

MICHAEL E. LANGTON, ESQ.

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This Reply is based on the accompanying Memorandum of Points and Authorities and pleadings on file.

DATED this 30 day of June, 2009.

Michael E. Langton

MICHAEL E. LANGTON, ESQ.
Nevada Bar No.: 0290
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(775) 329-7557

Attorney For Petitioners
LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA, LOCAL UNION 169

MEMORANDUM OF POINTS AND AUTHORITIES

1 I. Reply to Respondent's assertion "The Petition is
2 jurisdictionally defective on its face thereby
3 divesting this Court of jurisdiction."
4

5 Within its Opposition Respondent asserts: "Petitioners'
6 have brought this instant action seeking equitable relief from
7 this Honorable Court pursuant to 'Nevada Revised Statutes Chapter
8 3'". (Opposition, at 2:6-7.)

9 It is obvious that the reference in Petitioners' Petition
10 to "Chapter 3" at page 2 of the Petition was a typographical
11 error. Obviously, the reference should have been to Chapter 34.
12 Respondent should have been fully aware of the typographical
13 error because the petition filed June 18, 2009, was clearly
14 denominated: "Petition For Writ of Mandamus Or, In The
15 Alternative, Writ of Prohibition." Moreover, Respondent's
16 Opposition is titled "Opposition to Petition For Writ of
17 Mandamus, Alternatively Writ of Prohibition," i.e., an action
18 under Chapter 34, not Chapter 3. And, within its initial
19 paragraph, Respondent states, in relevant part, "The instant
20 motion is brought pursuant to NRS 34.150 et seq" The
21 entirety of the Petition was structured in conformance with
22 Chapter 34, including the prayer for relief.
23

24 Accordingly, Respondent's argument that the Court lacks
25 jurisdiction because of the typographical error is an attempt to
26 put form over substance and, therefore, a *non sequitur*.
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Therefore, it is respectfully submitted this Court does have jurisdiction over this matter and the parties thereto as the Petition clearly seeks relief under Chapter 34, not Chapter 3.

II. Reply to Respondent's argument that "Petitioners lack Standing because there is not privity of contract."

Respondent argues within its Section II that "Petitioners lack standing to bring the instant Petition because of lack of privity and because the matter is non-justiciable." (Opposition, at 2:17-18.) Respondent's argument is without merit as Petitioners need not have privity of contract in order to bring a Petition for Writ of Mandate to require a public officer to perform his duty and because the matter is indeed justiciable.

A. Petitioners have standing to seek the Writ of Mandamus.

Respondent argues that neither Petitioner bid on the public works project and, therefore, Petitioners lack standing and are not entitled to writ relief. Such argument is without merit as there is no requirement that Petitioners have bid on the project in order to see a writ to have the Public Works statutes enforced.

As stated in the Petition and as acknowledged by Respondent, the instant matter involves a public works project. Once a public entity exercises its discretion in undertaking a public works project, it becomes bound to follow public work

statutes. Building & Construction Trades Council v. State of Nevada, Public Works Board, 108 Nev. 605 (1992).

NRS 34.160 states in relevant part:

The writ [of mandamus] may be issued by the Supreme Court, a district court or a judge of the district court, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station; ...

Where the question is one of a public right and the object of a writ of mandamus is to procure enforcement of a public duty, the relator is not required to show that he has any legal or special interest in the result; it is sufficient if he shows that he is interested, as a citizen, in having laws executed and rights enforced. Piper v. Gracey, 11 Nev. 223 (1876), cited, State Bar v. List, 97 Nev. 367, at 368, 632 P.2d 341 (1981).

To justify the issuance of a writ of mandamus to enforce the performance of an act by a public officer, the act must be one performance of which the law requires as a duty resulting from the office, and there must be an actual omission on the part of the officer to perform it. Piper v. Gracey, supra; State Bar v. List, supra; Brewery Arts Center v. State Board of Examiners, 108 Nev. 1050 at 1054, 843 P.2d 369 (1992); Mineral County v. State Dep't of Conversation and Natural Resources, 117 Nev. 235 at 243, 20 P.3d 800 (2001).

NRS 34.170 states: "This writ shall be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It shall be issued upon affidavit, on the application of the party beneficially interested."

1 "'Standing is the legal right to set judicial machinery in
2 motion.' To establish standing in a mandamus proceeding, the
3 Petitioner must demonstrate a 'beneficial interest' in obtaining
4 writ relief.'" Secretary of State v. Nevada State Legislature,
5 120 Nev. 456, 460-61 (2004.) In Secretary of State, the Court
6 adopted the California Court's definition of "beneficial
7 interest," to wit: "To demonstrate a beneficial interest
8 sufficient to pursue a mandamus action, a party must show a
9 direct and substantial interest that falls within the zone of
10 interest to be protected by the legal duty asserted." Secretary
11 of State, supra, at 461.

12 A citizen and taxpayer of a County has a beneficial
13 interest in requiring public officials to perform their duty as
14 required by law. Piper v. Gracey, supra.

15 As alleged in paragraph II of the Petition, Petitioner Daly
16 is a citizen and resident of the City of Sparks and is over the
17 age of 21 years. Daly further has alleged within the Petition
18 that he is the Business Manager of Respondent Laborers' Local
19 169 and authorized to act on its behalf. However, Respondent
20 claims Daly "has not alleged that he brought the instant
21 Petition as a taxpayer of the Respondent, City of Sparks."
22 (Opposition, at 4:15-16.) As evidenced by the Affidavit
23 attached hereto, Daly is indeed a taxpayer of Respondent City of
24 Sparks, and Laborers' Local 169 and Daly have lobbied long and
25 hard and successfully for laws governing public works projects
26 such as the one at issue. Accordingly, Daly and Laborers' Local
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169 do indeed have a "beneficial interest" in ensuring that the laws governing public works are followed.

Furthermore, both Petitioner Daly and Local Union 169, do indeed possess "direct and substantial interest that falls within the zone of interest to be protected by the legal duty asserted." Mesagate Homeowner's Association v. City of Fernley, 124 Nev. Adv.Op.No. 91, 194 P.2d 1248, 1251-1252 (2008).

Accordingly, it is not necessary for Petitioners to be bidders on the public works project to have standing to seek a writ of mandamus to direct Respondent to follow Nevada's laws governing public works projects when they are seeking to have laws enforced in which they have a beneficial interest.

B. The instant matter is indeed a justiciable controversy.

Respondent argues that Petitioners lack standing because the instant matter is "non-justiciable." (Opposition, at 3:21.)

In Mesagate Homeowner's Association, supra, the Court stated: "We have expressly defined a 'justiciable controversy' as a 'ripe dispute between two interested and adverse parties, in which the moving party's interest is legally recognized.' ... [¶] In the context of a petition for a writ of mandamus, the question whether a party has a legally recognized interest is essentially a question of whether the party has a beneficial interest in obtaining writ relief. Indeed, this court has stated that '[t]o establish standing ... the petitioner must demonstrate a "beneficial interest" in obtaining writ relief' a

1 'beneficial interest' is a 'direct and substantial interest that
2 falls within the zone of interests to be protected by the legal
3 duty asserted.'"

4 On page 7 of its Opposition, Respondent argues that "Courts
5 should not be zealous to interfere with letting public contracts
6 unless they are satisfied that the public has been made to
7 suffer... ." (Emphasis added.) Continuing, Respondent argues
8 that "Nevada recognizes a legal presumption that the acts of
9 executive offices - such as Respondent's Purchasing Manager -
10 are done for the public good and should not be disturbed absent
11 a clear showing of wrong doing." (Opposition, at 7:12-14.)
12 Such argument is flawed for two reasons: (1) No contract has
13 been let by the Purchasing Manager as he does not have authority
14 to do so,¹ and (2) NRS 338.143(4) and (5) have not been followed
15 by Respondent's Purchasing Manager.

16 NRS 338.143(4) and (5) state:

17 4. Except as otherwise provided in subsection 5, and
18 NRS 338.147, the local government or its authorized
19 representative shall award a contract to the lowest
20 responsive and responsible bidder.

21 5. Any bids received in response to an advertisement
22 for bids may be rejected if the local government or
23 its authorized representative responsible for awarding
24 the contract determines that:

25 (a) The bidder is not responsive or
26 responsible; or

27 (b) The quality of the services, materials,
28 equipment or labor offered does not conform
to the approved plans or specifications; or

See Affidavit of Richard Daly submitted herewith, and related argument,
infra.

(c) The public interest would be served by such a rejection.

1 Paragraph VIII of the Petition stated: "The rejection of
2 the bids received from the project on or about May 20, 2009, did
3 not comply with requirements of NRS 338.1385."
4

5 NRS 338.1385(6) states in a manner similar to NRS
6 338.143(5):

7 6. Any bids received in response to an
8 advertisement for bids may be rejected if
9 the public body or its authorized
representative responsible for awarding the
contract determines that:

- 10 (a) The bidder is not a qualified bidder
11 pursuant to NRS 338.1379 or 338.1382;
12 (b) The bidder is not responsive or
13 responsible;
14 (c) The quality of the services, materials,
15 equipment or labor offered does not conform
16 to the approved plans or specifications; or
17 (d) The public interest would be served by such
a rejection.

18 Although Respondent has alleged there is a "paucity of
19 allegations involving the Union Petitioner," (Opposition, at
20 7:16-17), the allegations made by the Petitioners are joint
21 allegations, not related to one Petitioner or the other.
22 Moreover, paragraph IX of the Petition alleged "The Purchasing
23 Manager did not have legal authority to reject the bids for the
24 project received on or about May 20, 2009."

25 Therefore, it is respectfully submitted that the instant
26 matter is indeed a justiciable controversy ripe for adjudication
27 by the this Court as it involves a dispute between citizens of
28 the City of Sparks and whether the City has a duty to follow

laws governing public work project bidding.

1 C. Reply to Respondent's assertion
2 "Petitioners Request for a Writ of
3 Prohibition is Moot" and its argument that
4 "A Writ of Prohibition Is Not a Proper
5 Remedy."
6

7 At page 8 of its Opposition, Respondent asserts the
8 Alternative Petition for Writ of Prohibition is moot because
9 Respondent has already "rebid a new and different project of
10 similar scope on Wednesday, June 17, 2009." However, there is
11 no evidence supporting such assertion.

12 Additionally, Respondent has argued a Writ of Prohibition
13 is not a proper remedy for the same reason.

14 However, it is Petitioners' understanding, as alleged
15 within the Petition, at paragraph XII, that even if a
16 solicitation/announcement for bids has been published, the
17 actual bids are not returnable until July 8, 2009, and,
18 therefore, the issue of a writ of prohibition is not moot.
19 Accordingly, the Court can still prevent Respondent from
20 proceeding further with the "rebid" pending resolution of the
21 merits of the Writ of Mandamus. To rule that the issue was moot
22 because Respondent has solicited new bids on the "project of
23 similar scope," (Opposition, at 3:6), would set a precedent that
24 an entity that does not desire to abide by public works bidding
25 laws can simply ignore the first bids, without the awarding body
26 officially rejecting them for articulated reasons - as required,
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1 but not followed here - and rushing a "rebid." Such would be
2 the anthesis of due process.

3 In arguing that a Writ of Prohibition is not a proper
4 remedy, Respondent argues that "Rejection of a bid award is a
5 discretionary act left to the executive department and is not a
6 judicial function that should be arrested by and through a Writ
7 of Prohibition." (Opposition, at 8:21-22.) However, as
8 previously noted, the Purchasing Manager does not have
9 discretion to disregard public works bidding laws. Nor does
10 Respondent City, through any representative, have discretion to
11 disregard public works laws.

12 The statutes referenced above are very, very clear: Before
13 bids can be rejected, the awarding body must articulate reasons
14 therefore; it cannot simply "reject" the bids. Without
15 following the statutory mandates, the public interest is never
16 served.

17 Additionally, contrary to the spin the City attempts to put
18 on this action, the Petition is not a "bid protest." It is, as
19 previously noted, an action to require the City to follow Nevada
20 law.

21 Therefore, it is respectfully submitted this case is not
22 moot and that a Writ of Prohibition is proper to direct
23 Respondent to cease the rebidding, at least until the merits of
24 the Petition for Writ of Mandamus has been adjudicated.

25
26 D. Reply to Respondent's argument that a Writ of
27 Mandamus is an improper remedy in this action and
28 its assertion that the Purchasing Manager is the

1 person designated "by the governing body or City
2 Manager to be responsible for the development,
3 award and proper administration of purchases and
4 contracts on the development and award of
5 contracts for public works."

6 Within Sections VI and VIII of its Opposition, Respondent
7 City argues that mandamus is not a proper remedy in this matter
8 contending, *inter alia*, the Purchasing Manager was simply
9 exercising his discretionary authority when he rejected the bids
10 by his letter dated June 9, 2009, (i.e., Exhibit 1 attached to
11 the Petition). However, as discussed below, the Purchasing
12 Manager is not a person who has the authority to do so, contrary
13 to the assertions made by the City.

14 Nowhere within the Petition are the Petitioners requesting
15 that the contract be awarded to any particular responsive and
16 responsible bidder. However, Petitioners have alleged the
17 Purchasing Manager did not have legal authority to reject the
18 bids for the project. (Petition, at IX.) Petitioners have
19 further alleged that the City Council did not, at a public
20 meeting, reject the bids for the project. (Petition, at X.)
21 Additionally, Petitioners have alleged that the City of Sparks
22 had a duty to award the bid on the project to the entity that
23 was the lowest responsive and responsible bidder. (Petition, at
24 XI.) In response thereto Respondent admits: "On June 9, 2009,
25 Respondent by and through its Purchasing Manager gave notice
26 that all bids submitted pursuant to the April 29, 2009 bid
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request were rejected." (Opposition, at 14:4-5.) Respondent
1 then claims the Purchasing Manager was the "authorized
2 representative" of the City, citing Sparks Municipal Code,
3 (hereinafter "SMC"), 2.25.020(C).

4 Respondent also references SMC 2.25.030, SMC 2.25.040, and
5 SMC 2.060(2), but does not reference SMC 2.25.150 or SMC
6 2.25.160. Those unreferenced provisions do not support the
7 City's contention that its Purchasing Manager was authorized to
8 reject the bids, but support Petitioners' arguments that he was
9 not authorized to reject these public works bids.

10
11 SMC 2.25.150(E) states:

12 The city manager as chief administrative officer or
13 purchasing manager as the principal designated
14 authorized representative are authorized to execute
15 contracts providing for an expenditure of less than
16 twenty-five thousand dollars (\$25,000.00) unless
17 otherwise provided by ordinance or direction of the
18 city council.

19 SMC 2.25.160(A) states:

20 A. Unless otherwise provided for or exempt by Nevada
21 Revised Statutes any procurement resulting in an
22 expenditure of more than twenty-five thousand dollars
23 (\$25,000.00) shall have been made only after formal
24 competitive sealed bidding, solicited by public
25 notification, properly received and authorized by the
26 city council or their designated representative.
27 (Emphasis added.)

28 1. Per NRS 338.143, contracts for project defined as
a "public work" with an estimated value of less than
\$100,000.00 may be let by following the "informal"
bidding procedures outlined in SMC 2.25.150.

2. Projects defined as a "public work" where the
estimated cost exceeds \$100,000.00 shall be let
following the "formal" bidding procedures outlined
below.

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1 Nowhere in the Sparks Municipal Code is the Purchasing
2 Manager given authority to award or execute a contract in excess
3 of \$25,000.00. The project at issue is estimated at over
4 \$8,000,000.00.

5 SMC 2.25.150(E) clearly limits the Purchasing Manager's
6 authority involving contracts greater than \$25,000.00. Such
7 authority rests only with the City Council.

8 As evidenced by Exhibit 1 attached hereto, the Sparks City
9 Council, at its June 22, 2009 meeting, considered and acted on
10 19 items on the agenda concerning contracts with an amount
11 greater than \$25,000.00. (One such item, agenda item 5.11, was
12 in the amount of \$27,000.00.) At least four of those items,
13 (5.12, 5.17, 5.20, and 5.22), were assigned public works project
14 numbers. Obviously, the City Council acted on those items
15 because it had not delegated authority to the Purchasing Manager
16 to do so.

17 Accordingly, although the Purchasing Manager has been
18 authorized as the designated representative concerning contracts
19 under \$25,000.00, the City has not provided any evidence
20 whatsoever that the Purchasing Manager could be, by ordinance or
21 otherwise, the "authorized representative responsible for
22 awarding the contract," as required by NRS 338.1385(6). to
23 reject or award public works project contracts in excess of
24 \$25,000.00.

25 Respondent has simply put a spin on the term "authorized
26 representative" to apply it across the board, including public
27 works projects, when, in fact, it has not officially designated
28

1 the Purchasing Manager "by ordinance or direction of the
2 Council" as the duly authorized representative for contracts in
3 excess of \$25,000.00.

4 Therefore, it is respectfully submitted that a writ of
5 mandamus is indeed a proper remedy in this action and that the
6 Purchasing Manager is not the authorized representative in
7 matters concerning public works contracts in excess of
8 \$25,000.00.

9 E. The doctrine of laches is inapplicable.

10 Within Section VII of its Opposition, Respondent argues
11 that the doctrine of laches bars this Petition.

12 Unlike the facts in Building & Construction Trades Council
13 of Northern Nevada v. State, 108 Nev. 605 (1992), there do not
14 exist circumstances here which cause prejudice to Respondent.
15 In Building and Construction Trades Council, the Court noted
16 that the bidders were notified all of the responsive bids "were
17 significantly over the available construction budget," and that
18 the project was going to be redesigned and "re-bid as soon as
19 possible." (108 Nev., at 608.) However, almost immediately
20 thereafter, Respondent entered into negotiations with one of the
21 bidders, but did not negotiate with any of the other bidders.
22 After the negotiations, which were unknown to the other bidders,
23 Respondent awarded the project and work commenced on January 15,
24 1991. Although the Court agreed with the Building Trades
25 Council that the Respondent did not have discretion to negotiate
26 the project contract after it advised all bidders that the bids
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1 were rejected, the Court ruled that because the Petition for
2 Mandamus was filed after work had begun on the project the
3 doctrine of laches would apply "under the peculiar circumstances
4 of this case," (108 Nev., at 612), which included the fact that
5 rebidding "would have increased the project's cost and perhaps
6 resulted in a withdrawal of the federal grant." (*Id.*)

7 Those similar facts do not exist in this case. A writ of
8 mandamus will not increase the project's cost or result in the
9 withdrawal of federal grant or otherwise cause a change in
10 circumstances affecting Respondent.

11 Therefore, it is respectfully submitted the doctrine of
12 laches does not apply to this case.

13 **F. Reply to Respondent's assertion that**
14 **Petitioners' requested relief contravenes**
15 **public policy.**

16 In Section IX of its Opposition, the City contends
17 Petitioners' requested relief contravenes public policy. In
18 doing so, the City contends: "Petitioner Daly provides no legal
19 authority [that the Purchasing Manager rejected the bids without
20 legal authority]² yet readily concedes in his Petition that the
21 bids were allegedly rejected because 'the City discovered
22 multiple issues with the original bid documents and
23 specifications' which led to 'concerns' effecting pricing, the
24 'structure of the bid schedule' and 'how data was to be reported
25 to the State of Nevada'." (Opposition, at 16:12-16.) Such
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 See argument rejecting such position, supra.

1 assertion is a misrepresentation of the Petition. The quotes by
2 Respondent City are excerpts from the June 9, 2009, letter from
3 its Purchasing Manager to the bidders; they were put into the
4 Petition not as part of Petitioners' concessions, but merely as
5 a recitation of the City's position. It is quite improper to
6 allege that Petitioner Daly "concedes" anything in the June 9th
7 letter.

8 Additionally, Respondent contends the request for writ
9 relief is "illogical" contending "An order granting
10 extraordinary relief in this matter would force Respondent to
11 award a non-responsive bid on a deficient document, and would
12 preclude Respondent from rectifying the situation by treating
13 bidding parties fairly and timely re-bidding the project with
14 more accurate bid documents." (Opposition, at 16-17.) However,
15 there has been absolutely no evidence that any of the bids were
16 non-responsive, or that there was a "deficient document" or that
17 "re-bidding the project with more accurate bid documents" would
18 result. The June 9th letter attached to the Petition simply
19 speculates that "The original bid documents and specifications
20 ... may have left some (or all bidders) possibly making
21 assumptions concerning the scheduling of the job." (Emphasis
22 added.) There is absolutely no evidence that such actually
23 occurred as there is no evidence from any of the bidders
24 whatsoever to support the City's contention.
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1 Therefore, it is respectfully submitted that issuance of a
2 writ in this action would not contravene public policy but,
3 would in fact, enforce public policy that the public works laws
4 of Nevada are to be strictly followed.

4 CONCLUSION

5 Moreover, when Petitioners request the Court issue a writ
6 "compelling Respondent to award the contract on the above-
7 referenced project to the entity which was the lowest responsive
8 and responsible bidder and that submitted its bid in accordance
9 with Nevada law," (Petition, at 7), it is obviously requesting
10 the Court to issue the mandate that Respondent City of Sparks be
11 required to follow the law and, to comply with its strictures as
12 it deems proper in the premises.

13 Therefore, for any and all of the reasons stated above, it
14 is respectfully requested the Court issue the Writ of Mandamus
15 or, in the alternative, a Writ of Prohibition as requested by
16 Petitioners.
17

18 **RESPECTFULLY SUBMITTED** this 30 day of June, 2009.

19
20 
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24 Reno, NV 89503
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27 Attorney For Petitioners
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AFFIDAVIT IN SUPPORT OF WRIT OF MANDAMUS

1 STATE OF NEVADA)
2) ss.
3 COUNTY OF WASHOE)

4 I, **RICHARD DALY**, being first duly sworn, under the penalty
5 of perjury, depose and states as follows:

6 1. That I am a citizen of the State of Nevada, a resident
7 of the County of Washoe, City of Sparks, and over the age of 21.

8 2. That I have resided in Sparks, Nevada, for over 40
9 years and am a taxpayer and property owner in the City of
10 Sparks.

11 3. That on June 12, 2009, I had a discussion with Sparks
12 City Attorney Chester Adams concerning the project at issue.
13 During that conversation I asked him if the Purchasing Manager
14 had authority to award the project. Mr. Adams responded, "No."

15 4. That I have, both in my capacity as an individual and
16 as Business Manager of Laborers' Local 169, lobbied for laws
17 concerning public works in the State of Nevada, including the
18 County of Washoe. As such, both in my capacity as an individual
19 and as Business Manager of Laborers' Local 169, I have
20 diligently monitored public works projects in Washoe County,
21 including City of Sparks. It is in my best interests and the
22 best interests of the members of Local 169, as well as the best
23 interests of all citizens of the County of Washoe,
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1 City of Sparks, that all laws pertaining to public works
2 projects be enforced, and I have diligently endeavored to ensure
3 such enforcement.

4 **FURTHER YOUR AFFIANT SAYETH NAUGHT.**

5 *Richard Daly*
6 RICHARD DALY

7 **SUBSCRIBED and SWORN** before me
8 this 29th day of June, 2009.

9
10 *Marilyn E. Daniel*
11 NOTARY PUBLIC



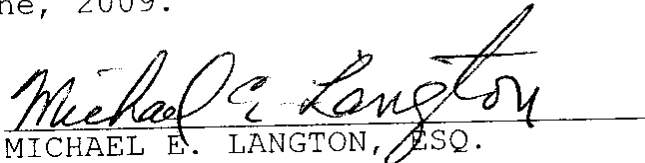
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CERTIFICATION

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The undersigned does hereby certify that this document does not contain the Social Security Number of any party to this action.

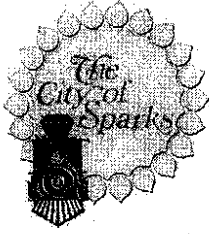
DATED this 30 day of June, 2009.



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MAYOR
Geno Martini

CITY COUNCIL
Julia Ratti, Ward I
Phillip Salerno, Ward II
Ron Smith, Ward III
Mike Carrigan, Ward IV
Ron Schmitt, Ward V

CITY ATTORNEY
Chet Adams

REGULAR CITY COUNCIL MEETING AGENDA

3:00 P.M. Monday, June 22, 2009

City Council Chambers

Legislative Building, 745 Fourth Street, Sparks, Nevada

Order of Agenda - Items listed on the agenda may be taken out of order.

Accommodations - The Sparks City Council Chambers are accessible to individuals with disabilities. Reasonable efforts will be made to accommodate persons with special needs such as sign language interpreters. Please call the City Clerk (775) 353-2350 one week in advance of the meeting. TDD Line 353-2350.

Rules - Addressing the Council - The meetings conducted by the Sparks City Council in the City of Sparks Legislative Building are not public forums. The presiding officer will enforce viewpoint neutral procedural rules to ensure orderly conduct during that portion of the Agenda set aside for Public Comment. In order to allow the City Clerk to properly document those individuals speaking to the City Council, persons desiring to address the Council shall first provide the City Clerk with a written request to speak so they may be recognized by the presiding officer.

Manner of Addressing the Council - In order to conduct orderly, efficient, effective and dignified meetings that promote a governmental purpose with a governmental process, public comment may address any agenda item or other public issue that the City Council has the authority to effectuate or exercise control over. Public comment on matters beyond the City Council's scope of authority is not relevant to Council business, does not invoke a governmental process nor serve a governmental purpose and is contrary to the effective, efficient and orderly business conducted by the Sparks City Council. Each person addressing the Council shall step up to the microphone, shall give his/her name and shall limit the time of his/her presentation to three (3) minutes. All public comment remarks shall be addressed to the Council as a body, and not to any member thereof. No person, other than members of the Council and the person having the floor, shall be permitted to enter into any discussion, either directly or through the members of the Council. No questions shall be asked of the Council members, except through the presiding officer. Speakers shall avoid undue repetition of points previously presented to the Council.

Sound Amplification - The City of Sparks Provides sound amplification during its public meetings for the convenience of the speakers and the audience. Sound amplification, if enhanced by yelling or shouting can cause hearing and equipment damage. Public speakers using the sound amplification shall not disrupt the meeting by yelling or shouting into the microphone while addressing the City Council.

Disruptive Conduct - Any person who willfully disrupts a meeting to the extent that its orderly conduct is made impractical may be removed from the meeting by order of the presiding officer. A person willfully disrupts a meeting when he/she (1) uses physical violence, threatens the use of physical violence or provides the use of physical violence or (2) continues to use loud, boisterous, unruly or provocative behavior after being asked to stop, which behavior is determined by the presiding officer, or a majority of the Council present, to be disruptive to the orderly conduct of the meeting or (3) fails to comply with any lawful decision or order of the presiding officer or of a majority of the Council relating to the orderly conduct of the meeting.

Action Items - Range of Possible Actions - Those items NOT marked with an asterisk (*) are items on which the Council may take action, which means that the Council may take any action, including, but not limited to, any one or combination of the following: (1) determine whether a business impact statement is required under NRS 237.080; (2) adopt, enact or approve the item as presented or recommended; (3) amend or make changes (substantial or minor) to the item as presented and then approve it as amended or changed; (4) approve the item with substantial or minor conditions; (5) deny, reject or fail or refuse to adopt, enact or approve the item, with or without prejudice; (6) table or postpone consideration of the item; (7) refer the item to staff or another public body for more information, advice or decision; (8) make a decision on the item; (9) make a commitment or promise regarding the item; (10) take a vote on the item; (11) do nothing at all.

Business Impact Statement - A business impact statement is available at the City Clerk's office for those items marked with a "\$."

Posting - I, Linda K. Patterson, City Clerk of the City of Sparks, Nevada, do hereby certify that this agenda was posted at the following locations three or more working days before the meeting:

Sparks City Hall, 431 Prater Way
Sparks Legislative Building, 745 4th Street
Sparks Police Department, 1701 E. Prater Way
Sparks Recreation Center, 98 Richards Way

Alf Sorensen Community Center, 1400 Baring Boulevard
Sparks Justice Court, 630 Greenbrae Drive
Sparks Branch Library, 1125 12th Street

EXHIBIT 1

1. *Call to Order
2. *Roll Call

Invocation Speaker: Pastor Dan Sipma
University Family Fellowship

Pledge of Allegiance

***Comments from the Public**

Approval of the Agenda – *Consideration of taking items out of sequence, deleting items and adding items which require action upon a finding that an emergency exists.*

3. **Recommendation to Approve Minutes of:**

3.1 Regular Meeting of May 26, 2009

4. **Announcements, Presentations, Recognition Items and Items of Special Interest:**

4.1 Presentation on H1N1 flu

4.2 Presentation regarding the All Star Band's trip to Longford, Ireland

5. **Consent Items:**

5.1 Report of Claims and Bills approved for payment and appropriation transfers for the period May 21, 2009, through June 3, 2009

5.2 Consideration and possible approval of appropriation transfers between accounts within funds

5.3 Consideration and possible acceptance of dispositioned evidence converted to City use

- 5.4 Consideration and possible execution of a five-year agreement to accept wastewater from Hidden Valley Manufacturing**
- 5.5 Consideration and possible approval to purchase various commercial insurance policies to protect the financial interests of the City in Fiscal Year 2009-2010 in the amount of \$411,486**
- 5.6 Consideration and possible approval to purchase various commercial insurance policies to protect the financial interests of the Truckee Meadows Water Reclamation Facility in Fiscal year 2009-2010 in the amount of \$224,303**
- 5.7 Consideration and possible approval to amend the contract with CDS Group Health Third Party Administration Services for the City of Sparks**
- 5.8 Consideration and possible approval of a contract to purchase stop loss insurance from National Union Fire Insurance Company for the City's self-funded group health benefits program in the amount of \$332,297.28**
- 5.9 Consideration and possible approval of a contract with Standard Insurance Company-providing life insurance, accidental death and dismemberment (AD&D) insurance and long-term disability (LTD) insurance in the amount of \$111,472.02**
- 5.10 Consideration and possible approval of a contract for the provision of Video Production Services with Sierra Nevada Community Access Television (SNCAT) for the annual cost of \$32,980 (Bid #08/09-026 Re-Bid)**
- 5.11 Consideration and possible approval of the award of the multi-agency Bid #08/09-024 to Ferral Gas and approval of the contract specific to the City of Sparks for the provision of Liquid Petroleum Gas (LPD, aka Propane) in the amount of \$27,000**

- 5.12 Consideration and possible award of the 2009 Curb, Gutter and Sidewalk Program, Bid Number 08/09-033, PWP WA-2009-266, CIP Number 9092 to MKD Construction, Inc., in the amount of \$328,999
- 5.13 Consideration and possible approval of the Informal Quote for the 2009 Merchant Street Concrete Improvements Project to Reno Concrete, in the amount of \$49,888
- 5.14 Consideration and possible award of the Informal Quote for the 2009 Nichols Boulevard and Howard Drive Roundabout Improvements to Anchor Concrete, in the amount of \$60,887
- 5.15 Consideration and possible approval of an Interlocal Cooperative Agreement for reimbursement with the Regional Transportation Commission in the amount of \$37,950 to replace storm drain facilities as part of the Deming Way, Bergin Way, Franklin Way and Meredith Way reconstruction project
- 5.16 Consideration and possible approval of the Informal Quote for the 2008/2009 Catch Basin Repair Project, CIP 9094, to Q&D Construction, Inc., in the amount of \$42,500
- 5.17 Consideration and possible award of the Alf Sorensen Re-Roof Project Base Bid and Alternate A, Bid No. 08/09-035, PWP No. WA-2009-272, to Bison Construction, in the amount of \$428,800
- 5.18 Consideration and possible acceptance of a Proposal for Rock Park Monitoring and Mitigation Program with Summit Engineering Corporation, in the amount of \$114,000
- 5.19 Consideration and possible approval for the purchase of signal operation supplies for projects and inventory in the amount of \$69,296 from Phoenix Highway Products, Inc.
- 5.20 Consideration and possible award of Fire Station No. 2 HVAC Remodel & Generator Replacement Project, Bid No.

08/09-037, PWP No. WA-2009-276, to Isbell Construction, in the amount of \$154,070

5.21 Consideration and possible award of the Sparks Public Works Maintenance Building Remodel Project to Isbell Construction, Incorporated, CIP 9134, in the amount of \$74,487.32

5.22 Consideration and possible award of the City of Sparks Maintenance Yard Improvement Project Phase 2, Bid Number 08/09-034, PWP WA-2009-271, CIP Numbers 9023, 9083, and 9133 to Q&D Construction, including alternate 1 in the amount of \$144,450

5.23 Consideration and possible award of the Golden Eagle Regional Park Traffic Signal Project to Titan Electrical Contracting, in the amount of \$182,620

5.24 Consideration and possible approval of Consultant Services Agreement Amendment 1 with Fluid Concepts for additional design, permitting and construction management of the Pioneer Diversion reconstruction, in the amount of \$63,140

6. General Business:

6.1 Consideration and possible acceptance of donation from the State of Nevada-Enforcing Underage Drinking Laws Grant in the amount of \$10,000

6.2 Consideration and possible approval of renewing the city's membership in the Reno-Sparks Chamber of Commerce for 2009-10, and the city's membership in the National League of Cities for 2009-10 and 2010-11

6.3 Discussion and possible approval of Amendment #1 to the Interlocal Agreement for Services Related to the Operation of the Homeless Community Assistance Center between the City of Sparks, the City of Reno and Washoe County

- 6.4 Consideration and possible adoption of Resolution No. 3142 to augment the 2008/2009 budget of the City of Sparks**
- 6.5 Consideration and possible adoption of Resolution No. 3143, designating certain employees as Executive; providing salaries for employees in these positions; providing benefits for these employees; providing for the repeal of all prior resolutions related to these employees; and providing other matters properly related thereto**
- 6.6 Consideration and possible adoption of Resolution No. 3144, designating certain employees as Management, Professional and Technical; providing salaries for employees in these positions; providing benefits for these employees; providing for the repeal of all prior resolutions related to these employees; and providing other matters properly related thereto**
- 6.7 Consideration and possible adoption of Resolution No. 3145, designating certain employees as Deputy Police Chief; providing salaries for employees in these positions; providing benefits for these employees; providing for the repeal of all prior resolutions related to these employees; and providing other matters properly related thereto**
- 6.8 Consideration and possible adoption of Resolution No. 3146, designating certain employees as Confidential; providing salaries for employees in these positions; providing benefits for these employees; providing for the repeal of all prior resolutions related to these employees; and providing other matters properly related thereto**
- 6.9 Consideration and possible adoption of Resolution No. 3147, designating certain employees as Assistant and Senior City Attorneys; providing salaries for employees in these positions; providing benefits for these employees; providing for the repeal of all prior resolutions related to these employees; and providing other matters properly related thereto**

6.10 Discussion and possible direction regarding proposed Kiley Wetlands Preserve

6.11 Consideration and possible approval of an Investment Advisory Agreement with Main Street Capital Management, LLC

7. Public Hearings and Action Items Unrelated to Planning and Zoning:

7.1 Second Reading, Consideration and Possible Approval of Bill No. 2606, an Ordinance Amending Chapter 14 of the Sparks Municipal Code to Update the Fire Code; and providing other matters properly related thereto

7.2 Consideration and possible approval of the abandonment of an easement for roadway and utility purposes described as Parcel 2 of that certain Grant, Bargain and Sale Deed, as filed in Official Records of Washoe County, Nevada on December 4, 1969, as Document Number 161114

8. Planning and Zoning Public Hearings and Action Items:

None

9. Comments:

9.1 *From the Council and City Manager

10. Adjournment * * * * *

CERTIFICATE OF SERVICE

1 Pursuant to NRCF 5(b), I certify that I am an employee of
2 Michael E. Langton, Esq., and that on this 30th day of June,
3 2009, I served a true accurate copy of the foregoing **Reply To**
4 **Respondent's Opposition For Writ of Mandamus** as follows:

- 5 XXXX Deposited for mailing, first class postage prepaid;
6 _____ Deposited for mailing, certified/registered;
7 _____ Personal delivery to office;
8 _____ Fax Sent Prior to Mailing;

9 addressed as Follows:

10
11 Chester H. Adams
12 Sparks City Attorney
13 P.O. Box 857
14 Sparks, Nevada 89432

15 Shirle Eiting, Esq.
16 Sparks City Attorney's Office
17 P.O. Box 857
18 Sparks, Nevada 89432

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MERRI KIRK

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