



May 3, 2010

VIA EMAIL & FED EX DELIVERY

Governor Jim Gibbons
State of Nevada
State Capitol
101 N Carson Street
Carson City, Nevada 89701

RE: Request for Investigation into Why MGM/Mirage is not Paying for CityCenter

Dear Governor Gibbons,

Over 5 long years ago, MGM/Mirage after extensive interviews and due diligence, selected Perini Building Company as their contractor for CityCenter. Together we embarked on a five year journey, the culmination of which was the Grand Opening of CityCenter on December 16th 2009. It is the largest private development in recent United States history. An accomplishment that everyone in the State of Nevada and the City of Las Vegas should take pride in. It is a World Class Destination that will be enjoyed by millions for years to come. Unfortunately this accomplishment will be overshadowed in the wake of destroyed businesses and livelihoods by the failure of MGM/Mirage to satisfy their financial obligations and pay the outstanding monies owed on CityCenter.

As outlined below, Perini and its Subcontractors delivered CityCenter as promised and yet is owed millions in unpaid contract balances;

- 1) The project was delivered on time as promised and MGM/Mirage has been operating the project for over 4 months. Substantial Completion was achieved, including the delivery of the required Temporary Certificates of Occupancy**
- 2) MGM/Mirage consistently and publicly congratulated Perini and their Subs for a job well done. In fact, the press release issued by Perini at the time of the Grand Opening of CityCenter, included high accolades and praise from MGM/Mirage. The quote from Bobby Baldwin, proudly contained in Perini's news release at the time of the December 16th opening was as follows:**

“The Perini team's responsiveness and professionalism was instrumental in allowing us to remain on schedule for a 2009 opening. We look forward to the opportunity to work with them in the future.”



- 3) **The final project cost due and owing Perini and its Subcontractors is approximately \$6.29 billion. Over \$800 million was performed by MBE/WBE businesses.**
- 4) **To date MGM/Mirage has paid only \$5.79 billion.**
- 5) **The balance due and owed by MGM/Mirage is approximately \$500 million. \$400 million is owed to Perini Subcontractors, of which almost \$40 million belongs to MBE/WBE businesses. Perini alone is owed \$100 million.**
- 6) **MGM/Mirage faced enormous financial difficulties throughout the latter part of the construction of CityCenter and continues to have financial challenges today. In late 2008/ 2009 when MGM/Mirage was seeking additional financing to complete the project, Perini sought assurances that MGM had adequate financing to meet the Project's Forecasted Cost (\$6.2 billion). These assurances were received in summer of 2009 and Perini was continually reassured thereafter by MGM/Mirage's Senior Management that it would in fact be paid for the work necessary to complete the Project.**
- 7) **In the meantime, MGM/Mirage's financial position continues to deteriorate:**
 - **CityCenter slashed condo prices by 30% in 2009 because of sluggish sales (Source: April 15, 2010 story by Tony Illia in LV Business Press).**
 - **MGM/Mirage's net revenue decreased 13% to \$5.9 billion in 2009. (Source: April 15, 2010 story by Tony Illia in LV Business Press.)**
 - **On April 12, MGM announced that it is delaying completion of Veer Towers and Harmon (Source: April 15, 2010 story by Tony Illia in Las Vegas Business Press).**
 - **Occupancy at Aria was just 63% for the first quarter of 2010. (Source: April 14, 2010 story in Las Vegas Review Journal by Howard Stutz.)**
 - **MGM/Mirage announced it will be reporting an operating loss of \$255 million for the first quarter of 2010. (Source: April 14, 2010 story in Las Vegas Review Journal by Howard Stutz.)**
- 8) **Although the market has changed drastically since the time that MGM/Mirage conceived the project, and it now appears that they do not have sufficient funds to meet their obligations, this unfortunate circumstance does not negate the fact that**



City Center was delivered on time and that they owe Perini and its Subcontractors almost \$500 million.

What you may not know is the extreme difficulties under which Perini and its Subcontractors operated while delivering CityCenter. MGM/Mirage continually failed to deliver on their obligations required by the contract with Perini for the construction of CityCenter.

1) Late Design Delivery/Decision Making by MGM/Mirage:

MGM/Mirage routinely missed design deliverable due dates for the Guaranteed Maximum Price (GMP) designs from 132 to 540 days late. Therefore, when we were able to start the work, all of the schedules were extremely tight leaving no margin of error for future changes.

Even after the alleged GMP designs were delivered and our GMP's were quoted and signed, MGM/Mirage failed to perform on the still outstanding design deadlines. Often times these additional design requirements were months late. The result was tremendous impact to our work efficiency and significant stacking of trades.

Well over 100,000 additional contract drawings were generated after the execution of the various GMP's, almost 4 times the original number of GMP drawings. In addition, over 2600 work instructions and field directives were issued, post-GMP, that continually impacted our ability to achieve any efficient work flow

Furthermore, MGM/Mirage's Life Safety and Smoke control designs, which were absolutely critical to delivering both Temporary Certificates of Occupancy's and Final Certificates of Occupancy's, were submitted to Clark County Building with significant errors and omissions. Almost all of these designs and related scenarios were delivered well over a year late. In fact we are still receiving modifications in 2010 that are directly impacting the ability to obtain the Final Certificate of Occupancy

2) MGM/Mirages Failure to Manage the Change Order Process

MGM/Mirage failed to properly implement and/or manage a contractually obligated online software system to manage the change order process resulting in inaccurate cost forecasting and a failure to timely and properly process change orders.

MGM/Mirage consistently manipulated this system to reflect their own cost opinions and continuously disregarded the information and forecasting provided by Perini. To this point, in mid 2009 Perini informed MGM/Mirage that they would no longer be

using this system to evaluate and determine current and future costs as the information had been manipulated by the Owner to the point of zero reliability

Perini using it's own systems consistently provided project cost forecasting to MGM/Mirage that was discarded and ignored. In fact, the final cost projection of +/- \$6.2 billion has not changed materially for over 14 months.

Perini and its Subcontractors have quoted over \$500 million in Owner directed Changes and related delay/impact costs. Many of the changes have been quoted for well over a year, with a large portion quoted for over 6 months. Despite repeated assurances that they would in good faith review and approve our change orders, MGM/Mirage failed to engage in any meaningful way to resolve any of the significant changes. In fact, to date, other than Aria Tower (+/- \$15 million), MGM/Mirage has failed to issue **ANY** significant Change Orders that would increase our GMP. To the contrary, and very self-serving, only deductive change orders and back-charges have been issued.

In mid-2009 MGM/Mirage engaged the services of Ernst and Young (EY) with the stated intention of "cleaning up" and resolving all outstanding changes by the end of 2009. Although some very limited progress was made on some of the minor changes and in-scope issues, by and large, EY simply did not engage in any meaningful negotiations on the major change order requests

As late as December 24th MGM/Mirage delivered an executed agreement, wherein they committed to resolving **ALL** major and/or materially significant changes by January 31, 2010. It is very apparent now that this was a complete misrepresentation of their intentions and a deliberate attempt to mislead Perini and its Subcontractors.

Once MGM/Mirage realized that their efforts to dismiss the millions in change orders were failing, they shifted their focus to fabricating "offsets" and reasons not to pay, rather than in good faith, resolving the costly changes they had initiated. The apparent "offsets" MGM/Mirage fabricated and the reasons they are totally contrived and unfounded are outlined below;

1) The Harmon "offset":

MGM/Mirage's use of issues associated with the Harmon to deny payment is nothing but a smokescreen. Harmon can and will be fixed.



The Harmon structural drawings were months late and contained many errors and omissions. From the commencement of construction the drawings were constantly changing and MGM/Mirage would have to acknowledge that the “permitted” set of drawings **never** matched the set of drawings we were using to construct the project.

The Subcontractor’s fabrication drawings were used by MGM/Mirage’s engineer to modify the designs, rather than the appropriate method of submitting drawings to the County for approval prior to proceeding with construction.

MGM/Mirage had full knowledge and visibility of what was going on as did the County, the engineer and the 3rd party inspectors. All were acting in good faith in an attempt to keep the project on schedule. Unfortunately, the combination of all of the constant drawing revisions resulted in errors.

In mid-2008, certain issues relating to the lack of constructability of the design, as well as negligent third party inspection and improper installation of the steel reinforcing were discovered at the upper floors of Harmon.

Despite efforts in 2008 by Perini to work with the MGM/Mirage towards a mutually acceptable remedy that would allow the Harmon to be constructed as originally intended, in late 2008 MGM/Mirage unilaterally decided to reduce the Harmon from 48 stories to 26 stories and announced they would defer the build out of the hotel portion for one year.

MGM/Mirage officials admitted several times that this decision was based on deteriorating market conditions for condominiums and cash flow considerations rather than any alleged construction defect. The defects became a convenient “excuse” for MGM/Mirage to use in announcing the Condo product elimination and the deferral of the Harmon Hotel build-out.

As of March 10th, 2010 only 10 of the 893 available condominiums in Veer and Mandarin Oriental towers had been purchased. (Source: April 12, 2010 story by Tony Illia in the LV Business Press)

As inspections and structural verification of Harmon continued, in early 2010, additional issues relating to the lack of constructability of the design, as well as negligent third party inspection and improper installation of the steel reinforcing at the lower floors of Harmon were discovered.

For the past couple of months Perini worked in good faith with MGM/Mirage and its engineers to assess and correct the lower level issues so as to allow the revised



scope of the Harmon to be completed. In fact, during job walks with MGM/Mirage's structural engineer, Halcrow Yolles, representations were made to Perini that the issues discovered could be remedied to allow the Harmon to be completed. Also in meetings with Ron Tutor and Bobby Baldwin in late February 2010, MGM/Mirage acknowledged that the issues were fixable and that Halcrow Yolles was in the progress of engineering the corrections.

On March 23rd, in violation of the terms of the Construction Agreement which allow Perini to repair any alleged non-conforming work, MGM/Mirage demanded "that Perini cease all construction activities at the Harmon" and directed its security officers to escort Perini employees from the site. Locks were changed precluding Perini's access to the Harmon site, thereby denying Perini the ability to complete its work under the Construction Agreement. Had MGM/Mirage not taken these actions, Perini and Halcrow Yolles, could have remedied the issues and delivered the Harmon to the Owner in July or August of this year

The above notwithstanding, the Harmon issues are completely covered by MGM/Mirage's OCIP insurance policy. Perini has provided documentation supporting this position, yet MGM/Mirage has not responded.

MGM/Mirage repeatedly concurred, at the highest levels of their management, that the Harmon claim would be resolved with Perini. They also presented a value of \$60 to \$80 million, for which Perini advised MGM/Mirage that their amount was overstated by more than double.

Perini also repeatedly received assurances from Bobby Baldwin and Jim Murren that it was not their intention to hold these monies from Perini or their Subcontractors.

In spite of all of these exchanges and dialogue, MGM/Mirage wants to now claim that Harmon is a "total loss" and have placed an unsupported value of \$412 million on the purported loss. It doesn't get any more obvious as to why they have contrived this theory, they either don't want to or don't have the ability to pay.

Finally, MGM/Mirage has their own concurrent structural defect issues, for which they are fully responsible. So even after the defects referenced above are corrected, they would have to address and correct their own issues before the County would allow occupancy of Harmon.

The bottom line is that Harmon can be fixed, MGM/Mirage knows it, Halcrow Yolles knows it and Perini knows it. It is obvious to anyone that will take the time to examine the facts that MGM/Mirage is only using this as an excuse to wrongfully hold our money

The time has come to let Perini and Halcrow Yolles complete the repair of the building and stop using this as an excuse not to pay.

2) The “non-conforming” work “offset”:

In the latter part of 2009, MGM/Mirage fabricated, inflated and then presented \$46 million of alleged “non-conforming” work. Perini and its Subcontractors have responded to the \$46 million of claims and with significant and compelling documentation have demonstrated their claims to be valued at less than \$4 million. Even the management team working for MGM/Mirage will acknowledge that the facts would not support them.

MGM/Mirage knows full well that almost all of the purported \$46 million of “non-conforming” work is in fact cost associated with Owner directed changes and related impacts, or is the result of their own design deficiencies.

3) The contrived “offset”:

Since MGM/Mirage knew that the \$46 million house of cards would soon collapse, giving them no legitimate reason to hold our money, they developed a strategy to create yet more unfounded “offsets”. Although representing that Ernst Young (EY) was tasked with resolving Change Orders, instead, Perini believes that MGM/Mirage assigned EY an entirely different agenda. That agenda was, and continues to be, to find and/or develop a strategy of “offsets” that would serve to provide an excuse not to pay Perini. In fact, after 4 years of constant auditing of Perini and their Subcontractor’s records by MGM/Mirage’s internal audit department and accounting staff, as each of our monthly billings were submitted, MGM/Mirage now has EY “re-auditing” the books.

MGM/Mirages internal audit department actually contacted our accounting group advising us that we should refuse to endure yet another audit by EY since it had already been done many times over. In our opinion it has become very obvious that MGM/Mirage and EY are on nothing more than a “Witch Hunt” In fact we



have reliable evidence that will confirm these tactics that will be shared at the appropriate time.

So now, more than 3 months after the project was delivered, MGM/Mirage has alleged additional “offsets” totaling \$215 million. The only way Perini was even made aware of this amount was in a letter dated March 17th from CityCenter attorneys with a single number, no notice and no back-up documentation. Enough is enough, it is time to stop the game playing and pay their bills.

The people of Nevada deserve to hear the full story behind the CityCenter lawsuit. They will be disappointed to learn of the actions and intentions of MGM/Mirage; one of our community’s largest corporations.

MGM/Mirage knows that it is only a matter of time that the Harmon and “offset” smokescreens will evaporate and they will be left with no alternative but to pay their bills. Unfortunately, MGM/Mirage has resorted to tactics that resemble the very best in corporate arrogance and disregard for hard working Nevadans who for many years and with great pride gave their all in constructing CityCenter

Perini has now learned and has good reason to believe that the next strategy is to go after the reputation of Perini and its Subcontractors. Most of us having lived and worked in this community for over 25 years simply will not tolerate these tactics.

Collectively, Perini and their Subcontractors have successfully completed large complex projects here in Las Vegas and throughout the country and around the globe. We are proud of what we have accomplished and of our contributions to the State of Nevada and the City of Las Vegas. We have been faithful and loyal employers of tens of thousands of high paying Las Vegas construction jobs and intend on providing these same employment opportunities in the future.

Perini and its Subcontractors currently employ over 5000 workers on our jobs at the Cosmopolitan Casino and the McCarran Airport expansion. The vast majority of which are proud members of our Local Labor Unions.

Check our references and repeat client base contacts, you will find that we deliver what we promise. We are direct in our communications and expect our Partners to be the same.

It is Perini’s and their Subcontractors intention to take the high road. To that end, we have formed a coalition named “Citizens Holding MGM Accountable” Many of our Subcontractors, Vendors and Labor Union Partners have joined forces to participate in communicating our message as clearly and concisely as possible and will use this coalition for such purposes.



Conclusion and Request for action:

In light of the great harm facing Perini and the over 600 Subcontractors and vendors that worked on City Center, many of which are small businesses or MBE/WBE firms, we ask that you open up an investigation to determine the real reason as to why MGM/Mirage is not paying their bill. We believe it is critical to the survival of many of the minority owned and small businesses involved, as well as all of our employees and all of Las Vegas to know the truth. We would ask that you and other State officials work on our behalf – and on the side of the best interest of Nevada- to pursue justice and determine whether MGM/Mirage is indeed rolling the dice with the future of all of our businesses and the people we employ. We are prepared to meet with you and others at your earliest convenience.

Respectfully and Sincerely,

PERINI BUILDING COMPANY

A handwritten signature in black ink, appearing to read "Craig W. Shaw".

Craig W. Shaw
President & CEO

A large, stylized handwritten signature in black ink, appearing to read "Dick Rizzo".

Dick Rizzo
Senior Vice President

A handwritten signature in black ink, appearing to read "Mark Caspers".

Mark Caspers
Sr. Vice President & CEO
Tutor Perini Building Divisions

A handwritten signature in black ink, appearing to read "Pat Hubbs".

Pat Hubbs
Executive Vice President

Cc: See Distribution List Attached

Distribution List

Governor Jim Gibbons
Grant Sawyer State Office Building
555 E. Washington, #5100
Las Vegas, NV 89101

Senator John Ensign
119 Russell Senate Office Building
Washington, DC 20510

Senator Harry Reid
528 Hart Senate Office Building
Washington, DC 20510

Congresswoman Shelly Berkley
429 Cannon House Office Building
Washington, DC 20515

Congressman Dean Heller
1023 Longworth
Washington, DC 20515

Congresswoman Dina Titus
319 Cannon Hob
Washington, DC 20515

Attorney General Catherine Cortez Masto
100 No. Carson Street
Carson City, NV 89701

&

555 E. Washington Avenue, #3900
Las Vegas, NV 89101

Clark County Commissioner Steve Sisolak
Commission District A
500 Grand Central Parkway
Las Vegas, NV 89106

Clark County Commissioner Tom Collins
Commission District B
500 Grand Central Parkway
Las Vegas, NV 89106

Clark County Commissioner Larry Brown
Commission District C
500 Grand Central Parkway
Las Vegas, NV 89106

Clark County Commissioner Lawrence Weekly
Commission District D
500 Grand Central Parkway
Las Vegas, NV 89106

Clark County Commissioner Chris Giunchigliani
Commission District E
500 Grand Central Parkway
Las Vegas, NV 89106

Clark County Commissioner Susan Brager
Commission District F
500 Grand Central Parkway
Las Vegas, NV 89106

Clark County Commissioner Rory Reid
Commission District G
500 Grand Central Parkway
Las Vegas, NV 89106

County Manager Virginia Valentine
500 Grand Central Parkway
Las Vegas, NV 89106

City of Las Vegas City Council
City Hall, Tenth Floor
400 Stewart Avenue
Las Vegas, NV 89101

Lois Tarkanian
Steve D. Ross
Steve Wolfson
Gary Reese
Stavros Anthony
Ricki Barlow

City of Las Vegas City Manager
Elizabeth N. Fretwell
City Hall, Eighth Floor
400 Stewart Avenue
Las Vegas, NV 89101

City of Las Vegas Mayor
Mayor Oscar B. Goodman
City Hall, Tenth Floor
400 Stewart Avenue
Las Vegas, NV 89101

Bill Grounds
Dubai World

MGM/Mirage Board Members
3600 Las Vegas Blvd. South
Las Vegas, NV 89109
James Murren, CEO
Rose McKinney-James, Director
Anthony Mandekic, Director
Daniel Taylor, Director
Kenny Guinn, Director
Roland Hernandez, Director
Alexis Herman, Director
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