

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY
DEPARTMENT OF AVIATION,
a political subdivision of the State
of Nevada,

Appellant,

vs.

SOUTHERN NEVADA LABOR
MANAGEMENT
COOPERATION COMMITTEE,
by and through its Trustees Terry
Mayfield and Chris
Christophersen (Petitioner
Below); and OFFICE OF THE
LABOR COMMISSIONER
(Respondent Below),

Respondent.

CASE NO.: 83252

District Court Case No.
A-18-781866-J

Electronically Filed
Nov 19 2021 02:50 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

EXHIBIT A

**AFFIDAVIT OF ALLISON L. KHEEL, ESQ., IN SUPPORT OF
CCDOA'S ALTERNATIVE PETITION FOR WRIT OF
CERTIORARI OR WRIT OF PROHIBITION**

FISHER & PHILLIPS LLP
MARK J. RICCARDI, ESQ.
Nevada Bar No. 3141
ALLISON L. KHEEL, ESQ.
Nevada Bar No. 12986
300 S. Fourth Street
Suite 1500
Las Vegas, NV 89101
Telephone: (702) 252-3131
Attorney for Appellant,
Clark County Department of Aviation

AFFIDAVIT OF ALLISON L. KHEEL, ESQ. IN SUPPORT OF
CLARK COUNTY DEPARTMENT OF AVIATION'S
ALTERNATIVE PETITION FOR WRIT OF CERTIORARI

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 ("CCDOA") in this proceeding. I have personal knowledge of, and am competent to testify to, the facts set forth herein. I make this Affidavit in Support of CCDOA's Alternative Petition for Writ of Certiorari or Writ of Prohibition.

2. Following the District Court's Decision, the Office of the Labor Commissioner ("OLC") set this matter for a pre-hearing conference on July 26, 2021. The CCDOA filed its Appeal and request for a stay of proceedings before the OLC pending the outcome of the appeal on July 16, 2021.

3. While the parties were in the pre-hearing conference they received the Supreme Court's order granting the temporary stay of the proceedings before the OLC. *See* Docket Entry 21-21486. The temporary stay was vacated and a stay pending appeal was denied by the Nevada Supreme Court on August 23, 2021. *See* Docket Entry 21-24557.

4. Once the temporary stay was lifted, the OLC rescheduled the pre-hearing conference, which was held on September 28, 2021. The OLC also sent a request for documents to the CCDOA, which the CCDOA responded to on September 27, 2021, producing 132 documents including

1 internal work orders, purchase orders for materials used, invoices and other
2 documents pertaining to the carpet tile maintenance.

3 5. On October 15, 2021, the CCDOA sent correspondence to the
4 OLC further clarifying how each of the 132 documents produced were
5 responsive to the OLC's request for records, and producing an additional
6 badge swipe record in response to the OLC's request during the pre-hearing
7 conference. A true and correct copy of this Correspondence is attached
8 hereto as **Exhibit 1**.
9

10
11 6. In e-mail correspondence dated October 28, 2021, the OLC
12 indicated its intention to schedule a hearing in December 2021 on the issue
13 of whether the work performed on Bid No. 17-604273 was "normal
14 maintenance." A true and correct copy of this e-mail correspondence
15 (attachment omitted) is attached hereto as **Exhibit 2**.
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18 7. In correspondence related to the pending appeal, Counsel for
19 the Southern Nevada Labor Management Cooperation Committee
20 ("LMCC"), Mr. Evan James, Esq. stated: "In addition, the email from the
21 Commissioner incorrectly states that a determination as to 'maintenance' is
22 to be considered. If that means work pursuant to Bid No.17-604273, it is
23 contrary to the District Court's Order that directs the calculating of wage
24 value and the identifying of wage claimants. I will be submitting a letter to
25 the Commissioner soon that addresses that issue." This correspondence
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1 indicated that the LMCC plans to oppose any attempt by the OLC to hold a
2 hearing and receive evidence on the issue of “maintenance” as part of the
3 case purportedly remanded back to the OLC.
4

5 8. On November 17, 2021, I responded to the OLC stating the
6 CCDOA’s availability for a hearing on the issue of maintenance. A true and
7 correct copy of this e-mail correspondence is attached hereto as **Exhibit 3**.
8

9 9. On November 18, 2021, Mr. James sent correspondence to the
10 OLC on behalf of the LMCC asserting that the Decision of the District Court
11 prohibited the OLC from holding a hearing on the issue of maintenance,
12 stating “Please note that the Department of Aviation (“DOA”) is not entitled
13 to relitigate that issue and the Labor Commissioner is not empowered to
14 revisit it either. The District Court has already determined that work
15 performed under Bid No. 17-604273 was subject to Nevada’s prevailing
16 wage rates precisely because the work was not normal maintenance pursuant
17 to the contract documents.” This correspondence attached 387 pages of
18 records that were not before the OLC at the time of the original
19 determination. A true and correct copy of this letter without attached
20 documents is attached hereto as **Exhibit 4**.
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25 10. The proceeding before the OLC is ongoing and developing in
26 real time, and evidence pertaining to these proceedings is relevant to the
27 substance and potential prejudice that are the subjects of this appeal.
28

11. At the present time, the CCDOA cannot anticipate what further actions the OLC may take or what rulings the OLC might make as to its ability to consider issues and evidence, or whether the OLC will proceed with a hearing on the issue of maintenance.

12. Thus, the potential for conflicting determinations from simultaneous proceedings in separate forums shows good cause for the Court to accept the alternative request that this matter be treated as a Petition for Certiorari or Petition for a Writ of Prohibition.

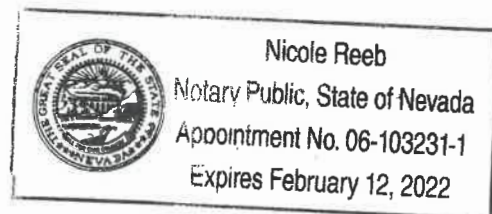
I declare under penalty of perjury the forgoing to be true and correct.

Executed on this 18th day of November, 2021.


Allison L. Kheel, Esq.

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

SUBSCRIBED and SWORN to before
me this 18th day of November, 2021.




NOTARY PUBLIC in and for said
County and State

EXHIBIT 1
TO EXHIBIT A



fisherphillips.com

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Las Vegas, NV 89101

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702-862-3817

Writer's E-mail:
akheel@fisherphillips.com

October 15, 2021

VIA EMAIL (shannonchambers@labor.nv.gov)

Shannon Chambers
Labor Commissioner
3300 W. Sahara Avenue
Suite 225
Las Vegas, NV 89102

Re: *Clark County Department of Aviation - NLC-17-001486*
Supplemental Response to Request for Documents

Dear Ms. Chambers:

In response to your request for supplemental production of documents in the above-referenced matter, the Clark County Department of Aviation ("CCDOA") produced 132 documents on September 27, 2021 responsive to your request. This is in addition to the 51 pages initially produced by the CCDOA on September 26, 2017. However, in order to assist in your review of the records, the CCDOA provides the following additional descriptions and clarification of the documents:

- Documents Related to Bid No. 18-604792 [15 out of 132] – includes records relating to Bid No. 18-604792 which was a bid for carpet, flooring, and other materials. Portions of these materials were utilized by National Contract Carpet ("NCC") in performance of work in Bid No. 17-604273.
- Purchase Orders [53 out of 132] – purchase orders for carpeting, flooring, and other materials purchased under Bid No. 18-604792.
- Purchase Orders From NCC [7 out of 132] – purchase orders submitted by NCC for materials and work related to Bid. 17-604273.
 - PO_4500289365_-_Nevada_Contract_Carpet.pdf
 - PO_4500289365_-_Nevada_Contract_Carpet.pdf (duplicate)
 - PO_4500295769_-_Nevada_Contract_Carpet.pdf
 - PO_4500298361_-_Nevada_Contract_Carpet (1).pdf
 - PO_4500298361_-_Nevada_Contract_Carpet.pdf (duplicate)
 - PO_4500298361_-_Nevada_Contract_Carpet.pdf (duplicate)
 - PO_4500303003_-_Nevada_Contract_Carpet.pdf

Fisher & Phillips LLP

Atlanta • Baltimore • Bethesda • Boston • Charlotte • Chicago • Cleveland • Columbia • Columbus • Dallas • Denver • Detroit • Fort Lauderdale • Gulfport
Houston • Irvine • Kansas City • Las Vegas • Los Angeles • Louisville • Memphis • Nashville • New Jersey • New Orleans • New York • Orlando • Philadelphia
Phoenix • Pittsburgh • Portland • Sacramento • San Diego • San Francisco • Seattle • Tampa • Washington, DC • Woodland Hills

- NCC Invoices [5 out of 132] – invoices submitted by NCC for work performed Bid. 17-604273.
 - 4500289365_-_Invoice.pdf
 - 4500295769_-_Invoice2.pdf
 - 4500295769_-_Invoice1.pdf
 - 4500298361_-_Invoice.pdf
 - 4500303003_-_Invoice.pdf
- Disbursement Checks to NCC [5 out of 132] – disbursement checks paid to NCC for work related to Bid. 17-604273.
 - 1594766 (1).pdf
 - 1637830.pdf
 - 1646839.pdf
 - 1647216.pdf
 - 1662486.pdf
- Work Orders [47 out of 132] – represent routine maintenance work performed by employees of CCDOA (who are exempt from prevailing wage requirements) and reflect installation of materials from Bid No. 18-604792.

Additionally, enclosed with this correspondence is a copy of the facility access badge transaction history for Stephen Bucher, President of NCC. CCDOA does not have payroll reports associated with Bid No. 17-604273 as the work associated with this contract was awarded pursuant to NRS 332 and is routine maintenance work and not public work.

If you have any questions or wish to discuss this matter further, please do not hesitate to contact me.

Very truly yours,



Allison L. Kheel, Esq.
For FISHER & PHILLIPS LLP

ALK:dk
Enclosures

Start Date & Time: 12/8/16 0:00
End Date & Time: 9/29/21 23:59

Terminal Name: *
Badge # :194976*
Company Name: *
Department Name:*

Date/Time	Full Name	History Message	Badge #	Terminal Name	company_name
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12/12/2016 11:40:05	BUCHER, STEPHEN	Local Grant	194976	04007 T1-BCS-L2-ST115A	DEPT OF AVIATION--TOPS CONTRACT
12/14/2016 13:54:57	BUCHER, STEPHEN	Local Grant	194976	04011 T1-BCS-L1-ST115A	DEPT OF AVIATION--TOPS CONTRACT
12/14/2016 13:55:19	BUCHER, STEPHEN	Local Grant	194976	04007 T1-BCS-L2-ST115A	DEPT OF AVIATION--TOPS CONTRACT
12/16/2016 10:45:45	BUCHER, STEPHEN	Local Grant	194976	04011 T1-BCS-L1-ST115A	DEPT OF AVIATION--TOPS CONTRACT
12/16/2016 10:46:07	BUCHER, STEPHEN	Local Grant	194976	04007 T1-BCS-L2-ST115A	DEPT OF AVIATION--TOPS CONTRACT
12/28/2016 15:23:25	BUCHER, STEPHEN	Invalid Reader	194976	09016 GATE 21 - Main	DEPT OF AVIATION--TOPS CONTRACT
03/18/2018 18:43:53	BUCHER, STEPHEN	Invalid Reader	194976	10813 T1-BCN-LO-350A MA 10814	DEPT OF AVIATION--TOPS CONTRACT
03/29/2018 12:05:09	BUCHER, STEPHEN	Local Grant	194976	08303 BADGING POS 3	DEPT OF AVIATION--TOPS CONTRACT
06/25/2018 13:59:21	BUCHER, STEPHEN	Invalid Reader	194976	09016 GATE 21 - Main	DEPT OF AVIATION--TOPS CONTRACT
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10/09/2018 08:35:32	BUCHER, STEPHEN	Local Grant	194976	24113 T3-SX-L2-110A MA24114	DEPT OF AVIATION--TOPS CONTRACT
10/09/2018 08:36:06	BUCHER, STEPHEN	Local Grant	194976	24112 T3-SX-L2-110B SL24111	DEPT OF AVIATION--TOPS CONTRACT
10/09/2018 09:03:44	BUCHER, STEPHEN	Local Grant	194976	24111 T3-SX-L2-110B MA24112	DEPT OF AVIATION--TOPS CONTRACT
10/09/2018 09:04:16	BUCHER, STEPHEN	Local Grant	194976	24114 T3-SX-L2-110A SL24113	DEPT OF AVIATION--TOPS CONTRACT
10/14/2018 22:17:02	BUCHER, STEPHEN	Local Grant	194976	24113 T3-SX-L2-110A MA24114	DEPT OF AVIATION--TOPS CONTRACT
10/14/2018 22:17:45	BUCHER, STEPHEN	Local Grant	194976	24112 T3-SX-L2-110B SL24111	DEPT OF AVIATION--TOPS CONTRACT
10/15/2018 00:18:42	BUCHER, STEPHEN	Invalid Reader	194976	03415 GATE 46	DEPT OF AVIATION--TOPS CONTRACT
10/15/2018 21:30:32	BUCHER, STEPHEN	Local Grant	194976	24113 T3-SX-L2-110A MA24114	DEPT OF AVIATION--TOPS CONTRACT
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10/16/2018 21:01:37	BUCHER, STEPHEN	Local Grant	194976	24112 T3-SX-L2-110B SL24111	DEPT OF AVIATION--TOPS CONTRACT
10/16/2018 23:28:44	BUCHER, STEPHEN	Local Grant	194976	24111 T3-SX-L2-110B MA24112	DEPT OF AVIATION--TOPS CONTRACT
10/16/2018 23:29:20	BUCHER, STEPHEN	Local Grant	194976	24114 T3-SX-L2-110A SL24113	DEPT OF AVIATION--TOPS CONTRACT
10/17/2018 21:18:37	BUCHER, STEPHEN	Local Grant	194976	24113 T3-SX-L2-110A MA24114	DEPT OF AVIATION--TOPS CONTRACT
10/17/2018 21:19:16	BUCHER, STEPHEN	Local Grant	194976	24112 T3-SX-L2-110B SL24111	DEPT OF AVIATION--TOPS CONTRACT

Start Date & Time: 12/8/16 0:00
End Date & Time: 9/29/21 23:59

Terminal Name: *
Badge #:194976*
Company Name: *
Department Name:*

Date/Time	Full Name	History Message	Badge #	Terminal Name	company_name
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10/18/2018 21:09:32	BUCHER, STEPHEN	Local Grant	194976	24113 T3-SX-L2-110A MA24114	DEPT OF AVIATION--TOPS CONTRACT
10/18/2018 21:10:07	BUCHER, STEPHEN	Local Grant	194976	24112 T3-SX-L2-110B SL24111	DEPT OF AVIATION--TOPS CONTRACT
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10/22/2018 23:48:48	BUCHER, STEPHEN	Local Grant	194976	24114 T3-SX-L2-110A SL24113	DEPT OF AVIATION--TOPS CONTRACT
10/23/2018 21:03:37	BUCHER, STEPHEN	Local Grant	194976	24113 T3-SX-L2-110A MA24114	DEPT OF AVIATION--TOPS CONTRACT
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10/23/2018 23:47:44	BUCHER, STEPHEN	Local Grant	194976	24111 T3-SX-L2-110B MA24112	DEPT OF AVIATION--TOPS CONTRACT
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10/24/2018 20:52:47	BUCHER, STEPHEN	Local Grant	194976	24112 T3-SX-L2-110B SL24111	DEPT OF AVIATION--TOPS CONTRACT
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10/28/2018 22:15:32	BUCHER, STEPHEN	Invalid Reader	194976	03415 GATE 46	DEPT OF AVIATION--TOPS CONTRACT
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10/29/2018 20:58:09	BUCHER, STEPHEN	Local Grant	194976	24112 T3-SX-L2-110B SL24111	DEPT OF AVIATION--TOPS CONTRACT
10/29/2018 23:44:50	BUCHER, STEPHEN	Local Grant	194976	24111 T3-SX-L2-110B MA24112	DEPT OF AVIATION--TOPS CONTRACT
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10/31/2018 21:23:09	BUCHER, STEPHEN	Local Grant	194976	24112 T3-SX-L2-110B SL24111	DEPT OF AVIATION--TOPS CONTRACT

Start Date & Time: 12/8/16 0:00
End Date & Time: 9/29/21 23:59

Terminal Name: *
Badge #:194976*
Company Name: *
Department Name:*

Date/Time	Full Name	History Message	Badge #	Terminal Name	company_name
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11/05/2018 21:04:40	BUCHER, STEPHEN	Local Grant	194976	24113 T3-SX-L2-110A MA24114	DEPT OF AVIATION--TOPS CONTRACT
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11/07/2018 00:37:49	BUCHER, STEPHEN	Local Grant	194976	24114 T3-SX-L2-110A SL24113	DEPT OF AVIATION--TOPS CONTRACT
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11/07/2018 20:44:23	BUCHER, STEPHEN	Local Grant	194976	24112 T3-SX-L2-110B SL24111	DEPT OF AVIATION--TOPS CONTRACT
11/08/2018 00:39:48	BUCHER, STEPHEN	Local Grant	194976	24111 T3-SX-L2-110B MA24112	DEPT OF AVIATION--TOPS CONTRACT
11/08/2018 00:40:22	BUCHER, STEPHEN	Local Grant	194976	24114 T3-SX-L2-110A SL24113	DEPT OF AVIATION--TOPS CONTRACT
11/08/2018 22:51:33	BUCHER, STEPHEN	Invalid Reader	194976	09016 GATE 1 - Main	DEPT OF AVIATION--TOPS CONTRACT
11/12/2018 22:08:43	BUCHER, STEPHEN	Invalid Reader	194976	09016 GATE 1 - Main	DEPT OF AVIATION--TOPS CONTRACT
04/23/2019 07:58:20	BUCHER, STEPHEN	Local Grant	194976	09801 T1-SX-CAX-L2-210A SL09803	DEPT OF AVIATION--TOPS CONTRACT
04/23/2019 07:58:32	BUCHER, STEPHEN	Local Grant	194976	09901 T1-SX-CAX-L2-220A	DEPT OF AVIATION--TOPS CONTRACT
04/26/2019 09:31:05	BUCHER, STEPHEN	Invalid Reader	194976	09016 GATE 1 - Main	DEPT OF AVIATION--TOPS CONTRACT
04/28/2019 20:18:59	BUCHER, STEPHEN	Local Grant	194976	09801 T1-SX-CAX-L2-210A SL09803	DEPT OF AVIATION--TOPS CONTRACT
04/28/2019 20:19:11	BUCHER, STEPHEN	Local Grant	194976	09901 T1-SX-CAX-L2-220A	DEPT OF AVIATION--TOPS CONTRACT
04/29/2019 20:27:50	BUCHER, STEPHEN	Local Grant	194976	09801 T1-SX-CAX-L2-210A SL09803	DEPT OF AVIATION--TOPS CONTRACT
04/29/2019 20:28:02	BUCHER, STEPHEN	Local Grant	194976	09901 T1-SX-CAX-L2-220A	DEPT OF AVIATION--TOPS CONTRACT
04/30/2019 20:34:43	BUCHER, STEPHEN	Local Grant	194976	04011 T1-BCS-L1-ST115A	DEPT OF AVIATION--TOPS CONTRACT
04/30/2019 20:35:25	BUCHER, STEPHEN	Local Grant	194976	04007 T1-BCS-L2-ST115A	DEPT OF AVIATION--TOPS CONTRACT

Start Date & Time: 12/8/16 0:00
End Date & Time: 9/29/21 23:59

Terminal Name: *
Badge #:194976*
Company Name: *
Department Name:*

Date/Time	Full Name	History Message	Badge #	Terminal Name	company_name
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05/01/2019 21:05:06	BUCHER, STEPHEN	Local Grant	194976	04007 T1-BCS-L2-ST115A	DEPT OF AVIATION--TOPS CONTRACT
05/02/2019 20:29:50	BUCHER, STEPHEN	Local Grant	194976	04011 T1-BCS-L1-ST115A	DEPT OF AVIATION--TOPS CONTRACT
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05/06/2019 20:07:32	BUCHER, STEPHEN	Local Grant	194976	04011 T1-BCS-L1-ST115A	DEPT OF AVIATION--TOPS CONTRACT
05/06/2019 20:08:16	BUCHER, STEPHEN	Local Grant	194976	04007 T1-BCS-L2-ST115A	DEPT OF AVIATION--TOPS CONTRACT
05/07/2019 21:25:28	BUCHER, STEPHEN	Local Grant	194976	04011 T1-BCS-L1-ST115A	DEPT OF AVIATION--TOPS CONTRACT
05/07/2019 21:26:06	BUCHER, STEPHEN	Local Grant	194976	04007 T1-BCS-L2-ST115A	DEPT OF AVIATION--TOPS CONTRACT
05/08/2019 20:42:29	BUCHER, STEPHEN	Local Grant	194976	09801 T1-SX-CAX-L2-210A SL09803	DEPT OF AVIATION--TOPS CONTRACT
05/08/2019 20:42:45	BUCHER, STEPHEN	Local Grant	194976	09901 T1-SX-CAX-L2-220A	DEPT OF AVIATION--TOPS CONTRACT
05/09/2019 21:27:03	BUCHER, STEPHEN	Local Grant	194976	04011 T1-BCS-L1-ST115A	DEPT OF AVIATION--TOPS CONTRACT
05/09/2019 21:27:40	BUCHER, STEPHEN	Local Grant	194976	04007 T1-BCS-L2-ST115A	DEPT OF AVIATION--TOPS CONTRACT
05/12/2019 20:48:38	BUCHER, STEPHEN	Local Grant	194976	09801 T1-SX-CAX-L2-210A SL09803	DEPT OF AVIATION--TOPS CONTRACT
05/12/2019 20:48:48	BUCHER, STEPHEN	Local Grant	194976	09901 T1-SX-CAX-L2-220A	DEPT OF AVIATION--TOPS CONTRACT
05/13/2019 21:15:40	BUCHER, STEPHEN	Local Grant	194976	09801 T1-SX-CAX-L2-210A SL09803	DEPT OF AVIATION--TOPS CONTRACT
05/13/2019 21:15:52	BUCHER, STEPHEN	Local Grant	194976	09901 T1-SX-CAX-L2-220A	DEPT OF AVIATION--TOPS CONTRACT
05/14/2019 07:13:22	BUCHER, STEPHEN	Local Grant	194976	04011 T1-BCS-L1-ST115A	DEPT OF AVIATION--TOPS CONTRACT
05/14/2019 07:13:47	BUCHER, STEPHEN	Local Grant	194976	04007 T1-BCS-L2-ST115A	DEPT OF AVIATION--TOPS CONTRACT
05/14/2019 20:44:17	BUCHER, STEPHEN	Local Grant	194976	04011 T1-BCS-L1-ST115A	DEPT OF AVIATION--TOPS CONTRACT
05/14/2019 20:44:56	BUCHER, STEPHEN	Local Grant	194976	04007 T1-BCS-L2-ST115A	DEPT OF AVIATION--TOPS CONTRACT
05/15/2019 09:37:01	BUCHER, STEPHEN	Local Grant	194976	04011 T1-BCS-L1-ST115A	DEPT OF AVIATION--TOPS CONTRACT
05/15/2019 09:37:47	BUCHER, STEPHEN	Local Grant	194976	04007 T1-BCS-L2-ST115A	DEPT OF AVIATION--TOPS CONTRACT
05/15/2019 21:08:55	BUCHER, STEPHEN	Local Grant	194976	09801 T1-SX-CAX-L2-210A SL09803	DEPT OF AVIATION--TOPS CONTRACT
05/15/2019 21:09:07	BUCHER, STEPHEN	Local Grant	194976	09901 T1-SX-CAX-L2-220A	DEPT OF AVIATION--TOPS CONTRACT
05/16/2019 21:21:52	BUCHER, STEPHEN	Local Grant	194976	09801 T1-SX-CAX-L2-210A SL09803	DEPT OF AVIATION--TOPS CONTRACT
05/16/2019 21:22:01	BUCHER, STEPHEN	Local Grant	194976	09901 T1-SX-CAX-L2-220A	DEPT OF AVIATION--TOPS CONTRACT
05/16/2019 21:22:09	BUCHER, STEPHEN	Local Grant	194976	09901 T1-SX-CAX-L2-220A	DEPT OF AVIATION--TOPS CONTRACT
05/19/2019 21:38:18	BUCHER, STEPHEN	Invalid Reader	194976	09016 GATE 1 - Main	DEPT OF AVIATION--TOPS CONTRACT
05/21/2019 21:10:46	BUCHER, STEPHEN	Local Grant	194976	09801 T1-SX-CAX-L2-210A SL09803	DEPT OF AVIATION--TOPS CONTRACT

Start Date & Time: 12/8/16 0:00
End Date & Time: 9/29/21 23:59

Terminal Name: *
Badge #:194976*
Company Name: *
Department Name:*

Date/Time	Full Name	History Message	Badge #	Terminal Name	company_name
05/21/2019 21:10:58	BUCHER, STEPHEN	Local Grant	194976	09901 T1-SX-CAX-L2-220A	DEPT OF AVIATION--TOPS CONTRACT
05/22/2019 21:15:26	BUCHER, STEPHEN	Local Grant	194976	09801 T1-SX-CAX-L2-210A SL09803	DEPT OF AVIATION--TOPS CONTRACT
05/22/2019 21:15:39	BUCHER, STEPHEN	Local Grant	194976	09901 T1-SX-CAX-L2-220A	DEPT OF AVIATION--TOPS CONTRACT
05/23/2019 21:11:42	BUCHER, STEPHEN	Local Grant	194976	04011 T1-BCS-L1-ST115A	DEPT OF AVIATION--TOPS CONTRACT
05/23/2019 21:12:14	BUCHER, STEPHEN	Local Grant	194976	04007 T1-BCS-L2-ST115A	DEPT OF AVIATION--TOPS CONTRACT
05/27/2019 21:26:04	BUCHER, STEPHEN	Local Grant	194976	09801 T1-SX-CAX-L2-210A SL09803	DEPT OF AVIATION--TOPS CONTRACT
05/27/2019 21:26:15	BUCHER, STEPHEN	Local Grant	194976	09901 T1-SX-CAX-L2-220A	DEPT OF AVIATION--TOPS CONTRACT
05/28/2019 20:27:50	BUCHER, STEPHEN	Local Grant	194976	09801 T1-SX-CAX-L2-210A SL09803	DEPT OF AVIATION--TOPS CONTRACT
05/28/2019 20:28:01	BUCHER, STEPHEN	Local Grant	194976	09901 T1-SX-CAX-L2-220A	DEPT OF AVIATION--TOPS CONTRACT
05/29/2019 15:28:10	BUCHER, STEPHEN	Local Grant	194976	04011 T1-BCS-L1-ST115A	DEPT OF AVIATION--TOPS CONTRACT
05/29/2019 15:28:32	BUCHER, STEPHEN	Local Grant	194976	04007 T1-BCS-L2-ST115A	DEPT OF AVIATION--TOPS CONTRACT
05/29/2019 21:03:07	BUCHER, STEPHEN	Local Grant	194976	09801 T1-SX-CAX-L2-210A SL09803	DEPT OF AVIATION--TOPS CONTRACT
05/29/2019 21:03:20	BUCHER, STEPHEN	Local Grant	194976	09901 T1-SX-CAX-L2-220A	DEPT OF AVIATION--TOPS CONTRACT
05/30/2019 21:06:39	BUCHER, STEPHEN	Local Grant	194976	09801 T1-SX-CAX-L2-210A SL09803	DEPT OF AVIATION--TOPS CONTRACT
05/30/2019 21:06:52	BUCHER, STEPHEN	Local Grant	194976	09901 T1-SX-CAX-L2-220A	DEPT OF AVIATION--TOPS CONTRACT
06/02/2019 21:37:48	BUCHER, STEPHEN	Invalid Reader	194976	09016 GATE 1 - Main	DEPT OF AVIATION--TOPS CONTRACT
06/03/2019 21:09:21	BUCHER, STEPHEN	Local Grant	194976	09801 T1-SX-CAX-L2-210A SL09803	DEPT OF AVIATION--TOPS CONTRACT
06/03/2019 21:09:32	BUCHER, STEPHEN	Local Grant	194976	09901 T1-SX-CAX-L2-220A	DEPT OF AVIATION--TOPS CONTRACT
06/04/2019 21:15:44	BUCHER, STEPHEN	Local Grant	194976	04011 T1-BCS-L1-ST115A	DEPT OF AVIATION--TOPS CONTRACT
06/04/2019 21:16:13	BUCHER, STEPHEN	Local Grant	194976	04007 T1-BCS-L2-ST115A	DEPT OF AVIATION--TOPS CONTRACT
06/05/2019 20:55:22	BUCHER, STEPHEN	Local Grant	194976	04011 T1-BCS-L1-ST115A	DEPT OF AVIATION--TOPS CONTRACT
06/05/2019 20:55:59	BUCHER, STEPHEN	Local Grant	194976	04007 T1-BCS-L2-ST115A	DEPT OF AVIATION--TOPS CONTRACT
06/06/2019 21:06:43	BUCHER, STEPHEN	Local Grant	194976	04011 T1-BCS-L1-ST115A	DEPT OF AVIATION--TOPS CONTRACT
06/06/2019 21:07:33	BUCHER, STEPHEN	Local Grant	194976	04007 T1-BCS-L2-ST115A	DEPT OF AVIATION--TOPS CONTRACT
06/06/2019 22:48:24	BUCHER, STEPHEN	Invalid Reader	194976	09016 GATE 1 - Main	DEPT OF AVIATION--TOPS CONTRACT
06/09/2019 22:08:48	BUCHER, STEPHEN	Local Grant	194976	04011 T1-BCS-L1-ST115A	DEPT OF AVIATION--TOPS CONTRACT
06/09/2019 22:09:22	BUCHER, STEPHEN	Local Grant	194976	04007 T1-BCS-L2-ST115A	DEPT OF AVIATION--TOPS CONTRACT
06/10/2019 21:15:28	BUCHER, STEPHEN	Local Grant	194976	09801 T1-SX-CAX-L2-210A SL09803	DEPT OF AVIATION--TOPS CONTRACT
06/10/2019 21:15:40	BUCHER, STEPHEN	Local Grant	194976	09901 T1-SX-CAX-L2-220A	DEPT OF AVIATION--TOPS CONTRACT

Start Date & Time: 12/8/16 0:00
End Date & Time: 9/29/21 23:59

Terminal Name: *
Badge #:194976*
Company Name: *
Department Name: *

Date/Time	Full Name	History Message	Badge #	Terminal Name	company_name
06/13/2019 17:51:21	BUCHER, STEPHEN	Local Grant	194976	09801 T1-SX-CAX-L2-210A SL09803	DEPT OF AVIATION--TOPS CONTRACT
06/13/2019 17:51:32	BUCHER, STEPHEN	Local Grant	194976	09901 T1-SX-CAX-L2-220A	DEPT OF AVIATION--TOPS CONTRACT
06/16/2019 22:01:49	BUCHER, STEPHEN	Local Grant	194976	09801 T1-SX-CAX-L2-210A SL09803	DEPT OF AVIATION--TOPS CONTRACT
06/16/2019 22:01:58	BUCHER, STEPHEN	Local Grant	194976	09901 T1-SX-CAX-L2-220A	DEPT OF AVIATION--TOPS CONTRACT
06/19/2019 09:44:17	BUCHER, STEPHEN	Invalid Reader	194976	09016 GATE 1 - Main	DEPT OF AVIATION--TOPS CONTRACT
06/19/2019 09:46:12	BUCHER, STEPHEN	Invalid Reader	194976	09016 GATE 1 - Main	DEPT OF AVIATION--TOPS CONTRACT
06/19/2019 21:11:44	BUCHER, STEPHEN	Local Grant	194976	09801 T1-SX-CAX-L2-210A SL09803	DEPT OF AVIATION--TOPS CONTRACT
06/19/2019 21:11:56	BUCHER, STEPHEN	Local Grant	194976	09901 T1-SX-CAX-L2-220A	DEPT OF AVIATION--TOPS CONTRACT
06/20/2019 00:21:33	BUCHER, STEPHEN	Invalid Reader	194976	09016 GATE 1 - Main	DEPT OF AVIATION--TOPS CONTRACT
06/20/2019 00:30:19	BUCHER, STEPHEN	Invalid Reader	194976	09016 GATE 1 - Main	DEPT OF AVIATION--TOPS CONTRACT
08/09/2019 09:29:09	BUCHER, STEPHEN	Invalid Reader	194976	09016 GATE 1 - Main	DEPT OF AVIATION--TOPS CONTRACT
08/11/2019 21:39:33	BUCHER, STEPHEN	Local Grant	194976	09801 T1-SX-CAX-L2-210A SL09803	DEPT OF AVIATION--TOPS CONTRACT
08/11/2019 21:39:45	BUCHER, STEPHEN	Local Grant	194976	09901 T1-SX-CAX-L2-220A	DEPT OF AVIATION--TOPS CONTRACT
08/12/2019 21:04:54	BUCHER, STEPHEN	Local Grant	194976	09801 T1-SX-CAX-L2-210A SL09803	DEPT OF AVIATION--TOPS CONTRACT
08/12/2019 21:05:05	BUCHER, STEPHEN	Local Grant	194976	09901 T1-SX-CAX-L2-220A	DEPT OF AVIATION--TOPS CONTRACT
08/13/2019 20:54:28	BUCHER, STEPHEN	Local Grant	194976	09801 T1-SX-CAX-L2-210A SL09803	DEPT OF AVIATION--TOPS CONTRACT
08/13/2019 20:54:41	BUCHER, STEPHEN	Local Grant	194976	09901 T1-SX-CAX-L2-220A	DEPT OF AVIATION--TOPS CONTRACT
08/13/2019 23:08:07	BUCHER, STEPHEN	Invalid Reader	194976	09016 GATE 1 - Main	DEPT OF AVIATION--TOPS CONTRACT
04/08/2020 14:57:27	BUCHER, STEPHEN	Local Grant	194976	08304 BADGING POS 4	DEPT OF AVIATION--TOPS CONTRACT

EXHIBIT 2
TO EXHIBIT A

Kheel, Allison

From: Shannon Chambers <shannonchambers@labor.nv.gov>
Sent: Thursday, October 28, 2021 3:52 PM
To: Evan James; Kheel, Allison
Subject: CCDOA - Correspondence to Shannon Chambers - Labor Commissioner - Re Supplemental Response to Request for Documents (NLC-17-001486)
Attachments: CCDOA - Correspondence to Shannon Chambers Labor Commissioner Re Supplemental Response to Request for Documents (10-15-21).pdf

CAUTION: This email originated from outside of the Firm. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon Mr. James & Ms. Kheel,

Mr. James, please see the attached correspondence regarding the request for documents issued by the Labor Commissioner.

The Labor Commissioner has reviewed this response and the other responses provided including, a public records response provided by the CCDOA, and offers the following analysis at this point.

1. The actual payroll records for work performed for Bid No. 17-604273 may not be available.
2. It appears there was an overlap in materials and/or work performed for Bid No. 17-604273 and Bid No. 18-604792.

The Labor Commissioner does not want to continue to request records that may not be available.

The Labor Commissioner is requesting that the parties meet and confer on potential hearing dates for December 2021 on the issue of whether the work performed on Bid No. 17-604273 was "normal maintenance"

In addition, the Labor Commissioner is requesting that the parties and/or Mr. James as the representative of the complainants propose a methodology or method to calculate the potential wages owed based on their position that the work performed for Bid No. 17-604273 was subject to prevailing wage. To the extent that a request for records and/or subpoena are needed, that can be requested and issued by the Labor Commissioner depending upon the scope of the request.

The Labor Commissioner is requesting a response to this email by November 15, 2021.

Thank you both for your attention to this matter.

Shannon M. Chambers
Labor Commissioner
State of Nevada

EXHIBIT 3
TO EXHIBIT A

Kheel, Allison

From: Kheel, Allison
Sent: Wednesday, November 17, 2021 3:18 PM
To: Shannon Chambers; Evan James
Cc: Andrea H. Nichols; Ricciardi, Mark; Allison Kheel (akheel@fisherphillips.com); Kerr, Darhyl
Subject: RE: CCDOA - Correspondence to Shannon Chambers - Labor Commissioner - Re Supplemental Response to Request for Documents (NLC-17-001486)

Dear Commissioner Chambers,

Sorry for the delay in responding to your e-mail, I only received Mr. James's response this morning. The CCDOA is available for a hearing on the issue of "maintenance" on December 13, 14, or 15. If those dates do not work we would be happy to propose some alternative dates in January of 2022. The CCDOA is also willing to present testimony at this hearing which would assist the Labor Commissioner in the calculation of prevailing wages (if such calculation ultimately proves necessary).

I have conferred with Mr. James and it is my present understanding that the LMCC's position is that the Labor Commissioner should not hold a hearing in this matter. The CCDOA disagrees. The CCDOA's position is that the District Court did not/does not have the authority to limit the scope of the Labor Commissioner's proceedings on remand and a hearing over whether this work is "maintenance" work and thus exempt from prevailing wage is necessary in this matter. The CCDOA is prepared to proceed with such a hearing on the December dates noted above.

Alternatively, the CCDOA would not oppose any decision by the Labor Commissioner to stay all further proceedings on this matter pending the outcome of the CCDOA's Appeal to the Supreme Court.

Very truly yours,



Allison Kheel

Attorney at Law

Fisher & Phillips LLP

300 S. Fourth Street | Suite 1500 | Las Vegas, NV 89101

akheel@fisherphillips.com | O: (702) 862-3817 | C: (702) 467-1066

[Website](#)

On the Front Lines of Workplace LawSM

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error, then immediately delete this message.

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

Sent: Thursday, October 28, 2021 3:52 PM

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

Subject: CCDOA - Correspondence to Shannon Chambers - Labor Commissioner - Re Supplemental Response to Request for Documents (NLC-17-001486)

CAUTION: This email originated from outside of the Firm. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon Mr. James & Ms. Kheel,

Mr. James, please see the attached correspondence regarding the request for documents issued by the Labor Commissioner.

The Labor Commissioner has reviewed this response and the other responses provided including, a public records response provided by the CCDOA, and offers the following analysis at this point.

1. The actual payroll records for work performed for Bid No. 17-604273 may not be available.
2. It appears there was an overlap in materials and/or work performed for Bid No. 17-604273 and Bid No. 18-604792.

The Labor Commissioner does not want to continue to request records that may not be available.

The Labor Commissioner is requesting that the parties meet and confer on potential hearing dates for December 2021 on the issue of whether the work performed on Bid No. 17-604273 was "normal maintenance"

In addition, the Labor Commissioner is requesting that the parties and/or Mr. James as the representative of the complainants propose a methodology or method to calculate the potential wages owed based on their position that the work performed for Bid No. 17-604273 was subject to prevailing wage. To the extent that a request for records and/or subpoena are needed, that can be requested and issued by the Labor Commissioner depending upon the scope of the request.

The Labor Commissioner is requesting a response to this email by November 15, 2021.

Thank you both for your attention to this matter.

Shannon M. Chambers
Labor Commissioner
State of Nevada

EXHIBIT 4
TO EXHIBIT A

KEVIN B. CHRISTENSEN
EVAN L. JAMES *†
DARYL E. MARTIN
WESLEY J. SMITH *†

KEVIN B. ARCHIBALD

LAURA J. WOLFF *

* ALSO LICENSED IN UTAH

† ALSO LICENSED IN WASHINGTON



7440 W. SAHARA AVE.
LAS VEGAS, NEVADA 89117
TEL 702-255-1718
FAX 702-255-0871

AUTHOR'S EMAIL
ELJ@CJMLV.COM

November 18, 2021

Via Email Only

State of Nevada Dept. of Business & Industry
Office of the Labor Commissioner
Shannon Chambers, Labor Commissioner
shannonchambers@labor.nv.gov

Re: *LMCC Adv. Clark County Dept. of Aviation, #NLC-17-00146*
Response to Email Dated October 28, 2021

Dear Commissioner Chambers,

This letter is in response to your email dated October 28, 2021. The first matter that I wish to address is the following request made in the email: “The Labor Commissioner is requesting that the parties meet and confer on potential hearing dates for December 2021 on the issue of whether the work performed on Bid No. 17-604273 was ‘normal maintenance.’” Please note that the Department of Aviation (“DOA”) is not entitled to relitigate that issue and the Labor Commissioner is not empowered to revisit it either. The District Court has already determined that work performed under Bid No. 17-604273 was subject to Nevada’s prevailing wage rates precisely because the work was not normal maintenance pursuant to the contract documents. According to the express language of the September 16, 2021, Decision and Order of the District Court, the Office of the Labor Commissioner was directed to do just three things in connection with this case: (1) “collect wage records” (2) “calculate the value of unpaid wages,” and (3) “identify potential wage claimants.”

The second matter that I wish to address is the DOA’s continued failure to comply with applicable law and the Court’s Order. By court order, Bid No. 17-604273 and its subsequent contract(s) were subject to prevailing wage law. The DOA has the obligation to investigate the matter pursuant to NRS 338.070(1), which states: “Any public body awarding a contract ***shall***: (a) investigate ***possible*** violations of the provisions of NRS 338.010 to 338.090, inclusive, committed in the execution of the contract....” (emphasis added). Even though the District Court’s Order has been appealed to the Nevada Supreme Court, the legal effect of the Order has not been stayed and the filing of the appeal did not change the District Court’s ruling. The DOA remains subject to the requirements of the statute, which include the mandate that the DOA investigate potential statutory violations.

The DOA’s duty to follow NRS 338.070(1) by investigating alleged (i.e., “possible”) violations was unquestionably triggered in 2017 when the Administrative Complaint was filed. From that time forward, the employment records of the contractors used by DOA have been “open at all reasonable hours to the inspection of the public body awarding the contract.” NRS

338.070(6). Those required records include “[t]he actual per diem, wages and benefits paid to the worker.” DOA’s utter disregard of law and continued desire to permit (or engage in) spoliation of evidence has, to the undersigned, become more than concerning. DOA’s attitude of noncooperation throughout this process has been consistent. In its unsuccessful motion asking the Nevada Supreme Court to stay the District Court’s Order the DOA said (falsely) that it “has no control or authority over the NCC’s wages records, timecards or NCC’s routine record destruction practices.” *See* Ex. 1, relevant excerpt from DOA’s Motion to Stay. But as shown above, DOA’s statement is both legally and factually incorrect. Not only is DOA’s refusal to investigate a violation of statute and the implicit cooperation requirement of the Court Order, its justification for refusing to investigate is itself based on a false statement of law.

The DOA has failed to produce documents for the time period of December 1, 2016, through March 24, 2018. It appears that the DOA’s disclosures to you regarding Bid No. 17-604273 are incomplete. To my understanding, the DOA’s disclosures are based upon a *recent* Public Records Request (“PPR”) from my office. That PPR reads, in part, as follows: “On **March 24, 2018**, the Clark County Department of Aviation (“DOA”) advertised **Bid No. 18-604792** (“Bid”) for the purchase of flooring materials. Please provide the following in regard to that Bid....” *See* Enclosure Bates No. 17 (emphasis added). The LMCC’s Administrative Complaint was filed on **April 27, 2017**, almost a year before Bid No. 18-604792 was published by the DOA. In addition, the Administrative Complaint lists Bid No. 17-604273 and not Bid No. 18-604792. Exhibit 1 to the Administrative Complaint contains the Invitation to Bid for Bid No. 17-604273, which shows that responses to that bid were due prior to **December 1, 2016**. There is therefore no question that the work at issue in this Case involved a sixteen-month time period prior to March 24, 2018. Where are the records that predate March 24, 2018?

The DOA is apparently asserting that its production of documents pursuant to the PPR is responsive to your request for documents relating specifically to Bid No. 17-604273, but it seems clear that the DOA’s response includes records of commingled materials and work performed under two separate bids (both Bid No. 17-604273 and Bid No. 18-604792). Furthermore, the DOA’s response to your request seems completely devoid of any documents between the dates of December 1, 2016, and March 24, 2018. This prompts the obvious conclusion that the DOA has intentionally engaged in a dereliction of duty to preserve and produce all relevant evidence (especially since under NRS 338.070(6) the DOA has had the absolute right to access all contractor records relating to Bid No. 17-604273 since at least 2017, when the Administrative Complaint was filed).

The third matter I will address is a preliminary calculation of unpaid wages through a “reasonable inference” based upon the records already produced by the DOA that relate to Bid No. 17-604273 and Nevada law. Although the DOA has produced no such records, employers are obligated to keep wage records pursuant to 29 U.S.C. 211(c), 29 C.F.R. Part 516, and N.R.S. 608.115. Also, contractors on public works projects are also obligated to provide certified payroll reports for work performed on the project. *See* NAC 338.096 – 100. Based on such statutes and rules, a body of law has developed in the United States to address the injustice that arises when parties refuse to keep records needed to prove the amount of wages owed. In a situation like this one, the United States Supreme Court stated “The employer cannot be heard to complain that the damages lack the exactness and precision of measurement that would be possible had he kept records in accordance with the requirements of § 11(c) of the Act. *Anderson v. Mt. Clemens*

Pottery Co., 328 U.S. 680, 688, 66 S. Ct. 1187, 1192-93 (1946). “In such a case ‘it would be a perversion of fundamental principles of justice to deny all relief to the injured person, and thereby relieve the wrongdoer from making any amend for his acts.’” *Id.* (quoting *Story Parchment Co. v. Paterson Parchment Paper Co.*, 282 U.S. 555, 563, 51 S. Ct. 248 (1931)). To that end, parties such as the DOA who refuse to obtain records necessary to affirmatively establish the value of wages owed are subject to a damages estimate through a “reasonable inference” as to the amount of wages owed. *See Brock v. Seto*, 790 F.2d 1446, 1449 (9th Cir. 1986) (“[E]vidence from employees was sufficient to impose upon the district court a duty to estimate back wages.”)

Workers in Nevada are entitled to a minimum wage. Nev. Const. Art. 15, § 16. Workers on DOA’s project were entitled to payment of the statutory minimum wage, which, at the time the work was performed under Bid No. 17-604273, was \$8.25 per hour. *See* NRS 608.250. The amount of wages due may be calculated by using the minimum wage rate required by law and the value of labor supplied to the project.¹ A review of the documents provided by DOA, which are enclosed and Bates numbered, indicates that Nevada Contract Carpet, Inc. (“NCC”) only provided labor. The following Table 1 is information compiled from NCC Invoices found in the DOA’s document production showing the value of labor performed under Bid No. 17-604273:

Table 1

NCC Invoice #	Bates Number	Date	Labor Value	Notes from Document
CG916124	34	6/25/2019	\$ 48,727.20	
GC915630	37	7/8/2019	\$ 3,690.93	"DEMO AND INSTALL CARPET TILE AND BASE"
CG916193	40	7/19/2019	\$ 12,169.53	
Total Labor			\$64,587.66	

The following Table 2 is a list of DOA Purchase Orders to NCC showing the value of labor performed in accordance with Bid No. 17-604273:

Table 2

DOA PO #	Bates Number	Date	PO Value	Notes form Document
4500289365-303	169-70	9/17/2018	\$ 62,528.10	“REMOVE & DISPOSE OF CARPET TILE”, “SUB FLOOR PREP”, “INSTALL NEW CARPET TILE”
4500295769-303	184-85	2/13/2019	\$ 97,454.40	"CARPET REMOVAL AND DISPOSAL", “SUB FLOOR PREP”, “INSTALLATION OF OWNER CARPET"
4500298361-303	197-98	4/16/2019	\$ 3,690.93	"DEMO AND INSTALL NEW CARPET"
4500303003-	205-06	7/8/2019	\$ 12,169.53	"INSTALL FLOORING"

¹ Using this method, the wages due will still be undervalued because the DOA has yet to produce documents relating to the project for the time period between December 1, 2016, and March 24, 218 and as shown in Tables 1 and 2 the DOA’s disclosed documents highly suggest that it has not released all information regarding labor costs because its Purchase Orders and Contractor Invoices are inconsistent.

303				
Total Labor			\$175,842.96	

Using the minimum wage of \$8.25 as a starting point, the number of hours performed on the project may be calculated by dividing the labor costs by \$8.25/hour. The amount of unpaid wages may then be calculated by subtracting \$8.25 per hour in wages paid from the required \$49.72² per hour prevailing wage rate and then multiplying that value by the number of hours worked. Here are the calculations for each table:

Calculation of Hours Worked Using Only NCC Invoices from Table 1:

$$\begin{array}{rcl}
 & \$ 58,128.89 & \text{Value of Labor (90\% of \$64,587.66, to} \\
 & & \text{account for overhead/profit)} \\
 \div & \$ 8.25 & \text{Assumed Wage Per Hour} \\
 = & 7,045.93 & \text{Hours Worked}
 \end{array}$$

Valuation of Wages Owed Using Only NCC Invoices from Table 1:

$$\begin{array}{rcl}
 & \$ 49.72 & \text{Prevailing Wage} \\
 - & \$ 8.25 & \text{Assumed Wage Paid Per Hour} \\
 \times & 7,045.93 & \text{Hours Worked} \\
 = & \mathbf{\$292,194.71} & \mathbf{\text{Unpaid Wages Per NCC Invoices}}
 \end{array}$$

Calculation of Hours Worked Using Only DOA Purchase Orders from Table 2:

$$\begin{array}{rcl}
 & \$ 158,258.66 & \text{Value of Labor (90\% of 175,842.96)} \\
 \div & \$ 8.25 & \text{Assumed Wage Per Hour} \\
 = & 19,182.87 & \text{Hours Worked}
 \end{array}$$

Valuation of Wages Owed Using Only DOA Purchase Orders from Table 2:

$$\begin{array}{rcl}
 & \$ 49.72 & \text{Prevailing Wage} \\
 - & \$ 8.25 & \text{Assumed Wage Paid Per Hour} \\
 \times & 21,314.30 & \text{Hours Worked} \\
 = & \mathbf{\$795,513.62} & \mathbf{\text{Unpaid Wages Per DOA Purchase Orders}}
 \end{array}$$

It is important to reiterate that the DOA had a duty to keep and obtain wage records. The DOA cannot complain about the wage approximation where it failed and refused to keep or obtain the records necessary to establish the actual wages owed.³

² Value obtained from Labor Commissioner's Prevailing Wage Valuations. See 2019 Prevailing Wage Rates, Clark County at 6.

³ If the DOA, or its contractors, can prove, using valid evidence / payroll records, that hourly wages paid to workers under Bid No. 17-604273 were higher than \$8.75, then these calculations will change, perhaps substantially.

The Court directed the Labor Commissioner not only to determine how much is owed in unpaid wages, but also to whom the wages are owed. The simplest way to do so is to obtain from NCC a list of employees that worked on the project during the time period associated with its Invoices and/or DOA's Purchase Orders. The relevant dates from the Invoices are June 25, 2019; July 8, 2019, and July 19, 2019. However, DOA's Purchase Orders show additional work being performed for which no NCC invoice was provided, so it would be appropriate to also obtain from NCC a list of workers who performed work pursuant to the DOA's Purchase Orders dated September 17, 18 (PO # 4500289365-303) and February 13, 2019 (PO # 4500295769-303).

Regardless of NCC or the DOA's ability and willingness to provide employee and wage information, the Labor Commissioner may obtain NCC employee information from the State of Nevada, Department of Training and Rehabilitation, Employment Security Division ("ESD"). NCC was required to submit quarterly reports to ESD containing employee names and wages paid. The Labor Commissioner is entitled to view such information pursuant to NAC 612.056. In addition, the LMCC has traditionally been allowed to obtain and view such information pursuant to its labor purposes. *See Trustees of the Constr. Indus. and Laborers Health and Welfare Trust v. Summit Landscape Companies, Inc.*, 309 F.Supp.2d 1228, 1244 (D. Nev. 2004); *see also Tobler and Oliver Const. Co. v. Board of Trustees*, 84 Nev. 438, 443, 442 P.2d 904, 907 (1968). The ESD quarterly reports will identify the workers to whom unpaid wages should be paid.

We suggest that the Labor Commissioner also subpoena additional documents from NCC. The following documents should still exist (if for no other reason than tax purposes) and would be help determine the full amount owed and to whom the owed amount should be paid:

1. Invoices submitted to DOA since December 1, 2016;
2. Applications for Progress Payments submitted to DOA since December 1, 2016;
3. Payroll reports from December 1, 2016, through the present;
4. Check registers since December 1, 2016, through present;
5. Employee time sheets/cards from December 1, 2016, through the present;
6. Contract(s) signed between NCC and DOA since December 1, 2016;
7. Dispatch records of employees to DOA work projects;
8. Quarterly and annual tax and wage reports, including but not limited to, reports submitted to ESD and Federal Forms 941, 1099, and employee W-2; and
9. Documents showing the job classification of employees.

The LMCC is willing to participate in a hearing with the Labor Commissioner consistent with the Court's Order. I look forward to the setting of that hearing.

Thank you,



Evan L. James, Esq.

Encl.

cc: Allison Kheel, Esq.
Andrea H. Nichols, Esq.