 by the Supreme Court. *See* February Order attached as **Exhibit B, Ex. A** at p. 2:6-8.

14 The DOA's Appeal argues that the District Court exceeded its authority by
15 limiting the Labor Commissioner's authority and scope of review on remand to
16 "ministerial" determinations of "the value of wages due." *See Ex. B* at pp. 2:26-3:2.
17 The Appeal also argues that the Decision reached the conclusion that the project was "not
18 maintenance" without *any* evidence in the Record actually describing the work; and even
19 if there had been a complete evidentiary record (which there was not), the District Court
20 still exceeded its statutory authority on a Petition for Judicial Review by making
21 additional findings beyond the sole "public money" findings set forth in the final agency
22 determination of the OLC. *See Revert v. Ray*, 95 Nev. 782, 603 P.2d 262 (Nev. 1979).
23 For these reasons, the DOA's Appeal seeks that the District Court's Decision be reversed
24 and set aside, and the matter remanded back to the Labor Commissioner to hold a full
25 and complete (unlimited) hearing and make a determination regarding whether the
26 project was "maintenance" and, thus, exempt from prevailing wage.

27 ² The DOA reserves its right to assert all errors in its appeal to the Nevada Supreme Court, notice
28 of which is filed concurrently herewith.

1 However, in accordance with the Decision, **the OLC has scheduled a pre-**
2 **hearing conference for July 26, 2021 at 11:00 a.m.** See Kheel Decl., and Notice of
3 Prehearing Conference from the OLC (**Exhibit 2 to Ex. C.**) Consequently, the DOA
4 will be unfairly prejudiced if the OLC proceeds to hold a hearing while the Decision (and
5 the question of the proper scope of the Labor Commissioner's authority on remand) is
6 pending appeal and could be modified or reversed. A stay of enforcement of the Decision
7 is necessary to preserve the *status quo* and avoid irreparable harm to the DOA while its
8 Appeal is pending resolution.

9 Enforcement of the Decision while the Appeal is pending will expose the DOA
10 to litigation in multiple forums and create the potential for conflicting decisions.
11 Enforcement also further violates the automatic stay presumption in NRCP 62(a)(1) that
12 no enforcement action will occur until 30 days have passed after service of written notice
13 of the entry of the judgment (in this case the Decision).³ NRCP 62(a)(1). As
14 communications with the OLC have indicated that the OLC plans to proceed with the
15 hearing absent a court order staying this matter, good cause exists to hear this on an
16 expedited basis. See Kheel Decl., Ex. C at ¶¶ 7-10, and **Exhibit 1 to Ex. C.**

17 The Court must grant a Stay of Enforcement of the Decision as a matter of right
18 in accordance with NRS § 233B.140, NRCP 62 and NRAP 8, and thus good cause exists
19 to hear this Motion on an expedited basis to avoid unfair prejudice to the DOA while its
20 Appeal is pending before the Supreme Court.

21 **II. CONCLUSION**

22 For the reasons set forth above, the Court should grant the DOA's Motion to Stay
23 the Enforcement of the District Court's Decision on an order shortening time while the
24 DOA's Appeal is pending. The DOA urges the Court to immediately grant a stay of
25 ///

26
27 ³ The Notice of Entry of the Order is dated June 28, 2021, meaning no Enforcement should occur
28 prior to Wednesday, July 28, 2021.

1 enforcement of the Decision and all proceedings before the OLC pending appeal, to
2 immediately docket the notice of appeal and forward the record to the Nevada Supreme
3 Court.

4 Dated this 16th day of July, 2021.

5 FISHER & PHILLIPS LLP

6 /s/ Allison L. Kheel, Esq.

7 MARK J. RICCIARDI, ESQ.

8 ALLISON L. KHEEL, ESQ.

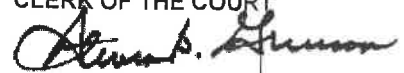
9 300 South Fourth Street, Suite 1500

10 Las Vegas, Nevada 89101

11 Attorneys for Respondent

12 Clark County Department of Aviation

EXHIBIT A



1 **NEOJ**
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5 7440 W. Sahara Avenue
6 Las Vegas, Nevada 89117
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9 Email: elj@cjmlv.com
10 *Attorneys for Petitioner*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 SOUTHERN NEVADA LABOR
14 MANAGEMENT COOPERATION
15 COMMITTEE, by and through its
16 Trustees Terry Mayfield and Chris
17 Christophersen,

18 Petitioner,

19 vs.

20 CLARK COUNTY NEVADA,
21 DEPARTMENT OF AVIATION, a
22 political subdivision of the State of
23 Nevada; and THE OFFICE OF THE
24 LABOR COMMISSIONER,

25 Respondents.

Case No.: A-18-781866-J

Dept. No.: 25

NOTICE OF ENTRY OF ORDER

26 Please take notice that the attached order was entered on June 25, 2021.

27 Dated June 28, 2021.

CHRISTENSEN JAMES & MARTIN

By: /s/ Evan L. James

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Attorneys for Petitioner

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CERTIFICATE OF SERVICE

On the date of filing with the Court, I caused a true and correct copy of the foregoing Notice of Entry of Order to be served as follows:

☒ ELECTRONIC SERVICE: Pursuant to Rule 8.05 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada, the document was electronically served on all parties registered in the case through the E-Filing System.

Natalie Saville	nat@cjmlv.com
Allison L. Kheel, Esq.	akheel@fisherphillips.com
Andrea Nichols, Esq.	anichols@ag.nv.gov
Melissa Flatley, Esq.	mflatley@at.nv.gov
Evan L. James, Esq.	elj@cjmlv.com
Sara Griffin	sgriffin@fisherphillips.com

CHRISTENSEN JAMES & MARTIN

By: /s/ Natalie Saville

Natalie Saville

CHRISTENSEN JAMES & MARTIN, CHTD.
7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117
PH: (702) 255-1718 & FAX: (702) 255-0871

ORDR
CHRISTENSEN JAMES & MARTIN
EVAN L. JAMES, ESQ.
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7440 W. Sahara Avenue
Las Vegas, Nevada 89117
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Facsimile: (702) 255-0871
Email: elj@cjmlv.com
Attorneys for Petitioner

DISTRICT COURT
CLARK COUNTY, NEVADA

SOUTHERN NEVADA LABOR
MANAGEMENT COOPERATION
COMMITTEE, by and through its
Trustees Terry Mayfield and Chris
Christophersen,

Petitioner,

vs.

CLARK COUNTY NEVADA,
DEPARTMENT OF AVIATION, a
political subdivision of the State of
Nevada; and THE OFFICE OF THE
LABOR COMMISSIONER,

Respondents.

Case No.: A-18-781866-J

Dept. No.: 25

**ORDER ON CLARK COUNTY
DEPARTMENT OF AVIATION'S
MOTION FOR RECONSIDERATION**

Respondent Clark County Department of Aviation's ("DOA") Motion for Reconsideration ("Motion") came before the Court on March 31, 2020. ~~The hearing was held in accordance Administrative Order 20-01 of the Eighth Judicial District Court.~~ At (KED) that time, all parties believed the Respondents' appeal to the Nevada Supreme Court divested the Court of jurisdiction. As such, the Court elected to treat the Motion as one for clarification. The Nevada Supreme Court disagreed and entered an order to show cause on June 5, 2020, compelling DOA to show cause why the appeal should not be dismissed for lack of jurisdiction. The Supreme Court identified the following four substantive allegations asserted by the DOA in its Motion: that the "district court order erroneously

1 retained jurisdiction, contained an improper conclusion of law regarding whether the
2 project constituted maintenance, incorrectly made new factual findings, and improperly
3 limited the manner in which the administrative agency makes its determination.”

4 The Court hereby enters its order on the Motion. The Motion must be denied as
5 one for reconsideration under EDCR 2.24 because it fails to present new evidence or
6 identify misapprehension of law. Nevertheless, the Court takes this opportunity to clarify
7 its prior Order entered February 4, 2020 (“February Order”) and address the issues
8 identified by the Supreme Court.

9 Retention of jurisdiction.

10 The Court clarifies that paragraph 7 on page 8 of the February Order was intended
11 to allow the Court to enforce and interpret the February Order, *See Travelers Indem. Co.*
12 *v. Bailey*, 129 S.Ct. 2195, 2205, 557 U.S. 137, 151 (2009), and not to interfere with the
13 Labor Commissioner in the performance of her duties. The Labor Commissioner is free
14 to perform her duties, but ~~the Labor Commissioner and the other parties are not free~~
~~she nor the other parties are free to disobey this Court’s Order.~~ (KED)

15 Improper conclusion of law regarding maintenance.

16 The administrative record and argument presented to the Court by the DOA
17 indicated that the Labor Commissioner treated the contract at issue as a maintenance
18 contract paid for with repair and maintenance funds. The Court disagreed ~~and entered its~~ finding that
19 ~~the contract at issue is not a maintenance contract, which findings are~~
~~findings consistent with the administrative record, which also addressed the presented~~
20 ~~argument that the contract at issue was a maintenance contract.~~
(KED)

21 Incorrectly made new factual findings.

22 The Court made no new factual findings. The Court’s findings were based upon
23 the administrative record as presented and argued to the Court.

24 Improper limitation on agency’s decision making.

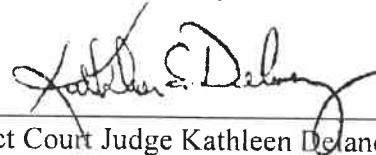
25 In remanding the matter to the Labor Commissioner, the Court intends for the
26 Labor Commissioner to use applicable prevailing wage rates to determine the value of
27

1 wages due and ensure that the unpaid wages are properly paid. The Court considers these
2 tasks to be ministerial in nature.

3 In response to the concern raised by the Labor Commissioner regarding the
4 possible discovery of additional work, the Court recognized that the Labor Commissioner
5 could encounter a situation where work was performed on the project that fell outside the
6 flooring contract. To be clear, if wages were earned for work performed on the project
7 pursuant to the flooring contract and its scope of work, those wages are to be paid at the
8 applicable prevailing wage rate because they were earned pursuant to a public works
9 construction contract. However, if the Labor Commissioner discovers that certain work
10 performed on the project fell outside the scope of work described in the flooring contract,
11 the Labor Commissioner may evaluate that work as she sees fit because it is not subject
12 to the contract at issue or these proceedings.

13 The February Order and this Order shall be construed together for purposes of
14 meeting the Court's stated intent and directives. **Dated this 25th day of June, 2021**

15 ~~Dated: September _____, 2020.~~



District Court Judge Kathleen Delaney

18 Submitted by:

19 CHRISTENSEN JAMES & MARTIN

20 By: /s/ Evan L. James

21 Evan L. James, Esq.

22 Nevada Bar No. 006735

23 7440 W. Sahara Avenue

24 Las Vegas, NV 89117

25 Tel.: (702) 255-1718

26 elj@cjmlv.com

27 *Attorneys for Petitioners*

369 E30 22B6 7207
Kathleen E. Delaney
District Court Judge

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Southern Nevada Labor
7 Management Cooperation
8 Committee, Petitioner(s)

CASE NO: A-18-781866-J

DEPT. NO. Department 25

9 vs.

10 Clark County Nevada
11 Department of Aviation,
12 Respondent(s)

13 **AUTOMATED CERTIFICATE OF SERVICE**

14 This automated certificate of service was generated by the Eighth Judicial District
15 Court. The foregoing Order was served via the court's electronic eFile system to all
16 recipients registered for e-Service on the above entitled case as listed below:

Service Date: 6/25/2021

17 Allison Kheel	akheel@fisherphillips.com
18 Natalie Saville	nat@cjmlv.com
19 Evan James	elj@cjmlv.com
20 Andrea Nichols	anichols@ag.nv.gov
21 Sarah Griffin	sgriffin@fisherphillips.com
22 Melissa Flatley	mflatley@ag.nv.gov

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EXHIBIT B



1 **NEOJ**
2 **CHRISTENSEN JAMES & MARTIN**
3 EVAN L. JAMES, ESQ.
4 Nevada Bar No. 07760
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6 Las Vegas, Nevada 89117
7 Tel.: (702) 255-1718
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9 Email: elj@cjmlv.com
10 *Attorneys for Petitioner*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 SOUTHERN NEVADA LABOR
14 MANAGEMENT COOPERATION
15 COMMITTEE, by and through its
16 Trustees Terry Mayfield and Chris
17 Christophersen,

18 Petitioner,

19 vs.

20 CLARK COUNTY NEVADA,
21 DEPARTMENT OF AVIATION, a
22 political subdivision of the State of
23 Nevada; and THE OFFICE OF THE
24 LABOR COMMISSIONER,

25 Respondents.

Case No.: A-18-781866-J

Dept. No.: 25

NOTICE OF ENTRY OF ORDER

26 Please take notice that the attached order was entered on February 4, 2020.

27 DATED this 7th day of February 2020.

CHRISTENSEN JAMES & MARTIN

By: /s/ Evan L. James

Evan L. James, Esq.

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CERTIFICATE OF SERVICE

On February 7, 2020, I caused a true and correct copy of the foregoing notice to be served as follows:

☒ ELECTRONIC SERVICE: Pursuant to Rule 8.05 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada, the document was electronically served on all parties registered in the case through the E-Filing System.

Mark J. Ricciardi, Esq.	mricciardi@fisherphillips.com
Holly E. Walker, Esq.	hwalker@fisherphillips.com
Andrea Nichols, Esq.	anichols@ag.nv.gov

CHRISTENSEN JAMES & MARTIN

By: /s/ Natalie Saville
Natalie Saville



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Attorneys for Petitioner

DISTRICT COURT
CLARK COUNTY, NEVADA

SOUTHERN NEVADA LABOR
MANAGEMENT COOPERATION
COMMITTEE, by and through its
Trustees Terry Mayfield and Chris
Christophersen,

Petitioner,

vs.

CLARK COUNTY NEVADA,
DEPARTMENT OF AVIATION, a
political subdivision of the State of
Nevada; and THE OFFICE OF THE
LABOR COMMISSIONER,

Respondents.

Case No.: A-18-781866-J

Dept. No.: 25

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER GRANTING
PETITION FOR JUDICIAL REVIEW**

The Court hereby enters findings of fact and conclusions of law in granting the
Petition for Judicial Review. The Court remands the matter to the Nevada State Labor
Commissioner for further proceedings consistent with this Court's findings, conclusions
and order.

FINDINGS OF FACT

1. The Clark County Nevada Department of Aviation (hereinafter "DOA") operates
the McCarran International Airport ("Airport") in Clark County, Nevada.
2. The DOA is part of the Clark County, Nevada government.

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NOV 20 2019

1 3. The Airport is funded by two primary sources. Revenue from Airport operations
2 such as charges to airlines and lease payments from vendor operations is one source of
3 income. Revenue from grants from the United States Government Federal Aviation
4 Administration ("FAA") is another source of income. However, to receive revenue from
5 the FAA, the DOA is contractually required to be financially self-sustaining and not
6 dependent upon revenue from government sources separate from its own operations.

7 4. The DOA has operated the Airport as a financially self-sustaining operation for
8 many years, consistent with its contractual obligations with the FAA.

9 5. The DOA, in 2016, published an Invitation to Bid, Bid No. 17-604273, for the
10 removal and replacement of 12,000 square feet (approximately the area of two football
11 fields) of carpet and 5,000 linear feet (approximately the distance of one mile) of base
12 cove (collectively referred to herein as "Project").

13 6. The DOA advertised and proceeded with the Project pursuant Nevada's Local
14 Governments Purchasing Statute, NRS 332 et seq. and specifically NRS 332.065.

15 7. The Southern Nevada Labor Management Cooperation Committee ("LMCC")
16 exists pursuant to 29 U.S.C. §§ 175a(a) and 186(c)(6) and a collective bargaining
17 agreement between the International Union of Painters and Allied Trades Local Union
18 No. 1512 and employers engaged in the floorcovering industry.

19 8. LMCC was created and is governed by an Agreement and Declaration of Trust
20 ("Trust Agreement") and is "established for the purpose of improving labor management
21 relationships, job security, organizational effectiveness, enhancing economic
22 development or involving workers in decisions affecting their jobs including improving
23 communication with respect to subjects of mutual interest and concern."

24 9. LMCC also exists pursuant to NRS § 613.230 for the purpose of "dealing with
25 employers concerning grievances, labor disputes, wages, rates of pay, hours of
26 employment, or other conditions of employment."
27

1 10. To achieve its purposes, the LMCC works to ensure that labor laws are followed,
2 including prevailing wage laws, which laws and associated activity are a matter of public
3 concern and public policy.

4 11. On April 28, 2017, the LMCC filed a complaint with the State of Nevada Office of
5 the Labor Commissioner ("OLC") alleging that the DOA had violated numerous labor
6 laws with regard to the Project, including violations of NRS 338 et seq.

7 12. On May 2, 2017, the OLC issued a notice to the DOA of the LMCC's complaint.

8 13. The DOA answered the complaint on May 23, 2017, admitting that it is a political
9 subdivision of the state of Nevada, but generally denying the complaint's allegations due
10 lack of information.

11 14. The OLC proceeded to conduct an investigation of the matter and requested and
12 received documents from the DOA.

13 15. The OLC did not hold a hearing, but certain investigatory meetings were held,
14 including one on January 10, 2018.

15 16. On February 12, 2018, the DOA sent a letter to the OLC wherein it asserted that
16 the Project was not a public work subject to NRS 338. The DOA further asserted that the
17 Project work constituted maintenance by replacing up to 12,000 square feet of carpet and
18 5,000 feet of base cove over the course of a year and that none of the work is paid for
19 with public money because the Airport is a financially self-sustaining operation. The
20 DOA further asserted that the carpet and base cove replacement was performed in smaller
21 sections and so as not to interfere with Airport operations.

22 17. On March 12, 2018, the DOA sent a letter to the OLC asserting that the Project
23 constituted normal maintenance and further asserting that the Project did not constitute
24 public funds as defined by NRS 338.010(17) because it was not "financed in whole or in
25 part from public money."
26
27

1 18. On June 4, 2017, the DOA, through counsel, sent an email to the OLC further
2 asserting that the Project is not subject to NRS 338 et seq. because the Airport is self-
3 funded.

4 19. On June 13, 2017, the OLC requested documents from the DOA confirming the
5 sources of the Airport's revenue.

6 20. On June 27, 2017, the DOA responded, through counsel, that the Airport's 2018
7 fiscal year budget consisted of \$556,500,000 and that \$23,703,000 of that money was
8 budgeted for what the DOA self characterizes as maintenance.

9 21. On August 30, 2017, the OLC issued a determination that acknowledged the DOA's
10 argument that the Project was maintenance. The OLC accepted the DOA's representation
11 that "[n]one of the repairs and maintenance funds are financed in any part through taxes
12 or public money."

13 22. The Special Conditions section of the Project's bid documents state that "[f]looring,
14 adhesive and base cove are OWNER supplied, successful bidder installed."

15 23. The DOA separated Project material costs from Project labor costs.

16 24. The DOA intended for the Project to be completed in smaller sections such as
17 individual rooms or smaller areas.

18 25. The DOA did not bid the Project pursuant to NRS 338 requirements.

19 26. At oral argument, counsel for the DOA questioned whether or not the LMCC had
20 a right to bring the original complaint filed with the Labor Commissioner.

21 CONCLUSION OF LAW

22 1. The DOA, as a political subdivision of the State of Nevada, is subject to all the laws
23 of the State of Nevada. The DOA cannot, whether intentionally or unintentionally,
24 selectively choose what laws it will or will not follow.

25 2. The Airport, its operations, and its funding, consisting of hundreds of millions of
26 dollars, are a matters of public concern because the Airport services all of southern
27 Nevada and its presence and use has a financial impact on the entire State of Nevada.

1 3. Governmental compliance with established law is a matter of public concern.

2 4. Moreover, prevailing wage laws are a matter of public policy and their application
3 and impact are a matter of public concern because they have an economic impact on the
4 community and affect the community by impacting the construction industry.

5 5. Because the LMCC is established and exists under both federal and state law to
6 address matters of public concern and public policy within the construction industry, it
7 has a direct interest in ensuring that laws within the construction industry are adhered to
8 and followed, giving the LMCC standing to challenge the DOA's conduct in regard to
9 NRS 338 et seq. and the payment of prevailing wages.

10 6. There is no definition of "public money" in NRS 338 et seq. The Court finds the
11 reasoning and arguments regarding public money as set forth in the LMCC's briefing
12 persuasive, being consistent with statute and case law.

13 7. The DOA's contractual relationship with the FAA does not excuse compliance with
14 Nevada law. Contractual relationships under 49 U.S.C. § 47101, upon which the DOA
15 relies, for the purposes of receiving grants are voluntary. There is no indication in 49
16 U.S.C. § 47101 that the United States Congress intended to preempt state laws of
17 generally applicability. Nevertheless, allowing a party, such as the DOA, to contract
18 around state law would create the unchecked ability to nullify Nevada law where there
19 was no congressional intent to do so. *See California Trucking Association v. Su*, 903 F.3d
20 953, 963 (9th Cir. 2018). In addition, the DOA's obligations under 49 U.S.C. § 47101(a)
21 specifically require that "the [A]irport will be available for public use...." The DOA is
22 therefore legally obligated to operate the Airport for the benefit of the public regardless
23 of the source of its funding. The Court concludes that contractual obligations that the
24 Airport be self-sustaining do not nullify Nevada law. The Court further concludes that
25 because the DOA is legally obligated to operate the Airport for a public purpose the
26 money it uses for Airport operations is intended for a public purpose.

1 8. There is no definition of “public money” in NRS 338 et seq. The Court must
2 therefore look elsewhere for an appropriate definition. The Nevada Supreme Court
3 addressed the issue of “public money” in the case of *Bombardier Transportation*
4 (*Holdings*) *USA, Inc. v. Nevada Labor Commissioner*, 433 P.3d 248, 251 (Nev., 2019).¹
5 The DOA was a party to the *Bombardier* case and made the same public money argument
6 that it now makes to this Court. The DOA argued to the Nevada Supreme Court that
7 money from its “normal operating funds” is not subject to Nevada’s prevailing wage laws
8 because the Airport operates “without the County’s general tax fund revenue.” The
9 Nevada Supreme Court rejected that argument, noting that “Bombardier’s arguments are
10 belied by the plain language of NRS 338.010(15) ... the financing language in the statute
11 does not require a particular type of funding, only that the project be financed by public
12 money, which the contract was.” *Bombardier* at 248 n. 3. The Court concludes that
13 pursuant to *Bombardier*, the Airport’s funds, the funding of which is common between
14 the *Bombardier* case and the Project, are in fact public money within the meaning of NRS
15 338.010(17).

16 9. The Court also concludes that the funds by which the Airport operates are in fact
17 public money even in the absence of the *Bombardier* holding. The Nevada Supreme
18 Court provided guidance of what constitutes public money in the case of *Carson-Tahoe*
19 *Hosp. v. Building & Const. Trades Council of Northern Nevada*, 128 P.3d 1065, 1068,
20 122 Nev. 218, 222 (2006) (“For example, a private project constructed to a public
21 agency’s specifications as part of an arrangement for the project’s eventual purchase by
22 the public agency would be a public work.”) The Airport is owned and operated by a
23 public entity. The Airport is for public use. The money by which the Airport operates,
24 regardless of source, is therefore public and within the meaning of “public money” as
25 used in NRS 338 et seq.

26
27 ¹ The OLC did not have the benefit of the *Bombardier* decision when issuing her
determination because the opinion was issued after the determination.

1 10. Subject to the remand order below, the Court concludes that the Project did not
2 constitute maintenance. The DOA's unilateral separation of the Project into smaller
3 construction units and the separation of material costs and labor costs violated Nevada
4 law. "A unit of the project must not be separated from the total project, even if that unit
5 is to be completed at a later time...." NRS 338.080(3). Replacing 12,000 square feet of
6 carpet and 5,000 linear feet of base cove involves a significant amount of work and is not
7 reflective of the type of work constituting maintenance as articulated in *Bombardier*. The
8 Nevada Supreme Court articulated maintenance as involving "such activities like
9 window washing, janitorial and housekeeping services, [and] fixing broken windows."
10 *Bombardier* at 255. The Court concludes that the OLC's accepting the DOA's assertion
11 that the Project constituted maintenance is contrary to fact and law. The Project was bid
12 with the potential of replacing carpeting that would cover approximately two football
13 fields and base cove that extended for approximately a mile. The intent of the bid and
14 Project execution was clearly an effort to manage costs. The DOA's assertion that it may
15 or may not have replaced 12,000 feet of carpet and 5,000 linear feet of base cove is
16 inconsequential because the intent of the bid and the Project allowed for a large volume
17 of repair work. Accepting an argument allowing the DOA to incrementally finish the
18 Project's scope of work "would run afoul of NRS Chapter 338's purpose and would allow
19 parties to insulate themselves from the statutes' applicability by simply including repair
20 work in a maintenance contract." See *Bombardier* at 254. The law does not allow the
21 DOA to bid large repair projects to be completed through smaller projects purported to
22 qualify as "maintenance."

23 11. The Court concludes that the OLC's determination was arbitrary, capricious and
24 inconsistent with fact.

25 12. Although the bid and intent of the Project violated Nevada law, the *Bombardier*
26 Court holding suggests that the OLC should conduct a post construction analysis to
27

1 determine what, if any, of the completed work actually constituted maintenance and what
2 constituted repair, being subject to prevailing wage rates.

3 ORDER

4 1. The Court Orders that matters set forth in its Conclusions of Law may also be
5 considered findings of fact to the extent necessary to maintain the coherence of its
6 conclusions.

7 2. The LMCC's Petition for Judicial Review is granted. The OLC's Determination is
8 hereby vacated and reversed as arbitrary, capricious and inconsistent with fact.

9 3. The Court rules and Orders that the money received by the Airport is public money
10 within the meaning of NRS 338 and that the Project did not constitute maintenance within
11 the meaning of NRS 338 et seq.

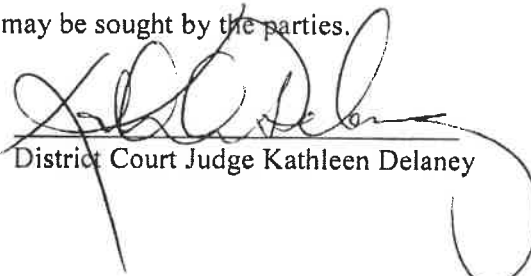
12 4. The Court further Orders the matter remanded to the OLC for the sole purposes of
13 determining the amount, if any, of the completed work that constitutes maintenance and
14 to whom and how much additional wages should be paid for work subject to NRS 338 et
15 seq.'s prevailing wage requirements. In making any such determinations, the OLC must
16 not separate the Project into smaller units as doing so is in violation of Nevada law.

17 5. This Order does not preclude the OLC from issuing administrative fines and similar
18 assessments pursuant to her statutory and regulatory authority.

19 6. The Court further Orders that the LMCC must be included in the proceedings on
20 remand as a proper and interested party with appropriate standing to participate.

21 7. The Court further Orders that it retains jurisdiction over any subsequent
22 proceedings that may be necessary for the collection of information, the enforcement of
23 this Order or for further review, if any, as may be sought by the parties.

24 Dated: January 28, 2020.

25 
26 District Court Judge Kathleen Delaney
27

1 Submitted by:
2 CHRISTENSEN JAMES & MARTIN
3 By: /s/ Evan L. James
4 Evan L. James, Esq.
5 Nevada Bar No. 006735
6 7440 W. Sahara Avenue
7 Las Vegas, NV 89117
8 Tel.: (702) 255-1718
9 elj@cjmlv.com
10 *Attorneys for Petitioners*
11 Reviewed as to form and content:
12 FISHER & PHILLIPS, LLC
13 By: Refused to sign
14 Holly E. Walker, Esq.
15 Nevada Bar No. 14295
16 300 South Fourth Street, Suite 1500
17 Las Vegas, NV 89101
18 hwalker@fisherphillips.com
19 *Attorneys for Respondent Clark*
20 *County Department of Aviation*
21 ATTORNEY GENERAL AARON FORD
22 By: /s/ Andrea Nichols (email approval given)
23 Andrea Nichols, Esq.
24 Senior Deputy Attorney General,
25 Nevada Bar No. 6436
26 Office of the Attorney General
27 100 N. Carson Nevada 89701
Carson City, NV 89701
Tel.: (775) 684-1218
anichols@ag.nv.gov
Attorneys for Respondent Office
of the Labor Commissioner

EXHIBIT C

DECLARATION OF ALLISON L. KHEEL, ESQ. IN SUPPORT OF CLARK COUNTY DEPARTMENT OF AVIATION'S MOTION TO STAY (1) ENFORCEMENT OF ORDER ON MOTION FOR RECONSIDERATION, (2) ENFORCEMENT OF ORDER GRANTING PETITION FOR JUDICIAL REVIEW, AND (3) ANY PROCEEDINGS BEFORE THE OFFICE OF THE LABOR COMMISSIONER ON AN ORDER SHORTENING TIME

Allison L. Kheel, Esq. states as follows:

1. I am an attorney representing the Appellant (Respondent in the District Court), Clark County Department of Aviation ("DOA") in this proceeding. I have personal knowledge of, and am competent to testify to, the facts set forth herein. I make this Declaration in Support of DOA's Motion To Stay (1) Enforcement Of Order On Motion For Reconsideration, (2) Enforcement Of Order Granting Petition For Judicial Review, And (3) Any Proceedings Before The Office Of The Labor Commissioner On An Order Shortening ("Motion" or "Motion to Stay").

2. Attached as **Exhibit A** to the Motion is a true and correct copy of the Notice of Entry of Order Dated June 28, 2021 on the District Court's June 25, 2021 Order on Clark County Department of Aviation's Motion for Reconsideration (hereinafter the "Order").

3. The Order purports to clarify and modify its findings as set forth in its prior Order Granting the LMCC's Petition for Judicial Review entered February 4, 2020 ("February Order").

4. Attached as **Exhibit B** to the Motion is a true and correct copy of the Notice of Entry of Order Dated February 7, 2020, on the District Court's February Order dated February 4, 2020.

5. The Order and the February Order must be read together and are collectively referred to in the Motion as the "Decision."

6. On June 29, 2021, immediately following the District Court's Order, the Nevada Office of the Labor Commissioner ("OLC") reached out to the parties in this case to schedule a pre-hearing conference in Case No. NLC-17-001486.

1 7. The DOA requested that the OLC delay scheduling the pre-hearing
2 conference as the DOA was planning to file an appeal of the Decision to the Nevada
3 Supreme Court.

4 8. A true and correct copy of the E-mail Trail between parties and Labor
5 Commissioner, Shannon Chambers is attached hereto as **Exhibit 1**.

6 9. The OLC proceeded to schedule the pre-hearing conference for July 26,
7 2021 at 11:00 a.m.

8 10. A true and correct copy of the Notice of Telephonic Pre-Hearing
9 Conference from the OLC setting the Pre-Hearing Conference for 11:00 a.m. on July 26,
10 2021, is attached hereto as **Exhibit 2**.

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

12 Executed on this 16th day of July, 2021.

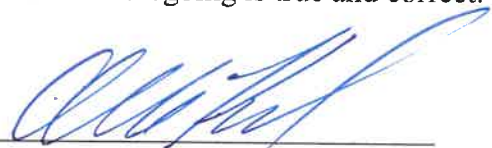
13 
14 _____
15 Allison L. Kheel, Esq.
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EXHIBIT 1
to
EXHIBIT C

Kheel, Allison

From: Shannon Chambers <shannonchambers@labor.nv.gov>
Sent: Wednesday, July 14, 2021 7:51 AM
To: Evan James; Kheel, Allison
Cc: Walker, Holly; Dylan Lawter; Ricciardi, Mark; Kerr, Darhyl
Subject: Re: So. NV Labor v Clark County Aviation

Good morning,

A pre-hearing conference will be set for July 26, 2021, at 11:00 a.m. A notice will be sent out with the details and call-in information.

Thank you.

From: Evan James <elj@cjmlv.com>
Sent: Monday, July 12, 2021 11:37 AM
To: Kheel, Allison <akheel@fisherphillips.com>; Shannon Chambers <shannonchambers@labor.nv.gov>
Cc: Walker, Holly <hwalker@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>; Ricciardi, Mark <mricciardi@fisherphillips.com>; Kerr, Darhyl <dkerr@fisherphillips.com>
Subject: Re: So. NV Labor v Clark County Aviation

Dear Commissioner Chambers,

At present, there is no stay in the litigation. Thus, it is incumbent upon all involved to comply with the Court's Order.

The matter to be resolved before your office is the value of the unpaid wages to the workers and the payment of wages to the underpaid workers. This is a simple calculation and collection of money owed. Unfortunately, the DOA has refused to provide payroll and work records that will allow for the calculations to be made. Given the passage of time, the LMCC is concerned that records and workers will be lost and that workers will not be paid. It is the LMCC's position that records need to be collected, workers identified, and unpaid wage calculations made as soon as possible and regardless of any appeal that the DOA may make.

Thank you,

Evan L. James, Esq.
Christensen James & Martin
7440 W Sahara Ave.
Las Vegas, Nevada 89117
(702) 255-1718

CONFIDENTIALITY NOTICE: This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any unauthorized review, use, or distribution is prohibited and may be unlawful.

IRS CIRCULAR 230 DISCLOSURE: To the extent this communication (or any attachment) addresses any tax matter, it may not be relied upon to (i) avoid tax-related penalties under the Internal Revenue Code, or (ii) promote, market or recommend to another party any transaction or matter herein addressed.

From: Kheel, Allison <akheel@fisherphillips.com>

Sent: Friday, July 9, 2021 4:49 PM

To: Shannon Chambers <shannonchambers@labor.nv.gov>

Cc: Evan James <elj@cjmlv.com>; Walker, Holly <hwalker@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>; Ricciardi, Mark <mricciardi@fisherphillips.com>; Kerr, Darhyl <dkerr@fisherphillips.com>; Kheel, Allison <akheel@fisherphillips.com>

Subject: Re: So. NV Labor v Clark County Aviation

Dear Ms. Chambers,

The Department of Aviation will be appealing this matter and will be seeking a stay of any proceedings before the Labor Commissioner as part of that Appeal as the District Court did not have the authority to limit the Labor Commissioner's power to hold a full hearing and make determinations regarding the type, designation and scope of the work in this matter.

Thus, it is the DOA's position that holding any kind of prehearing conference would be premature until the Supreme Court can rule on the Appeal and Stay.

If you have any questions please feel free to contact me directly at 702-467-1066.

Very Truly Yours,
Allison Kheel

Sent from my iPhone

On Jul 9, 2021, at 1:58 PM, Shannon Chambers <shannonchambers@labor.nv.gov> wrote:

Good morning Mr. Ricciardi,

Please see the email below along with the original email string. If you could please let me know what attorney is assigned to this matter for Clark County Aviation and dates of availability for a pre-hearing.

Good morning Ms. Kheel,

Could you please provide your availability for a pre-hearing conference in this matter by close of business today?

Thank you.

Shannon M. Chambers
Labor Commissioner
State of Nevada

From: Evan James <elj@cjmlv.com>

Sent: Friday, July 9, 2021 10:47 AM

To: Shannon Chambers <shannonchambers@labor.nv.gov>; hwalker@fisherphillips.com <hwalker@fisherphillips.com>
Cc: Kheel, Allison <akheel@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>; Ricciardi, Mark <mricciardi@fisherphillips.com>
Subject: Re: So. NV Labor v Clark County Aviation

Commissioner Chambers,

You may wish to reach out to Mark Ricciardi who practices with Allison. He is copied on this email.

Thank you,

Evan L. James, Esq.
Christensen James & Martin
7440 W Sahara Ave.
Las Vegas, Nevada 89117
(702) 255-1718

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From: Shannon Chambers <shannonchambers@labor.nv.gov>
Sent: Friday, July 9, 2021 8:12 AM
To: Evan James <elj@cjmlv.com>; hwalker@fisherphillips.com <hwalker@fisherphillips.com>
Cc: Kheel, Allison <akheel@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>
Subject: Re: So. NV Labor v Clark County Aviation

Good morning Ms. Kheel,

Could you please provide your availability for a pre-hearing conference in this matter by close of business today?

Thank you.

Shannon M. Chambers
Labor Commissioner
State of Nevada

From: Shannon Chambers <shannonchambers@labor.nv.gov>
Sent: Tuesday, June 29, 2021 12:44 PM
To: Evan James <elj@cjmlv.com>; hwalker@fisherphillips.com <hwalker@fisherphillips.com>
Cc: Kheel, Allison <akheel@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>
Subject: Re: So. NV Labor v Clark County Aviation

Good afternoon,

Thank you, Mr. James.

Will wait to hear back from Ms. Kheel.

From: Evan James <elj@cjmlv.com>
Sent: Tuesday, June 29, 2021 12:22 PM
To: Shannon Chambers <shannonchambers@labor.nv.gov>; hwalker@fisherphillips.com
<hwalker@fisherphillips.com>
Cc: Kheel, Allison <akheel@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>
Subject: Re: So. NV Labor v Clark County Aviation

I believe Ms. Walker is no longer employed at Fisher Phillips. Allison Kheel is the attorney now handling the case for the Department of Aviation. She is copied on this email.

My current availability for July is as follows:

Thursday, 8th all day.
Friday, 9th all day.

Tuesday, 13th after 2:00 p.m.
Wednesday, 14th all day.
Thursday, 15th, after 1:00 p.m.
Friday, 16th before 12:00 p.m.

Monday, 19th after 1:00 p.m.
Tuesday, 20th all day.
Thursday, 22nd all day.
Friday, 23rd all day.

Monday, 26th all day.
Tuesday, 27th all day.
Wednesday, 28th all day.

NAC 307.300(7) requires the parties to make a good faith effort to settle the matter at the prehearing conference. The LMCC is a labor organization governed by trustees. One group of trustees represents employers. Another group of trustees represents the unions. It is impermissible for a single trustee to make a unilateral determination. As such, an employer trustee and a labor trustee must be designated to attend the conference as representatives of the LMCC. If agreeable to you Commissioner Chambers and to Allison, I would like three dates in July that the conference may be held on and then present those dates to the clients so that representatives may be selected to attend.

Also, if settlement is really going to be discussed, we will need to have a valuation of unpaid wages. To date, I am unaware of any wage documents being supplied by the Department of Aviation despite the Office of the Labor Commissioner's request to produce them. See the August 18, 2017 letter that is attached to this email.

Best wishes,

Evan L. James, Esq.
Christensen James & Martin
7440 W Sahara Ave.
Las Vegas, Nevada 89117
(702) 255-1718

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From: Shannon Chambers <shannonchambers@labor.nv.gov>
Sent: Tuesday, June 29, 2021 7:07 AM
To: Evan James <elj@cjmlv.com>; hwalker@fisherphillips.com <hwalker@fisherphillips.com>
Subject: So. NV Labor v Clark County Aviation

Good morning Mr. James and Ms. Walker,

Based on the most recent orders (attached), the Labor Commissioner would like to set up a pre-hearing conference with the parties in the next 30-days. It is anticipated that the pre-hearing conference will be by telephone or webex.

If you could please provide your availability over the next 30-days.

Thank you.

Shannon M. Chambers
Labor Commissioner
State of Nevada

EXHIBIT 2
to
EXHIBIT C

1 **BEFORE THE NEVADA STATE LABOR COMMISSIONER**
2 **CARSON CITY, NEVADA AND LAS VEGAS, NEVADA**
3
4
5

6 IN THE MATTER OF:)

Case No. NLC-17-001486

7 Southern Nevada Labor Management)
8 Cooperation Committee, by and through its)
9 Trustees Terry Mayfield & Chris)
Christophersen,)

10 Complainants,)

11 v.)

12 Clark County Department of Aviation and)
The Office of the Labor Commissioner,)

13 Respondents.)

14 Clark County Department of Aviation)
15 Project: McCarran International Airport)
16 Bid No. 17-694273, Carpet and Base Cove)
Installation)

FILED

JUL 14 2021

NEVADA
LABOR COMMISSIONER-CC

17 **NOTICE OF TELEPHONIC PRE-HEARING CONFERENCE**

18 On April 28, 2017, Southern Nevada Labor Management Cooperation
19 Committee (LMCC) filed a complaint against Clark County Department of Aviation
20 (CCDOA) for possible violations of Nevada Revised Statutes (NRS) sections 338.010
21 to 338.090, inclusive, and/or Nevada Administrative Code (NAC) sections 338.005 to
22 338.125, inclusive, on Bid No. 17-694273, Carpet and Base Cove Installation at
23 McCarran International Airport (Project). The Office of the Labor Commissioner
24 (OLC) issued an order on August 30, 2018, that the compliance review conducted did
25 not reveal violations of Nevada labor laws with regards to NRS Chapter 338 or
26 NAC Chapter 338 and closed the matter.

27 LMCC filed a Petition for Judicial Review on September 27, 2018, in the 8th
28 Judicial District Court in Clark County, Nevada (Court) as Case No. A-18-7818660J in

1 Dept. No. 25, asking the Court to reverse the OLC's ruling. On June 25, 2021, the
2 Court ordered this matter be remanded back to the OLC.

3 NOTICE IS HEREBY GIVEN that a Telephonic Pre-Hearing Conference will be
4 held before Labor Commissioner, Shannon M. Chambers, commencing on **Monday,**
5 **July 26, 2021, at 11:00 AM. The call-in information is: 1 (888) 782-2120 and**
6 **Pass Code 7822120.**

7 The matters to be addressed at the Pre-Hearing Conference may include, but
8 are not limited to:

- 9 1. Clearly identifying the issue(s) in dispute.
- 10 2. Providing all claimants/parties with an opportunity to resolve any or all
11 issues in dispute.
- 12 3. Set a date and time for the Hearing if necessary.

13 The legal authority and jurisdiction for the Pre-Hearing Conference is pursuant
14 to Nevada Administrative Code (NAC) section 607.300 - Prehearing conference.

15 1. If any party disputes a claim or complaint, the Commissioner may
16 require the parties to appear before him or her at a prehearing
17 conference at a time and place designated by the Commissioner to
establish the issues to be resolved at the hearing and discuss the
settlement of the matter.

18 2. The Commissioner may enter reasonable orders governing the
19 conduct of the prehearing conference and, for good cause, allow a party
to appear via telephone.

20 3. The parties may be represented by counsel at the prehearing
conference. An attorney representing a party at the prehearing
conference must comply with subsection 2 of NAC 607.090.

21 4. The parties shall present all evidence then known to them that
22 substantiates their respective positions during the prehearing conference.

23 5. A prehearing conference conducted pursuant to this section may
not be recorded.

24 6. Offers of settlement discussed at the prehearing conference may
25 not be used as an admission at any subsequent hearing, and the
Commissioner will so inform the parties at the beginning of the
prehearing conference.

26 7. At the prehearing conference, the parties shall make a good faith
effort to resolve the matter through settlement or stipulation.

27 8. If the Commissioner determines that the matter cannot be resolved
28 at the prehearing conference, he or she may issue a determination in the
matter pursuant to NAC 607.065.

1 On or before July 26, 2021, CCDOA shall provide a response to the OLC's
2 letter dated August 18, 2017, which requested information and/or documents and
3 records from the CCDOA.

4 IT IS HEREBY ORDERED.

- 5 1. A Telephonic Pre-Hearing Conference be held on Monday, July 26,
6 2021, at 11:00 AM and all parties be in attendance.
- 7 2. CCDOA shall provide a response to the OLC's letter dated August 18,
8 2017, on or before July 26, 2021.

9 Dated this 14th day of July 2021.

10 
11 Shannon M. Chambers
12 Labor Commissioner
13 State of Nevada
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CERTIFICATE OF MAILING

I, Rosiland M. McCloud, do hereby certify that I mailed a true and correct copy of the foregoing **NOTICE OF PRE-HEARING CONFERENCE**, via the United States Postal Service, Carson City, Nevada, in a postage-prepaid envelope to the following:

Evan L. James, Esq.
CHRISTENSEN JAMES & MARTIN
7440 W. Sahara Avenue
Las Vegas, Nevada 89117

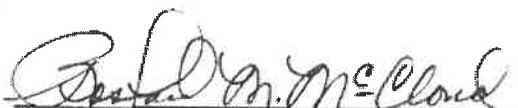
Clark County Department of Aviation
Administration Bldg., 3rd Floor
845 E. Russell Road
Las Vegas, Nevada 89119

Timothy Baldwin, Esq.
Clark County District Attorney
500 So. Grand Central Pkwy.
Las Vegas, Nevada 89106

Allison Kheel, Esq.
FISHER PHILLIPS
300 So. 4th St., Suite 1500
Las Vegas, Nevada 89101

Andrea Nichols, Sr. Deputy Attorney General
Office of the Attorney General
5420 Kietzke Lane, #202
Reno, Nevada 89511

Dated this 14th day of July 2021.


Rosiland M. McCloud, an employee of the
Nevada State Labor Commissioner

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Southern Nevada Labor
Management Cooperation
7 Committee, Petitioner(s)

CASE NO: A-18-781866-J

DEPT. NO. Department 25

8 vs.

9 Clark County Nevada
10 Department of Aviation,
11 Respondent(s)

12
13 **AUTOMATED CERTIFICATE OF SERVICE**

14 This automated certificate of service was generated by the Eighth Judicial District
15 Court. The foregoing Order Shortening Time was served via the court's electronic eFile
system to all recipients registered for e-Service on the above entitled case as listed below:

16 Service Date: 7/16/2021

17 Allison Kheel akheel@fisherphillips.com

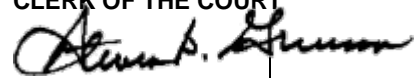
18 Natalie Saville nat@cjmlv.com

19 Evan James elj@cjmlv.com

20 Andrea Nichols anichols@ag.nv.gov

21 Sarah Griffin sgriffin@fisherphillips.com

22 Melissa Flatley mflatley@ag.nv.gov



OPPS
CHRISTENSEN JAMES & MARTIN
EVAN L. JAMES, ESQ.
Nevada Bar No. 07760
7440 W. Sahara Avenue
Las Vegas, Nevada 89117
Tel.: (702) 255-1718
Facsimile: (702) 255-0871
Email: elj@cjmlv.com
Attorneys for Petitioner

DISTRICT COURT
CLARK COUNTY, NEVADA

SOUTHERN NEVADA LABOR
MANAGEMENT COOPERATION
COMMITTEE, by and through its
Trustees Terry Mayfield and Chris
Christophersen,

Petitioner,

vs.

CLARK COUNTY NEVADA,
DEPARTMENT OF AVIATION, a
political subdivision of the State of
Nevada; and THE OFFICE OF THE
LABOR COMMISSIONER,

Respondents.

Case No.: A-18-781866-J

Dept. No.: 25

**OPPOSITION TO MOTION TO STAY
(1) ENFORCEMENT FOR ORDER ON
MOTION FOR RECONSIDERATION,
(2) ENFORCEMENT OF ORDER
GRANTING PETITION FOR
JUDICIAL REVIEW, AND (3) ANY
PROCEEDINGS BEFORE THE
OFFICE OF THE LABOR
COMMISSIONER**

Petitioner hereby opposes Respondent Clark County Nevada Department of
Aviation's Motion to Stay (1) Enforcement for Order on Motion for Reconsideration, (2)
Enforcement of Order Granting Petition for Judicial Review, and (3) any Proceedings
Before the Labor Commissioner that was filed on July 16, 2021.

Dated July 20, 2021.

CHRISTENSEN JAMES & MARTIN

By: /s/ Evan L. James
Evan L. James, Esq. (7706)
7440 W. Sahara Avenue
Las Vegas, NV 89117
Tel.: (702) 255-1718
Fax: (702) 255-0871
Attorneys for Petitioner

CHRISTENSEN JAMES & MARTIN, CHTD.
7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117
PH: (702) 255-1718 § FAX: (702) 255-0871

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Dear Ms. Chambers,

Thus, it is the DOA's position that holding any kind of prehearing conference would be premature until the Supreme Court can rule on the Appeal and Stay.

The undersigned, on behalf of the Petitioner, responded as follows:

At present, there is no stay in the litigation. Thus, it is incumbent upon all involved to comply with the Court's Order.

See Ex. 2, July 12, 2021 Email from Evan James to Commissioner Shannon Chambers.

Good afternoon,

1 This matter is pending before the Labor Commissioner until such
2 time as an Order granting the Clark County Department of
3 Aviation's request for a Stay is received by this office.

4 **The concerns of Mr. James would be similar to those shared by**
5 **the Labor Commissioner. A request for records/information**
6 **from the Labor Commissioner to the Clark County Department**
7 **of Aviation has been pending for several years.**

8 A pre-hearing conference will be set in this matter and the Clark
9 County Department of Aviation should produce records and/or a
10 response why they have not produced the requested records prior to
11 the pre-hearing conference.

12 *See* Ex. 3, Email from Commissioner Shannon Chambers dated July 12, 2021 (emphasis
13 added).

14 ARGUMENT

15 **1. The Court must not allow serious and irreparable harm to occur.**

16 The Court should allow for the preservation of evidence by not interfering with the
17 Labor Commissioner's activities. The Labor Commissioner needs to collect evidence,
18 evaluate the evidence for sufficiency, and calculate wages to identify wage claimants.
19 "Spoliation occurs when a party fails to preserve evidence it knows or reasonably should
20 know is relevant to actual or anticipated litigation, [so] ... courts have inherent authority
21 to manage the judicial process so as to achieve the fair, orderly, and expeditious disposition
22 of cases [, which allows them to address spoliation issues]." *MDB Trucking, LLC v. Versa*
23 *Prods. Co.*, 136 Nev. Adv. Rep. 72, 475 P.3d 397, 402-03 (Nev. 2020). The Labor
24 Commissioner has expressed her concern about evidence and her desire to perform her
25 duties based upon the evidence. The Court should allow her to do so as no harm will come
26 to DOA.

27 ///

///

///

1 **2. DOA is not entitled to a stay because no money judgment was issued and serious**
2 **and irreparable harm to wage claimants exists.**

3 The DOA's argument that it is entitled to a stay as a "matter of right" is premised upon
4 an incomplete application of *Clark Cty. Office of the Coroner/Medical Exam'r*. Here is the
5 holding from that case:

6 We conclude that NRCP 62(d) must be read in conjunction with
7 NRCP 62(e), such that, **upon motion**, state and local government
8 appellants are generally entitled to a stay of a **money judgment**
9 pending appeal, without needing to post a supersedeas bond or other
10 security. Further, in this case, LVRJ concedes that **no irreparable**
11 **or serious harm** will ensue if the stay is granted. Therefore, the
Coroner's Office is entitled to a stay of the attorney fees and costs
judgment pending appeal, and the stay motion is granted pending
further order of this court.

12 *Clark Cty. Office of the Coroner/Medical Exam'r v. Las Vegas Review-Journal*, 134 Nev.
13 174, 177-78, 415 P.3d 16, 19 (2018) (emphasis added). Application of that holding
14 requires the government to meet three requirements: (A) It must file a motion to stay; (B)
15 The judgment to be stayed must be a money judgment; (C) No irreparable or serious harm
16 will ensue if the stay is granted.

17 A. Filed Motion. The DOA has filed a motion to stay. This requirement is met.

18 B. Money Judgment. No money judgment was issued. Because no money
19 judgment was issued, this requirement is not met, so DOA is not entitled to
20 a stay as a matter of right.

21 C. Serious or Irreparable Harm. The Labor Commissioner has expressed her
22 concern that wage records may be disappearing and that DOA has – for
23 years – failed to comply with her request to produce wage records. Wage
24 records date back to at least 2017. The inability to identify unpaid workers
25 and calculate wages due because records are lost is a serious and irreparable
26 harm, so this requirement is not met.

1 **3. The LMCC agrees with DOA that the status quo should be preserved, and to do**
2 **so the Labor Commissioner must calculate wages and identify claimants to**
3 **preserve wage claims.**

4 The only way to preserve the status quo is to let the Labor Commissioner do her job
5 by collecting wage information and identifying potential wage claimants by calculating
6 their unpaid wages.

7 **4. No harm will come to DOA by letting the Labor Commissioner do her job.**

8 DOA has pointed to no harm it will suffer by letting the Labor Commissioner do her
9 job. If DOA is successful on appeal, then the Labor Commissioner may adjust her findings
10 accordingly.

11 Notably, no one is arguing that workers should be given the unpaid wages while the
12 appeal is pending. Thus, DOA has no risk of loss or harm.

13 **CONCLUSION**

14 DOA's motion should be denied for the above reasons.

15 Dated July 20, 2021.

CHRISTENSEN JAMES & MARTIN

16 By: /s/ Evan L. James
17 Evan L. James, Esq. (7706)
18 7440 W. Sahara Avenue
19 Las Vegas, NV 89117
20 Tel.: (702) 255-1718
21 Fax: (702) 255-0871
22 Attorneys for Petitioner
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CERTIFICATE OF SERVICE

On the date of filing with the Court, I caused a true and correct copy of the foregoing Notice of Entry of Order to be served as follows:

☒ ELECTRONIC SERVICE: Pursuant to Rule 8.05 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada, the document was electronically served on all parties registered in the case through the E-Filing System.

Natalie Saville	nat@cjmlv.com
Allison L. Kheel, Esq.	akheel@fisherphillips.com
Andrea Nichols, Esq.	anichols@ag.nv.gov
Melissa Flatley, Esq.	mflatley@at.nv.gov
Evan L. James, Esq.	elj@cjmlv.com
Sara Griffin	sgriffin@fisherphillips.com

CHRISTENSEN JAMES & MARTIN

By: /s/ Natalie Saville

Natalie Saville

DECL
CHRISTENSEN JAMES & MARTIN
EVAN L. JAMES, ESQ.
Nevada Bar No. 07760
7440 W. Sahara Avenue
Las Vegas, Nevada 89117
Tel.: (702) 255-1718
Facsimile: (702) 255-0871
Email: elj@cjmlv.com
Attorneys for Petitioner

DISTRICT COURT
CLARK COUNTY, NEVADA

SOUTHERN NEVADA LABOR
MANAGEMENT COOPERATION
COMMITTEE, by and through its
Trustees Terry Mayfield and Chris
Christophersen,

Petitioner,

vs.

CLARK COUNTY NEVADA,
DEPARTMENT OF AVIATION, a
political subdivision of the State of
Nevada; and THE OFFICE OF THE
LABOR COMMISSIONER,

Respondents.

Case No.: A-18-781866-J

Dept. No.: 25

DECLARATION OF EVAN L. JAMES

I hereby declare as follows:

1. A have personal knowledge of the matters asserted and am competent to testify.
2. Exhibit 1 is a true and correct copy of a July 9, 2021, email from Allison Kheel to Commissioner Shannon Chambers.
3. Exhibit 2 is a true and correct copy of a July 12, 2021, email from myself to Commissioner Shannon Chambers.
4. Exhibit 3 is a true and correct copy of a July 12, 2021, email from Commissioner Shannon Chambers.

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

Executed on July 20, 2021.

Evan L. James

EXHIBIT

1

App. - 065

Re: So. NV Labor v Clark County Aviation

Kheel, Allison <akheel@fisherphillips.com>

Fri 7/9/2021 4:50 PM

To: Shannon Chambers <shannonchambers@labor.nv.gov>

Cc: Evan James <elj@cjmlv.com>; Walker, Holly <hwalker@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>; Ricciardi, Mark <mricciardi@fisherphillips.com>; Kerr, Darhyl <dkerr@fisherphillips.com>; Kheel, Allison <akheel@fisherphillips.com>

Dear Ms. Chambers,

The Department of Aviation will be appealing this matter and will be seeking a stay of any proceedings before the Labor Commissioner as part of that Appeal as the District Court did not have the authority to limit the Labor Commissioner's power to hold a full hearing and make determinations regarding the type, designation and scope of the work in this matter.

Thus, it is the DOA's position that holding any kind of prehearing conference would be premature until the Supreme Court can rule on the Appeal and Stay.

If you have any questions please feel free to contact me directly at 702-467-1066.

Very Truly Yours,
Allison Kheel

Sent from my iPhone

On Jul 9, 2021, at 1:58 PM, Shannon Chambers <shannonchambers@labor.nv.gov> wrote:

Good morning Mr. Ricciardi,

Please see the email below along with the original email string. If you could please let me know what attorney is assigned to this matter for Clark County Aviation and dates of availability for a pre-hearing.

Good morning Ms. Kheel,

Could you please provide your availability for a pre-hearing conference in this matter by close of business today?

Thank you.

Shannon M. Chambers
Labor Commissioner
State of Nevada

From: Evan James <elj@cjmlv.com>

Sent: Friday, July 9, 2021 10:47 AM

EXHIBIT

2

App. - 067

Re: So. NV Labor v Clark County Aviation

Evan James <elj@cjmlv.com>

Mon 7/12/2021 11:37 AM

To: Kheel, Allison <akheel@fisherphillips.com>; Shannon Chambers <shannonchambers@labor.nv.gov>

Cc: Walker, Holly <hwalker@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>; Ricciardi, Mark <mricciardi@fisherphillips.com>; Kerr, Darhyl <dkerr@fisherphillips.com>

Dear Commissioner Chambers,

At present, there is no stay in the litigation. Thus, it is incumbent upon all involved to comply with the Court's Order.

The matter to be resolved before your office is the value of the unpaid wages to the workers and the payment of wages to the underpaid workers. This is a simple calculation and collection of money owed. Unfortunately, the DOA has refused to provide payroll and work records that will allow for the calculations to be made. Given the passage of time, the LMCC is concerned that records and workers will be lost and that workers will not be paid. It is the LMCC's position that records need to be collected, workers identified, and unpaid wage calculations made as soon as possible and regardless of any appeal that the DOA may make.

Thank you,

Evan L. James, Esq.
Christensen James & Martin
7440 W Sahara Ave.
Las Vegas, Nevada 89117
(702) 255-1718

— — —

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IRS CIRCULAR 230 DISCLOSURE: To the extent this communication (or any attachment) addresses any tax matter, it may not be relied upon to (i) avoid tax-related penalties under the Internal Revenue Code, or (ii) promote, market or recommend to another party any transaction or matter herein addressed.

From: Kheel, Allison <akheel@fisherphillips.com>
Sent: Friday, July 9, 2021 4:49 PM
To: Shannon Chambers <shannonchambers@labor.nv.gov>
Cc: Evan James <elj@cjmlv.com>; Walker, Holly <hwalker@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>; Ricciardi, Mark <mricciardi@fisherphillips.com>; Kerr, Darhyl <dkerr@fisherphillips.com>; Kheel, Allison <akheel@fisherphillips.com>
Subject: Re: So. NV Labor v Clark County Aviation

Dear Ms. Chambers,

The Department of Aviation will be appealing this matter and will be seeking a stay of any proceedings before the Labor Commissioner as part of that Appeal as the District Court did not have

EXHIBIT

3

App. - 069

Re: So. NV Labor v Clark County Aviation

Shannon Chambers <shannonchambers@labor.nv.gov>

Mon 7/12/2021 2:36 PM

To: Evan James <elj@cjmlv.com>; Kheel, Allison <akheel@fisherphillips.com>

Cc: Walker, Holly <hwalker@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>; Ricciardi, Mark <mricciardi@fisherphillips.com>; Kerr, Darhyl <dkerr@fisherphillips.com>

Good afternoon,

This matter is pending before the Labor Commissioner until such time as an Order granting the Clark County Department of Aviation's request for a Stay is received by this office.

The concerns of Mr. James would be similar to those shared by the Labor Commissioner. A request for records/information from the Labor Commissioner to the Clark County Department of Aviation has been pending for several years.

A pre-hearing conference will be set in this matter and the Clark County Department of Aviation should produce records and/or a response why they have not produced the requested records prior to the pre-hearing conference.

Thank you.

Shannon M. Chambers
Labor Commissioner
State of Nevada

From: Evan James <elj@cjmlv.com>

Sent: Monday, July 12, 2021 11:37 AM

To: Kheel, Allison <akheel@fisherphillips.com>; Shannon Chambers <shannonchambers@labor.nv.gov>

Cc: Walker, Holly <hwalker@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>; Ricciardi, Mark <mricciardi@fisherphillips.com>; Kerr, Darhyl <dkerr@fisherphillips.com>

Subject: Re: So. NV Labor v Clark County Aviation

Dear Commissioner Chambers,

At present, there is no stay in the litigation. Thus, it is incumbent upon all involved to comply with the Court's Order.

The matter to be resolved before your office is the value of the unpaid wages to the workers and the payment of wages to the underpaid workers. This is a simple calculation and collection of money owed. Unfortunately, the DOA has refused to provide payroll and work records that will allow for the calculations to be made. Given the passage of time, the LMCC is concerned that records and workers will be lost and that workers will not be paid. It is the LMCC's position that records need to be collected, workers identified, and unpaid wage calculations made as soon as possible and regardless of any appeal that the DOA may make.

Thank you,

1 **DOA**
2 **CHRISTENSEN JAMES & MARTIN**
3 EVAN L. JAMES, ESQ.
4 Nevada Bar No. 07760
5 7440 W. Sahara Avenue
6 Las Vegas, Nevada 89117
7 Tel.: (702) 255-1718
8 Facsimile: (702) 255-0871
9 Email: elj@cjmlv.com
10 *Attorneys for Petitioner*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 SOUTHERN NEVADA LABOR
14 MANAGEMENT COOPERATION
15 COMMITTEE, by and through its
16 Trustees Terry Mayfield and Chris
17 Christophersen,

18 Petitioner,

19 vs.

20 CLARK COUNTY NEVADA,
21 DEPARTMENT OF AVIATION, a
22 political subdivision of the State of
23 Nevada; and THE OFFICE OF THE
24 LABOR COMMISSIONER,

25 Respondents.
26
27

Case No.: A-18-781866-J

Dept. No.: 25

DECISION AND ORDER

18 The Court hereby enters a Decision and Order denying Clark County Nevada
19 Department of Aviation's ("DOA") Motion to Stay (1) Enforcement for Order on Motion
20 for Reconsideration, (2) Enforcement of Order Granting Petition for Judicial Review, and
21 (3) any Proceedings Before the Labor Commissioner ("Motion").

22 The matter was heard on July 22, 2021 pursuant to a granted motion for order
23 shortening time. The Court reviewed the Motion and the opposition thereto filed by the
24 Southern Nevada Labor Management Cooperation Committee ("LMCC"). DOA was
25 provided an opportunity to argue in rebuttal to the LMCC's opposition. The Office of the
26 Labor Commissioner was also provided an opportunity to and did argue.

1 DOA argues that as a governmental entity it is entitled to a stay of proceedings as
2 a matter of right. It premises its argument upon a reading of NRCP 62(d) and the case of
3 *Clark Cty. Office of the Coroner/Medical Exam'r v. Las Vegas Review-Journal*, 134 Nev.
4 174, 177-78, 415 P.3d 16, 19 (2018). The Court disagrees because nothing in NRCP 62(d)
5 states that governmental entities are automatically entitled to a stay as a matter of right
6 and the *Coroner* case addresses the propriety of a stay for a governmental entity when
7 there is a money judgment at issue. The Court's Judgment sought to be stayed is not a
8 money judgment. The *Coroner* case is therefore distinguishable and not applicable.

9 The Court therefore considers the Motion under the general factors applicable to a
10 party requesting a stay of a judgment. The Court finds that under the particular
11 circumstances of this case judicial economy will be served by allowing the Labor
12 Commissioner to collect wage records, calculate the value of unpaid wages, and identify
13 potential wage claimants. Under the facts of this case, the parties will be able to use the
14 time during the pendency of the appeal to prepare for the Supreme Court's decision. The
15 Court finds that no prejudice will come to any party by having wage records produced,
16 potential wage claims calculated, and potential wage claimants identified. Such activities
17 will not defeat the object of DOA's appeal because the Labor Commissioner's activities
18 will not affect the appeal to the Supreme Court. Further, the Labor Commissioner is
19 subject to the Supreme Court's decision and it appears will be able to adjust the wage
20 calculations in accordance with the Supreme Court's ruling in the event that she needs to
21 do so. As for whether or not DOA is likely to succeed on the appeal's merits, that is a
22 matter for the Supreme Court as this Court has already issued its judgment.

23 The Court therefore denies the Motion.

24 Dated July _____, 2021.

25 District Court Judge Kathleen Delaney
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Submitted by:
CHRISTENSEN JAMES & MARTIN

By: /s/ Evan L. James
Evan L. James, Esq.
Nevada Bar No. 006735
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Las Vegas, NV 89117
Tel.: (702) 255-1718
elj@cjmlv.com
Attorneys for Petitioners

Reviewed as to form and content:

FISHER & PHILLIPS, LLC

By: Refused to sign
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*Attorneys for Respondent Clark
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*Attorneys for Respondent Office
of the Labor Commissioner*

McCARRAN INTERNATIONAL AIRPORT
CLARK COUNTY, NEVADA
PO Box 11005 Las Vegas NV 89111-1005
(702) 261-5013 FAX (702) 261-3647



CLARK COUNTY DEPARTMENT OF AVIATION
FINANCE PURCHASING & CONTRACTS

INVITATION TO BID
BID NO. 17-604273
CARPET AND BASE COVE INSTALLATION

The **BID PACKAGE** is available as follows:

Clark County Department of Aviation
Administration Building
3rd Floor, Purchasing
1845 East Russell Road
Las Vegas, NV 89119
(702) 261-5013

A **PREBID CONFERENCE** will be held at: **10:00 A.M.** on **November 14, 2016** at the:

Clark County Department of Aviation
Administration Building
1st Floor, Conference Room 1A
1845 East Russell Road
Las Vegas, NV 89119
(702) 261-5013

BID OPENING

Bids will be accepted at **Clark County Department of Aviation, Administration Building**, located at 3rd Floor, Purchasing, 1845 East Russell Road, Suite 300, Las Vegas, NV 89119, on or before December 1, 2016, at **2:00:00 p.m. based on the time clock at the Department of Aviation Purchasing front desk.**

Hearing impaired customers may obtain information by calling TT/TDD:
Relay Nevada toll-free (800) 326-6868.

Published:

LVRJ: 11/2/2016 thru 11/8/2016

www.mccarran.com

El Tiempo



Clark County Board of Commissioners
Steve Sisolak, Chairman • Larry Brown, Vice Chairman
Susan Brager • Marilyn Kirkpatrick • Chris Giunchigliani • Mary Beth Scow • Lawrence Weekly



- h. Failure to Deliver: In the event that the successful Bidder fails to deliver the product in accordance with the terms and conditions of the Contract, the OWNER shall have the option to either terminate the Contract or temporarily procure the product from another supplier. If the product is procured from another supplier, the successful Bidder shall pay to the OWNER any difference between the bid price and the price paid to the other supplier.
- i. Liquidated Damages - Completion of Contract: In case of failure on the part of the successful Bidder to deliver the product within the time specified, or within such additional time as may be granted by the formal action of the OWNER, the successful Bidder shall pay to the OWNER, as liquidated damages, \$2,000.00 per calendar day. This sum shall be considered as reimbursement, in part, to the OWNER for the loss of the use of the items agreed to in this document. The liquidated damages shall be deducted from the next invoice from the successful Bidder or billed to the successful Bidder directly. This shall not preclude the recovery of any other damages that can be reasonably estimated.
- j. Service and Inspection Instructions: Prior to delivery, the product(s) shall be completely inspected and serviced by the delivering dealer and/or the manufacturer's pre-delivery service center. A copy of the manufacturer's standard pre-delivery service check list shall be completed for the product(s), signed by a representative of the organization performing the inspection/service and delivered with the product(s).

The product(s) will be inspected at time of delivery, by an authorized representative of the OWNER, for workmanship, appearance, proper functioning of all equipment and systems and conformance to all other requirements of this specification. In the event deficiencies are detected, the product(s) will be rejected to make the necessary repairs, adjustments or replacements. Payment and/or the commencement of a discount period (if applicable) will not be made until the corrective action is made, the product(s) re-inspected and accepted. If the product(s) is accepted at delivery and later rejected because of deficiencies, it shall be the dealer's responsibility to pick up the product(s), make the necessary corrections and redeliver the product(s) for re-inspection and acceptance.

No later than one (1) working day following the notification of intent to deliver, the successful Bidder must provide the OWNER's authorized representative a complete typed or printed list indicating the Dealer's Stock Number, product's Identification Number and applicable Purchase Order number.

14. CONSUMPTION ESTIMATES

The quantities appearing on the Bid Form are approximate only and are prepared for the solicitation of bids. Payment to the successful Bidder will be made only for the actual quantity of products or services furnished in accordance with the bid; and it is understood that the scheduled quantity of products or services to be furnished may be increased, decreased or omitted without, in any way, invalidating bid prices.

15. PURCHASE ORDERS

The Department of Aviation Finance Purchasing and Contracts will create purchase order(s), which will authorize the successful Bidder to deliver and invoice for the product(s) and/or service(s) offered.

16. INVOICING

Invoices are to be sent to McCarran International Airport, c/o Accounts Payable, P.O. Box 11004, Las Vegas, NV 89111-1004, or via email to accountspayable@mccarran.com. Invoices are to be sent within 90 calendar days of completion of the work. Invoices for payment not submitted within this time period will not be considered for payment. Payment of invoices will be made within 30 calendar days, unless otherwise specified, after receipt of an accurate invoice that has been reviewed and approved by the applicable Department of Aviation's authorized representative.

All invoices should include the following information:

- a. Company Name
- b. Complete Address (including street, city, state, and zip code)
- c. Telephone Number
- d. Contact Person
- e. Itemized description of products delivered (including quantities) or services rendered (including dates)
- f. Clark County McCarran International Airport Purchase Order Number
- g. Company's Tax Identification Number
- h. Bid Number
- i. Itemized pricing and total amount due (excluding sales and Use Tax)
- j. Percentage Discounts / Payment Terms (if offered)
- k. Company's Invoice Number declare

The successful Bidder is responsible to insure that all invoices submitted for payment are in strict accordance with the price(s) offered on the Bid Form. If overcharges are found, the OWNER may declare the successful Bidder in breach of the Contract, terminate the Contract, and designate the successful Bidder as non-responsible if responding to future invitations to bid.

17. INVOICE AUDITS

The successful Bidder shall provide the OWNER, within 14 calendar days of the OWNER's request, a report to validate that the price(s) charged are in accordance with the price(s) offered on the successful Bidder's Bid Form. The format of the report will depend on the pricing structure provided on the Bid Form. The report shall be subject to review and approval by the OWNER's using department(s) and Internal Audit Department. Discrepancies found in the report will require the successful Bidder to update the report no later than seven (7) calendar days after notification by the OWNER. In the event that the successful Bidder undercharged the OWNER, the OWNER shall reimburse the successful Bidder within 14 calendar days. In the event that the successful Bidder overcharged the OWNER, the successful Bidder shall reimburse the OWNER within 14 calendar days. If overcharges are found, the OWNER may declare the successful Bidder in breach of the Contract, terminate the Contract, and designate the successful Bidder as non-responsible if responding to future invitations to bid.

18. PARTIAL PAYMENTS

Partial payments are not allowed

19. WARRANTY

The successful Bidder shall guarantee all workmanship they have furnished for a period of one (1) year after the final acceptance of the services provided. If during the guarantee period, any defect or faulty services are found, it shall immediately, upon notification by the OWNER, proceed at its own expense to replace and repair same, together with any damage to all finishes, fixtures, equipment, and furnishings that may be damaged as a result of this defective equipment or workmanship within five (5) calendar days after notification.

20. ESCALATION

The pricing on this bid is based on a cost per square yard for carpet installation and associated other services, and a cost per linear foot for base cove installation. The 'cost per' rate bid must remain in effect for a period of one (1) year from the date of award. If, at the end of the one (1) year period, the successful Bidder elects to submit a written request to change the rate, it may be adjusted by adding or deducting any percentage increase or decrease in employment cost based on the following index: United States Department of Labor, Bureau of Labor Statistics, Employment Cost Index, Table 3, Index for Total Compensation for Private Industry Workers by Industrial and Occupational Group, Industry and Occupational Group: Service Workers. The OWNER shall be given 30 calendar days advanced notification. The successful Bidder shall submit the appropriate documentation including the indices to evaluate and confirm the labor rate change. Only one (1) written escalation request will be allowed annually, including during any renewal options the OWNER chooses to exercise.

21. BRAND NAMES "OR EQUAL"

Whenever, in this Invitation to Bid, any particular materials, processes and/or products are indicated or specified by patent, proprietary or brand name, or by name of manufacturer, such wording will be deemed to be used for the purpose of facilitating description of the material, process and/or equipment desired and will be deemed to be followed by the words, "or equal." Proof satisfactory to OWNER must be provided by the successful Bidder to show that the alternative product is, in fact, equal to the product required in the specifications.

22. SUBSTITUTIONS

Specifications are intended to show the kind and qualities required and are not intended to be restrictive. **Additional bids that are equal to, or exceed, the requirements stated in this document are invited.** Bidders desiring to submit proposals for items other than those specified shall observe the following procedure:

- a. Submit with the bid complete manufacturer's brochures of the actual items being offered, including pictures and/or dimensional drawings.
- b. Proof, satisfactory to OWNER, must be provided by Bidder to show that the product is equal to, or exceeds the bid specifications in design and performance.
- c. Equivalent items may be subject to performance testing.

23. NO SUBSTITUTE

"No Substitute" means there is only one brand name product that is acceptable to perform the function required by the using department.