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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

FISHER SAND & GRAVEL CO., a North  
Dakota corporation,

Plaintiff,

vs.

CLARK COUNTY, NEVADA, a Nevada  
corporation

Defendants.

CASE NO.

DEPT. NO.

**MOTION FOR WRIT OF MANDAMUS,  
TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION**

**MEMORANDUM OF POINTS AND AUTHORITIES**

**STATEMENT OF THE CASE**

On April 21, 2009, contrary to the recommendation of Staff, its legal advisor and law, the Clark County Commission abused its discretion by awarding Bid No. 601309-08 to the second lowest bidder, Las Vegas Paving Company ("LVPC"). Fisher Sand & Gravel Co., ("FSG"), the low bidder by approximately \$4,600,000, herein challenges the award of Bid No. 601309-08 to LVPC.

1 In support of this Motion is Exhibit 1, attached hereto, which contains material  
2 submitted by FSG at the hearing, which exhibit contains most of Clark County's file  
3 material and correspondence. (See Affidavit of William Curran, Exhibit 1, containing 49).

4 I.

5 **STATEMENT OF FACTS**

6 On October 27, 2008, Clark County advertised Bid No. 601309-08, Northern Clark  
7 County Route 215 Bruce Woodbury Beltway from Tenaya Way to Decatur Boulevard.  
8 (See Exhibit 1, Attachment 45 – Staff report). On December 12, 2009, a pre-bid  
9 conference was held and approximately 35 contractors were in attendance. Five (5)  
10 addendums were issued and on January 29, 2009, the bid was opened and the following  
11 seven bids were received.

12	FSG	\$112,233,445.50
13	LVPC Corporation	\$116,820,814.40
14	Meadow Valley Contractors	\$116,913,548.40
15	Frehner Construction Company,	\$119,892,371.40
16	Inc.	
17	Road and Highway Builders, LLC	\$123,777,777.00
18	Granite Construction, Inc.	\$134,998,273.75
19	Perini Building Company, Inc.	\$141,877,242.00

20  
21 FSG was the low responsive and responsible bidder. FSG's bid was responsive to all bid  
22 specifications.

23 Paragraph 15 of the instruction to bidders allows a protest to be filed within five (5)  
24 working days. Furthermore, pursuant to NRS 338.142(1), a protest must be filed within  
25 five (5) business days after the date bids are opened. Also pursuant to NRS 338.142(2),  
26 the Notice of Protest must set forth with specificity the reasons the person filing the  
27 protest believes that the applicable provisions of law were violated.  
28

1 On February 2, 2009, LVPC submitted a protest against awarding the bid to FSG  
2 (Attachment 15 to Exhibit 1). The protest dated February 2, 2009 concerned the alleged  
3 failure of FSG to specifically identify qualified subcontractors for item numbers 402-01,  
4 402-02, 402.03, 403.01 and 409.01 because LVPC alleged FSG did not perform that type  
5 of work so it would have to be performed by a subcontractor (See Attachment 15 to  
6 Exhibit 1, hereinafter references will only identify the attachment number).

7 On February 10, 2009, FSG responded to the February 2, 2009 LVPC Protest,  
8 and pointed out that it would self perform the work identified by the LVPC protest  
9 (Attachment 17).

10 On February 13, 2009, LVPC filed an additional protest specifying a new protest  
11 based upon paragraph 6 of the Bidder's Representation regarding contractor's Board  
12 Licensing (Attachment 18). This protest was filed beyond the five (5) day period required  
13 by NRS 338.142. In the second protest, LVPC argues that bidders must have an A-2  
14 Highway classification license. Even though FSG has an A license which is admittedly  
15 the required license, LVPC argues that subcontractors, Bravo Underground and Pipes  
16 Paving who are **NOT** bidders, must have an A-2 license. Under this theory, LVPC  
17 requested that FSG's bid be rejected (Attachment 18).

18 On February 27, 2009, the County Staff responded to the LVPC protest. The  
19 County addressed both protests by LVPC. The County noted that FSG was going to self  
20 perform the work identified in the first protest. As to the second protest, the County noted  
21 that the subcontractors listed by FSG (Bravo and Pipes Paving) to perform "flatwork and  
22 pipe" and "partial excavation" are qualified and properly licensed for this project and the  
23 scope of work, that FSG intends for them to perform. Therefore, Staff intended to  
24 recommend an award to FSG (Attachment 19).

25 On March 17, 2009, LVPC withdrew Protest #1, but decided to proceed with  
26 Protest #2 (Attachment 21).

27 On April 1, 2009 FSG responded to the LVPC protest. FSG pointed out that  
28 Protest #2 was untimely, having been filed on February 13, 2009 which is eleven (11)

1 business days after the bid opening. FSG noted that Protest #1 and Protest #2 were  
2 entirely different protests. Therefore, under NRS 338.142 (1) and (2), the second protest  
3 was untimely (Attachment 25).

4 In the April 1, 2009 letter, FSG addressed the grounds cited by LVPC for Protest  
5 #2. FSG pointed out that subcontractors are not bidders. A Bidder is defined in Section  
6 6(b) of the Instruction to Bidders and clearly includes only the Prime Contractor, not  
7 subcontractors. FSG noted it has a Class A license which includes all A  
8 subclassifications including A-2 (Attachment 24).

9 FSG noted that Bravo is licensed to perform flatwork and some pipe which is the  
10 work designated by the FSG bid. Further, FSG noted that the Contractors' Board had  
11 approved an increase in Bravo's license to perform this very project. FSG further noted  
12 that Pipes Paving was doing partial excavation on the project for which they hold the  
13 proper license (Attachment 24).

14 In the April 1, 2009 letter, FSG noted that LVPC was using subcontractors on  
15 highway projects that did not have an A-2 license, thus, demonstrating that even LVPC  
16 realized that their argument was unfounded. Finally, FSG noted a subcontractor does  
17 not build highways nor does it bid directly to the County (Attachment 25).

18 On April 15, 2009 FSG provided information to the County regarding another  
19 LVPC project (Project No. 3313DB), where LVPC used subcontractors who did not have  
20 an A or A-2 license on a highway project (Attachment 27).

21 FSG is a qualified Prime Contractor who has extensive work experience in  
22 Nevada. Two major projects demonstrate their ability to perform the work specified in the  
23 bid under consideration. They are currently performing the largest public works project in  
24 the state of Nevada, the I-580 Freeway extension. They are also completing the largest  
25 private grading and paving project in Nevada, the Crystal Ridge/Ascaya Residential  
26 Development. (see Attachment 29) There is no issue as to their ability to perform. The  
27 State of Nevada states that FSG is a tremendous partner on the I-580 project  
28 (Attachment 34).

1 FSG provided the County with extensive documentation, establishing that on most  
2 significant highway projects in the state, FSG and other contractors including LVPC use  
3 subcontractors who do not have an A or A-2 license (Attachments 35-42). Thus  
4 demonstrating it is common knowledge, consistent with proper statutory interpretation  
5 that an A or A-2 license is not required for subcontractors.

6 To support its interpretation of the statute and staff's position, FSG provided the  
7 opinion of two eminently qualified experts. Marty Manning, the former Director of Public  
8 Works for the County, stated that the LVPC protest #2 in this matter is without merit. Mr.  
9 Manning was the Director of Clark County Public Works and involved in the 215 beltway  
10 construction. He states that subcontractors work under the supervision of the general  
11 contractor and do not need to have an A, A/B or A-2 license themselves (Attachment 46).  
12 Donald Wood, a former Manager of Purchasing for Clark County, stated that he has been  
13 involved in excess of 800 bid protests. He has reviewed the LVPC protest #2 and  
14 determined it was not timely (Attachment 47).

15 On April 21, 2009, the Board of County Commissioners ignored the  
16 recommendations of Staff, the plain language of the bid documents, experts, Marty  
17 Manning and Donald Wood; the documents provided by FSG demonstrating that the  
18 protest by LVPC was ridiculous and rejected the FSG bid and made the award to LVPC.  
19 There is no evidence or reasonable interpretation of law that supports the County  
20 Commission's decision to impose an additional \$4,600,000 tax burden on the citizens  
21 and taxpayers of Clark County.

22 The award of Bid 60139-08 to LVPC is a manifest abuse of discretion.

23  
24 **II.**  
**LEGAL ARGUMENT**

25 **A. THE PURPOSE OF THE STATE BIDDING STATUTES HAVE BEEN**  
26 **FRUSTRATED IN THIS MATTER**

27 In Associated Builders and Contractors, Inc., 115 Nev. 151, 979 P. 2d 224 (Nev.),  
28 the Court identified the purpose of public bidding statutes:

1 . . . the policy behind the competitive bidding statutes is "to guard against  
2 favoritism, improvidence, extravagance and corruption; their aim is to  
3 secure for the public the benefits of unfettered competition." George Harms,  
4 644 A. 2d at 91 (emphasis added) (quoting Terminal Construction Corp. v.  
5 Atlantic County Sewerage Authority, 67 N.J. 403, 341 A. 2d 327 (1975).

6 The Court also stated:

7 with respect to bidding procedures, this court has held that:

8 The purpose of bidding is to secure competition, save public funds, and to  
9 guard against favoritism, improvidence and corruption. Such statutes are  
10 deemed to be for the benefit of the taxpayers and not the bidders, and are  
11 to be construed for the public good. Gulf Oil Corp. v. Clark County, 94 Nev.  
12 116, 118-19, 575 P.2d 1332, 1333 (1978)

13 In this matter all of the purposes of the state bidding statutes have been violated in  
14 a most egregious matter. The County Commissioners have imposed a \$4,600,000  
15 additional burden on the taxpayers of Clark County.

16 Moreover, in a blatant demonstration of favoritism, Commissioners abused staff in  
17 public. This is demonstrated by Commissioner Collins' rude, shameful and crude public  
18 treatment of Yolanda Jones. When Ms. Jones sought to explain her conclusions in an  
19 unbiased and impartial manner, Commissioner Collins intimated that she was lying.  
20 What was obvious was that Commissioner Collins was biased toward LVPC. There  
21 could hardly be a more clear demonstration of favoritism and improvidence and  
22 extravagance.

23 The Commissioners treatment of staff and FSG was shameful. Everything about  
24 the conduct of the Commissioners was designed to harm competition, promote favoritism  
25 and harm the public funds.

26 **B. LVPC PROTEST WAS UNTIMELY AND SHOULD NOT HAVE BEEN**  
27 **CONSIDERED BY THE COUNTY**

28 The County Commissioners' rationale for awarding LVPC the Project was based

1 on its erroneous reading of NRS provisions and the instructions to bidder. First, the  
2 County Commissioners should have never entertained LVPC's second protests  
3 submitted on February 13, 2009. NRS 338.142(1) sets forth that a person who bids on a  
4 contract may file a notice of protest regarding the awarding of the contract with the  
5 authorized representative designated by the public body within five (5) business days  
6 after the date the bids were opened by the public body or its authorized representative.  
7 NRS 338.142(2) requires that the bid protest set forth "with specificity the reasons the  
8 person filing the notice believes the applicable provisions of law were violated."

9 Under the circumstances, LVPC submitted the second protest eleven (11) days  
10 after the bid opening. The bid opened on January 30, 2009, and therefore under NRS  
11 338.142(1) closed on February 6, 2009. Accordingly, the February 13, 2009 LVPC  
12 protest was untimely. Moreover, and aside from its untimely submission, LVPC failed to  
13 set forth with specificity any reasons why FSG's bid form failed to comply with the  
14 statutory requirements of NRS 338.1389. Instead, LVPC's second protests set forth  
15 general allegations, which had no substantive support.

16 LVPC, in an effort to circumvent the five (5) day notice requirement, argued to  
17 Clark County that the second protest was just an expansion of the first protest -- i.e.,  
18 FSG's paving capabilities. A review of the second protests however, establishes that the  
19 assertion made therein having nothing to do with FSG's paving capabilities or its license  
20 classification to complete the project. Instead, the LVPC's second protest asserts claims  
21 that FSG's subcontractors Bravo's and Pipes Paving licenses as a specialty contractor  
22 fail to comply with the requirements of the statute, and the instructions to bidders. FSG's  
23 disagreed with this assertions.

24 Even if this Court was to assume that Clark County should have heard the  
25 untimely protest submission, Clark County should have denied LVPC's second protests  
26 in accordance with the Bid Documents, specifically Section 7.A.2 item (d) for the  
27 instruction to bidders. Section 7.A.2 item (d) sets forth that "Owners shall verify through  
28 the Nevada State Contractors Board only that information required pursuant to NRS

1 338.141 as provided by the Bidder. Any Bidder or Subcontractor questioning licensing or  
2 utilization of any Subcontractor(s) shall direct their inquiries to the State Contractors  
3 Board with a copy of all correspondence to the Owner. The Owner will not conduct any  
4 investigations regarding the Bidders' (Prime Contractor) relationships with Subcontractors  
5 as defined in NRS 338.140.1.d." Accordingly, and pursuant to the instruction to bidders, it  
6 is the responsibility of the State Contractors Board to regulate licensing, not the County  
7 Commission.

8 Clark County abused its discretion with it failed to award the Project to FSG.

9 **C. THE COUNTY COMMISSIONERS IMPROPRIETY DETERMINED THAT**  
10 **FSG WAS NOT A RESPONSIBLE BIDDER AND REJECTED ITS BID**

11 Commissioner Sisolak made a Motion to Award Bid No. 601309-08 to LVPC  
12 stating that FSG was not a responsible bidder. There is no dispute that the bid from FSG  
13 was responsive and that FSG is a responsible bidder and that it has an A license which  
14 covers A-2 type of work, so FSG is properly licensed. The only apparent reason for this  
15 Motion is that Commissioner Sisolak believed that FSG had submitted an improper bid.

16 Contrary to Staff's recommendation and statements, the Commission apparently  
17 accepted the argument that subcontractors doing flatwork and some pipe and partial  
18 excavation under the direction of a General (Prime) contractor must still have an A-2  
19 license based upon LVPC's untimely protest #2.

20 LVPC has argued that Paragraph 6 Bidder's Representation requires that  
21 subcontractors must have an A-2 license. Such an interpretation of the bid specification  
22 is on its face incorrect. (Attachment 18)

23 Paragraph 6 of the Bid specifications entitled Bidder's Representations provides:

24 **B. Nevada State Contractor's Board Licensing**

- 25 1. Bidders for this work must be qualified and properly licensed to  
26 perform the particular work pursuant to the provisions of the Nevada  
27 Revised Statutes Chapter 624. Failure to comply shall result in rejection of  
28 the Bidder. Nevada Contractor's License number, and dollar limit must be  
indicated on the Bid Form page. Should there be a protest regarding the  
applicability of the low Bidder's Contractor's license to the scope of the



1 project, it shall be the low Bidder's responsibility to obtain an opinion from  
2 the State Contractor's Board at its next meeting. Bidders are reminded  
3 that, per NRS 624.3015, bidding on a contract for work in excess of its limits  
4 or beyond the scope of its license is grounds for disciplinary action by the  
5 State Contractors Board.

6 This paragraph on its face only applies to FSG who is the bidder. It is without  
7 dispute FSG is properly licensed.

8 In a non-sensical manner Las Vegas Paving claims that Bravo Underground and  
9 Pipes Paving, come within Paragraph 6 (above) that even though they are not bidders nor  
10 general contractors on this job.

11 FSG has established in its presentation that Bravo Underground and Pipes Paving  
12 are qualified to do the work contemplated by the FSG bid.

13 FSG submitted the following information in attachment:

14 We have submitted Bravo Underground as the subcontractor  
15 performing "Flatwork & some pipe". As their name implies, they perform  
16 underground work and are currently licensed as A12, A15 and A19 under  
17 license #0043226. These classifications deal with various aspects of pipe  
18 or underground work. We have included the letter from the Board in  
19 regards to Bravo Underground specific to this project concerning a raise in  
20 their license limit; this was apparently selectively omitted from the LVPC  
21 submittal. The letter grants them approval to bid and build specifically on  
22 the referenced project to a limit of up to \$6,000,000. I don't believe the  
23 Board would write an approval letter to Bravo Underground if they were not  
24 properly licensed for performing any type of work on the referenced project.

25 We have submitted Pipes Paving as subcontractor performing  
26 "partial excavation" on the project. They currently hold A7, A12 and A16  
27 classifications with an unlimited monetary amount. These classifications  
28 deal with excavation and as such are applicable to the portion of work they  
are performing on the project.

1 If LVPC actually believed their own argument regarding license  
2 classifications, they should have questioned our choice for steel  
3 subcontractor and striping/sign subcontractor as well. Although both Pacific  
4 Coast Steel and Highway Striping and Signs LLC perform work on highway  
5 projects through Nevada, neither firm holds a Class A or A-2 License, which  
6 is arguably required by LVPC. I believe the reason these subcontractors  
7 were omitted from the protest is due to the fact that LVPC listed them in  
8 their bid knowing that they do not hold the license subclassification they are  
9 demanding that our subcontractors hold. In researching this ideal beyond  
10 this bid and how it would affect current projects under construction we  
11 thought to review the NDOT design build being performed by LVPC. Of the  
12 18 subcontractors currently registered with NDOT on that "highway" project,  
13 only one (1) has the license classification that LVPC has determined to be  
14 required for that type of work; there are no subcontractors with an A2  
15 license on the project. This suggests that they are fully aware their protest  
16 is without merit and should ultimately be rejected.

17 Finally, a Subcontractor does not build the "Highway"; it is the Prime  
18 Contractor's (BIDDERS) responsibility and knowledge that leads to the  
19 successful construction of an entire "Highway" project. Thus, we are  
20 licensed and bonded accordingly to ensure to the General Public that the  
21 work is completed correctly. We do not expect any of our Subcontractors to  
22 individually build the "Highway", we have hired them only for their expertise  
23 for which they are licensed. FSG has provided Clark County Public Works  
24 with the lowest responsive and responsible bid for the Northern Clark  
25 County Route 215 Bruce Woodbury Beltway Tenaya Way to Decatur  
26 Boulevard. We have fulfilled our obligation within the bid documents and  
27 has assembled the best team of subcontractors, suppliers and outside  
28 service tem members in order to provide you with an excellent product. We

1 have clearly identified the false accusations, incomplete information and  
2 misrepresentations given by LVPC. We believe that LVPC has purposely  
3 delayed the award of this project with meritless protests and accusations.  
4 These tactics by LVPC have been successful only in wasting the valuable  
5 time and money of Clark County Public Works in the process.

6 Marty Manning, former Director for Clark County Public Works, provided a clear  
7 statement regarding this issue.

8 "I have reviewed Las Vegas Paving's protest and find it to be without  
9 merit. Under Nevada law, the County can only award highway work to  
10 contractors holding either an A, A/B, or A-2 license from the State  
11 Contractors Board. A contractor holding one of these license designations  
12 is then free to utilize the services of subcontractors that hold the appropriate  
13 specialty designations for the type of work they are going to perform.  
14 These subcontractors work under the supervision of the licensed general  
15 contractor, and they need not, and typically do not, have the A, A/B or A-2  
16 license themselves. Fisher's listing of its subcontractors is legally  
17 appropriate and conforms to industry norms.

18 Accordingly, Las Vegas Paving's contention in this matter is without  
19 merit, in my opinion is contrary to the law, further, is contrary to the long  
20 standing practice of the County in its award of public works contracts."

21 There is no dispute that FSG is the General Contractor and Bidder in this matter.  
22 LVPC Protest # 2 is without merit, the County Commissioners have based their rejection  
23 of the FSG bid on a totally improper basis.

24 **D. FSG HAS THE RIGHT TO SUBSTITUTE SUBCONTRACTORS IF A**  
25 **SUBCONTRACTOR IS NOT PROPERLY LICENSED**

26 While it is a technical aspect of public works bidding, the right to substitute  
27 subcontractors is well accepted and commonly practiced in Nevada. The bid  
28 specifications herein absolutely allows FSG to substitute a subcontractor if a  
subcontractor is found not to be properly licensed.

Under section 7.A.2 item (e), the bid specification states:

"Pursuant to NRS 338.1387 and 338.145, a Subcontractor who is named in  
the bid for the Contract as a Subcontractor who will provide a portion of the work

1 on the public work pursuant to NRS 338.41, and is not properly licensed for that  
2 portion of the work shall be deemed unacceptable, and the contractor shall provide  
3 an acceptable Subcontractor. " (italics added for emphasis)

4 FSG does not desire to substitute any subcontractor unless it found that the  
5 original designated subcontractor is not licensed, but it has that right.

6 This concept clearly establishes that the County Commissioners improperly  
7 rejected this low bid. If they find that a subcontractor is not properly licensed, the only  
8 recourse is to require FSG to substitute that subcontractor or perform the work  
9 themselves. It is improper to reject their bid for that reason (attachment 24).

10 The award must be made to FSG then if a subcontractor is not proper, that  
11 subcontractor can be replaced.

12 **E. A WRIT OF MANDAMUS IS AN APPROPRIATE REMEDY IN THIS CASE**

13 A Writ of Mandamus is an appropriate remedy in this case. It enjoins an inferior  
14 body or person to affirmatively act in a manner which the law compels the body to act.  
15 See Dr. Horton, Inc. v. Eighth Jud. Dist. Ct., ex rel County of Clark, 123 Nev. \_\_\_, 168 P.  
16 3d 731, 737 (2007). The Writ of Mandamus is appropriate to control the manifest abuse  
17 of discretion of a government body. State vs. Second Jud. Dist. Ct., ex rel County of  
18 Washoe, 121 Nev. 413, 116 P. 3<sup>rd</sup> 834 (2005); Nova Horizon Inc. v. City Counsel of  
19 Reno, 105 Nev. 92, 98, 769 P. 2d 721 (1989).

20 **1. A Writ of Mandamus Is Appropriate in this Case to Clarify**  
21 **Important Issues of Law**

22 FSG asserts that the Clark County Commissioner abused their discretion by  
23 not abiding by the law and advice of staff. In Westpark Owners Ass'n vs. Dist. Ct., 123  
24 Nev. \_\_\_, 167 P. 3d 421 (2007), the Court set forth the proper use of a Writ of Mandamus:

25 A writ of mandamus is available "to compel the performance of an act which  
26 the law ...[requires] as a duty resulting from an office, trust or station," NRS  
27 34.160. See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637  
28

1 P.2d 534, 536 (1981); or to control a manifest abuse or an arbitrary or capricious  
2 exercise of discretion. ... We have exercised our discretion to intervene "under  
3 circumstances of urgency or strong necessity, or when an important issue of law  
4 needs clarification and sound judicial economy and administration favor the  
5 granting of the petition," *Ducharm*, 118 Nev. At 614, 55 P.3d at 423.

6 In *Westpark Owners Ass'n v. Dist. Court*, *supra*, the Court found that a Writ of  
7 Mandamus was proper for the purpose of interpreting NRS Chapter 40.

8 The Supreme Court has often found that a Writ of Mandamus is appropriate when  
9 an important question of law needs clarification. *See Cote H v. Eighth Judicial District*  
10 *Court*, 124 Nev. \_\_\_, 175 P. 3d 906 (2008), *Schuster v. Eighth Judicial District Court*, 123  
11 Nev. \_\_\_, 160 P. 2d 873, 875 (2007)

12 As previously discussed there are three issues of law which the County  
13 Commissioner have clearly misapplied.

14 The first issue of law is that the County Commissioners heard LVPC protest #2  
15 even though under the clear provisions of NRS 338.142 (1) and (2), the protest was filed  
16 beyond the five (5) day limit. As noted, this statute was adopted to prevent this type of  
17 delay. The Court should dismiss the LVPC protest and find that the County  
18 Commissioners improperly heard the LVPC protest and rejected FSG's bid.

19 The second issue of interpretation deals with the substance of LVPC protest  
20 regarding paragraph 6 of the bid specifications. As previously addressed, the County  
21 Commissioners have interpreted paragraph 6 to mean that subcontractors are bidders.

22 The clear language of paragraph 6 requires only the bidder/prime contractor to  
23 have the highway license (A, A/B or A-2). This is the interpretation of staff, the County's  
24 legal advisors, expert witnesses and practice and procedure.

25 The third issue of law is that the County Commissioners could not reject this bid  
26 because subcontractors were not properly licensed. Section 7.A.2, item (e), does not  
27 allow the County Commissioners to reject a bid because of an improper subcontractor. It  
28 only allows a substitution of a subcontractor when a subcontractor is not properly

1 licensed.

2 But for the Commissioners' abusive treatment of staff and blatant favoritism to  
3 LVPC., FSG would have received the award of Bid No. 601309-08.

4 Commissioner Sisolak in a quote to the Las Vegas Sun after the bid stated "The  
5 state's code is vague . . . It's got to be a responsible bid and I think I wasn't getting clear  
6 enough legal advice ... whether or not the subcontractors and the A-2 license is their  
7 specialty" (see Exhibit 2). The county attorneys were crystal clear that the subcontractor  
8 did not need a A-2 license. (see Exhibit 1, Affidavit of Bill Curran and Exhibit 3, Video of  
9 Commission Hearing.

10 As demonstrated by the abusive conduct toward staff, a cynic would say that the  
11 Commissioners were confused only because they chose to be confused by their blatant  
12 favoritism for LVPC.

13 A Writ of Mandamus is an appropriate vehicle for the Court to enlighten the  
14 Commissioners as to the proper interpretation of NRS 338.142, paragraph 6. The Court  
15 should find that the LVPC protest #2 was not timely and the Commissioners improperly  
16 heard the protest. Further the Court should find that FSG was the proper bidder under  
17 paragraph 6, and had the proper license for the work and thus is entitled to the award for  
18 Bid No. 601309-08. Finally, the Court must find that the circumstances of this case do  
19 not allow rejection of the FSG bid and paragraph 7.A.2, item e.

20 **2. WHERE THERE IS A PALABLE ABUSE OF DISCRETION, THE**  
21 **COURT MUST REVERSE THE DECISION OF A PUBLIC BOARD**  
22 **REGARDING A PUBLIC CONTRACT**

23 Courts should not be zealous to interfere with the letting of contracts, unless they  
24 are satisfied that the public will suffer through careless attention to business. State  
25 Purchasing Division v. George Equipment, 105 Nev. 798, 783 P. 2d 949 (1989). The  
26 burden is on the movant to establish an abuse of discretion. *Id.*

27 In the present matter, the County Commissioners in a blatant abuse of staff and  
28 blatant show of favoritism rejected the low bidder.

1 This is not a case where there is any defect with the low bid which allowed the  
2 Commission to reject that bid, even though it was the low bid, such as Douglas County v.  
3 Pederson, 78 Nev. 106, 369 P. 2d 669 (1962). Rather this case is similar to the case  
4 where the Commission abuses its discretion by acting contrary to the recommendation of  
5 staff, advice of its attorney and the evidence presented and the law governing  
6 government bids and this particular bid.

7 A Writ of Mandamus must issue to correct the actions the Commission in the  
8 application of the law involving NRS 338.141, paragraph 6 and paragraph 7.A.2, item e,  
9 of the bid specifications and reverse this manifest abuse of discretion.

10 **3. THERE IS NO ADEQUATE REMEDY AT LAW TO PROTECT THE**  
11 **INTERESTS OF FSG**

12 Since a Writ of Mandamus is an extraordinary writ, it will not issue if there is an  
13 adequate remedy at law. But in the case of clarification of law on important public issues,  
14 the Court may exercise its discretion to issue a Writ of Mandamus. See City of North Las  
15 Vegas v. Eighth Judicial Dist. Ct., 122 Nev. 1197, 147 P. 3d. 1109 (2006).

16 Also in this matter, the courts have not allowed a legal challenge after the  
17 execution of the contract. See Richardson Construction, Inc. v. Clark County School  
18 District, 123 Nev. 61, 156 P. 3d 21 (2007).

19 FSG is entitled to mandamus relief to remedy the abuse of discretion by the  
20 County Commissioners.

21 **F. INJUNCTIVE RELIEF IS NECESSARY SO THE COURT MAY**  
22 **PERSEVERE THE STATUS QUO AND PREVENT IRREPARABLE HARM**  
23 **UNTIL THEY RESOLVE THE MERITS OF THIS MATTER**

24 **1. Legal Standard for Temporary Restraining Order**

25 NRCP 65(b) permits the Court, with or without notice, to issue temporary  
26 restraining order when it appears from the verified complaint that immediate and  
27 irreparable injury, loss, or damage will result to FSG before the opposition can be heard  
28 and some attempt at service has been effectuated upon the Defendants.

1 A temporary restraining order should be issued immediately to prevent irreparable  
2 harm to the parties, to allow an opportunity for this Court to be presented with all  
3 pertinent evidence, and to determine the rights of the parties in adjudicating the claims for  
4 relief sought by FSG. Here the accompanying exhibits and the Affidavit of William P.  
5 Curran establishes that FSG is in jeopardy of having its statutory rights violated and  
6 losing a unique business opportunity. If the Defendants go forward with the execution of  
7 the contract, FSG will have no recourse regarding its statutory rights and will lose a  
8 contract valued in excess of \$112,000,000, will lose the practical experience of working  
9 on a Clark County project, and will experience a loss of reputation earned by performing  
10 work on the Project.

11 Upon knowledge and belief, the County has not approved an executed contract.  
12 However, at any moment, the County could execute a contract creating the substantial  
13 harm noted herein.

## 14 2. Temporary Restraining order is Proper in this Case

15 Plaintiff asks this Court to issue an immediate temporary restraining order, (1)  
16 requiring the County and Las Vegas Paving to refrain from executing a contract on Bid  
17 No. 601309-08, until a preliminary injunction and Petition for A Writ of Mandamus can be  
18 heard on the abuse of discretion and improper determination that FSG was not a  
19 responsible bidder.

20 Filed concurrently with this motion is FSG's Verified Complaint. The Verified  
21 Complaint seeks declaratory relief and Mandamus Relief regarding the substantive rights  
22 held by FSG as the lowest responsible bidder. The majority of the County  
23 Commissioners have contrary to advice of counsel and Staff determined a matter of  
24 contract interpretation. Their decision is contrary to the bid request instructions and a  
25 manifest abuse of discretion.

26 If the County executes the contract on Bid No. 601309-08, FSG will suffer  
27 irreparable harm. FSG would suffer a violation of its statutory rights and bid rights to the  
28



1 award of Bid No. 601309-08. Moreover, FSG will suffer the loss of a unique opportunity  
2 to gain practical experience and to enhance its business reputation related to work on the  
3 215 Freeway. In light of the foregoing, FSG seeks a temporary restraining order to avoid  
4 irreparable harm.

### 5                   **3. Legal Standard for Preliminary Injunction**

6           Pursuant to NRCP 65(a), this Court may set this matter for a hearing for  
7 determination as to whether a preliminary injunction should be issued in favor of FSG.

8           An injunction may be granted when it appears, by the complaint that the  
9 commission or continuance of some act, during litigation, would produce great or  
10 irreparable injury to FSG or that Defendants are doing or threatening, or is about to do, or  
11 is procuring or suffering to be done, some act in violation of FSG's rights respecting the  
12 subject of the action, and tending to render the judgment ineffectual. See NRS 33.010(2)  
13 and (3). If the County executes a contract, FSG's rights will be impacted and will render  
14 a subsequent judgment ineffectual.

### 15                   **4. Injunctive Relief is Proper in this Case**

16           A preliminary injunction is available if an applicant can show a likelihood of  
17 success on the merits and a reasonable probability that the non-moving party's conduct,  
18 if allowed to continue will cause irreparable harm for which a compensatory damage is an  
19 inadequate remedy. See Dangberg Holdings Nev., LLC. v. Douglas County, 115 Nev.  
20 129, 978 P.2d 311 (1999). Clark Pacific v. Krump Construction, Inc. 942 F. Supp. 1324  
21 (D. Nev. 1996).

#### 22                   **a. FSG Is Likely To Succeed On The Merits**

23           FSG has demonstrated that 1) the County accepted a protest by Las Vegas  
24 Paving that was untimely under NRS 338.141 (1) and (2). While Las Vegas Paving filed  
25 Protest #1 within the five days and specified the reasons for the protest, this protest was  
26 withdrawn. Protest #2, which was heard by the County Commissioner was untimely.  
27 Therefore, the County acted improperly on the protest. The Court should find that there  
28

1 was no proper protest and FSG was the lowest responsible bidder.

2 FSG has also demonstrated that the Commissioner misconstrued the bid request  
3 provisions and confused the licensing of the Prime Contractor and Bidder with specialty  
4 subcontractors and also did not allow FSG to substitute another subcontractor as  
5 required if the Commissioners believed the subcontractor was not properly licensed. This  
6 decision was a manifest abuse of discretion. The Court has the duty to correct this  
7 decision and compel the award to FSG.

8 **b. FSG Will Suffer Irreparable Injury Should the Contract Be**  
9 **Executed In This Matter**

10 In the construction industry, each project represents a unique opportunity to gain  
11 practical experience and to enhance a contractor reputation. Denial of injunctive relief  
12 would permanently deprive Williams of this opportunity, on a approximately \$112,000,000  
13 contract, to enhance its reputation in the construction industry and to improve its job  
14 performance through the gaining of valuable practical experience on this project. See  
15 Clark Pacific v. Krump Construction, Inc., 942 F. Supp. 1324, 1347 (D. Nev. 1996).

16 FSG faces irreparable harm to its future business. Placing a dollar value on this  
17 type of experience is impossible. If FSG wrongfully loses its opportunity to perform its  
18 work on the Project, it may lose its chance to successfully bid on future highway projects.

19 FSG faces irreparable harm that can easily be corrected by an injunction. If no  
20 injunction is instituted, the County and Las Vegas Paving could execute a contract that  
21 would deprive FSG of this project. By allowing for a determination regarding the statutory  
22 basis for bidders on highway projects, FSG's statutory rights are preserved.

23 Allowing, the Commissioner to violate FSG's statutory right by itself can satisfy the  
24 requirements of irreparable harm. See Clark Pacific v. Krump Construction, Inc., 942 F.  
25 Supp. 1324, 1347 (D. Nev. 1996). Only by injunctive relief is FSG's right to fair and equal  
26 treatment in the public work contracting process adequately protected. See Clark Pacific  
27 v. Krump Construction, Inc., 942 F. Supp. 1324, 1347 Fn. 22 (D. Nev. 1996) citing Clark  
28 Constr. Co. v. Pena, 895 F. Supp. 1483, 1493 (M.D. Ala. 1995) referring to the public

1 works contract bidding process.

2 Denial of injunctive relief essentially permits Las Vegas Paving to obtain a contract  
3 at the expense of \$4,600,000 to the taxpayers of Clark County. By enjoining the  
4 execution of the contract, FSG and the public interest in a lawful bidding process are  
5 protected as well as ensures that eventual execution and performance of a lawful  
6 contract. See Clark Pacific v. Krump Construction, Inc. 942 F. Supp. 1324, 1348 (D. Nev.  
7 1996) citing Glenwood Bridge, Inc. v. City of Minneapolis, 940 F. 2d 367, 372 (8<sup>th</sup> Cir.  
8 1991).

9 As the Court in Clark Pacific vs. Krump Construction stated, "the Court must not  
10 ignore the people of Nevada, whose Thirty Million Dollars are after all at stake in this  
11 matter. Id. At 1348. In this case, the taxpayer will be forced to pay an additional  
12 \$4,600,000 for no reason.

13 c. **Balance of Hardship**

14 The Court is to weigh in the balance the respective hardships to the parties and  
15 the public caused by granting or denying FSG's motion for preliminary injunction. See  
16 Clark Pacific v. Krump Construction, Inc. 942 F. Supp. 1324, 1350 (D. Nev. 1996).

17 On one hand, the County and Las Vegas Paving have an interest in completing  
18 the Project in a timely manner.

19 On the other hand, FSG, the public, and every future listed subcontractor on a  
20 public works job has a vested interest in ensuring a lawful bidding process; fair and  
21 untainted bid process. The taxpayers lose \$4,600,000 for no reason.

22 The balancing of these hardships is rendered irrelevant if the County and Las  
23 Vegas Paving enter into a contract.

24 To the converse, if the Commissioners are inattentive to the requirement of the  
25 statute for properly letting and enforcing of public construction contracts it faces future  
26 untimely and improper protests.

27 FSG faces irreparable harm. As set forth herein, FSG's loss goes beyond  
28 monetary damages and results in permanent harm. In addition, if Las Vegas Paving is

1 allowed to prevail, every bid will be subject to protest on frivolous and improper grounds.

2 Finally, the citizens of Clark County have an interest in: ensuring a lawful bidding  
3 process; fair and untainted bargaining between the County and its contractors; and  
4 between those contractors and their subcontractors. As discussed there are multiple  
5 deleterious affects on the competitive system of bidding used on public works project, if  
6 the Commissioners without reason contradict staff and its attorney. See Clark Pacific v.  
7 Krump Construction, Inc., 942 F. Supp. 1324, 1338 F.2d 12 (D. Nev. 1996). The public  
8 has an interest in avoiding those effects.

9 The net result is that the harm endured by FSG outweighs that of the County.

10 d. **Security**

11 Pursuant to Fed. R. Civ. P. 65(c), FSG stands willing and able to post a security in  
12 an amount to be determined by the Court. Since there is no contract, there is no definite  
13 monetary harm, so the only harm is the cost of litigation which should be reasonably  
14 determined.

15 G. **CONCLUSION**

16 It is respectfully requested that this Honorable Court grant in the form of either or  
17 both a temporary restraining order and a preliminary injunction thereby: (1) restraining  
18 and enjoining the execution of a contract between the County and Las Vegas Paving on  
19 Bid No. 601309-08, 2) a declaration that the bid protest by Las Vegas Paving was  
20 untimely and 3) that FSG should be awarded Bid No. 601309-8.

21 ///

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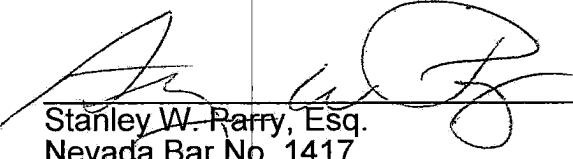
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BALLARD SPAHR ANDREWS & INGERSOLL, LLP  
100 CITY PARKWAY, SUITE 1750  
LAS VEGAS, NEVADA 89106-4614  
(702) 471-7000 FAX (702) 471-7070

1 The Court should also issue a Writ of Mandamus compelling the County to award  
2 Bid 601309-08 to FSG.

3  
4 DATED this 22 day of April, 2009.

5 BALLARD SPAHR ANDREWS & INGERSOLL, LLP

6  
7   
8 Stanley W. Parry, Esq.  
9 Nevada Bar No. 1417  
10 Jacob D. Bundick, Esq.  
11 Nevada Bar No. 9772  
12 100 N. City Parkway, Suite 1750  
13 Las Vegas, Nevada 89106  
14 Attorneys for Plaintiff  
15 Nevada Power Company  
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CERTIFICATE OF SERVICE

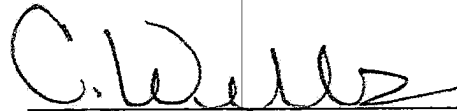
Pursuant to N.R.C.P. 5(b), I hereby certify that on the 22<sup>nd</sup> day of April, 2009, a true and correct copy of the foregoing **MOTION FOR WRIT OF MANDAMUS, TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION** was served to the following in the manner set forth below:

Commission Clerk  
Clark County, Nevada  
500 South Grand Central Parkway, 6<sup>th</sup> Floor  
Las Vegas, NV 89155

☐ Hand Delivery

☐ Facsimile Transmission

☒ U.S. Mail, postage prepaid



An Employee of  
Ballard Spahr Andrews & Ingersoll, LLP

BALLARD SPAHR ANDREWS & INGERSOLL, LLP  
100 CITY PARKWAY, SUITE 1750  
LAS VEGAS, NEVADA 89106-4614  
(702) 471-7000 FAX (702) 471-7070



AFFIDAVIT OF JOSEPH MILLER

STATE OF NEVADA       )  
                                  )ss.  
COUNTY OF CLARK     )

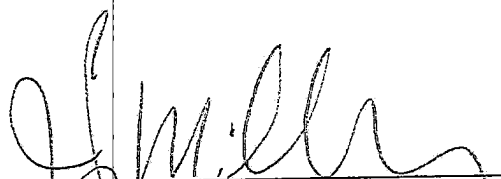
I, Joseph Miller, being duly sworn and under the penalty of perjury does hereby depose and say:

1. I am an the Nevada Area Manager for FISHER SAND & GRAVEL CO. ("FSG").
2. On or about October 27, 2008, the County published an "invitation to bid" for a highway construction project known as "Bid No. 601309-08, Northern Clark County Route 215 Bruce Woodbury Beltway, from Tenaya Way to Decatur Boulevard" (the "Project").
3. On January 29, 2009, FSG submitted a bid for 112,233,445.50 to Clark County for the Project.
4. The second lowest bid submitted was from Las Vegas Paving Company ("LVPC") for \$116,820,814.40.
5. FSG was the lowest bidder for the Project when the bids were opened by Clark County on January 29, 2009.
6. FSG seeks to perform work on the Project given the unique opportunity to gain more practical experience and enhance its business reputation related to work on the 215 Bruce Woodbury Beltway.
7. FSG has two major projects in the State of Nevada which demonstrates its ability to perform the Project. These projects include: (i) the largest public works project in the state, the I-580 Freeway extension, and (ii) the largest private grading and paving project in state, the Crystal Ridge/Ascaya Residential Development.

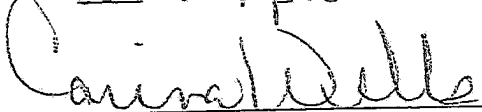


8. Upon information and belief, performing work on this Project will enhance FSG's reputation and improve job performance on future projects related to highway construction and/or improvements.
9. Performance and experience gained in this setting is essential, where it is anticipated that similar work will continue for years to come in Las Vegas.
10. Clark County's award of the Project to LVPC has resulted in FSG losing a unique opportunity.
11. Clark County's decision will result in subcontractors who do not have an A, A/B or A-2 license being unable to work on highway projects.
12. FSG will be unable to work in the future with subcontractors it has established long standing relationships because of Clark County's determination.
13. There is a potential that a number of qualified people will lose out on employment.
14. FSG will continue to lose unique opportunities such as this Project in the future because it was denied the award despite it being the lowest responsive and responsible bidder.

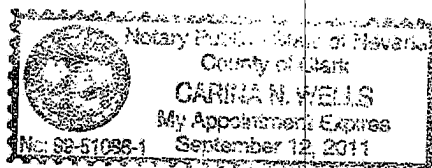
AFFINIAT SAYETH NOTHING MORE

  
\_\_\_\_\_  
Joseph Miller

Subscribed and sworn to before me  
This 20<sup>th</sup> day of April, 2009.



Notary Public, in and for said  
County and State





AFFIDAVIT OF BILL CURRAN

STATE OF NEVADA        )  
COUNTY OF CLARK        ) ss:

I, BILL CURRAN, do hereby swear under penalty of perjury that the assertions of this affidavit are true:

1. I am a resident of Clark County, Nevada, and I am an attorney in good standing and licensed to practice before the Courts in the State of Nevada. My bar number is 49.

2. I am a partner of the law firm of BALLARD SPAHR ANDREWS & INGERSOLL, LLP, which is currently the attorney of record for the Plaintiff, Fisher Sand & Gravel Co. ("Fisher").

3. I have practiced law in Nevada since my admission in 1974. My current practice focuses on state and local government law and often includes representing private clients on procurement/bidding issues involving the award of public works projects by Clark County. Earlier in my career, from 1979-1989, I served as County Counsel for Clark County, appointed by the District Attorney to be the chief attorney for the County in its civil matters and the supervisor of the Civil Division of the District Attorney's office.

4. I represent Fisher with respect to its bid which was submitted to Clark County, on January 29, 2009, on Bid No. 601309-08, Northern Clark County Route 215 Bruce Woodbury Beltway Tenaya Way to Decatur Boulevard. Fisher was the low bidder on this project with a bid in the amount of \$112,233,445.50, which was \$4,587,368.90 lower than the bid submitted by the second lowest bidder, Las Vegas Paving, which was \$116,820,814.40. After review of the bid documents, the County's purchasing staff found that Fisher was the low responsive and responsible bidder and that it complied with all applicable requirements.

///

1           5.       On February 2, 2009, Las Vegas Paving filed a protest with the County  
2 alleging on information and belief that Fisher would not self perform certain aspects of the  
3 contemplated work and that they might engage in unauthorized "bid shopping." This  
4 protest was timely filed in accordance with the 5 business day limitation imposed by NRS  
5 338.142.

6           6.       After review of Fisher's response to the bid protest, on February 13, 2009,  
7 Las Vegas Paving submitted another letter to the County withdrawing its original protest  
8 but seeking "permission to further expand its protest" on new grounds that were in no  
9 way related to the original basis of the protest. This new protest, in short, was based on  
10 the assertion that two of Fisher's subcontractors did not hold the necessary state licenses  
11 to do the work indicated.

12           7.       NRS 338.142 provides in pertinent part as follows:

13                   "1. A person who bids on a contract may file a notice of  
14 protest regarding the awarding of the contract with the  
15 authorized representative designated by the public body  
16 within 5 business days after the date the bids were opened  
17 by the public body or its authorized representative.

18                   2. The notice of protest must include a written statement  
19 setting forth with specificity the reasons the person filing the  
20 notice believes the applicable provisions of law were  
21 violated."

22           8.       In accordance with NRS 338.142, I believe the new protest was untimely  
23 filed and barred from even being considered by the County Commission. This will be one  
24 of two key issues in this matter. In addition to my argument on this issue, expert  
25 testimony was presented to the Commission in the form of a letter from Don Woods, JD,  
26 C.P.M., a government purchasing consultant and former Clark County Purchasing and  
27 Contract Manager. His letter to the Commission in pertinent part, concluded:

28           ///

///

1 "My review of this bid indicates that there were in effect two  
2 protests filed. The first protest concerned listing of  
3 subcontractors. This protest was filed timely but was  
4 withdrawn by Las Vegas Paving.

5 The second bid protest was filed eleven days after bid  
6 opening and related to proper licensing which is a separate  
7 and distinct protest from the original protest. The second  
8 protest is untimely under NRS 338.142.

9 The Las Vegas Paving protest is contrary to law and should  
10 not be given any consideration."

11 9. At the County Commission hearing on April 21, 2009 Las Vegas Paving's  
12 counsel pressed its second protest that Fisher's proposed use of subcontractors was  
13 unlawful in that Fisher improperly designated unqualified and unlicensed subcontractors  
14 to perform work outside their license classifications. This argument was based on the  
15 assertion that all work to be performed on a highway project must be done by contractors  
16 or subcontractors holding at least an A-2 license from the State Contractors Board.

17 10. It was uncontested that Fisher holds the appropriate license from the State  
18 Contractors Board; this issue concerned two of Fisher's proposed subcontractors, Bravo  
19 Underground and Pipes Paving. Bravo, designated by Fisher to perform "flatwork and  
20 some pipe," holds Class A-12 (Excavating; Grading; Trenching and Surfacing), Class A-  
21 15 (Sewers; Drains and Pipes), Class A-19 (Pipelines and Conduits), and C5 (Concrete  
22 contracting) specialty licenses, the appropriate licenses for the work it was to perform on  
23 this project. Pipes Paving, designated by Fisher to perform "partial excavations," holds  
24 Class A-7 (Excavating and Grading), Class A-12 (Excavating; Grading; Trenching and  
25 Surfacing), and A-16 (Paving Streets, Driveways and Parking Lots) specialty licenses, the  
26 appropriate licenses for the work it intends to perform on this project.

27 11. My argument that these subcontractors hold the appropriate licenses from  
28 the Contractors Board was in accordance with a letter from Marty Manning, P.E. – Civil,  
who had served as Clark County Public Works Director for 20 years and who had  
overseen hundreds of millions of dollars in public works contracts by Clark County,

1 including earlier phases of the Bruce Woodbury Beltway. Marty Manning's letter states,  
2 in pertinent part:

3 "I have reviewed Las Vegas Paving's protest and find it to be  
4 without merit. Under Nevada law, the County can only  
5 award highway work to contractors holding either an A, A/B,  
6 or A-2 license from the State Contractors Board. A  
7 contractor holding one of these license designations is then  
8 free to utilize the services of subcontractors that hold the  
9 appropriate specialty designations for the type of work they  
10 are going to perform. These subcontractors work under the  
11 supervision of the licensed general contractor, and they  
12 need not, and typically do not, have the A, A/B or A-2 license  
13 themselves. Fisher's listing of its subcontractors is legally  
14 appropriate and conforms to industry norms.

15 Accordingly, Las Vegas Paving's contention in this matter is  
16 without merit, in my opinion is contrary to the law, further, is  
17 contrary to the long standing practice of the County in its  
18 award of public works contracts."

19 12. Prior to submitting its bid, Fisher asked Bravo Underground to seek an  
20 increase from the State Contractors Board in its bonding capacity so that it could perform  
21 the full scope of work that was necessary for the proposed beltway project. The request  
22 specified the project under consideration that the exact scope of work to be performed.

23 13. With the specific information at hand, the Contractors Board approved  
24 Bravo Underground's request so that it would serve as a sub-contractor in this project.

25 14. Prior to the hearing, I reviewed the bids submitted by all seven general  
26 contractors who submitted bids. All seven included the use of subcontractors to perform  
27 work within the scope of their respective specialty areas. This includes Las Vegas  
28 Paving, who also included subcontractors with appropriate specialty licenses, but not the  
A, AB, A-2 general contractors license that it argued was required of all of Fisher's  
subcontractors.

15. At the County Commission meeting on April 21, 2009, the County's own  
staff which oversees the bidding process stated that its recommendation was that the  
contract be awarded to Fisher and that Las Vegas Paving's protest was without merit.

1 16. At the County Commission meeting on April 21, 2009, the Clark County  
2 District Attorney's office, the Commission's legal counsel, also stated that Fisher's bid  
3 was in accordance with all legal requirements and the Las Vegas Paving's protest was  
4 invalid and improperly stated the law.


5 17. Notwithstanding the advice of its own professional purchasing staff and the  
6 advice of the District Attorney's Office, the County Commission, on a 6-1 vote, rejected  
7 Fisher's bid and awarded the contract to Las Vegas Paving. In my opinion this was an  
8 arbitrary and capricious act in violation of well established law and constitutes a waste of  
9 more than \$4.5 million dollars in public funds. Even if, for the sake of argument, the law  
10 required A-2 licensing for all performing any work on the project whatever, the action is  
11 arbitrary and capricious since Las Vegas Paving's bid also included subcontractors with  
12 specialty licenses, but not the A-2 license that Las Vegas Paving claimed was necessary

13 18. Fisher expended approximately \$50,000.00 in preparing and submitting its  
14 bid and has additionally incurred substantial legal fees in the presentation of this matter  
15 to the County Commission.

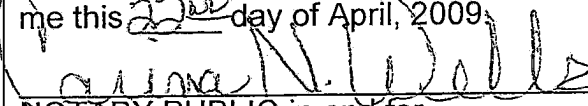
16 19. I presented at the April 21, 2009 hearing, the book entitled "Materials  
17 Submitted by Fisher Sand & Gravel Co.," containing attachments 1-49, which are  
18 designated as Exhibit #1 for this case. This book was made a part of the record of the  
19 County Commission's proceedings.

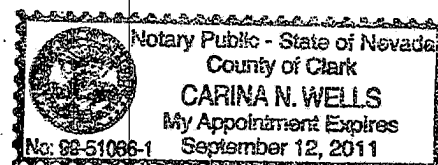
20 20. The facts stated herein are based on my personal knowledge, unless stated  
21 to be on information and belief, and as to said facts, I believe them to be true.

22 FURTHER AFFIANT SAYETH NAUGHT.

23  
24   
BILL CURRAN

25  
26 SUBSCRIBED and SWORN to before  
me this 22<sup>nd</sup> day of April, 2009.

27   
28 NOTARY PUBLIC in and for  
said County and State







AFFIDAVIT OF STANLEY W. PARRY, ESQ.

STATE OF NEVADA       )  
                                  )ss.  
COUNTY OF CLARK       )

I, Stanley W. Parry, being duly sworn and under the penalty of perjury does hereby depose and say:

1. I am an attorney duly licensed to practice before the courts in the State Nevada. I am a shareholder of the law firm Ballard Spahr Andrews & Ingersoll, LLP and am counsel for Plaintiff Fisher Sand & Gravel Co. ("FSG") in this actions. The following facts are within my personal knowledge, and if called as a witness, I am competent to testify thereto.

2. I make this Declaration in support of FSG's Application for Temporary Restraining Order and for Preliminary Injunction.

3. I have not given *ex parte* notice to Defendant Clark County, Nevada ("Clark County") because of the nature of the action – i.e., bid protests and contested hearing before the County Commission on April 21, 2009 – which I seek an Order from this for a Writ of Mandamus and Injunction to vacate the award of Bid No. 601309-08, Northern Clark County Route 215 Bruce Woodbury Beltway, from Tenaya Way to Decatur Boulevard (the "Project") to Las Vegas Paving Company ("LVPC").

4. I am seeking an Order from this Court, requiring Clark County to vacate the award of the Project to LVPC.

5. I am seeking an Order from this Court, requiring Clark County award FSG the Project pursuant to NRS 338.1389

6. I believe that if I were to give any notice to Clark County will result in LVPC breaking ground on the Project today.

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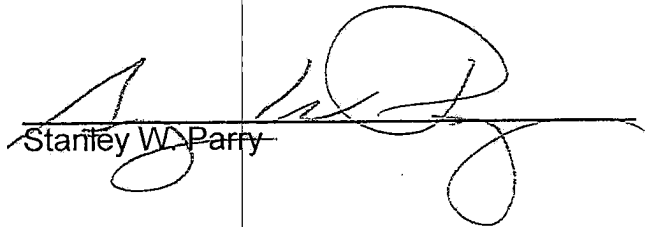
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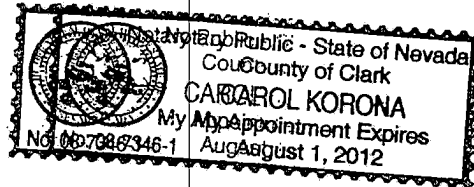
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AFFIANT SAYETH NOTHING MORE

  
Stanley W. Parry

Subscribed and sworn before me  
This 22nd day of April, 2009.

  
NOTARY PUBLIC





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**LAS VEGAS SUN**

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# 215 Beltway widening contract sparks controversy

**By Jeff Pope**

Published Tue, Apr 21, 2009 (7:56 p.m.)

Updated 13 minutes ago

Construction to widen the northern 215 Beltway hit a bump in the road Tuesday.

The Clark County Commission went against the advice of its staff and a deputy district attorney and threw out the lowest bid of \$112.2 million submitted by Fisher Sand and Gravel Co. It awarded the contract to Las Vegas Paving, whose bid came in \$4.6 million higher.

Las Vegas Paving had filed a protest with the county claiming two of Fisher's subcontractors lacked the necessary licenses to perform highway construction.

Attorneys for both companies and the county weighed in on their interpretation of the Nevada Administrative Code that requires general contractors to carry the A-2 license — an engineering subclassification allowing work on highways.

At question is whether the code requires subcontractors to also carry a general contractor's license.

Wade Gochmour, attorney for Las Vegas Paving, argued that it does.

"In order to do this type of work on highways, they need to have that specialized engineering knowledge," he said.

The state's code is vague, said Commissioner Steve Sisolak, who proffered the recommendation to throw out Fisher's bid.

"It's got to be a responsible bid and I think I wasn't getting clear enough legal advice ... whether or not the subcontractors need the A-2 license in their specialty," he said. "It doesn't seem like the guy who would excavate for a pipe is the same guy who would do excavating for a freeway."

Las Vegas Paving also sought a decision from the Nevada State Contractors Board but withdrew its request yesterday.

Fisher's attorney, Bill Curran, said his client likely will take its case to District Court.

Curran said he was stunned by the commission's decision, in part because the protest was filed after the five-day window set by state law.

"Not only was there a \$4.6 million difference in the bid amount but, purely on the grounds of procedure, the protest was filed too late," he said.

The law was enacted in 2003 to prevent bid protests from delaying projects.

If the commission's decision stands, it would require subcontractors to carry a general contractor's license.

"If I was a subcontractor in any kind of work, I'd be worried," Curran said.

Court action could delay the start of the project of converting the existing roadway into a four-lane highway from Tenaya Way to Decatur Boulevard with interchanges at Jones and Decatur.

Commissioner Larry Brown said he hopes the courts would expedite any proceedings in the interest of a public project.

Brown cast the lone vote against awarding the contract to Las Vegas Paving, saying Deputy District Attorney Mary Miller confirmed the bid met the standard criteria.

"There's no question as soon as we opened that agenda today that there was going to be litigation on either side regardless of the decision," he said. "I just want to get the job on the streets, create the jobs and get the beltway going."

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