

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRED NASSIRI, an individual; NASSIRI
LIVING TRUST, a trust formed under
Nevada law,

Appellants,

vs.

STATE OF NEVADA, on relation of its
Department of Transportation,

Respondent.

Supreme Court No. 76660

Eighth Judicial District Court

Case No. A-12-672841

Electronically Filed
Sep 05 2018 08:26 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department: XXVI
County Clark Judge: Hon. Gloria Sturman
District Ct. Case No. A-12-672841-C

2. **Attorney filing this docketing statement:**

Attorney Eric R. Olsen/Dylan T. Ciciliano Telephone (725) 777-3000
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Email: eolsen@gtg.legal / dciciliano@gtg.legal
Client(s) Appellants / Cross-Respondents FRED NASSIRI, NASSIRI LIVING
TRUST

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. **Attorney(s) representing respondents(s):**

Attorney William L. Coulthard, Eric M. Pepperman, Mona Kaveh
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Firm Kemp, Jones & Coulthard, LLP
Address: 3800 Howard Hughes Parkway, 17th Floor
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Email: w.coulthard@kempjones.com, e.pepperman@kempjones.com,
m.kaveh@kempjones.com
Client(s) Respondents / Cross-Appellants State of Nevada, on relation of its
Department of Transportation
Attorney Adam Paul Laxalt, Dennis Vincent Gallagher, Joseph Vadala, Janet Merrill
Telephone (702) 730-3400
Firm Office of the Attorney General
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Email: alazalt@ag.nv.gov
Client(s) Respondents / Cross-Appellants State of Nevada, on relation of its
Department of Transportation

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>Award of Attorneys' Fees and Costs.</u> |

5. Does this appeal raise issues concerning any of the following? No.

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

State, Dep't of Transportation v. Eighth Judicial Dist. Court, Case No. 70098.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None

8. Nature of the action. Briefly describe the nature of the action and the result below:

This matter arises out of a breach of contract claim. Appellant filed suit in the Eighth Judicial District Court claiming breach of contract when the State of Nevada's Department of Transportation failed to disclose that a flyover bridge would be constructed at the Blue Diamond Road / Interstate 15 interchange, thus substantially devaluing his property. During litigation, the State petitioned this Court for a writ of mandamus to compel the district court to grant the State's motion for summary judgment. State, Dep't

of Transportation v. Eighth Judicial Dist. Court, Case No. 70098. This Court issued a writ of mandamus, 133 Nev., Adv. Op. 70, 402 P.3d 677 (2017), and the district court subsequently granted the State's motion for summary judgment.

Subsequently, the State moved for attorneys' costs and fees. After briefing and argument, the district court granted the State's motion in part, reducing the State's requested attorneys' fees paid to outside counsel from \$1,092,756.02 to \$983,480.42, and reducing the State's fees incurred by the Office of the Attorney General from \$178,947.90 to \$0.00. The district court further reduced the State's requested costs from \$119,727.99 to \$73,095.40. Appellants appealed and Respondents cross-appealed the district court's award.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

- a) Whether the district court improperly awarded the State attorneys' fees and costs when there were duplicate charges, significant block billing, insufficient evidence supporting the amounts awarded; and
- b) Whether the district court improperly awarded attorneys' fees and costs against the Nassiri Living Trust when the Trust was not a party to the action below.

Appellants may add to or abandon the foregoing issues on appeal as his counsel further reviews the record.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

///

///

12. Other issues. Does this appeal involve any of the following issues?

- ☐ Reversal of well-settled Nevada precedent (identify the case(s))
- ☐ An issue arising under the United States and/or Nevada Constitutions
- ☐ A substantial issue of first impression
- ☐ An issue of public policy
- ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
- ☐ A ballot question

If so, explain:

13. Trial. If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? N/A

14. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? No. If so, which Justice? N/A.

TIMELINESS OF NOTICE OF APPEAL

15. Date of entry of written judgment or order appealed from:

- i. Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting in Part:
(1) the State of Nevada's Motion for Award of Attorneys' Fees, Costs, and Interest;
and (2) Nassiri's Motion to Retax Memorandum of Costs; and Judgment: July 9, 2018.

16. Date of entry of written judgment or order was served:

- i. Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting in Part:
(1) the State of Nevada's Motion for Award of Attorneys' Fees, Costs, and Interest;
and (2) Nassiri's Motion to Retax Memorandum of Costs; and Judgment: July 9, 2018.

Was service by:

- ☐ Delivery
- ☒ Mail/electronic/fax

17. Date of Written notice of entry of judgment or order was served:

- i. Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting in Part:
(1) the State of Nevada's Motion for Award of Attorneys' Fees, Costs, and Interest;
and (2) Nassiri's Motion to Retax Memorandum of Costs; and Judgment: July 9, 2018.

///

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59).

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing N/A

☐ NRCP 52(b) Date of filing N/A

☐ NRCP 59 Date of filing N/A

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. 578, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion: N/A

(c) Date written notice of entry of order resolving tolling motion was served:
N/A

Was service by:

☐ Delivery

☐ Mail (electronic)

19. Date notice of appeal filed Notice of Appeal was filed August 7, 2018.

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☐ NRAP 3A(b)(1) ☐ NRS 38.205

☐ NRAP 3A(b)(2) ☐ NRS 233B.150

☐ NRAP 3A(b)(3) ☐ NRS 703.376

☒ Other (specify) NRAP 3A(b)(8)

- (b) Explain how each authority provides a basis for appeal from the judgment or order: An appeal may be taken from “[a] special order entered after final judgment” NRAP 3A(b)(8). An order awarding attorneys’ fees and costs is a special order entered after final judgment and is thus appealable under NRAP 3A(b)(8). See Thomas v. City of N. Las Vegas, 122 Nev. 82, 90 n.5, 157 P.3d 1057, 1063 n.5 (2006).

22. List all parties involved in the action or consolidated actions in the district court:

- (a) Parties:

Plaintiff: Fred Nassiri, individually and as trustee of the Nassiri Living Trust.

Defendant: State of Nevada on relation of its Department of Transportation.

- (b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

N/A

23. Give a brief description (3 to 5 words) of each party’s separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

- (a) Plaintiff’s claims: Plaintiff originally alleged Inverse Condemnation, Breach of Contract, Breach of Covenant of Good Faith and Fair Dealing (Contractual and Tortious), Negligent Misrepresentation, and Intentional Misrepresentation. These were disposed on by the Court in *State Dep’t of Transp. v. Eighth Judicial Dist. Court*, 133 Nev., Adv. Op. 70, 402 P.3d 677, 682 (2017), and the District Court’s FFCL and Order Granting Summary Judgment, and the Order Vacating Previous Orders Denying Summary, entered January 2, 2018. The issue before the Court is the District Court’s FFCL and Order re. Motions for Fees and to Retax, entered on August 1, 2018.

- (b) Defendant’s counterclaims: None.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☐ Yes ☒ No

25. If you answered “No” to question 24, complete the following:

- (a) Specify the claims remaining pending below: None.

- (b) Specify the parties remaining below: None.
- (c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?
- ☒ Yes ☐ No
- (d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?
- ☐ Yes ☒ No
26. If you answered “No” to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):
27. Attach file-stamped copies of the following documents:
- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
 - Any tolling motion(s) and order(s) resolving tolling motion(s)
 - Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
 - Any other order challenged on appeal
 - Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Fred Nassiri and the Nassiri Living Trust
Name of appellant(s)

Eric R. Olsen/Dylan T. Ciciliano
Name of counsel of record

September 4, 2018
Date

/s/ Eric R. Olsen
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 4th day of September, 2018, I served a copy of this completed Docketing Statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By E-Service through Nevada Supreme Court; email and/or first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

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Co-Counsel for the State of Nevada

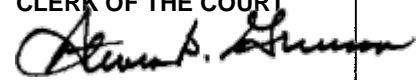
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/s/ Anna Diallo

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Electronically Filed
7/9/2018 10:51 AM
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13 *Attorneys for the State of Nevada, on
relation to its Department of Transportation*

14
15 DISTRICT COURT

16 CLARK COUNTY, NEVADA

17 FRED NASSIRI, individually and as trustee
of the NASSIRI LIVING TRUST, a trust
18 formed under Nevada law,

19 Plaintiffs,

20 vs.

21 STATE OF NEVADA, on relation of its
22 Department of Transportation; DOE
GOVERNMENT AGENCIES I-X,
23 inclusive; DOE INDIVIDUALS I-X; and
DOE ENTITIES 1-10, inclusive,

24 Defendants.
25
26

Case No.: A-12-672841-C

Dept. No.: XXVI

**NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
ORDER GRANTING IN PART: (1) THE
STATE OF NEVADA'S MOTION FOR
AWARD OF ATTORNEYS' FEES,
COSTS, AND INTEREST; AND (2)
NASSIRI'S MOTION TO RETAX
MEMORANDUM OF COSTS; AND
JUDGMENT**

Hearing Date: February 27, 2018

May 24, 2018

Hearing Time: 9:00 a.m. / 10:30 a.m.

27 ///
28

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1 PLEASE TAKE NOTICE that the FINDINGS OF FACT, CONCLUSIONS OF LAW,
2 AND ORDER GRANTING IN PART: (1) THE STATE OF NEVADA'S MOTION FOR
3 AWARD OF ATTORNEYS' FEES, COSTS, AND INTEREST; AND (2) NASSIRI'S
4 MOTION TO RETAX MEMORANDUM OF COSTS; AND JUDGMENT was entered in this
5 matter on July 6, 2018, a copy of which is attached hereto.

6 Dated this 9th day of July, 2018.

7 Respectfully submitted by:

8 
9

10 William L. Coulthard, Esq. (#3927)

11 Eric M. Pepperman, Esq. (#11679)

12 Mona Kaveh, Esq. (#11825)

13 KEMP, JONES & COULTHARD, LLP

14 3800 Howard Hughes Parkway, 17th Flr.

15 Las Vegas, Nevada 89169

16 -and-

17 Attorney General Adam Paul Laxalt, Esq.

18 Dennis V. Gallagher, Esq. (#955)

19 Joe Vadala, Esq. (#5158)

20 Janet L. Merrill, Esq. (#10736)

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24 *Attorneys for the State of Nevada, on*
25 *relation of its Department of Transportation*
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27
28

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day July, 2018, I served a true and correct copy of the above and foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING IN PART: (1) THE STATE OF NEVADA'S MOTION FOR AWARD OF ATTORNEYS' FEES, COSTS, AND INTEREST; AND (2) NASSIRI'S MOTION TO RETAX MEMORANDUM OF COSTS; AND JUDGMENT** to all parties, via the Court's e-filing service.

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13 *Attorneys for the State of Nevada, on
relation of its Department of Transportation*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 FRED NASSIRI, individually and as trustee
17 of the NASSIRI LIVING TRUST, a trust
formed under Nevada law,

18 Plaintiffs,

19 vs.

20 STATE OF NEVADA, on relation of its
21 Department of Transportation; DOE
GOVERNMENT AGENCIES I-X, inclusive;
22 DOE INDIVIDUALS I-X; and DOE
ENTITIES 1-10, inclusive,

23 Defendants.

Case No.: A-12-672841-C
Dept. No.: XXVI

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER GRANTING IN
PART: (1) THE STATE OF NEVADA'S
MOTION FOR AWARD OF
ATTORNEYS' FEES, COSTS, AND
INTEREST; AND (2) NASSIRI'S
MOTION TO RETAX MEMORANDUM
OF COSTS; AND JUDGMENT**

Hearing Date: February 27, 2018
May 24, 2018
Hearing Time: 9:00 a.m. / 10:30 a.m.

24
25
26 THIS MATTER came on for hearing pursuant to: (1) The State of Nevada, on relation of
27 its Department of Transportation's (the "State") Motion for Award of Attorneys' Fees, Costs,
28 and Interest; and (2) Fred Nassiri, individually, and as trustee of the Nassiri Living Trust's

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<input type="checkbox"/> Motion to Dismiss	<input type="checkbox"/> Voluntary Dismissal
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Involuntary Dismissal
<input type="checkbox"/> Judgment on Pleadings	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Judgment of Arbitration	<input checked="" type="checkbox"/> Default Judgment

(collectively, "Nassiri") Motion to Retax Memorandum of Costs, on the 27th day of February, 2018, at 9:00 a.m., and on the 24th day of May 2018, at 10:30 a.m., with Nassiri being represented by Eric R. Olsen, Esq. and Dylan T. Ciciliano, Esq. of the law firm Garman Turner Gordon LLP, and the State being represented by William L. Coulthard, Esq. and Mona Kaveh, Esq. of the law firm Kemp, Jones & Coulthard, LLP. The Court having reviewed the pleadings and papers on file herein and having heard the arguments of counsel made at the hearing; and with good cause appearing and there being no just reason for delay, the Court hereby makes the following findings of fact, conclusions of law, and order:

I.

FINDINGS OF FACT

1. On September 27, 2017, the Nevada Supreme Court issued an Opinion and Writ of Mandamus directing summary judgment in favor of the State on all of Nassiri's claims for relief.

2. On January 2, 2018, this Court entered both its Findings of Fact, Conclusions of Law, and Order Granting Summary Judgment in Favor of the State on Each of Plaintiffs' Claims; and Vacating Previous Orders Denying the State's Motions for Summary Judgment.

3. On January 9, 2018, the State filed its Verified Memorandum of Costs and Disbursements Pursuant to NRS 18.005 and 18.110 asserting costs in the amount of \$119,727.99.

4. On January 16, 2018, Nassiri filed his Motion to Retax Memorandum of Costs, followed by the State's Opposition on February 8, 2018, and Nassiri's Reply on February 20, 2018.

5. The State filed its Motion for Award of Attorneys' Fees, Costs, and Interest on January 22, 2018, followed by the State's Errata on January 25, 2018, Nassiri's Opposition on February 8, 2018, and the State's Reply on February 20, 2018. The State requested fees in the amount of \$1,271,703.92, which encompassed fees in the amount of \$1,092,756.02 paid to Kemp, Jones & Coulthard, LLP ("KJC") by the State, and fees in the amount of \$178,947.90 for time spent by the Office of the Attorney General on this matter. The State sought attorneys'

1 fees based upon § 2.18 of the parties' Settlement Agreement and Release of All Claims, dated
2 April 29, 2005 (the "2005 Settlement Agreement"), which provides:

3
4 2.18 Attorney's Fees. If any action is commenced to enforce the
5 terms of this Agreement, the prevailing party shall be entitled to
6 recover all of its expenses related to such action, including but not
7 limited to, its reasonable attorney's fees and costs.

8 6. The Court heard oral argument on the Motion to Retax Memorandum of Costs
9 and the Motion for Award of Attorneys' Fees, Costs, and Interest on February 27, 2018. After
10 the Court heard oral argument from both parties on both motions, it took the Motion to Retax
11 Memorandum of Costs under advisement and requested that the State supplement its Motion for
12 Award of Attorneys' Fees, Costs, and Interest with additional billing records by March 16,
13 2018. The Court provided Nassiri with an opportunity to file a supplemental opposition and for
14 the State to file a supplemental reply.

15 7. The State filed its Supplement Brief in Support of its Motion for Award of
16 Attorneys' Fees, Costs, and Interest on March 16, 2018, and attached additional billing records.
17 Nassiri filed his Supplemental Opposition on April 3, 2018, and the State filed its Supplemental
18 Reply on April 23, 2018.

19 8. The Court heard oral argument on the supplemental pleadings on May 24, 2018,
20 at 10:30 a.m.

21 II.

22 CONCLUSIONS OF LAW

23 Attorneys' Fees

24 9. The State is the prevailing party in this action. Thus, the Court finds that the
25 State is entitled to an award of attorneys' fees pursuant to § 2.18 of the 2005 Settlement
26 Agreement.

27 10. "In general, a district court may not award 'attorney fees... unless authorized to
28 do so by a statute, rule or contract.'" *Davis v. Beling*, 278 P.3d 501, 515 (Nev. 2012), quoting
U.S. Design & Constr. v. I.B.E.W. Local 357, 50 P.3d 170, 173 (Nev. 2002). With respect to
the Court's contractual authority to award attorneys' fees, it is well-settled that "[p]arties are

1 free to provide for attorneys' fees by express contractual provisions." *Davis*, 278 P.3d at 515
2 (citations omitted). Whenever the language of a contractual attorneys' fees provision is clear
3 and unambiguous, it must be enforced as written. *Id.*

4 11. "When determining the amount of fees to award, the district court has great
5 discretion, to be 'tempered only by reason and fairness.'" *Albios v. Horizon Communities, Inc.*,
6 132 P.3d 1022, 1034 (Nev. 2006), quoting *Shuette*, 124 P.3d at 548-49. "The district court is
7 not limited in its approach for determining the amount of attorneys' fees to award, but it must
8 conduct its analysis in light of the *Brunzell v. Golden Gate National Bank* factors." *Albios*, 132
9 P.3d at 1034 (citations omitted). These factors include:

10 (i) The qualities of the advocate: his ability, training, education,
11 experience, professional standing and skills; (ii) the character of the
12 work to be done: its difficulty, intricacy, importance, time and skill
13 required, the responsibility imposed and the prominence and
14 character of the parties where they affect the importance of the
litigation; (iii) the work actually performed by the lawyer: the skill,
time and attention given to the work; and (iv) the result: whether the
attorney was successful and what benefits were derived. *Brunzell v.*
Golden Gate National Bank, 455 P.2d 31, 33 (Nev. 1969).

15 The Court's order awarding attorneys' fees must reference its findings with respect to each of
16 these factors. *Albios*, 132 P.3d at 1034 (citations omitted).

17 12. Under Nevada law, when an award of fees is not authorized on every single
18 claim, the decision whether to apportion the fees between such claims is within the trial court's
19 discretion. *See Mayfield v. Koroghli*, 184 P.3d 362, 369 (Nev. 2008). In exercising its
20 discretion, the court should consider "whether apportionment is rendered impracticable by the
21 interrelationship of the claims [asserted]." *Id.* (adopting the reasoning set forth in *Abdallah v.*
22 *United Sav. Bank*, 51 Cal.Rptr.2d 286 (Cal.App.Ct. 1996)). Whenever the claims are "so
23 'inextricably intertwined' as to make it 'impracticable, if not impossible, to separate the
24 multitude of conjoined activities into compensable or noncompensable time units,'" the Court
25 should not apportion any award of fees. *Mayfield*, 184 P.3d at 369, quoting *Abdallah*, 51
26 Cal.Rptr.2d at 293. "The district court must, however, attempt to apportion the [fees] before
27 determining that apportionment is impracticable." *Id.* Under *Mayfield*, when it elects not to
28 apportion attorneys' fees, "the district court must make specific findings, either on the record

1 during oral proceedings or in its order, with regard to the circumstances of the case before it that
2 render apportionment impracticable.” 184 P.3d at 369.

3 13. After reviewing the briefings and hearing oral argument from the parties, the
4 State’s requested attorneys’ fees award for amounts paid to its outside counsel, KJC, is
5 reasonable, subject to certain reductions, under the factors enumerated in *Brunzell*. Each of the
6 factors are analyzed below and each analysis includes but is not limited to the following:

7 a. The qualities of the advocate (his ability, training, education, experience,
8 professional standing and skills): This Court is familiar with the qualities of the State’s counsel
9 over the several years that this litigation has been pending, as well as the countless other times
10 that these attorneys have appeared before this Court. KJC is an AV rated firm under Martindale
11 Hubbell’s peer review process and has a lengthy history of practice before the Eighth Judicial
12 District Court. The professional standing of KJC is beyond reproach. The State’s lead trial
13 counsel, William L. Coulthard, Esq., is well regarded in the legal community for his legal skill,
14 ability, experience, and professional standing. Moreover, the involved associate attorneys are
15 likewise skilled, experienced, and professionally competent. The qualities of the advocates
16 weigh in favor of the State’s attorneys’ fees award for KJC.

17 b. The character of the work to be done (its difficulty, intricacy, importance,
18 time and skill required, the responsibility imposed and the prominence and character of the
19 parties where they affect the importance of the litigation): The character of the work done in this
20 case justifies an award of fees. The State argued that this case involved serious questions about
21 the State’s ability to engage in efficient, long-term highway improvement projects, including,
22 but not limited, its authority to exchange surplus property as part of eminent domain
23 settlements, its responsibility to preserve the view and visibility of exchanged property going
24 forward, its compliance with federal and state public disclosure requirements, and its ability to
25 negotiate and enter into arm’s-length contracts with members of the public. This is buttressed
26 by the fact that the Nevada Supreme Court entertained a writ of mandamus to address “an
27 important issue of law and an important policy question.” 133 Nev., Ad. Opinion 70, pg. 5
28 (Sep. 27, 2017).

Moreover, eminent domain, and more particularly inverse condemnation, is an extraordinarily complex and important area of law. Eminent domain is rooted in the Constitution and implicates the delicate balance between the constitutional right to own property and the government's right to take private property for a public benefit. The character of legal work performed during the preparation, discovery, pretrial, trial, and appellate phases of this litigation all support the State's requested attorneys' fees award for its outside counsel, KJC.

c. The work actually performed by the lawyer (the skill, time and attention given to the work): This case proceeded through a year of discovery. The State's attorneys oversaw the review of thousands of documents and the production of nearly 20,000 pages worth of documents; they prepared for, conducted, and defended numerous depositions (some of which occurred outside Las Vegas); they prepared and defended multiple motions, including motions to dismiss and document-intensive motions for summary judgment; they prepared for and conducted a complex, six-day limited bench trial as to the State's statute of limitations defenses, where they marshalled the State's witnesses and evidence and drafted several bench briefs; they prepared this case for trial; they drafted, opposed, and argued several pretrial motions; and they prepared a comprehensive petition for writ of mandamus to the Nevada Supreme Court and participated in lengthy appellate proceedings, including *en banc* oral argument, which ultimately resulted in published precedent and the dismissal of Nassiri's remaining claims for relief.

This was a hard-fought case, against very skilled, polished opposing attorneys, that presented numerous hurdles and complicated legal issues. The State's attorneys vigorously defended this case over a substantial period of time and at the risk of a significantly adverse decision. Accordingly, the quality of work performed by KJC supports the State's requested award of attorneys' fees for its outside counsel, KJC.

d. The result (whether the attorney was successful and what benefits were derived): Although the road was long, the State ultimately succeeded in achieving a full and complete dismissal of Nassiri's claims. While Nassiri characterizes points of his case quite

1 differently, the State contends that it successfully defended against tens of millions of dollars in
2 potential liability, and successfully protected the State's ability to continue to engage in
3 efficient, long-term highway improvement projects. The State believes the latter was especially
4 significant in this case, as Nassiri challenged the State's policies and procedures for accepting
5 design-build project proposals, for publicly disclosing proposed highway improvement plans,
6 for exchanging surplus property as part of eminent domain settlements, and for entering into
7 arm's-length contracts. To the State's further benefit, its attorneys' successful efforts are
8 memorialized in a published opinion of the *en banc* Nevada Supreme Court.

9 14. After reviewing the State's billing records, reviewing the parties' briefings, and
10 hearing oral argument, the Court concludes it is impracticable to apportion the State's attorneys'
11 fees between Nassiri's claims and/or between Nassiri, individually, and as trustee under the
12 Nassiri Living Trust:

13 a. Nassiri's claims: Nassiri asserted that the State should be constitutionally
14 prohibited from recovering fees under Section 22(7) of the Nevada Constitution and that the
15 entire case arises from the prior eminent domain action or alternatively on Nassiri's present
16 claims related to inverse condemnation. The Court finds that the action in part arises from the
17 Settlement Agreement, which contains a prevailing party attorneys' fees provision. Moreover,
18 to the extent that Nassiri brought claims arising from alleged inverse condemnation, the Court
19 finds that the inverse condemnation claims and contract-based claims are so intertwined that it
20 is impracticable to apportion the State's attorneys' fees between the two. The following
21 circumstances support this finding: (i) these claims were based on the same factual assertion
22 that Nassiri was harmed by the State's 2010 construction of the flyover; (ii) these claims sought
23 identical damages; (iii) these claims involved the same discovery; and (iv) the Court is unable to
24 separate the time spent on defending individual claims.

25 b. Nassiri, individually, and as trustee under the Nassiri Living Trust:
26 Apportioning the State's attorneys' fees between Nassiri, individually, and as trustee under the
27 Nassiri Living Trust is impracticable because Nassiri and the Nassiri Living Trust, both
28 Plaintiffs in this action, sued the State for breach of the 2005 Settlement Agreement. Paragraph

one of the Amended Complaint defines the Trust, and Paragraph two defines Fred Nassiri individually; thereafter, they are referenced collectively as "Plaintiffs." 3/27/13 Amended Complaint. While Nassiri asserts that the Nassiri Living Trust is not a party to the 2005 Settlement Agreement, the 2005 Settlement Agreement states:

2.25. Successors and Assigns. This Agreement shall be binding and shall inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, personal representatives, successors, or assigns, as the case may be.

Based upon the above reasons, the Court finds that the Nassiri Living Trust is also liable for attorneys' fees.

15. The State is entitled to an award of reasonable attorneys' fees for the amounts incurred and paid to KJC. NRCP 54(d)(3)(A)-(B). An award of attorneys' fees must be supported by substantial evidence. *Logan v. Abe*, 131 Nev. ___, ___, 350 P.3d 1139, 1143 (2015).

16. Upon reviewing the invoices from KJC, the Court notes that KJC's invoices are block billed. "If a district court encounters difficulty considering the character of the work done or the work actually performed because of block billing, then the district court may order additional briefing or discount the relevant block-billed time entry or entries by an appropriate amount." *In re Margaret Mary Adams 2006 Trust*, 2015 WL 1423378, *2 (Nev. Mar. 26, 2015). Under KJC's block billing, the Court could not determine the reasonableness of various entries that pertained to certain tasks, such as inter-office communications, and elects to discount the total fees incurred and paid to KJC by 10%.

17. Based on this 10% discount, the State is entitled to an attorneys' fees award of \$983,480.42 for fees incurred and paid to KJC.

18. Further, the State seeks fees related to time expended by the Office of the Attorney General. The Attorney General is a division of the State. Moreover, the State did not pay fees directly to the Attorney General. The Attorney General, however, did record the time its attorneys spent on the matter and estimated the approximate hourly cost of the Attorney General based on the annual Attorney General cost allocation to the Department of

1 Transportation.

2 19. After review of the invoices submitted by the Attorney General, the Court
3 determines that the time expended by the Attorney General is best classified as overhead and
4 therefore not recoverable as attorneys' fees.

5 **Costs**

6 20. NRS 18.020 states that "[c]osts must be allowed of course to the prevailing party
7 against any adverse party against whom judgment is rendered . . . in an action for the recovery
8 of money or damages, where the plaintiff seeks to recover more than \$2,500." Although the
9 court has discretion to determine allowable costs, statutes permitting the recovery of costs are to
10 be strictly construed because they are in derogation of common law. *Berosini v. People for the*
11 *Ethical Treatment of Animals*, 971 P.2d 383, 385 (Nev. 1998) (citing *Gibellini v. Klindt*, 885
12 P.2d 540, 543 (Nev. 1994)).

13 21. Pursuant to NRS 18.005, costs must be reasonable. "Reasonable costs" must be
14 actual and reasonable, "rather than a reasonable estimate or calculation of such costs. . ."
15 *Berosini*, 971 P.2d at 385-86 (quoting *Gibellini*, 885 P.2d at 543); see also *Village Builders 96,*
16 *L.P. v. U.S. Laboratories, Inc.*, 112 P.3d 1082, 1093 (Nev. 2005) (recognizing that costs must
17 be actually incurred by the prevailing party). The district court retains sound discretion in
18 determining the reasonableness of the amounts and the items of costs to be awarded. *Schwartz*
19 *v. Estate of Greenspun*, 881 P.2d 638, 643 (Nev. 1994); see also *Berosini*, 971 P.2d at 385.

20 22. The State is the prevailing party in this action and is entitled to an award of costs
21 under both NRS 18.020 and § 2.18 of the 2005 Settlement Agreement. The State requested
22 costs incurred in the total amount of \$119,727.99.

23 23. The State paid KJC for legal research costs (Westlaw) in the amount of
24 \$25,304.68. After reviewing the evidence provided by the State, the Court finds that the
25 information provided does not sufficiently document the actual legal research costs incurred by
26 KJC. Accordingly, the State's claimed legal research costs reflect an estimation of KJC's
27 overhead and are denied in their entirety.

28 24. The State incurred expert witness costs in the amount of \$45,967.23. These costs

1 are reduced to \$24,639.32 as follows:

2 a. The State retained Alan Nevin and incurred costs in the amount of
3 \$18,827.91 for his expert witness services. Because Mr. Nevin did not testify at either trial or in
4 deposition, the Court does not find that his expert report and testimony was of such necessity to
5 require a larger fee under NRS 18.005. Accordingly, these costs are reduced to \$1,500.00.

6 b. The State retained Jack Sjostrom and incurred costs in the amount of
7 \$2,812.50 for his expert witness services. Mr. Sjostrom did testify at deposition and the
8 circumstances surrounding his expert report and testimony were of such necessity to require a
9 larger fee under NRS 18.005. These incurred costs will not be reduced.

10 c. The State retained Shelli Lowe and incurred costs in the amount of
11 \$12,050.00 for her expert witness services. Ms. Lowe did testify at deposition and the
12 circumstances surrounding her expert report and testimony were of such necessity to require a
13 larger fee under NRS 18.005. The State is entitled to \$1,500.00 in costs for Ms. Lowe's time
14 preparing for her report, and \$10,550.00 related to preparing for her testimony.

15 d. The State retained Ken Ackeret and incurred costs in the amount of
16 \$12,276.82 for his expert witness services. Mr. Ackeret did testify at deposition and the
17 circumstances surrounding his expert report and testimony were of such necessity to require a
18 larger fee under NRS 18.005. The State is entitled to \$1,500 in costs for Mr. Ackeret's time
19 preparing for his report, and \$6,776.82 related to preparing for his testimony.

20 25. The State is entitled to its costs incurred for clerk's fees (\$77.00), reporters' fees
21 for depositions (\$15,940.85), witness fees (\$124.00), process server fees (\$1,229.50), telecopies
22 (\$19.02), photocopies (\$15,588.05), long distance phone calls (\$141.86), postage (\$274.16),
23 travel/lodging (\$2,364.09), and other reasonable and necessary expenses incurred in connection
24 with this action for run service (\$1,460.00), trial support (\$6,828.79), and reporters' fees for
25 transcripts of court proceedings (\$4,408.76). These costs total \$48,456.08.

26 26. The State is therefore entitled to costs in the amount of \$73,095.40 as these costs
27 are reasonable, necessary, and actually incurred, and are also properly documented and
28 consistent with Nevada law.

Post-Judgment Interest

27. NRS 17.130(2) provides that interest on a judgment will continue to accrue until it has been satisfied. Under this provision, post-judgment interest should accrue on the total amount of fees and costs awarded to the State until these fees and costs have been satisfied. This order and judgment shall continue to accrue post-judgment interest from the date this order and judgment has been entered, calculated at the prime rate plus two percent (2%), until such time as this order and judgment is completely satisfied.

III.

ORDER AND JUDGMENT

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the State of Nevada, on relation of its Department of Transportation's Motion for Award of Attorneys' Fees, Costs, and Interest is GRANTED in part.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Fred Nassiri, individually, and as trustee of the Nassiri Living Trust's Motion to Retax Memorandum of Costs is GRANTED in part.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the State of Nevada, on relation of its Department of Transportation is awarded attorneys' fees in the amount of \$983,480.42 against Fred Nassiri, individually, and as trustee of the Nassiri Living Trust.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the State of Nevada, on relation of its Department of Transportation is awarded costs in the amount of \$73,095.40 against Fred Nassiri, individually, and as trustee of the Nassiri Living Trust.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the State of Nevada, on relation of its Department of Transportation is awarded post-judgment interest on the total amount of fees and costs awarded to the State (\$1,056,575.82) until these fees and costs have been satisfied against Fred Nassiri, individually, and as trustee of the Nassiri Living Trust. This Order and Judgment shall continue to accrue post-judgment interest from the date this Order and Judgment has been entered, calculated at the prime rate plus two percent (2%), until such time as this Order and Judgment is completely satisfied.

1 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that each of the Court's
2 findings of fact is to be construed as a conclusion of law, and each of the Court's conclusion of
3 law are to be construed as a finding of fact, as may be necessary or appropriate to carry out this
4 Order and Judgment.


5 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to *Campos-*
6 *Garcia v. Johnson*, 331 P.3d 890, 891 (Nev. 2014), this Order is also considered a Judgment in
7 favor of the State of Nevada, on relation of its Department of Transportation, and may be
8 executed upon.

9 DATED this 5th of July, 2018.

11 
12 DISTRICT COURT JUDGE

13 Respectfully submitted by:

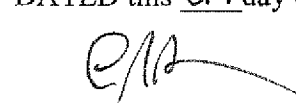
14 DATED this 2nd day of July 2018.

15 
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22 -and-

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Approved as to form and content:

DATED this 2nd day of June 2018.

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15 DISTRICT COURT

16 CLARK COUNTY, NEVADA

17 FRED NASSIRI, individually and as trustee
18 of the NASSIRI LIVING TRUST, a trust
formed under Nevada law,

19 Plaintiffs,

20 vs.

21 STATE OF NEVADA, on relation of its
22 Department of Transportation; DOE
GOVERNMENT AGENCIES I-X, inclusive;
23 DOE INDIVIDUALS I-X; and DOE
ENTITIES 1-10, inclusive,

24 Defendants.
25

26 THE STATE OF NEVADA, on relation of
27 its Department of Transportation,

28 Counterclaimant,

Case No.: A672841
Dept. No.: XXVI

**Department of Transportation's Answer
to Amended Complaint and Counterclaim**

1 vs.

2 FRED NASSIRI, an individual; DOES I
3 through X; and ROE CORPORATIONS I
4 through X, inclusive,

5
6 Counterdefendants.

7 Defendant State of Nevada, on relation of its Department of Transportation (the
8 “Department of Transportation”), by and through its counsel of record, Kemp, Jones &
9 Coulthard, LLP, and the Office of the Attorney General, hereby answers Plaintiff Fred Nassiri,
10 individually and as trustee of the Nassiri Living Trust’s (collectively, “Nassiri”) Amended
11 Complaint as follows:

12 **I.**

13 **The Parties, Jurisdiction and Venue¹**

14 1. In answering paragraph 1, the Department of Transportation is without sufficient
15 knowledge or information upon which to form a belief as to the truth of the allegations and
16 therefore denies the same.

17 2. In answering paragraph 2, the Department of Transportation is without sufficient
18 knowledge or information upon which to form a belief as to the truth of the allegations and
19 therefore denies the same.

20 3. In answering paragraph 3, the Department of Transportation admits that it is duly
21 created, organized, existing and acting under and by virtue of Nevada Revised Statutes Chapter
22 408. The Department of Transportation is without sufficient knowledge or information upon
23 which to form a belief as to the truth of the remaining allegations contained in paragraph 3 and
24 therefore denies the same.

25
26
27 ¹ The Department of Transportation denies all of the allegations contained in the headings and
28 subheadings employed by Nassiri in his Amended Complaint to the extent they can be construed as such,
and recite them herein only for the sake of clarity.

4. In answering paragraph 4, the Department of Transportation is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations and therefore denies the same.

5. In answering paragraph 5, the Department of Transportation is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations and therefore denies the same.

II.

General Allegations

6. In answering paragraph 6, the Department of Transportation is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations and therefore denies the same.

Acquisition of the Exchange Property

7. In answering paragraph 7, the Department of Transportation admits that it filed a condemnation action against Nassiri, individually, on August 31, 2004, in the Eighth Judicial District Court, Clark County, Nevada, Case No. A491334, to acquire certain real property owned by Nassiri in connection with the construction and reconstruction of the I-15/Blue Diamond interchange and the attendant widening and realignment of Blue Diamond Road. The Department of Transportation denies the remaining allegations contained in paragraph 7.

8. In answering paragraph 8, the Department of Transportation admits that the parties entered into a Settlement Agreement and Release of All Claims, dated April 28, 2005 (the "Settlement Agreement") and that the parties entered into a First Amendment to Settlement Agreement and Release of All Claims on June 14, 2005 ("First Amendment"). As to the remaining allegations, the Department of Transportation states the Settlement Agreement and First Amendment speak for themselves and therefore denies any allegations that are inconsistent with those documents.

9. In answering paragraph 9, the Department of Transportation is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations and therefore denies the same.

1 10. In answering paragraph 10, the Department of Transportation is without
2 sufficient knowledge or information upon which to form a belief as to the truth of the
3 allegations and therefore denies the same.

4 11. In answering paragraph 11, the Department of Transportation is without
5 sufficient knowledge or information upon which to form a belief as to the truth of the
6 allegations and therefore denies the same.

7 12. In answering paragraph 12, the Department of Transportation admits that it
8 conveyed the Exchange Property to Nassiri by quitclaim deed, and denies that it conveyed the
9 Exchange Property “with specific knowledge of a potential or threatened litigation by a
10 neighboring landowner, thus exposing [Nassiri] to litigation.” The Department of
11 Transportation is without sufficient knowledge or information upon which to form a belief as to
12 the truth of the remaining allegations contained in paragraph 12 and therefore denies the same.

13 13. In answering paragraph 13, the Department of Transportation is without
14 sufficient knowledge or information upon which to form a belief as to the truth of the
15 allegations and therefore denies the same.

16 14. In answering paragraph 14, the Department of Transportation is without
17 sufficient knowledge or information upon which to form a belief as to the truth of the
18 allegations and therefore denies the same.

19 15. In answering paragraph 15, the Department of Transportation is without
20 sufficient knowledge or information upon which to form a belief as to the truth of the allegation
21 that “[t]ogether with legal expenses, [Nassiri] incurred over \$7 Million in expenses in
22 connection with the Koroghli litigation,” and therefore denies the same. The Department of
23 Transportation denies the remaining allegations contained in paragraph 15.

24 16. In answering paragraph 16, the Department of Transportation is without
25 sufficient knowledge or information upon which to form a belief as to the truth of the allegation
26 that “[i]t was not until late 2008 that [Nassiri] obtained a copy of the Department of
27 Transportation’s 2004 Appraisal of the Exchange Property,” and therefore denies the same, and
28 states the 2004 Appraisal speaks for itself and therefore denies any allegations that are

1 inconsistent with that document. The Department of Transportation denies the remaining
2 allegations contained in paragraph 16.

3 17. In answering paragraph 17, the Department of Transportation denies all of the
4 allegations contained therein.

5 18. In answering paragraph 18, the Department of Transportation denies all of the
6 allegations contained therein.

7 **Changes in the Blue Diamond Interchange**

8 19. In answering paragraph 19, the Department of Transportation is without
9 sufficient knowledge or information upon which to form a belief as to the truth of the
10 allegations and therefore denies the same.

11 20. In answering paragraph 20, the Department of Transportation is without
12 sufficient knowledge or information upon which to form a belief as to the truth of the
13 allegations and therefore denies the same.

14 21. In answering paragraph 21, the Department of Transportation states the 2004
15 Appraisal speaks for itself and therefore denies any allegations that are inconsistent with those
16 documents. The Department of Transportation denies the remaining allegations contained in
17 paragraph 21.

18 22. In answering paragraph 22, the Department of Transportation denies all of the
19 allegations contained therein.

20 23. In answering paragraph 23, the Department of Transportation is without
21 sufficient knowledge or information upon which to form a belief as to the truth of the
22 allegations and therefore denies the same.

23 24. In answering paragraph 24, the Department of Transportation admits that it
24 prepared an Environmental Assessment in October 2008. As to the remaining allegations, the
25 Department of Transportation states the Environmental Assessment speaks for itself and
26 therefore denies any allegations that are inconsistent with that document.

27 25. In answering paragraph 25, the Department of Transportation admits it held a
28 public meeting on March 24, 2010, and denies that Las Vegas Paving is its agent. The

1 Department of Transportation is without sufficient knowledge or information upon which to
2 form a belief as to the truth of the remaining allegations contained in paragraph 25 and therefore
3 denies the same.

4 26. In answering paragraph 26, the Department of Transportation admits that Nassiri
5 and Las Vegas Paving Corporation entered into a Ground Lease Agreement on April 15, 2010,
6 and denies that Las Vegas Paving is the Department of Transportation's agent and partner. The
7 Department of Transportation is without sufficient knowledge or information upon which to
8 form a belief as to the truth of the remaining allegations contained in paragraph 26 and therefore
9 denies the same.

10 27. In answering paragraph 27, the Department of Transportation is without
11 sufficient knowledge or information upon which to form a belief as to the truth of the
12 allegations and therefore denies the same.

13 28. In answering paragraph 28, the Department of Transportation is without
14 sufficient knowledge or information upon which to form a belief as to the truth of the
15 allegations and therefore denies the same.

16 29. In answering paragraph 29, the Department of Transportation is without
17 sufficient knowledge or information upon which to form a belief as to the truth of the
18 allegations and therefore denies the same.

19 30. In answering paragraph 30, the Department of Transportation is without
20 sufficient knowledge or information upon which to form a belief as to the truth of the
21 allegations and therefore denies the same.

22 31. In answering paragraph 31, the Department of Transportation is without
23 sufficient knowledge or information upon which to form a belief as to the truth of the
24 allegations and therefore denies the same.

25 32. In answering paragraph 32, the Department of Transportation is without
26 sufficient knowledge or information upon which to form a belief as to the truth of the
27 allegations and therefore denies the same.
28

4 34. In answering paragraph 34, the Department of Transportation states that the
5 statute speaks for itself and therefore denies any allegations that are inconsistent with that
6 statute.

35. In answering paragraph 35, the Department of Transportation denies all of the
allegations contained therein.

9 36. In answering paragraph 36, the Department of Transportation denies all of the
10 allegations contained therein.

III.

Claims for Relief

First Claim for Relief

(Inverse Condemnation)

15 37. In answering paragraph 37, the Department of Transportation repeats and
16 realleges its responses to the allegations contained in the preceding paragraphs as though fully
17 set forth herein.

18 38. In answering paragraph 38, the Department of Transportation is without
19 sufficient knowledge or information upon which to form a belief as to the truth of the
20 allegations and therefore denies the same.

39. In answering paragraph 39, the Department of Transportation is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations and therefore denies the same.

40. In answering paragraph 40, the Department of Transportation is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations and therefore denies the same.

1 41. In answering paragraph 41, the Department of Transportation states that the
2 statute speaks for itself and therefore denies any allegations that are inconsistent with that
3 statute.

4 42. In answering paragraph 42, the Department of Transportation is without
5 sufficient knowledge or information upon which to form a belief as to the truth of the
6 allegations and therefore denies the same.

7 43. In answering paragraph 43, the Department of Transportation is without
8 sufficient knowledge or information upon which to form a belief as to the truth of the
9 allegations and therefore denies the same.

10 44. In answering paragraph 44, the Department of Transportation is without
11 sufficient knowledge or information upon which to form a belief as to the truth of the
12 allegations and therefore denies the same.

13 45. In answering paragraph 45, the Department of Transportation denies all of the
14 allegations contained therein.

15 **Second Claim for Relief**
16 **(Breach of Contract)**

17 46. In answering paragraph 46, the Department of Transportation repeats and
18 realleges its responses to the allegations contained in the preceding paragraphs as though fully
19 set forth herein.

20 47. In answering paragraph 47, the Department of Transportation admits that Nassiri
21 and the Department of Transportation entered into a Settlement Agreement on April 28, 2005,
22 and that the Settlement Agreement is a valid and enforceable contract. As to the remaining
23 allegations, the Department of Transportation states the Settlement Agreement speaks for itself
24 and therefore denies any allegations that are inconsistent with that document.

25 48. In answering paragraph 48, the Department of Transportation is without
26 sufficient knowledge or information upon which to form a belief as to the truth of the allegation
27 that “[t]o complete acquisition of the Exchange Property, Plaintiffs were also required to pay an
28 additional \$200,000 not included in the contract to address the ‘Chambers Claim,’” and

1 therefore denies the same. The Department of Transportation denies the remaining allegations
2 contained in paragraph 48.

3 49. In answering paragraph 49, the Department of Transportation denies all of the
4 allegations contained therein.

5 50. In answering paragraph 50, the Department of Transportation is without
6 sufficient knowledge or information upon which to form a belief as to the truth of the allegation
7 that “[p]rior to and, again, subsequent to [Nassiri’s] purchase of the Exchange Property, [the
8 Department of Transportation] presented [Nassiri] with the Blue Diamond Interchange
9 development plan” and “[t]hat plan reflected that the Exchange Property had in excess of 1,500
10 feet of visibility from I-15,” and therefore denies the same. The Department of Transportation
11 denies the remaining allegations contained in paragraph 50.

12 51. In answering paragraph 51, the Department of Transportation denies all of the
13 allegations contained therein.

14 **Third Claim for Relief**

15 **(Breach of Implied Covenant and Good Faith and Fair Dealing)**

16 52. In answering paragraph 52, the Department of Transportation repeats and
17 realleges its responses to the allegations contained in the preceding paragraphs as though fully
18 set forth herein.

19 53. In answering paragraph 53, the Department of Transportation admits the
20 allegations contained therein.

21 54. In answering paragraph 54, the Department of Transportation admits the
22 allegations contained therein.

23 55. In answering paragraph 55, the Department of Transportation admits the
24 allegations contained therein.

25 56. In answering paragraph 56, the Department of Transportation denies the
26 allegations contained therein.

27 57. In answering paragraph 57, the Department of Transportation denies the
28 allegations contained therein.

1 58. In answering paragraph 58, the Department of Transportation denies the
2 allegations contained therein.

3 59. In answering paragraph 59, the Department of Transportation denies the
4 allegations contained therein.

5 60. In answering paragraph 60, the Department of Transportation denies the
6 allegations contained therein.

7 61. In answering paragraph 61, the Department of Transportation denies the
8 allegations contained therein.

9
10 **Fourth Claim for Relief**
11 **(Breach of Implied Covenant and Good Faith and Fair Dealing – Tortious Breach)**

12 62. In answering paragraph 62, the Department of Transportation repeats and
13 realleges its responses to the allegations contained in the preceding paragraphs as though fully
14 set forth herein.

15 63. In answering paragraph 63, the Department of Transportation admits the
16 allegations contained therein.

17 64. In answering paragraph 64, the Department of Transportation admits the
18 allegations contained therein.

19 65. In answering paragraph 65, the Department of Transportation admits the
20 allegations contained therein.

21 66. In answering paragraph 66, the Department of Transportation denies the
22 allegations contained therein.

23 67. In answering paragraph 67, the Department of Transportation denies the
24 allegations contained therein.

25 68. In answering paragraph 68, the Department of Transportation denies the
26 allegations contained therein.

27 69. In answering paragraph 69, the Department of Transportation denies the
28 allegations contained therein.

1 70. In answering paragraph 70, the Department of Transportation denies the
2 allegations contained therein.

3 71. In answering paragraph 71, the Department of Transportation denies the
4 allegations contained therein.

5 72. In answering paragraph 72, the Department of Transportation denies the
6 allegations contained therein.

7 73. In answering paragraph 73, the Department of Transportation denies the
8 allegations contained therein.

9 **Fifth Claim for Relief**
10 **(Negligent Misrepresentation)**

11 74. In answering paragraphs 74-81, the Department of Transportation refers Nassiri
12 to the Court's Order Granting in Part Defendant the Department of Transportation's Motion to
13 Dismiss Amended Complaint for Failure to State a Claim, on file herein, wherein the Court
14 dismissed the negligent misrepresentation claim with prejudice.

15 **Sixth Claim for Relief**
16 **(Intentional Misrepresentation)**

17 75. In answering paragraphs 82-88, the Department of Transportation refers Nassiri
18 to the Court's Order Granting in Part Defendant the Department of Transportation's Motion to
19 Dismiss Amended Complaint for Failure to State a Claim, on file herein, wherein the Court
20 dismissed the intentional misrepresentation claim with prejudice.

21 **Affirmative Defenses**

22 1. Nassiri's Amended Complaint fails to state any claim against the Department of
23 Transportation upon which relief can be granted.

24 2. Nassiri's Amended Complaint fails to state ultimate facts sufficient to constitute
25 a claim for relief.

26 3. Nassiri has failed to commence this action within the time required by the
27 applicable statute of limitations and his claims are therefore barred.
28

4. By his own actions, Nassiri has waived whatever right he may have otherwise had to relief from the Department of Transportation.

5. By virtue of his own conduct, Nassiri should be estopped from making any claim against the Department of Transportation.

6. Nassiri's claims have been waived and/or voided as a result of the acts and the conduct of Nassiri, including but not limited to, Nassiri's own breaches of the Settlement Agreement and First Amendment.

7. Nassiri has failed to allege a duty under Nevada law.

8. The deprivation of a property owner's view is not a compensable "taking" that would substantiate an inverse condemnation claim.

9. Nevada does not recognize an implied negative easement of view or visibility.

10. The parties lack a fiduciary or special relationship.

11. Any award for damages sounding in tort is limited under NRS 41.035.

12. Any damages Nassiri may have incurred were proximately caused by the acts of persons other than the Department of Transportation, and therefore, Nassiri is not entitled to any relief from the Department of Transportation.

13. Nassiri's damages, if any, resulted from the acts or omissions of third parties over whom the Department of Transportation had no control. The acts of such third parties constitute intervening or superseding causes of the harm, if any, suffered by Nassiri.

14. Any damages Nassiri may have incurred were proximately caused by his own acts or acts of its agents, and therefore, Nassiri is not entitled to any relief from the Department of Transportation.

15. Nassiri has failed to take reasonable steps to mitigate his damages, if any, thus completely or partially barring his claims.

16. Nassiri's claims are barred by the doctrines of laches, waiver, and/or estoppel.

17. Nassiri's claims are barred by the doctrine of unclean hands.

18. The Department of Transportation's acts were privileged and justified.

19. The Department of Transportation acted in good faith.

20. Any payment that the Department of Transportation received was for fair consideration.

21. Nassiri's recovery, if any must be offset by compensation already received.

22. The Department of Transportation is immune from liability under NRS 41.032 because it is a state agency and all of Nassiri's allegations challenge discretionary functions and/or duties.

23. Nassiri's inverse condemnation claim is not yet ripe due to his failure to exhaust his administrative remedies prior to filing this action.

24. Nassiri failed to comply with the requirements of NRS 408.497 prior to filing his inverse condemnation claim and is therefore not entitled to relief under this claim.

25. Any damages that Nassiri alleges to have suffered from the matters alleged in the Complaint are too remote or speculative to allow recovery.

26. Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of the Department of Transportation's Answer and therefore the Department of Transportation reserves the right to allege additional defenses as they may become known, or as they evolve during the litigation, and to amend its Answer accordingly.

WHEREFORE, the Department of Transportation respectfully requests:

1. That Nassiri takes nothing by way of his Amended Complaint;

2. That the Department of Transportation be awarded its reasonable attorney's fees and costs in defending this action; and

3. For such other and further relief as this Court deems just and proper.

Counterclaim

For its Counterclaim against Fred Nassiri ("Nassiri"), Defendant/Counterclaimant State of Nevada, on relation of its Department of Transportation (the "Department of Transportation"), complains and alleges as follows:

1 9. The Department of Transportation and Nassiri also agreed that Nassiri would
2 purchase from the Department of Transportation the Exchange Property for the fully negotiated
3 and arms-length transaction price of \$23,239,004.50.

4 10. After Nassiri purchased the Exchange Property, together with his previously-
5 owned adjoining parcels, Nassiri owned a contiguous 67-acre parcel of real property.

6 11. The agreement to resolve the Eminent Domain Action and the agreement to
7 sell/purchase the Exchange Property were memorialized in a single Settlement Agreement and
8 Release of All Claims dated April 28, 2005, and later amended on June 14, 2005. *See*
9 Settlement Agreement and First Amendment attached hereto as Exhibit 1.

10 12. Pursuant to the Settlement Agreement, the parties expressly acknowledged that
11 the terms of their deal had “been negotiated and discussed between [the Department of
12 Transportation] and Nassiri,” that the parties “have had the benefit and advice of counsel of
13 their choosing,” and that the “Agreement constitute[d] the entire Agreement by and between”
14 them. *Id.* at ¶¶ 2.19, 2.20 and (second) 2.28.

15 13. As part of the sale of the Exchange Property, Nassiri agreed to take the property
16 “with all faults” and without warranties via quitclaim deed. *Id.* at ¶ 2.04(a).

17 14. As memorialized in the Settlement Agreement, Nassiri “acknowledge[d] he is
18 aware of claims by Carolyn Ann Chambers . . . relating to an alleged reversionary interest or
19 other right relating to the Exchange Property (the ‘Chambers Claim’), that he has performed his
20 own investigation of the Chambers Claim, and, based upon such investigation, accepts the
21 Exchange Property subject to any claims of Chambers, her assigns or successors.” *Id.* at ¶
22 2.04(a).

23 15. Nassiri promised to “indemnify and hold harmless the State of Nevada and [the
24 Department of Transportation] . . . of and from all claims, known or unknown, asserted or
25 unasserted of whatever nature, now existing or hereafter arising, including but not limited to
26 claims for attorney’s fees and costs, relating in any way to the Chambers Claims.” *Id.* at ¶
27 2.04(c).

28

1 16. Nassiri also expressly released the Department of Transportation not just for the
2 Chambers Claims but for any and all “matters affecting” the Exchange Property’s “title or
3 claims thereto,” and he acknowledged that this release applies, covers, and includes “all
4 unknown, unforeseen, unsuspected, and unanticipated injuries, claims, damages, losses, and
5 liabilities, if any.” *Id.* at ¶¶ 2.09 and 2.19(ii).

6 17. The quitclaim deed transferring the Exchange Property was executed on June 14,
7 2005, and recorded with the Clark County, Nevada Recorder’s office on June 17, 2005. *See*
8 Quitclaim Deed attached hereto as Exhibit 2.

9 18. Subsequent to Nassiri’s purchase of the Exchange Property, a dispute arose over
10 the Exchange Property between Nassiri and his neighboring landowners, Alexandra Properties,
11 LLC, Oasis Las Vegas, L.L.C., and New Horizon 2001, L.L.C, by and through their
12 representative, Ray Koroghli (collectively, the “Oasis Landowners”).

13 19. This dispute resulted in a lawsuit filed by the Oasis Landowners against Nassiri
14 on March 6, 2007, in the Eighth Judicial District Court, Clark County, Nevada, Case No.
15 A537215 (the “Koroghli Action”).

16 20. In the Koroghli Action, the Oasis Landowners alleged that they had previously
17 agreed with Nassiri to jointly purchase the Exchange Property from the Department of
18 Transportation.

19 21. The Oasis Landowners further alleged, *inter alia*, that Nassiri breached his
20 agreement with the Oasis Landowners to jointly purchase the Exchange Property by purchasing
21 the Exchange Property alone.

22 22. Nassiri alleges that on or about November 17, 2008, he and the Oasis
23 Landowners entered into a settlement agreement to resolve the Koroghli Action.

24 23. To resolve the Koroghli Action, Nassiri alleges that he and the Oasis
25 Landowners each agreed to a mutual exchange of land, and that Nassiri was required to pay a
26 settlement sum to the Oasis Landowners. Together with legal expenses, Nassiri alleges he
27 incurred more than \$7 million in connection with the Koroghli Action.
28

24. By 2012, Nassiri was experiencing buyer's remorse over his purchase of the Exchange Property.

25. On May 29, 2012, counsel for Nassiri sent a letter to Deputy Attorney General, Keith Marcher, regarding Nassiri's demands to the Department of Transportation in connection with Nassiri's purchase of the Exchange Property.

26. Nassiri demanded rescission of the entire transaction relating to his purchase of the Exchange Property, as well as additional money damages, which included more than \$7 million as reimbursement for Nassiri's settlement and legal expenses in the Koroghli Action and \$200,000 as reimbursement for the Chambers Claim settlement.

27. As an alternative to rescission, Nassiri offered to keep the Exchange Property and demanded total additional damages, which included \$200,000 as reimbursement for the Chambers Claim settlement.

28. On November 30, 2012, more than seven years after the Settlement Agreement was executed and the land deals were completed, Nassiri filed this action, followed with an amended complaint on March 27, 2013.

29. Even though Nassiri waived and released all "matters affecting" the Exchange Property's "title or claims thereto," and he acknowledged that this release applies, covers, and includes "all unknown, unforeseen, unsuspected, and unanticipated injuries, claims, damages, losses, and liabilities, if any," expressly including the Chambers Claims, Nassiri's amended complaint (at ¶ 48) seeks money damages as reimbursement for his costs incurred in connection with the Chambers Claim and Koroghli Litigation.

30. The Settlement Agreement provides that "[i]f any action is commenced to enforce the terms of this Agreement, the prevailing party shall be entitled to recover all of its expenses related to such action, including but not limited to, its reasonable attorney's fees and costs." Settlement Agreement at ¶ 2.18.

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First Claim for Relief

(Breach of Contract)

31. The Department of Transportation repeats and realleges all previous paragraphs as though set forth fully herein.

32. The Settlement Agreement and First Amendment are valid and enforceable contracts whereby Nassiri agreed to purchase the Exchange Property from the Department of Transportation and Nassiri waived and released all “matters affecting” the Exchange Property’s “title or claims thereto,” and acknowledged that the release applies, covers, and includes “all unknown, unforeseen, unsuspected, and unanticipated injuries, claims, damages, losses, and liabilities, if any,” expressly including the Chambers Claims and implicitly including any claims arising from the Koroghli Action.

33. The Department of Transportation performed each of its obligations under the Settlement Agreement and First Amendment.

34. Nassiri materially breached the Settlement Agreement and First Amendment by filing a lawsuit against the Department of Transportation to recover damages that include reimbursements for Nassiri’s costs in connection with the waived and released Chambers Claim and Koroghli Action.

35. Nassiri’s breach of the Settlement Agreement and First Amendment has actually and proximately caused the Department of Transportation to suffer damages in an amount in excess of \$10,000.

36. As a result of Nassiri’s breach of the Settlement Agreement and First Amendment, the Department of Transportation has been required to retain the services of Kemp, Jones & Coulthard, LLP and the Office of the Attorney General to prosecute this action and is entitled to an award of attorney’s fees and costs.

Second Claim for Relief

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

37. The Department of Transportation repeats and realleges all previous paragraphs as though set forth fully herein.

1 38. Implied in the parties' Settlement Agreement and First Amendment is a covenant
2 of good faith and fair dealing.

3 39. Nassiri breached this covenant by initiating a lawsuit against the Department of
4 Transportation that included claims for damages in connection with the Chambers Claim and
5 Koroghli Action, even though Nassiri expressly waived and released any such claims.

6 40. As a direct and proximate result of Nassiri's breach of the implied covenant of
7 good faith and fair dealing, the Department of Transportation has suffered damages in an
8 amount in excess of \$10,000.

9 41. As a result of Nassiri's breach of the implied covenant of good faith and fair
10 dealing, the Department of Transportation has been required to retain the services of Kemp,
11 Jones & Coulthard, LLP and the Office of the Attorney General to prosecute this action and is
12 entitled to an award of attorney's fees and costs.

13 **Third Claim for Relief**
14 **(Declaratory Relief)**

15 42. The Department of Transportation repeats and realleges all previous paragraphs
16 as though set forth fully herein.

17 43. A justiciable controversy exists between the Department of Transportation and
18 Nassiri over their respective rights and obligations under the Settlement Agreement and First
19 Amendment, which includes whether or not Nassiri is even entitled to sue the Department of
20 Transportation for damages that he expressly waived.

21 44. The Department of Transportation and Nassiri's interests in this controversy are
22 adverse.

23 45. The Department of Transportation has a legally protectable interest in this
24 controversy, as Nassiri has sued the Department of Transportation for millions of dollars in
25 connection with waived and released claims and the Department of Transportation is entitled to
26 its attorney's fees and costs for having to defend against these waived and released claims.

46. The issues involved in the controversy are ripe for adjudication because they center on unavailable claims that Nassiri is presently asserting against the Department of Transportation.

47. As a result of Nassiri asserting claims against the Department of Transportation that he previously agreed to waive and release, the Department of Transportation has been required to retain the services of Kemp, Jones & Coulthard, LLP and the Office of the Attorney General to prosecute this action and is entitled to an award of attorney's fees and costs.

Fourth Claim for Relief
(Attorney's Fees as Special Damages)

48. The Department of Transportation repeats and realleges all previous paragraphs as though set forth fully herein.

49. As a result of Nassiri asserting claims against the Department of Transportation that he previously agreed to waive and release, the Department of Transportation has been required to retain the services of Kemp, Jones & Coulthard, LLP and the Office of the Attorney General to defend against claims that arise from Nassiri's own breach of the Settlement Agreement and First Amendment.

50. The Department of Transportation's attorney's fees are foreseeable damages because Nassiri has forced the Department of Transportation to incur attorney's fees that the Department of Transportation would not have otherwise incurred in the absence of Nassiri's waived and released claims in breach of the Settlement Agreement and First Amendment.

51. The Department of Transportation's additional attorney's fees are necessitated by, and the natural and probable consequence of, Nassiri's bad faith assertion of waived and released claims in breach of the Settlement Agreement and First Amendment.

Prayer for Relief

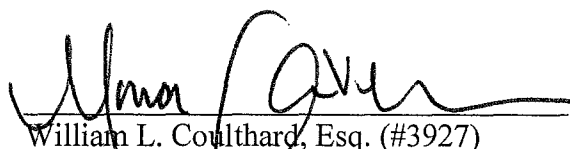
WHEREFORE, the Department of Transportation respectfully prays for judgment against Nassiri as follows:

1. For damages in excess of \$10,000.00;
2. For reasonable attorney's fees and costs incurred herein;

3. For reasonable attorney's fees as special damages incurred in defense of Nassiri's claims related to the waived and released Chambers Claim and Koroghli Action;
4. For pre-judgment and post-judgment interest as provided by law;
5. For a declaration regarding the parties' rights and obligations with respect to the Settlement Agreement and First Amendment; and
6. For any further and additional relief that this Court may deem appropriate.

DATED this 31st day of October, 2013.

Respectfully submitted by:



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Certificate of Service

I hereby certify that on the 31st day of October, 2013, I served a true and correct copy of the **Department of Transportation's Answer to Amended Complaint and Counterclaim** via U.S. Mail, properly addressed to the following:

Eric R. Olsen, Esq.
Dylan T. Ciciliano, Esq.
Gordon Silver
3960 Howard Hughes Parkway, 9th Floor
Las Vegas, Nevada 89169
Attorneys for Plaintiffs

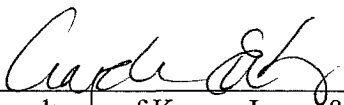

An employee of Kemp, Jones & Coulthard, LLP

EXHIBIT 1

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of All Claims (this "Agreement") is entered into this 22 day of April, 2005 (the "Execution Date") by and among The State of Nevada, on relation of its Department of Transportation ("NDOT" or "Plaintiff") and Fred Nassiri, a resident of Clark County, Nevada ("NASSIRI" or "Defendant", and together with NDOT, "the Parties").

I.

Recitals

1.01 The Lawsuit. On or about August 31, 2004, NDOT filed its Complaint in condemnation ("Complaint") against, among others, NASSIRI, in the Eighth Judicial District Court, Clark County, Nevada, Case Number A491334 (the "Lawsuit") to acquire certain property owned by NASSIRI in fee simple and other property owned by NASSIRI for a two-year construction easement in connection with the construction and reconstruction of the interchange at I-15 and Blue Diamond Road, and the attendant widening and realignment of Blue Diamond Road (the "Project"). NDOT also named Clark County as a defendant in the Lawsuit. Clark County filed a disclaimer of any interest in the proceedings on October 13, 2004.

1.02 Funds on Deposit With Court Clerk. On September 27, 2004, NDOT deposited with the Clerk of the Court ("Clerk") the sum of FOUR MILLION EIGHT HUNDRED TEN THOUSAND and NO/100 DOLLARS (\$4,810,000.00) in connection with NDOT's motion for immediate occupancy (the "Deposit").

1.03 The Exchange Property. NDOT owns 24.41 acres (1,063,132 square feet) of land located generally southeast of the intersection of existing Blue Diamond Road and I-15 and east of NASSIRI's property, which land is more particularly described in the legal description attached hereto at Exhibit "1" and incorporated herein by this reference (the "Exchange Property"). NASSIRI desires to purchase the Exchange Property from NDOT.

1.04 Settlement. The parties hereto desire to enter into this Agreement, which among other things provides for full and final resolution of the Lawsuit, the release of the Deposit to NASSIRI, the conveyance in fee simple of certain property owned by Nassiri to NDOT by judgment, the conveyance of temporary construction easements over the Exchange Property to NDOT, and the conveyance of the Exchange Property to NASSIRI on the terms and conditions set forth herein.

II.

Agreement

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows.

2.01 Escrow. The Parties shall establish an escrow in Las Vegas, Nevada with Nevada Title Company ("Escrow"), establishing a certified escrow officer to act as the Escrow Agent, and this Agreement shall serve as the instructions to the Escrow Agent for handling the transaction. The Escrow Agent shall not take any action contrary to this Agreement absent the express direction of both Parties in writing. Closing shall occur on the Closing Date as defined in Section 2.07, below.

2.02 Stipulated Judgment and Condemnation Proceeds. On or before the Closing Date, the Parties shall execute and deliver to Escrow a stipulation ("Stipulated Judgment") in the form attached hereto as Exhibit "2" together with an executed Final Judgment and Final Order of Condemnation attached thereto ("Final Judgment"), which Stipulated Judgment shall provide, among other matters, that the Clerk shall release the Deposit to NASSIRI, and release the balance of any funds held by the Clerk in connection with the Lawsuit to NDOT.

2.03 Vesting of Title in NDOT. The property to be conveyed to NDOT by recordation of the Final Judgment is located in unincorporated Clark County, Nevada, and consists of portions of the property generally located at the southwest corner of the intersection of Las Vegas Boulevard South and existing Blue Diamond Road, having Clark County Assessor's Parcel Number 177-08-803-002 and an address of 8011 Las Vegas Boulevard South, Las Vegas, Nevada 89123, and more specifically described in the Complaint as a 183,823 square-foot portion of NDOT Parcel No. S-160-CL-000.016 in fee simple absolute, as further described and identified in Exhibit "2" attached hereto and incorporated herein by this reference (the "Fee Acquisition"), a temporary easement on a 705 square-foot portion of NDOT Parcel No. S-160-CL-000.016 TE, also as described in Exhibit "2" (the "TE"), and a 25,419 square-foot portion of NDOT Parcel No. S-160-CL-000.015, which the Complaint requested in fee simple but the Parties have agreed will serve instead as a temporary easement (the "Teardrop TE", and together with the TE and the Fee Acquisition, the "Subject Property"). The Subject Property shall be condemned and given over to NDOT through entry with the Clerk of the Stipulated Judgment attached hereto as Exhibit "1" and the recording with the Clark County Recorder of the Final Judgment attached thereto, or such other documentation as NDOT may require to vest fee simple title to the Fee Acquisition in NDOT and secure NDOT's TE and Teardrop TE.

2.04 Conveyance of Exchange Property to NASSIRI.

(a) Quitclaim Deed. NDOT shall convey the Exchange Property to NASSIRI by quitclaim deed in the form attached hereto as Exhibit "3", without warranty, "as-is", "where-is", and

"with all faults" (the "Quitclaim Deed"). NASSIRI acknowledges that he is aware of claims by Carolyn Ann Chambers or her representatives relating to an alleged reversionary interest or other right relating to the Exchange Property (the "Chambers Claims"), that he has performed his own investigation of the Chambers Claims, and, based upon such investigation, accepts the Exchange Property subject to any claims of Chambers, her assigns or successors.

(b) Title. NASSIRI may cause Escrow Agent to issue to NASSIRI (with a copy to NDOT) a preliminary title report with respect to the Exchange Property (the "Preliminary Report") on or before the close of business on the tenth business day following the Execution Date, together with copies of all documents relating to title exceptions referred to in the Preliminary Report. NASSIRI shall give NDOT notice if the Preliminary Report contains any exceptions that are not reasonably acceptable to NASSIRI on or before the close of business on the tenth (10th) business day prior to Closing ("NASSIRI's Title Notice"). NDOT shall notify NASSIRI on or before the close of business on the fifth (5th) business day following the date of NASSIRI's Title Notice if NDOT will satisfy any requirement or remove any exception before the Closing Date ("NDOT's Title Notice"). NDOT's failure to provide NDOT's Title Notice with respect to any requirement or exception shall constitute NDOT's refusal to satisfy or remove the requirement or exception. NASSIRI shall thereafter, but not less than two (2) business days prior to the Closing Date, approve the title contingency set forth herein, or terminate this Agreement. NASSIRI's failure to give such notice of termination shall constitute NASSIRI's agreement to all title exceptions or requirements and NASSIRI's agreement to consummate the transactions contemplated by this Agreement. If notice of termination is given, this Agreement shall terminate and the parties shall be released from any and all further obligations under this Agreement, except for any such obligation which survives termination. Those exceptions to title set forth in the Preliminary Report to which NASSIRI has not objected in writing to NDOT or that NDOT has not agreed to remove pursuant to this Section 9 shall, together with any interest of Carolyn Ann Chambers, her assigns or successors, constitute the "Approved Exceptions".

(c) Chambers Representation and Indemnity. Nassiri represents and warrants as of the Closing Date that Nassiri shall have secured an assignment to Nassiri of all right, title, and interest of Carolyn Ann Chambers, her successors or assigns, in or to the Chambers Claims. Nassiri shall indemnify and hold harmless the State of Nevada and NDOT, their managers, agents, employers, employees, attorneys, insurers, successors, and assigns, and their political subdivisions and sister agencies, of and from all claims, known or unknown, asserted or unasserted of whatever nature, now existing or hereafter arising, including but not limited to claims for attorney's fees and costs, relating in any way to the Chambers Claims.

2.05 Exchange Compensation. On or before the Closing Date, NASSIRI shall deposit in Escrow the sum of TWENTY-THREE MILLION TWO HUNDRED TWENTY NINE THOUSAND FIVE HUNDRED and NO/100 DOLLARS (\$23,229,500.00) (the "Exchange Compensation") in "Cash." For purposes of this Agreement, "Cash" means immediately available United States funds transferred by certified check or wire transfer.

2.06 Exchange Property Construction Easement. On or before the Closing Date, NASSIRI shall execute and deliver to Escrow a temporary construction easement in the form attached hereto as Exhibit "4" allowing NDOT to use certain portions of the Exchange Property in connection with Project planning, staging, and construction (the "Exchange Property Easement").

2.07 Closing.

(a) Date and Location. Closing shall occur at the offices of Escrow Agent at 10:00 a.m. on the thirtieth (30th) day after the Execution Date, or at such other time or place as the Parties may agree in writing (the "Closing Date").

(b) NASSIRI Deliveries on Closing Date. Unless previously provided, NASSIRI shall deliver the following to Escrow on the Closing Date:

- (i) Executed Stipulated Judgment together with executed Final Judgment and such other documentation as NDOT may require to vest fee simple title to the Fee Acquisition in NDOT and secure NDOT's TE and Teardrop TE;
- (ii) Executed Exchange Property Easement;
- (iii) Exchange Compensation;
- (iv) Any fees for issuance by Nevada Title Company of a policy of title insurance for the Exchange Property;
- (v) 1/2 of any fees of Escrow or Escrow Agent for handling this transaction; and
- (vi) Real property transferor other taxes, if any, that apply to the recording of the Quitclaim Deed.

(c) NDOT Deliveries on Closing Date. Unless previously provided, NDOT shall deliver the following to Escrow on the Closing Date:

- (i) Executed Stipulated Judgment together with executed Final Judgment and Final Order of Condemnation; and
- (ii) The Quitclaim Deed;

(d) Actions by Escrow Agent on Closing Date. On the Closing Date, Escrow Agent shall:

- (i) Collect the deliveries required by NASSIRI and NDOT as set forth in Sections 2.07(b) and (c), above;
- (ii) If desired and paid for by NASSIRI, issue an Owner's Policy of Title Insurance for the Exchange Property subject only to the Approved Exceptions;
- (iii) Record the Quitclaim Deed and the Exchange Property Easement;
- (iv) Deliver to NDOT, less ½ any applicable Escrow or Escrow Agent fees for handling this transaction, the Exchange Compensation; and
- (v) Prepare and deliver to the Parties a closing statement.

2.08 NDOT Release. NDOT hereby fully releases and forever discharges NASSIRI and his agents, employers, employees, attorneys, insurers, successors, and assigns, of and from all claims, known or unknown, asserted or unasserted, of whatever nature, now existing or hereafter arising, including but not limited to claims for attorney's fees and costs, relating in any way to the Lawsuit, or any matters asserted therein, or which could have been asserted therein, or its subject matter.

2.09 NASSIRI Release. NASSIRI hereby releases and forever discharges: (i) the Lawsuit, or any matters asserted therein, or which could have been asserted therein, or its subject matter, including but not limited to any claims related to the location on the Property of a public highway and necessary incidents thereto, and any claims for any severance damages to the remainder of NASSIRI's property; and (ii) the physical condition of the Exchange Property as of the Execution Date or matters affecting title or claims thereto.

2.10 NDOT Ownership. NASSIRI represents and warrants that, to the best of his knowledge, no third party has any right, title, or interest in the Fee Acquisition or TE or Teardrop TE land, and Nassiri covenants that he shall take no action between the Execution Date and Closing Date that will result in any third party having any right, title, or interest in or to the Fee Acquisition, TE, or Teardrop TE.

2.11 Property Damage. NASSIRI shall be responsible for any and all risk and liability for any injury or damage to persons or personal property or for any injury or damage to the Subject Property, including but not limited to any and all repairs and/or maintenance to the Property, until the Final Judgment and Final Order of Condemnation is recorded with the Clark County, Nevada Recorder. NDOT shall be responsible for any and all risk and liability for any injury or damage to persons or personal property or for any injury or damage to the Exchange Property, including but not limited to any and all repairs and/or maintenance to the Exchange Property, until the Closing Date.

2.12 Condition of TE and Teardrop TE. NDOT shall leave the TE and Teardrop TE in as neat and presentable condition as it existed prior to NDOT's use of the TE and Teardrop TE, with

all fences, structures and other property belonging to NASSIRI that NDOT may remove or relocate in order to complete the Project to be replaced as nearly in their original condition as is reasonably possible.

2.13 Civil Rights Act. The regulations pertaining to nondiscrimination and Title VI of the Civil Rights Act of 1964, as contained in Title 23, Code of Federal Regulations Part 200, and Title 49, Code of Federal Regulations Part 21, are hereby incorporated by reference and made a part of this Agreement.

2.14 NRS Chapter 408. NDOT shall have the right to adapt and improve the whole or any part of the Property in accordance with the provisions of NRS Chapter 408, including but not limited to NRS 408.487.

2.15 Highway Engineer's Stationing. All Highway Engineer's Stationing is approximate and subject to slight adjustment as necessary to meet construction requirements. To the extent adjustments due to Highway Engineer's Stationing result in a net Fee Acquisition more than one hundred (100) square feet greater or less than 183,823 square feet, the rate of Twenty-Three dollars (\$23.00) per square foot shall be applied to such net change and a credit or invoice generated by NDOT at the conclusion of the Project or at such earlier time as the net area can be finally calculated. NDOT shall pay any credit owing Nassiri hereunder within sixty (60) days of calculating the final net Fee Acquisition, or, alternatively, Nassiri shall pay any invoice generated by NDOT hereunder within sixty (60) days of receipt.

2.16 Extension of TE and Teardrop TE Term. The termination date of the TE and Teardrop TE has been established in compliance with the best available information on the time frame needed for the Project. If NDOT determines that circumstances warrant an extension of the term of the TE and Teardrop TE to complete the Project, NASSIRI shall grant such an extension to NDOT at a rate of \$500.00 per month.

2.17 No Liability. By entering into this Agreement, no party shall be deemed to admit: (i) any liability for any claims, causes of action, or demands; (ii) any wrong doing or fault; nor (iii) violation of any law, precedent, rule, regulation, or statute. Further, nothing contained in this Agreement may be construed as an admission against the interest of any party.

2.18 Attorney's Fees. If any action is commenced to enforce the terms of this Agreement, the prevailing party shall be entitled to recover all of its expenses related to such action, including but not limited to, its reasonable attorney's fees and costs.

2.19 Acknowledgments. The parties mutually understand, agree, and warrant: (i) that NDOT and NASSIRI deny the legal liability and damages alleged in the Lawsuit, that the payment and distribution of the Condemnation Proceeds, and execution of the Judgment, as provided herein is not to be construed as admissions of liability on the part of NDOT or NASSIRI, but such payment and distribution is solely in compromise and settlement of disputed claims, and the amount of the

Condemnation Proceeds is not an admission by any party as to the fair market value of the Subject Property, or any claims for damages; (ii) that the releases contained herein extend and apply to and also cover and include all unknown, unforeseen, unsuspected, and unanticipated injuries, claims, damages, losses, and liabilities, if any, arising from the matters addressed herein; (iii) that no promise or inducement has been offered except as herein set forth; (iv) that this settlement is in good faith and is equitable; (v) that this Agreement is executed without reliance upon any statement or representation by any party or its representatives concerning the nature and extent of the claimed damages or legal liability therefor; (vi) the parties are legally competent to execute this Agreement and to accept full responsibility therefore; (vii) that this Agreement and the releases set forth herein have been carefully read in their entirety by the Parties, who have had the benefit and advice of counsel of their choosing, and this Agreement and the releases set forth herein are known by the Parties to be in full and final and complete compromise, settlement, release, accord and satisfaction, and discharge of all claims and actions as above stated; and (viii) that in entering into this Agreement and the settlement and releases that are encompassed herein, the Parties are acting freely and voluntarily and without influence, compulsion, or duress of any kind from any source, including, but not limited to, any other party or parties, their attorneys, representatives, or anyone acting or purporting to act on behalf of any party.

2.20 Integration. This Agreement constitutes the entire Agreement by and between the Parties and supersedes and replaces any and all previous agreements entered into or negotiated between the Parties.

2.21 Assignment. This Agreement shall not be assigned by NASSIRI, in whole or in part, to any third party, except to a buyer of all of the property NASSIRI owns within Parcel Number 177-08-803-002 as of the Execution Date, without the approval of NDOT in writing, and only then in the event such third party agrees to be bound by the terms herein. Any such assignment will not relieve NASSIRI of any obligations to NDOT hereunder.

2.22 Amendments. This Agreement may not be amended or modified except in writing and signed by each of the Parties.

2.23 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada.

2.24 Counterparts. This Agreement may be executed in any number of counterparts confirmed by facsimile signatures transmitted by telephone, each of which shall be deemed a duplicate original.

2.25 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, personal representatives, successors, or assigns, as the case may be.

2.26 Notices. Any Notice required or desired to be given under this Agreement shall be

in writing and personally hand delivered, given by overnight express delivery with receipt, or given by United States registered or certified mail, postage prepaid, return receipt requested. All Notices shall be sent to the receiving party at the following address or at such other address as the party may from time to time direct in writing:

If to NASSIRI:
6590 Bermuda Road
Las Vegas, Nevada 89119

If to NDOT:
Nevada Department of Transportation
Attn: Jeffrey Fontaine, P.E., Director
1263 S. Stewart St.
Carson City, Nevada 89712

With a copy to:
Michael Chapman, Esq.
9585 Prototype Court, #C
Reno, Nevada 89521
Fax: (775)827-1872

With a copy to:
Gregory J. Walch, Esq.
Santoro, Driggs, Walch et al.
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Fax: (702)791-0308

For purposes of this Agreement, Notices shall be deemed to have been given, delivered, or received upon personal delivery thereof or seventy-two (72) hours after having been deposited in the United States mail as provided herein.

2.27 Headings. All headings and subheadings employed within this Agreement are inserted only for convenience and ease of reference and shall not be considered in the construction or interpretation of any provision of this Agreement.

2.28 No Third Party Beneficiaries. This Agreement is for the benefit of the State of Nevada on relation of its Department of Transportation and NASSIRI only, and is not for the benefit of any other person or entity. Without limiting the generality of the preceding sentence, the Parties hereto agree that there are no third-party beneficiaries of this Agreement.

2.28 No Presumption Regarding Drafter. The Parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between NDOT and NASSIRI, and that this Agreement reflects their mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, it would not be appropriate to deem either Party to be the drafter of this Agreement, and therefore no presumption for or against the drafter shall be applicable in interpreting or enforcing this Agreement.

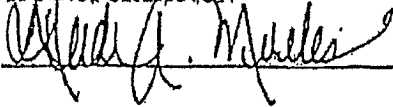
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2.29 Time is of the Essence. The Parties acknowledge that time is of the essence in every aspect of this Agreement.

THE STATE OF NEVADA, ON
RELATION OF ITS DEPARTMENT OF
TRANSPORTATION

FRED NASSIRI



Date: _____

By: Heidi A. Mireles

Its: Chief Right-of-Way Agent

Date: April 29, 2005

Approved as to Legality and Form:

SANTORO, DRIGGS, WALCH,
KEARNEY, JOHNSON & THOMPSON

CHAPMAN LAW OFFICE

By: _____
GREGORY J. WALCH, ESQ.
Nevada Bar No. 4780
KIRBY C. GRUCHOW, JR., ESQ.
Nevada Bar No. 6663
400 South Fourth Street, Third Floor
Las Vegas, NV 89101
Phone: (702) 791-0308
Attorneys for Plaintiff The State of
Nevada, on relation of its Department
of Transportation

By: _____
MICHAEL G. CHAPMAN, ESQ.
Nevada Bar No. 1630
9585 Prototype Court, #C
Reno, Nevada 89521
Phone: (775) 827-1866
Attorney for Defendant Fred Nassiri

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THE STATE OF NEVADA, ON
RELATION OF ITS DEPARTMENT OF
TRANSPORTATION

FRED NASSIRI

Date: 4-28-05

By: _____
Its: _____
Date: _____

Approved as to Legality and Form:

SANTORO, DRIGGS, WALCH,
KEARNEY, JOHNSON & THOMPSON

CHAPMAN LAW OFFICE

By: _____
GREGORY J. WALCH, ESQ.
Nevada Bar No. 4780
KIRBY C. GRUCHOW, JR., ESQ.
Nevada Bar No. 6663
400 South Fourth Street, Third Floor
Las Vegas, NV 89101
Phone: (702) 791-0308
Attorneys for Plaintiff The State of
Nevada, on relation of its Department
of Transportation

By: _____
MICHAEL G. CHAPMAN, ESQ.
Nevada Bar No. 1630
9585 Prototype Court, #C
Reno, Nevada 89521
Phone: (775) 827-1866
Attorney for Defendant Fred Nassiri

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THE STATE OF NEVADA, ON
RELATION OF ITS DEPARTMENT OF
TRANSPORTATION

FRED NASSIRI

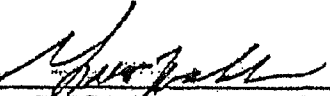
By: _____
Its: _____
Date: _____

Date: _____

Approved as to Legality and Form:

SANTORO, DRIGGS, WALCH,
KEARNEY, JOHNSON & THOMPSON

CHAPMAN LAW OFFICE

By: 
GREGORY J. WALCH, ESQ.
Nevada Bar No. 4780
KIRBY C. GRUCHOW, JR., ESQ.
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400 South Fourth Street, Third Floor
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Phone: (775) 827-1866
Attorney for Defendant Fred Nassiri

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THE STATE OF NEVADA, ON
RELATION OF ITS DEPARTMENT OF
TRANSPORTATION

FRED NASSIRI

By: _____
Its: _____
Date: _____

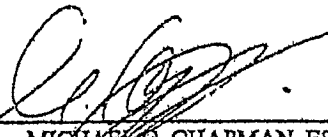
Date: _____

Approved as to Legality and Form:

SANTORO, DRIGGS, WALCH,
KEARNEY, JOHNSON & THOMPSON

CHAPMAN LAW OFFICE

By: _____
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Nevada, on relation of its Department
of Transportation

By: 
MICHAEL G. CHAPMAN, ESQ.
Nevada Bar No. 1630
9585 Prototype Court, #C
Reno, Nevada 89521
Phone: (775) 827-1866
Attorney for Defendant Fred Nassiri



Nevada Title Company

ESCROW DISCLAIMER

TO: Nevada Title Company
ESCROW NO.: 05-05-0001-CLB
DATE: May 8, 2003

The undersigned parties acknowledge that the Escrow Agent's function is to be a disinterested third party, taking mutual instructions from the parties to a transaction for preparation of documentation to complete the principal's prior agreements.

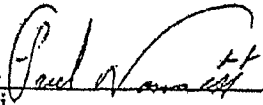
The Escrow Agent is NOT AN ATTORNEY and CANNOT ADVISE the parties as to any legal business, or tax consequences of any provisions or instrument set forth or prepared in connection with this transaction. The undersigned have read and understand each document to which we have affixed our signature and have authorized and instructed Escrow Agent in the manner in which any blanks remaining in said forms are to be completed.

With regard to any questions we may have had pertaining to the Escrow Instructions, the Escrow Agent's role or participation in the escrow, or to the roles of the Real Estate Broker, if any, we have received sufficient explanation. We understand that the subject escrow shall close in accordance with the matters set forth on the documents we have executed.

With regard to any questions we may have had pertaining to the new loan being obtained, if any, we have been made aware that the loan documents were not generated by Nevada Title Company, and that we have received sufficient explanation from the lender providing said loan.

DO NOT AFFIX YOUR SIGNATURES BELOW UNTIL YOU HAVE READ AND AGREED WITH THE MATTERS SET FORTH ABOVE. SHOULD YOU STILL HAVE QUESTIONS WITH REGARD TO THE ABOVE, YOU ARE ADVISED TO SEEK THE ADVICE OF AN INDEPENDENT LEGAL COUNSEL.

BUYERS:


Fred Nassiri

SELLERS:

State of Nevada Department of Transportation

By: _____

Print Name: _____

Title: _____



Nevada Title Company

ESCROW DISCLAIMER

TO: Nevada Title Company
ESCROW NO.: 05-05-0001-CLB
DATE: May 8, 2005

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BUYERS:

Fred Nassiri

SELLERS:

State of Nevada Department of Transportation

By: _____

Print Name: _____

Title: _____

Heldi A. Mireles
Heldi A. Mireles
Chief R/W Agent

FIRST AMENDMENT TO SETTLEMENT AGREEMENT
AND RELEASE OF ALL CLAIMS

This First Amendment to Settlement Agreement and Release of All Claims (the "First Amendment") is made and entered into this 28th day of June, 2005, by and among The State of Nevada, on relation of its Department of Transportation ("NDOT" or "Plaintiff") and Fred Nassiri, a resident of Clark County, Nevada ("NASSIRI" or "Defendant", and together with NDOT, "the Parties") to amend that certain Settlement Agreement and Release of All Claims (the "Settlement Agreement") entered into by the Parties on or about April 28, 2005.

I.

Recitals

1.01 The Lawsuit. On or about August 31, 2004, NDOT filed its Complaint in condemnation ("Complaint") against, among others, NASSIRI, in the Eighth Judicial District Court, Clark County, Nevada, Case Number A491334 (the "Lawsuit") to acquire certain property owned by NASSIRI in fee simple and other property owned by NASSIRI for a two-year construction easement in connection with the construction and reconstruction of the interchange at I-15 and Blue Diamond Road, and the attendant widening and realignment of Blue Diamond Road (the "Project"). NDOT also named Clark County as a defendant in the Lawsuit. Clark County filed a disclaimer of any interest in the proceedings on October 13, 2004.

1.02 Settlement Agreement. The Parties resolved the Lawsuit through the Settlement Agreement, which, among other things, provided that NDOT would convey to NASSIRI a 1,063,132 parcel of land defined therein as the "Exchange Property" and NASSIRI would pay NDOT TWENTY-THREE MILLION TWO HUNDRED TWENTY NINE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$23,229,500.00) (the "Exchange Compensation") in exchange. The Parties have discovered that the Exchange Property legal description should be changed as set forth in this First Amendment, and that such revised legal description will be used in both the Quitclaim Deed and Exchange Property Easement.

1.03 Settlement Agreement Survival. The Parties also desire that the Settlement Agreement be modified to set forth more clearly the Parties' intention that the representations, warranties, indemnities, and all other rights and obligations of the Settlement Agreement shall not merge with the conveyance or recording of the Quitclaim Deed or Exchange Property Easement.

II.

Agreement

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows.

2.01 Defined Terms. All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Settlement Agreement.

2.02 Exchange Property Legal Description. The Exchange Property shall be the 1,063,570 square foot property set forth in the legal description and diagram attached hereto as Exhibit A-1 and incorporated herein by this reference. The legal description set forth in Exhibit A-1 shall be attached to and incorporated into the Quitclaim Deed and the Exchange Property Easement.

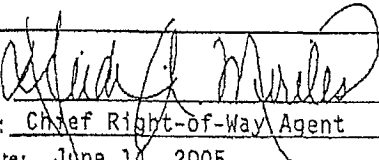
2.03 Exchange Compensation. The Exchange Compensation shall be TWENTY-THREE MILLION TWO HUNDRED THIRTY-NINE THOUSAND FOUR AND 05/100 DOLLARS (\$23,239,004.50) rather than TWENTY-THREE MILLION TWO HUNDRED TWENTY NINE THOUSAND FIVE HUNDRED and NO/100 DOLLARS (\$23,229,500.00) to reflect the additional square footage included in the Exchange Property legal description attached hereto as Exhibit A-1 at TWENTY-ONE AND 85/100 DOLLARS (\$21.85) per square foot.

2.04 Survival. The representations, warranties, indemnities, and all other rights and obligations provided in the Settlement Agreement shall not merge with the conveyance or recording of the Quitclaim Deed or Exchange Property Easement, or with the entry or recording of the Final Judgment.

This First Amendment shall be effective as of the date first written above.

THE STATE OF NEVADA, ON
RELATION OF ITS DEPARTMENT OF
TRANSPORTATION

FRED NASSIRI

By: 
Its: Chief Right-of-Way Agent
Date: June 14, 2005

Date: _____

II.

Agreement

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows.

2.01 Defined Terms. All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Settlement Agreement.

2.02 Exchange Property Legal Description. The Exchange Property shall be the 1,063,570 square foot property set forth in the legal description and diagram attached hereto as Exhibit A-1 and incorporated herein by this reference. The legal description set forth in Exhibit A-1 shall be attached to and incorporated into the Quitclaim Deed and the Exchange Property Easement.

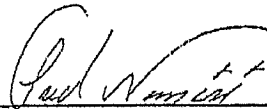
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2.04 Survival. The representations, warranties, indemnities, and all other rights and obligations provided in the Settlement Agreement shall not merge with the conveyance or recording of the Quitclaim Deed or Exchange Property Easement, or with the entry or recording of the Final Judgment.

This First Amendment shall be effective as of the date first written above.

THE STATE OF NEVADA, ON
RELATION OF ITS DEPARTMENT OF
TRANSPORTATION

FRED NASSIRI



Date: 8-7-05

By: _____

Its: _____

Date: _____

Approved as to Legality and Form:

SANTORO, DRIGGS, WALCH,
KEARNEY, JOHNSON & THOMPSON

By: 

GREGORY J. WALCH, ESQ.
Nevada Bar No. 4780
KIRBY C. GRUCHOW, JR., ESQ.
Nevada Bar No. 6663
400 South Fourth Street, Third Floor
Las Vegas, NV 89101
Phone: (702) 791-0308
Attorneys for Plaintiff The State of
Nevada, on relation of its Department
of Transportation

CHAPMAN LAW OFFICE

By: _____

MICHAEL G. CHAPMAN, ESQ.
Nevada Bar No. 1630
9585 Prototype Court, #C
Reno, Nevada 89521
Phone: (775) 827-1866
Attorney for Defendant Fred Nassiri

Approved as to Legality and Form:

SANTORO, DRIGGS, WALCH,
KEARNEY, JOHNSON & THOMPSON

CHAPMAN LAW OFFICE

By: _____
GREGORY J. WALCH, ESQ.
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KIRBY C. GRUCHOW, JR., ESQ.
Nevada Bar No. 6663
400 South Fourth Street, Third Floor
Las Vegas, NV 89101
Phone: (702) 791-0308
Attorneys for Plaintiff The State of
Nevada, on relation of its Department
of Transportation


By:  _____
MICHAEL G. CHAPMAN, ESQ.
Nevada Bar No. 1630
9585 Prototype Court, #C
Reno, Nevada 89521
Phone: (775) 827-1866
Attorney for Defendant Fred Nassiri

EXHIBIT 2

20050617-0003561

Fee: \$20.00 RPTT: \$118,521.45
N/C Fee: \$25.00

06/17/2005 14:19:00
T20050111257

Requestor:
NEVADA TITLE COMPANY

Frances Deane PUN
Clark County Recorder Pas: 7

AFTER RECORDING RETURN TO:
MICHAEL CHAPMAN, ESQ.
9585 Prototype Court, #C
Reno, Nevada 89521

26

AND SEND TAX NOTICES TO:
FRED NASSIRI
6590 Bermuda Road
Las Vegas, Nevada 89119

LEGAL DESCRIPTION PREPARED BY:
HEIDI A. MIRELES
NEVADA DEPT. OF TRANSPORTATION
RIGHT-OF-WAY DIVISION
1263 S. STEWART ST.
CARSON CITY, NV 89712

7

Ptn. of APNs: 177-08-799-011 177-08-899-002, -003, -005, -009, -010 & -011	Project: I-015-1(6)28 E.A. 70090 All of Parcels: I-15-CL-000170 (Old Parcel No. 140) I-15-CL-000171 (Old Parcel No. 141) I-15-CL-000172 (Old Parcel No. 142) I-15-CL-000179 (Old Parcel No. 149) I-15-CL-000180 (Old Parcel No. 150) I-15-CL-000181 (Old Parcel No. 151)
All of APNs 177-08-799-012, -013, -014, -015, -016, & -017 177-08-899-004, -006, -014, & -015	Ptn. of Parcels: I-15-CL-000159 (Old Parcel No. 133) I-15-CL-000160 (Old Parcel No. 41-N) I-15-CL-000161 (Old Parcel No. 134) I-15-CL-000169 (Old Parcel No. 139) I-15-CL-000178 (Old Parcel No. 147)

QUITCLAIM DEED

The STATE OF NEVADA, acting by and through its Department of Transportation ("Grantor"), hereby conveys all of Grantor's right, title, and interest in and to the following described real property to FRED NASSIRI ("Grantee"), a resident of Clark County, Nevada:

See Exhibit "A-1", Legal Description, attached hereto and incorporated herein by this reference (the "Property").

The Property shall have no access in and to Interstate Route 15.

GRANTOR,
THE STATE OF NEVADA
ON RELATION OF ITS DEPARTMENT
OF TRANSPORTATION

STATE OF Nevada }
County of Carson } SS

Margaret E. Oaci
Notary Public

GRANTEE,
FRED NASSIRI

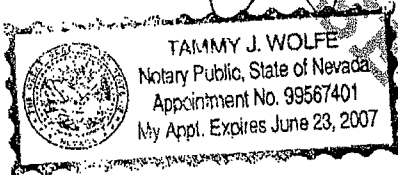
Fred Nassiri

Date: 6/15/05

STATE OF }
 }SS
County of }

On this 15 day of June, 2005, before me a Notary Public personally appeared Fred Nassiri personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument and acknowledged that he (she or they) executed it.

Tammy J. Wolfe
Notary Public



GRANTEE'S COPY

EXHIBIT A – 1: LEGAL DESCRIPTION

Said real property situate, lying and being in the County of Clark, State of Nevada, and more particularly described as being a portion of GOVERNMENT LOTS 30, 31, 32, 33, 35, 38, 39, 40, all of GOVERNMENT LOT 34 and a portion of the E 1/2 of the SE 1/4, all in Section 8, T. 22 S., R. 61 E., M.D.M., and more fully described by metes and bounds as follows, to wit:

COMMENCING at a found R/R Spike with punch mark, located at the intersection of Las Vegas Boulevard and Mesa Verde Lane, accepted as being the south one-sixteenth corner common to said Section 8 and Section 9, T. 22 S., R. 61 E., M.D.M., shown and delineated as a "R/R SPIKE" on that certain RECORD OF SURVEY for CLARK COUNTY, No. 00414, filed for record on June 27, 1997, File 089, Page 0086 of SURVEYS, Official Records Book No. 970627, Clark County, Nevada Records; thence S. 0°13'50" E., along the east line of said Section 8, a distance of 1,322.43 feet, (record N. 0°00'27" E. - 1,322.49 feet per said RECORD OF SURVEY), to a found R/R Spike with punch mark, located at the intersection of Las Vegas Boulevard and Windmill Lane, accepted as being the corner common to Sections 8, 9, 17, and 16, T. 22 S., R. 61 E., M.D.M., shown and delineated as a "R/R SPIKE" on said RECORD OF SURVEY; thence N. 69°42'39" W. a distance of 1,702.09 feet to the POINT OF BEGINNING; said point of beginning described as being on the right or easterly right-of-way line of IR-15, 845.66 feet right of and at right angles to Highway Engineer's Station "LNe" 364+79.89 P.O.T.; thence along said right or easterly right-of-way line the following three (3) courses and distances:

- 1) N. 85°40'00" W. - 300.00 feet;
- 2) from a tangent which bears the last described course, curving to the right with a radius of 260.00 feet, through an angle of 80°26'12", an arc distance of 365.01 feet;
- 3) N. 5°13'48" W. - 984.40 feet to the former right or easterly right-of-way line of said IR-15;

thence along said former right or easterly right-of-way line the following three (3) courses and distances:

- 1) from a tangent which bears S. 30°05'59" E., curving to the left with a radius of 600.00 feet, through an angle of 86°41'24", an arc distance of 907.82 feet;
- 2) N. 63°12'37" E. - 500.00 feet;
- 3) N. 63°05'14" E. - 441.62 feet;

thence S. 29°09'04" E. a distance of 215.92 feet to the former right or easterly right-of-way line of said IR-15; thence along said former right or easterly right-of-way line the following five (5) courses and distances:

- 1) S. 58°42'57" W. - 499.31 feet;
- 2) from a tangent which bears the last described course, curving to the left with a radius of 600.00 feet, through an angle of 36°52'12", an arc distance of 386.10 feet;
- 3) S. 21°50'45" W. - 336.79 feet;
- 4) from a tangent which bears the last described course, curving to the right with a radius of 800.00 feet, through an angle of 30°06'10", an arc distance of 420.31 feet;
- 5) S. 51°56'55" W. - 76.01 feet to the point of beginning;

said parcel contains an area of 24.42 acres (1,063,570 square feet).

The Basis of Bearing for this description is the NEVADA STATE PLANE COORDINATE SYSTEM, NAD 83/94 DATUM, East Zone as determined by the State of Nevada, Department of Transportation.

The above described parcel shall have no access in and to IR-15.

SUBJECT TO any and all existing utilities, whether of record or not.

State of Nevada
Declaration of Value

1. Assessor Parcel Number(s)

a) 177-08-799-011, 177-08-799-012, 177-08-799-013, 177-08-799-014, 177-08-799-015, 177-08-799-016, 177-08-799-017, 177-08-899-002, 177-08-899-003, 177-08-899-004, 177-08-899-005, 177-08-899-006, 177-08-899-009, 177-08-899-010, 177-08-899-011, 177-08-899-014, 177-08-899-015

b) _____
c) _____
d) _____

2. Type of Property:

- ☒ a) Vacant Land ☐ b) Sgl. Fam. Residence
☐ c) Condo/Twnhse ☐ d) 2-4 Plex
☐ e) Apt. Bldg. ☐ f) Comm'l/Ind'l
☐ g) Agricultural ☐ h) Mobile Home
☐ i) Other _____

FOR RECORDER'S OPTIONAL USE ONLY	
Document/Instrument #:	_____
Book:	Page: _____
Date of Recording:	_____
Notes:	_____

3. Total Value/Sales Price of Property

\$23,239,004.50

Deed in Lieu of Foreclosure Only (value of property) _____

Transfer Tax Value:

\$23,239,004.50

Real Property Transfer Tax Due

\$118,521.45

4. If Exemption Claimed:

a. Transfer Tax Exemption, per NRS 375.090, Section: _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declare(s) and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: Carla L. Burchard, Escrow Agent Capacity: GRANTOR/SELLER

Signature: Carla L. Burchard, Escrow Agent Capacity: GRANTEE/BUYER

SELLER (GRANTOR) INFORMATION
(REQUIRED)

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: State of Nevada Department of Transportation

Print Name: Fred Nassiri

Address: 1263 South Stewart Street

Address: 6590 Bermuda Road

City/State/Zip: Carson City, NV 89712

City/State/Zip: Las Vegas, NV 89119

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

Cont
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Print Name: Nevada Title Company Esc. #: 05-05-0001-CLB
Address: 2500 N Buffalo, Suite 150
City: Las Vegas State: NV Zip: 89128
(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

ASSESSOR'S COPY

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