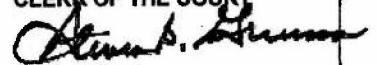


Exhibit 1



SPENCER FANE LLP

John H. Mowbray, Esq. (Bar No. 1140)
John Randall Jefferies, Esq. (Bar No. 3512)
Mary E. Bacon, Esq. (Bar No. 12686)
300 S. Fourth Street, Suite 950
Las Vegas, NV 89101
Telephone: (702) 408-3411
Facsimile: (702) 408-3401
E-mail: JMowbray@spencerfane.com

RJefferies@spencerfane.com

MBacon@spencerfane.com

-and-

MARQUIS AURBACH COFFING

Jack Chen Min Juan, Esq. (Bar No. 6367)
Cody S. Mounteer, Esq. (Bar No. 11220)
10001 Park Run Drive
Las Vegas, NV 89145
Telephone: 702.207.6089
Email: jjuan@maclaw.com
cmounteer@maclaw.com

Attorneys for Apco Construction, Inc.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

APCO CONSTRUCTION, a Nevada
corporation,

Plaintiff,

v.

GEMSTONE DEVELOPMENT WEST,
INC., A Nevada corporation,

Defendant.

Case No.: A571228

Dept. No.: XIII

Consolidated with:

A574391; A574792; A577623; A583289;
A587168; A580889; A584730; A589195;
A595552; A597089; A592826; A589677;
A596924; A584960; A608717; A608718;
and A590319

NOTICE OF ENTRY OF ORDER (1)
GRANTING APCO CONSTRUCTION,
INC. MOTION FOR ATTORNEYS FEES
AND COSTS (2) GRANTING APCO
CONSTRUCTION, INC.'S
MEMORANDUM OF COSTS IN PART
(3) GRANTING HELIX ELECTRIC OF
NEVADA LLC'S MOTION TO RETAX
IN PART AND DENYING IN PART (4)
GRANTING PLAINTIFF

**INTERVENTION NATIONAL WOOD
PRODUCTS LLC'S MOTION TO
RETAX IN PART AND DENYING IN
PART AND (5) GRANTING NATIONAL
WOOD PRODUCTS, INC.'S MOTION
TO FILE A SURREPLY**

AND ALL RELATED MATTERS

TO: All parties herein and their respective counsel:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that on the 27th day of September, 2018, a **ORDER (1) GRANTING APCO CONSTRUCTION, INC. MOTION FOR ATTORNEYS FEES AND COSTS (2) GRANTING APCO CONSTRUCTION, INC.'S MEMORANDUM OF COSTS IN PART (3) GRANTING HELIX ELECTRIC OF NEVADA LLC'S MOTION TO RETAX IN PART AND DENYING IN PART (4) GRANTING PLAINTIFF INTERVENTION NATIONAL WOOD PRODUCTS LLC'S MOTION TO RETAX IN PART AND DENYING IN PART AND (5) GRANTING NATIONAL WOOD PRODUCTS, INC.'S MOTION TO FILE A SURREPLY** was entered in the above case. A copy is attached.

DATED: September 28, 2018.

SPENCER FANE LLP

By: /s/ Mary E. Bacon

John H. Mowbray, Esq. (Bar No. 1140)
John Randall Jefferies, Esq. (Bar No. 3512)
Mary E. Bacon, Esq. (Bar No. 12686)
300 S. Fourth Street, Suite 950
Las Vegas, NV 89101
Telephone: (702) 408-3411
Facsimile: (702) 408-3401
Attorneys for Apco Construction, Inc.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of SPENCER FANE LLP and that a copy of the
3 foregoing **NOTICE OF ENTRY OF ORDER (1) GRANTING APCO CONSTRUCTION,**
4 **INC. MOTION FOR ATTORNEYS FEES AND COSTS (2) GRANTING APCO**
5 **CONSTRUCTION, INC.'S MEMORANDUM OF COSTS IN PART (3) GRANTING**
6 **HELIX ELECTRIC OF NEVADA LLC'S MOTION TO RETAX IN PART AND**
7 **DENYING IN PART (4) GRANTING PLAINTIFF INTERVENTION NATIONAL WOOD**
8 **PRODUCTS LLC'S MOTION TO RETAX IN PART AND DENYING IN PART AND (5)**
9 **GRANTING NATIONAL WOOD PRODUCTS, INC.'S MOTION TO FILE A SURREPLY**

10 was served by electronic transmission through the E-Filing system pursuant to NEFCR 9, NRCF
11 5(b) and EDCR 7.26 or by mailing a copy to their last known address, first class mail, postage
12 prepaid for non-registered users, on this 28th day of September, 2018, as follows:
13

14
15 **Counter Claimant: Camco Pacific Construction Co Inc**

16 Steven L. Morris (steve@gmdlegal.com)

17 **Intervenor Plaintiff: Cactus Rose Construction Inc**

18 Eric B. Zimbelman (ezimbelman@peelbrimley.com)

19 **Intervenor Plaintiff: Interstate Plumbing & Air Conditioning Inc**

20 Jonathan S. Dabbieri (dabbieri@sullivanhill.com)

21 **Intervenor: National Wood Products, Inc.'s**

22 Dana Y Kim (dkim@caddenfuller.com)

23 Richard L Tobler (rltldck@hotmail.com)

24 Richard Reincke (rreincke@caddenfuller.com)

25 S. Judy Hirahara (jhirahara@caddenfuller.com)

26 Tammy Cortez (tcortez@caddenfuller.com)

27 **Other: Chapter 7 Trustee**

28 Elizabeth Stephens (stephens@sullivanhill.com)

Gianna Garcia (ggarcia@sullivanhill.com)

Jennifer Saurer (Saurer@sullivanhill.com)

Jonathan Dabbieri (dabbieri@sullivanhill.com)

Plaintiff: Apco Construction

Rosie Wesp (rwesp@maclaw.com)

Third Party Plaintiff: E & E Fire Protection LLC

TRACY JAMES TRUMAN (DISTRICT@TRUMANLEGAL.COM)

Other Service Contacts

"Caleb Langsdale, Esq." . (caleb@langsdalelaw.com)

"Cody Mounteer, Esq." . (cmounteer@marquisaubach.com)

"Cori Mandy, Legal Secretary" . (cori.mandy@procopio.com)

"Donald H. Williams, Esq." . (dwilliams@dhwiawlv.com)

"Marisa L. Maskas, Esq." . (mmaskas@pezzilloyd.com)

"Martin A. Little, Esq." . (mal@juww.com)

"Martin A. Little, Esq." . (mal@juww.com)

Aaron D. Lancaster . (alancaster@gerrard-cox.com)

Agnes Wong . (aw@juww.com)

Amanda Armstrong . (aarmstrong@peelbrimley.com)

Andrew J. Kessler . (andrew.kessler@procopio.com)

Becky Pintar . (bpintar@gglt.com)

Benjamin D. Johnson . (ben.johnson@btjd.com)

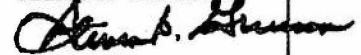
Beverly Roberts . (broberts@trumanlegal.com)

Brad Slighting . (bslighting@djplaw.com)

1 Caleb Langsdale . (Caleb@Langsdalelaw.com)
2 Calendar . (calendar@litigationservices.com)
3 Cheri Vandermeulen . (cvandermeulen@dickinsonwright.com)
4 Christine Spencer . (cspencer@dickinsonwright.com)
5 Christine Taradash . (CTaradash@maazlaw.com)
6 Cindy Simmons . (csimmons@djplaw.com)
7 Courtney Peterson . (cpeterson@maclaw.com)
8 Cynthia Kelley . (ckelley@nevadafirm.com)
9 Dana Y. Kim . (dkim@caddenfuller.com)
10 David J. Merrill . (david@djmerillpc.com)
11 David R. Johnson . (djohnson@watttieder.com)
12 Debbie Holloman . (dholloman@jamsadr.com)
13 Debbie Rosewall . (dr@juww.com)
14 Debra Hitchens . (dhitchens@maazlaw.com)
15 Depository . (Depository@litigationservices.com)
16 District filings . (district@trumanlegal.com)
17 Donna Wolfbrandt . (dwolfbrandt@dickinsonwright.com)
18 Douglas D. Gerrard . (dgerrard@gerrard-cox.com)
19 E-File Desk . (EfileLasVegas@wilsonelser.com)
20 Elizabeth Martin (em@juww.com)
21 Eric Dobberstein . (edobberstein@dickinsonwright.com)
22 Eric Zimbelman . (ezimbelman@peelbrimley.com)
23 Erica Bennett . (e.bennett@kempjones.com)
24 Floyd Hale . (fhale@floydhale.com)
25 George Robinson . (grobinson@pezzilloyd.com)
26 Glenn F. Meier . (gmeier@nevadafirm.com)
27 Gwen Rutar Mullins . (grm@h2law.com)
28 Hrustyk Nicole . (Nicole.Hrustyk@wilsonelser.com)
I-Che Lai . (I-Che.Lai@wilsonelser.com)
Jack Juan . (jjuan@marquisaubach.com)
Jennifer Case . (jcase@madaw.com)
Jennifer MacDonald . (jmacdonald@watttieder.com)
Jennifer R. Lloyd . (Jlloyd@pezzilloyd.com)
Jineen DeAngelis . (jdeangelis@foxrothschild.com)

1 Jorge Ramirez . (Jorge.Ramirez@wilsonelser.com)
2 Kathleen Morris . (kmorris@mcdonaldcarano.com)
3 Kaytlyn Bassett . (kbassett@gerrard-cox.com)
4 Kelly McGee . (kom@juww.com)
5 Kenzie Dunn . (kdunn@btjd.com)
6 Lani Maile . (Lani.Maile@wilsonelser.com)
7 Legal Assistant . (rlegalassistant@rookerlaw.com)
8 Linda Compton . (lcompton@gglts.com)
9 Marie Ogella . (mogella@gordonrees.com)
10 Michael R. Ernst . (mre@juww.com)
11 Michael Rawlins . (mrawlins@rookerlaw.com)
12 Pamela Montgomery . (pym@kempjones.com)
13 Phillip Aurbach . (paurbach@madaw.com)
14 Rachel E. Donn . (rdonn@nevadafirm.com)
15 Rebecca Chapman . (rebecca.chapman@procopio.com)
16 Receptionist . (Reception@nvbusinesslawyers.com)
17
18 Renee Hoban . (rhoban@nevadafirm.com)
19 Richard I. Dreitzer . (rdreitzer@foxrothschild.com)
20 Richard Tobler . (rltldck@hotmail.com)
21 Rosey Jeffrey . (rjeffrey@peelbrimley.com)
22 Ryan Bellows . (rbellows@mcdonaldcarano.com)
23 S. Judy Hirahara . (jhirahara@caddenfuller.com)
24 Sarah A. Mead . (sam@juww.com)
25 Steven Morris . (steve@gmdlegal.com)
26 Tammy Cortez . (tcortez@caddenfuller.com)
27 Taylor Fong . (tfong@marquisaurbach.com)
28 Terri Hansen . (thansen@peelbrimley.com)
Timothy E. Salter . (tim.salter@procopio.com)
Wade B. Gochnour . (wbgo@h2law.com)

/s/ Elizabeth Kuchman
An employee of Spencer Fane LLP



ODR

Spencer Fane LLP

John H. Mowbray, Esq. (Bar No. 1140)

John Randall Jefferies, Esq. (Bar No. 3512)

Mary E. Bacon, Esq. (Bar No. 12686)

300 S. Fourth Street, Suite 950

Las Vegas, NV 89101

Telephone: (702) 408-3411

Facsimile: (702) 408-3401

E-mail: JMowbray@spencerfane.com

RJefferies@spencerfane.com

MBacon@spencerfane.com

-and-

Marquis Aurbach Coffing

Jack Chen Min Juan, Esq. (Bar No. 6367)

Cody S. Mounteer, Esq. (Bar No. 11220)

10001 Park Run Drive

Las Vegas, Nevada 89145

Telephone: (702) 382-0711

Facsimile: (702) 382-5816

jjuan@maclaw.com

cmounteer@maclaw.com

Attorneys for APCO Construction

DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada
corporation,

Plaintiff,

vs.

GEMSTONE DEVELOPMENT WEST, INC., A
Nevada corporation,

Defendant.

Case No.: A571228

Dept. No.: XIII

Consolidated with:

A574391; A574792; A577623; A583289;
A587168; A580889; A584730; A589195;
A595552; A597089; A592826; A589677;
A596924; A584960; A608717; A608718 and
A590319

ORDER:

**(1) GRANTING APCO CONSTRUCTION,
INC. MOTION FOR ATTORNEYS FEES
AND COSTS**

**(2) GRANTING APCO CONSTRUCTION,
INC.'S MEMORANDUM OF COSTS IN
PART**

**(3) GRANTING HELIX ELECTRIC OF
NEVADA LLC'S MOTION TO RETAX IN
PART AND DENYING IN PART**

RECEIVED

SEP 14 2018

DISTRICT COURT DEPT# 13

1 (4) GRANTING PLAINTIFF IN
2 INTERVENTION NATIONAL WOOD
3 PRODUCTS LLC'S MOTION TO RETAX
4 IN PART AND DENYING IN PART

5 -AND-

6 (5) GRANTING NATIONAL WOOD
7 PRODUCTS, INC.'S MOTION TO FILE A
8 SURREPLY

9 AND ALL RELATED MATTERS

10 On July 19, 2018, the Court heard the following motions: (1) APCO Construction Inc.'s
11 Motion for Attorneys Fees and Costs; (2) APCO Construction, Inc.'s Memorandum of Costs
12 [Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products,
13 Inc.]; (3) Plaintiff in Intervention National Wood Products, Inc.'s Motion to Retax Costs Re:
14 Defendant APCO Construction, Inc.'s Memorandum of Costs and Disbursements Against
15 Plaintiff in Intervention National Wood Products, Inc. with Joinder by Helix Electric of Nevada,
16 LLC, (4) Helix Electric of Nevada, LLC's Motion to Retax Costs Re: Defendant APCO
17 Construction, Inc.'s Memorandum of Costs and Disbursements with Joinder by Plaintiff in
18 Intervention National Wood Products, Inc., and (5) National Wood Products, Inc.'s Ex Parte
19 Motion for Order Shortening Time to Hear Motion for Order Permitting Leave to File Surreply
20 to APCO Construction's Reply to National Wood Products, Inc.'s Opposition to Motion for
21 Attorneys' Fees and Costs.

22 John Randall Jefferies, Esq. and Mary Bacon, Esq. of the law firm of Spencer Fane
23 appeared on behalf of APCO Construction, Inc. ("APCO"); Eric Zimbleman, Esq. of the law
24 firm of Peel Brimley appeared on behalf of Helix Electric of Nevada, LLC ("Helix"), and John
25 Taylor, Esq. and S. Judy Hirahara, Esq. of the law firm of Cadden Fuller and Richard Tobler,
26 Esq. of the law firm Richard Tobler, Ltd. appeared on behalf of Plaintiff in Intervention National
27 Wood Products, Inc. ("National Wood"), the Court having heard oral argument and examined the
records and documents on file in the above-entitled matter and being fully advised on the
premises, hereby ORDERS as follows, having rendered its Decision filed on August 8, 2018:

1 **1. APCO Construction, Inc.'s Motion for Attorneys Fees and Costs Against**
2 **Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.**
3 **and APCO Construction, Inc.'s Memorandum of Costs and Disbursements [Against Helix**
4 **Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.].**

5 APCO requested attorney's fees from Helix and National Wood pursuant to the
6 subcontracts at issue and pursuant to APCO's November 13, 2018 offers of judgment. APCO
7 also sought an award of attorney's fees against Helix pursuant to NRS 108.237(3). The Court
8 finds that although there are certainly viable bases supporting APCO's contention that
9 contractual provisions in the repesective subcontracts and equitable estoppel can support an
10 award of attorney's fees going back in time to a point long before making of the November 13,
11 2018 offers of judgment, the Court determines, in the context of this complex case, involving
12 multiple parties and claims and consolidation of cases and periodic party alignments and
13 realignments and contractual reconfigurations, that the best basis for attorney fee awards is
14 NRCP 68.

15 NRCP 68 provides in part that at "any time more than 10 days before trial, any party may
16 serve an offer in writing to allow judgment to be taken in accordance with its terms and
17 conditions."¹ "If the offer is not accepted within 10 days after service, it shall be considered
18 rejected by the offeree and deemed withdrawn by the offeror."² And "[i]f the offeree rejects an
19 offer and fails to obtain a more favorable judgment, (1) the offeree cannot recover any costs or
20 attorney's fees and shall not recover interest for the period after the service of the offer and
21 before the judgment; and (2) the offeree shall pay the offeror's post-offer costs, applicable
22 interest on the judgment from the time of the offer to the time of entry of the judgment and
23 reasonable attorney's fees, if any be allowed, actually incurred by the offeror from the time of
24 the offer."³

25 The purpose of NRCP 68 is to promote and encourage settlement and save time and
26 money for the court system, the parties, and the taxpayers.⁴ It rewards a party who makes a

27 ¹ NRCP 68(a).

28 ² NRCP 68(e).

29 ³ NRCP 68(f).

30 ⁴ *Muije v. A N. Las Vegas Cab Co.*, 106 Nev. 664, 667, 799 P.2d 559, 561 (1990).

1 reasonable offer to settle a lawsuit and punishes the party who refuses to accept such an offer.⁵
2 "NRCF 68 encourages the settlement of lawsuits by raising the stakes for a litigant who receives
3 an offer of judgment. An offeree must balance the uncertainty of receiving a more favorable
4 judgment against the risk of receiving a less favorable judgment and being forced to pay the
5 offeror's costs and attorney's fees."⁶ In reviewing an application for an award of attorney's fee
6 pursuant to NRCF 68, "the trial court must carefully evaluate the following factors: (1) whether
7 the plaintiff's claim was brought in good faith; (2) whether the defendants' offer of judgment was
8 reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to
9 reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the
10 fees sought by the offeror are reasonable and justified in amount."⁷ "After weighing the
11 foregoing factors, the district judge may, where warranted, award up to the full amount of fees
12 requested."⁸ An award will not be disturbed if the record is clear that the district court
13 considered the factors and the court's award is not arbitrary or capricious.⁹ No single factor
14 under *Beattie* is determinative. The district court has broad discretion to grant the request as long
15 as all appropriate factors are at least considered.¹⁰

16 On November 13, 2018, APCO made an offer of judgment to Helix for \$25,000 and an
17 offer of judgment to National Wood for \$35,000. Neither party accepted APCO's offer.

18 Preliminarily, APCO's offers were timely.¹¹ Helix and National Wood argued that the
19 November 13, 2018 offers of judgment were untimely because (i) in 2012 the Court (per Judge
20 Susan Scann) issued an Order, which was prepared and submitted by and at the behest of APCO,
21 by and through its then-attorneys, that "[t]rial of this consolidated matter commenced on October
22 30, 2012," and (ii) this action has never been bifurcated or de-consolidated. However, the Court
23

24 ⁵ *Dillard Dep't Stores, Inc. v. Beckwith*, 115 Nev. 372, 382, 989 P.2d 882, 888 (1999).

25 ⁶ *Bergmann v. Boyce*, 109 Nev. 670, 678, 856 P.2d 560, 565 (1993).

26 ⁷ *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983)

27 ⁸ *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983)

28 ⁹ *Uniroyal Goodrich Tire Co. v. Mercer*, 111 Nev.

29 318, 324, 890 P.2d 785, 789 (1995), superseded by statute on other grounds as stated in *RTTC*
30 *Comm'ns, LLC v. Saratoga Flier, Inc.*, 121 Nev. 34, 41-42 & n. 20, 110 P.3d 24, 29 & n. 20 (2005).

31 ¹⁰ *Arnoult*, 114 Nev. at 252 n.16, 955 P.2d at 673 n.16.

32 ¹¹ *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 994-95, 860 P.2d 720, 724 (1993).

1 is persuaded by APCO's contention that its offers of judgment were timely relative to the
2 applicability of NRCP 68 and *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 994-95, 860 P.2d 720,
3 724 (1993).

4 The Court assesses the *Beattie* factors as follows:

- 5 • Helix's and National Wood's (CabineTec's) claims were brought in good faith.
- 6 • APCO's offers were reasonable and in good faith in both timing and amount.
- 7 • Helix's and National Wood's decisions to reject the offers and proceed to trial against
8 APCO were not grossly unreasonable or in bad faith.
- 9 • The fees sought by APCO are reasonable,¹² *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev.
10 345, 349, 455 P.2d 31, 33 (1969), but an order that Helix and National Wood pay them in
11 their entirety would not be justified given the balancing of the *Beattie* factors.

12 Accordingly, APCO's Motion for Attorney's Fees and Costs is GRANTED pursuant to
13 NRCP 68 with an award of attorneys' fees against Helix in the sum of \$85,000.00, and an award
14 of attorneys' fees against National Wood in the sum of \$60,000.00.

15 APCO requested \$57,228.89 in costs, the Court GRANTS APCO's Motion for Costs and
16 Memorandum for Costs subject to the following deductions: \$3,942.38 for travel and lodging,
17 \$6,013.42 for photocopies¹³ and \$10,500 related to an accounting audit.¹⁴ In total, APCO is
18 awarded a total of \$36,615.08 in costs; \$18,307.54 due from Helix and \$18,307.54 due from
19 National Wood.

20 In total, APCO is awarded a total of \$103,307.54 in fees and costs against Helix and a total
21 of \$78,307.54 in fees and costs against National Wood.

22
23
24 ¹² APCO's post-offer fees attributable to Helix total \$130,933.73 and APCO's post-offer fees attributable
25 to National Wood total \$106,882.23.

26 ¹³ Spencer Fane initially asked for \$15,013.42 for photocopies and reproductions for trial. With the \$6,013.42
27 deduction, APCO is awarded \$9,000 for photocopies and reproductions for trial.

28 ¹⁴ For the sake of judicial efficiency, the Court incorporates APCO's briefing on its costs from its 05/26/2018 *APCO*
29 *Construction, Inc.'s Supplement to its* of its Motion for Attorneys' Fees, APCO Construction, Inc. 06/29/2018 Reply
30 in Support of its Motion for Attorney's Fees and related briefing.

1 2. Plaintiff in Intervention National Wood Products, Inc.'s Motion to Retax
2 Costs Re: Defendant APCO Construction, Inc.'s Memorandum of Costs and
3 Disbursements Against Plaintiff in Intervention National Wood Products, Inc. with Joinder
4 by Helix Electric of Nevada, LLC

5 National Wood asserted various reasons for retaxing certain costs. National Wood's
6 Motion to Retax is granted in part as follows: First, the Court retaxes and reduces \$3,942.38 of
7 APCO's expenses related travel and lodging since these amounts were not incurred for
8 depositions. Since only half of the total travel costs were initially allocated to National Wood,
9 the Court retaxes and reduces the \$1,971.19 that APCO initially attributed to National Wood to
10 \$0.00 (zero dollars). Next, the court retaxes \$6,013.42 of the \$15,013.42 APCO requested for
11 photocopies and reduces the same to \$9,000.00. Again, because APCO only asked for half of the
12 total \$15,013.42 in photocopies against National Wood, the Court retaxes and reduces these
13 amounts as to National Wood to \$4,500.00

14 In total, APCO is awarded \$18,307.54 in costs against National Wood.

15 3. Helix Electric of Nevada, LLC's Motion to Retax Costs Re: Defendant APCO
16 Construction, Inc.'s Memorandum of Costs and Disbursements with Joinder by Plaintiff in
17 Intervention National Wood Products, Inc.

18 Helix's Motion to Retax Costs is also granted in part. First, Helix is entitled to the same
19 deductions awarded to National Wood such that (i) the Court retaxes and reduces the \$1,971.19
20 that APCO initially attributed to Helix to \$0.00 (zero dollars) and (ii) the court retaxes \$6,013.42
21 of the \$15,013.42 APCO requested for photocopies and reduces Helix's portion of the same to
22 \$4,500.00. In addition, the Court will retax \$10,500 of accounting costs.

23 APCO is awarded \$18,307.54 in costs against Helix.

1 4. National Wood Products, Inc.'s Ex Parte Motion for Order Shortening Time to
2 Hear Motion for Order Permitting Leave to File Surreply to APCO Construction's Reply
3 to National Wood Products, Inc.'s Opposition to Motion for Attorneys' Fees and Costs.

4 APCO did not oppose National Wood's Motion for Order Shortening Time to Hear
5 Motion for Order Permitting Leave to File Surreply to APCO Construction's Reply to National
6 Wood Products, Inc.'s Opposition to Motion for Attorneys' Fees and Costs. As such, the Motion
7 is granted.

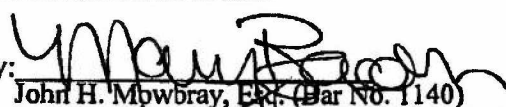
8 IT IS SO ORDERED.

9 DATED this ____ day of _____, 2018.

10
11 _____
12 DISTRICT COURT JUDGE

13 Respectfully submitted by:


14 SPENCER FANE LLP

15 By: 
16 John H. Mowbray, Esq. (Bar No. 1140)
17 John Randall Jefferies, Esq. (Bar No. 3512)
18 Mary E. Bacon, Esq. (Bar No. 12686)
19 300 S. Fourth Street, Suite 950
20 Las Vegas, NV 89101
21 Telephone: (702) 408-3411
22 Facsimile: (702) 408-3401
23 Attorneys for Apco Construction, Inc.

24 Approved as to form by:

25 RICHARD L. TOBLER, LTD.

26 PEEL BRIMLEY

27 By: 
28 Richard L. Tobler, Esq.
29 Nevada Bar No. 4070
30 3654 N. Rancho Drive, Suite 102
31 Las Vegas, Nevada 89130
32 Attorneys for Plaintiff in Intervention,
33 NATIONAL WOOD PRODUCTS, INC.

34 ERIC B. ZIMBELMAN,
35 Nevada Bar No. 9407
36 RICHARD L. PEEL, ESQ.
37 Nevada Bar No. 4359
38 3333 E. Serene Avenue, Suite 200
39 Henderson, NV 89074-6571
40 Attorneys for Helix Electric of Nevada,
41 LLC,

1 4. National Wood Products, Inc.'s Ex Parte Motion for Order Shortening Time to
2 Hear Motion for Order Permitting Leave to File Surreply to APCO Construction's Reply
3 to National Wood Products, Inc.'s Opposition to Motion for Attorneys' Fees and Costs.

4 APCO did not oppose National Wood's Motion for Order Shortening Time to Hear
5 Motion for Order Permitting Leave to File Surreply to APCO Construction's Reply to National
6 Wood Products, Inc.'s Opposition to Motion for Attorneys' Fees and Costs. As such, the Motion
7 is granted.

8 IT IS SO ORDERED.

9 DATED this 25th day of September, 2018.

10 
11 DISTRICT COURT JUDGE

12 Respectfully submitted by:

13 SPENCER FANE LLP

14 By:

15 John H. Mowbray, Esq. (Bar No. 1140)
16 John Randall Jefferies, Esq. (Bar No. 3512)
17 Mary E. Bacon, Esq. (Bar No. 12686)
18 300 S. Fourth Street, Suite 950
19 Las Vegas, NV 89101
20 Telephone: (702) 408-3411
21 Facsimile: (702) 408-3401
22 Attorneys for Apco Construction, Inc.


23 Approved as to form by:

24 RICHARD L. TOBLER, LTD.

25 PEEL BRIMLEY

26 By:

27 Richard L. Tobler, Esq.
28 Nevada Bar No. 4070
29 3654 N. Rancho Drive, Suite 102
30 Las Vegas, Nevada 89130
31 Attorneys for Plaintiff in Intervention,
32 NATIONAL WOOD PRODUCTS, INC.

33 
34 ERIC B. ZIMBELMAN,
35 Nevada Bar No. 9407
36 RICHARD L. PEEL, ESQ.
37 Nevada Bar No. 4359
38 3333 E. Serene Avenue, Suite 200
39 Henderson, NV 89074-6571
40 Attorneys for Helix Electric of Nevada,
41 LLC,

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 APCO CONSTRUCTION, INC., A
3 NEVADA CORPORATION,

4 Cross Appellant/Respondent
5 vs.

6 HELIX ELECTRIC OF NEVADA,
7 LLC,

8 Cross Respondent/Appellant

Case No. 77320

District Court Case No. 08A571228

Electronically Filed
Mar 04 2019 11:31 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Eighth Judicial
District Court, the Honorable Mark
Denton

9 1. Eighth Judicial District Court, Department 13, Clark County, Judge
10 Mark Denton, District Court Case No. A-571228.

11 2. **Attorney Filing this Docket Statement:**

12 John Randall Jefferies, Esq., Nevada Bar #3512

13 Christopher H. Byrd, Esq., Nevada Bar #1633

14 Fennemore Craig, P.C.

15 300 South Fourth St. 14th Floor

16 Las Vegas, NV 89101

17 Telephone: (702) 692-8000

18 Facsimile: (702) 692-8099

19 Email: rjefferies@fclaw.com

cbyrd@fclaw.com

-and-

Mary E. Bacon, Esq., Nevada Bar # 12686

Spencer Fane, LLP

300 South 4th Street, Suite 950

Las Vegas, Nevada 89101

Telephone: (702) 408-3400

Facsimile: (702) 408-3401

Email: mbacon@spencerfane.com

-and-

1 Micah S. Echols, Esq., Nevada Bar #8437
2 Cody S. Mounteer, Esq., Nevada Bar #11220
3 Tom W. Stewart, Esq., Nevada Bar #14280
4 Marquis Aurbach Coffing
5 10001 Park Run Drive
6 Las Vegas, NV 89145
7 Telephone: (702) 382-0711
8 Facsimile: (702) 382-5816
9 Email: mechols@maclaw.com
10 cmounteer@maclaw.com
11 tstewart@maclaw.com

Attorneys for Cross Appellant/Respondent APCO Construction, Inc.

7
8 **3. Attorney(s) Representing Cross Respondent/Appellant:**

9 Eric B. Zimbelman, Esq., Nevada Bar #9407
10 Peel Brimley LLP
11 3333 E. Serene Ave. Suite 200
12 Henderson, NV 89074
13 Telephone: (702) 990-7272
14 Facsimile: (702) 990-7273
15 E-mail: ezimbelman@peelbrimley.com
16 *Attorney for Helix Electric of Nevada, LLC*

17 **4. Nature of Disposition (check all that apply):**

- 18 ☐ Judgment after bench trial ☐ Dismissal:
19 ☐ Judgment after jury verdict ☐ Lack of jurisdiction
☐ Summary judgment ☐ Failure to state a claim
☐ Default judgment ☐ Failure to prosecute
☐ Grant/Denial of NRCP 60(b) relief ☐ Other (specify):
☐ Grant/Denial of injunction ☐ Divorce Decree:
☐ Grant/Denial of declaratory relief ☐ Original ☐ Modification
☐ Review of Agency determination ☐ Other disposition
(specify): Post Judgment Special
Order denying attorneys' fees and costs.

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

2 ☐ Child Custody

3 ☐ Venue

4 ☐ Termination of parental rights

5 **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:

6 1. Docket No. 75197, APCO Construction, Inc. v Zitting Bros.
Constr., Inc.

7 2. Docket No. 61131, APCO Construction, Inc. v. Dist. Ct. (Scott
Financial).

8 3. Docket No. 57641, Club Vista Financial Services v. Dist. Ct.
(Scott Financial).

9 4. Docket No. 57784, Club Vista Financial Services v. Dist. Ct.
(Scott Financial).

10 5. Docket No. 76276, Helix Electric of NV, LLC, et. al. v APCO
Construction, Inc.

11 **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:

12 APCO refers to and incorporates by reference Section 7 of Helix
13 Electric of Nevada, LLC's Docketing Statement and referenced pleadings,
14 filed August 8, 2018, in Docket No 76276.

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

16 APCO refers to and incorporates by reference Section 8 of Helix
17 Electric of Nevada, LLC's Docketing Statement and referenced pleadings,
18 filed August 8, 2018, in Docket No 76276.

19 APCO further states that this Cross Appeal is to appeal post trial
orders denying APCO attorneys' fees pursuant to the relevant contract
documents and refusing to award APCO all of its costs.

- 1 **9. Issues on appeal.** State concisely the principal issue(s) in this appeal
(attach separate sheets as necessary):
- 2 1. Whether the District Court erred in failing to determine APCO
was entitled to attorneys' fees under relevant subcontract provisions
3 governing the award of attorneys' fees? and
4 2. Whether the District Court erred in failing to award APCO all
of its recoverable costs?
- 5 **10. Pending proceedings in this court raising the same or similar**
issues. If you are aware of any proceeding presently pending before
6 this court which raises the same or similar issues raised in this appeal,
list the case name and docket number and identify the same or similar
7 issues raised:
1. Helix Electric of Nevada LLC and National Wood Products,
8 Inc. v. APCO Construction Inc., Docket No. 76276. Helix Electric
amended its notice of appeal to appeal the same award of fees and
9 costs to APCO that are at issue in this appeal.
- 10 **11. Constitutional issues:** If this appeal challenges the constitutionality
of a statute, and the state, any state agency, or any officer or
11 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
12 44 and NRS 30.130?
☐ N/A
13 ☐ Yes
14 ☐ No
If not, explain:
- 15 **12. Other issues.** Does this appeal involve any of the following issues?
☐ Reversal of well-settled Nevada precedent (identify the case(s))
16 ☐ An issue arising under the United States and/or Nevada
Constitutions
17 ☐ A substantial issue of first-impression
☐ An issue of public policy
18 ☐ An issue where en banc consideration is necessary to maintain
uniformity of this court's decisions
19 ☐ A ballot question

1 If so, explain:

2 The issue is whether equity bars a party to a contract that has an
3 attorneys' fee provision from avoiding liability for fees on claims
4 arising from the contract unsuccessfully asserted the assignor of the
5 contract. APCO's award of full fees pursuant to the relevant
6 subcontract was denied because Helix argued APCO could not collect
7 fees under the subcontract since APCO assigned the subcontract to
8 the replacement contractor and thus, was not a party to the contract.
9 APCO argued its fees were permitted pursuant to equitable estoppel
10 because Helix's claims were all contract based and Helix would have
11 been entitled to its fees had it prevailed.

12 **13. Assignment to the Court of Appeals or retention in the Supreme**
13 **Court.** Briefly set forth whether the matter is presumptively retained
14 by the Supreme Court or assigned to the Court of Appeals under
15 NRAP 17, and cite the subparagraph(s) of the Rule under which the
16 matter falls. If appellant believes that the Supreme Court should
17 retain the case despite its presumptive assignment to the Court of
18 Appeals, identify the specific issue(s) or circumstance(s) that warrant
19 retaining the case, and include an explanation of their importance or
significance:

20 The issue regarding the award of fees and costs in a post judgment
21 motion requires that these issues be assigned presumptively to the
22 Court of Appeals. NRAP 17(b)(7). However, APCO believes the
23 Supreme Court should retain this case because it provides an issue of
24 public policy. The issue is whether equity bars a party to a contract
25 that has an attorneys' fee provision from avoiding liability for fees on
26 claims arising from the contract unsuccessfully asserted the assignor
27 of the contract. APCO's award of full fees pursuant to the relevant
28 subcontract was denied because Helix argued APCO could not
29 collect fees under the subcontract since APCO assigned the
30 subcontract to the replacement contractor and thus, was not a party to
31 the contract. APCO argued its fees were permitted pursuant to
32 equitable estoppel because Helix's claims were all contract based and
33 Helix would have been entitled to its fees had it prevailed.

34 **14. Trial.** If this action proceeded to trial, how many days did the trial

1 last?

2 The issues on this appeal arise from post judgment motions for
3 attorneys' fees and costs.

4 Was it a bench or jury trial? The underlying action was a six day
5 bench trial.

6 **15. Judicial Disqualification.** Do you intend to file a motion to
7 disqualify or have a justice recuse him/herself from participation in
8 this appeal? If so, which Justice?

9 No

10 **TIMELINESS OF NOTICE OF APPEAL**

11 **16. Date of entry of written judgment or order appealed from**
12 September 28, 2018.

13 **Attach a copy. If more than one judgment or order is appealed**
14 **from, attach copies of each judgment or order from which appeal**
15 **is taken.**

16 See Exhibit "1".

17 (a) If no written judgment or order was filed in the district court,
18 explain the basis for seeking appellate review:

19 N/A

20 **17. Date written notice of entry of judgment or order was served:**
21 September 28, 2018.

22 Was service by:

23 ☐ Delivery ☐ Unknown ☐ Mail/Electronic/Fax.

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

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

1 the motion, and the date of filing. N/A.

2 ☐ NRCP 50(b) Date of Filing _____

3 ☐ NRCP 52(b) Date of Filing: _____

4 ☐ NRCP 59 Date of Filing: _____

5 NOTE: Motions made pursuant to NRCP 60 or motions for
6 rehearing or reconsideration may toll the time for filing a notice of
7 appeal. See AA Primo Builders v Washington, 126 Nev. ____,
8 245 P.3d 1190 (2010).

9 (b) Date of entry of written order resolving tolling motion _____

10 (c) Date written notice of entry of order resolving tolling motion
11 was served _____

12 Was service by:

13 ☐ Delivery

14 ☐ Mail

15 **19. Date notice of appeal was filed**

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

19 APCO filed its Notice of Cross Appeal on October 26, 2018. Helix
Electric of Nevada, LLC's Amended Notice of Appeal was filed in Docket
76276 on October 25, 2018.

**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)(2). This cross appeal was filed within 14 days after Helix
Electric Of Nevada LLC's Amended Notice of Appeal, which
appealed the District Court's decision of the post judgment orders for
attorneys' fees and costs.

1

2

- 3

4

5

6

- 7

- 9

0

1

2

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

4 APCO contends that it was entitled to attorneys' fees under the terms
5 of the relevant subcontracts, NRS 108.237(3) and NRCP 68 and costs
6 pursuant to the Judgment as prevailing party and the Verified Cost
7 Memorandum filed below.

8 All issues regarding attorneys' fees and costs were resolved by the
9 Order, written notice of which was given September 28, 2018.

10 As to the claims in the underlying action, APCO refers to and
11 incorporates by reference Section 7 and 22(b) of Helix Electric of Nevada's
12 Docketing Statement and the referenced pleadings, filed August 8, 2018, in
13 Docket No 76276.

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

17 ☐ Yes

18 ☐ No

19 **25. If you answered "No" to question 23, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(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

1 26. If you answered "No" to any part of question 24, explain the basis
2 for seeking appellate review (e.g., order is independently
appealable under NRAP 3A(b)): N/A

3 27. Attached file-stamped copies of the following documents: The
4 latest-filed complaint, counterclaims, cross-claims, and third-
5 party claims; any tolling motion(s) and order(s) resolving tolling
6 motion(s); orders of NRCP 41(a) dismissals formally resolving
7 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; and
notices of entry for each attached order.

8 See Exhibit "1". For the pleadings related to the underlying action,
9 APCO refers to and incorporates by reference the Appendix filed by
10 APCO in its Docketing Statement in Case No. 75197, filed April 3,
2018, and Exhibits "1", and "C" through "I" to Helix Electric of
Nevada, LLC's Docketing Statement, filed August 8, 2018, in Docket
No 76276.

1 **VERIFICATION**

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

6 Name of Appellant/Cross-
7 Respondent

8 APCO Construction, Inc.

Name of counsel of record:

John Randall Jefferies, Esq., NV Bar
#3512

Christopher H. Byrd, Esq.
Fennemore Craig, P.C.
300 South Fourth St. 14th Floor
Las Vegas, NV 89101

Telephone: (702) 692-8000

Facsimile: (702) 692-8099

Email: rjefferies@fclaw.com
cbyrd@fclaw.com

-and-

Mary E. Bacon, Esq., NV Bar # 12686
Spencer Fane, LLP
300 South 4th Street, Suite 950
Las Vegas, Nevada 89101

Telephone: (702) 408-3400

Facsimile: (702) 408-3401

Email: mbacon@spencerfane.com

-and-

Micah S. Echols, Esq., NV Bar #8437
Cody S. Munteer, Esq., NV Bar #11220
Tom W. Stewart, Esq., NV Bar #14280
Marquis Aurbach Coffing

10001 Park Run Drive


Las Vegas, NV 89145

Telephone: (702) 382-0711

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

Facsimile: (702) 382-5816
Email: mechols@maclaw.com
cmounteer@maclaw.com
tstewart@maclaw.com

Dated this 29th day of
January, 2019.


Signature of counsel of record

State and county where
signed:
Clark County, Nevada

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9

6
7
8
9
0
1
2
3
4
5
6
7
8
9

6
7
8
9
0
1
2
3
4
5
6
7
8
9

7
8
9
0
1
2
3
4
5
6
7
8
9

7
8
9
0
1
2
3
4
5
6
7
8
9

8
9
0
1
2
3
4
5
6
7
8
9

8
9
0
1
2
3
4
5
6
7
8
9

9
0
1
2
3
4
5
6
7
8
9

1
2
3
4
5
6
7
8
9

3
4
5
6
7
8
9

4
5
6
7
8
9