

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

HELIX ELECTRIC OF NEVADA,  
LLC,

Appellant/Cross-Respondent,

vs.

APCO CONSTRUCTION, INC., a  
Nevada Corporation,

Respondent/Cross-Appellant.

Case No. 77320/80508

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**RESPONSE TO PETITION FOR REHEARING**

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## **RESPONSE TO PETITION FOR REHEARING**

### **REHEARING STANDARDS**

Petitions for rehearing are disfavored, and are only granted upon a showing that this Court has misapprehended or overlooked a material fact in the record, or misapplied controlling law. NRAP 40(c); *City of N. Las Vegas v. 5th & Centennial*, 130 Nev. 619, 622, 331 P.3d 896, 898 (2014). Petitions for rehearing are not an opportunity to raise previously rejected arguments, and “parties may not reargue matters they presented in their appellate briefs and during oral arguments.” *City of N. Las Vegas*, 130 Nev. at 622, 331 P.3d at 898; *see also* NRAP 40(c)(1). Rehearing may not be used to “review matters that are of no practical consequence,” *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 606, 609, 245 P.3d 1182, 1184 (2010) (internal quotations omitted), nor may it be used to reassert matters upon which this Court has previously exercised judicial restraint to determine were not necessary for the disposition of the appeal. *Mona v. Eighth Jud. Dist. Ct.*, 132 Nev. 719, 724, 380 P.3d 836, 840 (Nev. 2016).

### **ARGUMENT**

- I. REHEARING IS NOT WARRANTED BECAUSE THE COURT PROPERLY FOUND HELIX FAILED TO PERFORM VALID CONDITIONS PRECEDENT FOR PAYMENT OF RETENTION. HELIX WAS NEVER ENTITLED TO SEEK RETENTION ON AN UNFINISHED PROJECT FROM APCO.**

This Court should deny Helix's petition for rehearing because it raises questions that are not material to the disposition of this appeal. This Court found that the conditions to the payment of retention in Section 3.8 of the Subcontract were valid and enforceable and Helix admitted that those conditions were not performed. *Helix Elec. of Nev., LLC v. APCO Constr., Inc.*, 138 Nev., Adv. Op. 13, 506 P.3d 1046, 1051-52 (Nev. 2022); 84 JA 6239. This Court rejected Helix's argument that APCO prevented performance of those conditions by stopping work and/or failing to terminate Helix's Subcontract because it found that Helix continued working for Gemstone and Camco, after APCO left, under the valid assignment of the Subcontract. *Id.* Because Helix continued to perform under the assignment but failed to satisfy the conditions to trigger payment of retention, neither APCO, nor anyone else, was obligated to pay retention to Helix. It was Helix's failure to perform the conditions precedent under the Subcontract, not the assignment of APCO's payment obligation, that led this Court to properly conclude APCO did not owe retention to Helix. Thus, this Court did not need to consider whether the assignment also transferred APCO's payment obligation or the need for a novation, because the payment obligation never came to fruition and Helix's arguments regarding the substitution of obligors by assignment, the need for a novation, and who was ultimately required to pay retention, besides being erroneous, are not material to the disposition of this appeal. This petition should be denied.

**II. BECAUSE THIS COURT PROPERLY FOUND THAT APCO'S OBLIGATIONS WERE VALIDLY ASSIGNED, THIS COURT DID NOT NEED TO FIND THAT A NOVATION OCCURRED.**

Rehearing is not warranted because (1) Helix's petition improperly re-argues matters previously briefed and rejected by this Court, (2) all executory obligations under the Subcontract were validly assigned without the need for a novation, and (3) rehearing is of no practical consequence because this Court's findings on assignment also support a finding of novation.

**A. HELIX'S PETITION IMPROPERLY RE-ARGUES MATTERS PREVIOUSLY BRIEFED AND REJECTED BY THIS COURT.**

This Court should deny rehearing because this petition improperly reargues matter presented in the briefs. NRAP 40(c)(1). The parties previously raised and briefed the question of whether APCO's transfer of Helix's Subcontract to Gemstone and the ratification of Camco to replace APCO constituted a novation. *See* Appellant/Cross-Respondent's Consolidated Opening Brief, pp. 51-54; Respondent/Cross-Appellant's Combined Answering and Opening Brief on Cross-Appeal, pp. 46-47; Appellant/Cross-Respondent's Reply Brief and Answering Brief on Cross-Appeal, pp. 22-23. APCO specifically noted that this Court need not reach the issue of whether a novation occurred, because the district court's conclusion that Camco, not APCO, became liable for Helix's retention was validly based upon the assignment of the Subcontract and the ratification agreement that Helix admitted

existed with Camco, under which Helix knowingly replaced APCO with Camco on all obligations. *See* Respondent/Cross-Appellant’s Combined Answering and Opening Brief on Cross-Appeal at p. 46. This Court impliedly rejected Helix’s argument that a novation, rather than an assignment, must occur when it affirmed the district court’s finding that APCO’s obligations, including payment or retention, were validly assigned to Gemstone/Camco. *See Helix Elec. of Nev.*, 506 P.3d at 1052 . On this basis alone, rehearing must be denied.

Furthermore, this Court should deny rehearing because this Court expressly rejected Helix’s argument about the assignment and the enforcement of conditions precedent in footnote 4 of its opinion. *See Helix Elec. of Nev.*, 506 P.3d at 1053 n.4. Although Helix purports to change the tenor of the argument, this Court has already considered and rejected Helix’s similar arguments on appeal that APCO remains liable notwithstanding an assignment and these, “therefore, constitute improper reargument under NRAP 40(c)(1).” *Ainsworth v. Combined Ins. Co. of Am.*, 105 Nev. 237, 243, 774 P.2d 1003, 1008-09 (1989) (abrogated on other grounds by *Powers v. United Servs. Auto Ass’n*, 114 Nev. 690, 962 P.2d 596 (1998)).

**B. OBLIGATIONS TO PAY MONEY CAN BE ASSIGNED, AND NOVATION IS NOT REQUIRED.**

Even if Helix could persuade this Court to ignore Helix’s failure to perform valid conditions precedent for payment of retention, Helix’s arguments regarding

the assignment and the need for a novation are refuted by the plain language of the assignment provisions in the Subcontract and the Camco ratification agreement, which shifted APCO's payment obligation to Gemstone and or Camco *with Helix's express consent*. Thus, the Court's opinion is neither incomplete nor misleading, nor did this Court overlook or misapply any controlling law because APCO's obligation to pay Helix was validly assigned, and Helix's consent made a novation unnecessary.

First, the law is clear that obligations to pay money can be assigned without requiring a novation because "a change in the person to whom the payment is to be made is not ordinarily material[.]" *Restatement (Second) of Contracts*, § 317 cmt. d (1981); *see also* 29 Williston on Contracts, § 74:11 (4th ed. 2022). Because the *right* to receive payment is generally freely assignable, so too is the *obligation* to make that payment. *See Restatement (Second) of Contracts*, § 318(2) (1981). As the Restatement explains, "a promise requires performance by a particular person only to the extent that the obligee has a substantial interest in having that person perform or control the acts promised." *Id.* APCO could properly assign the Subcontract and its obligation to pay retention to Gemstone because Helix consented to the assignment as part of the Subcontract. Helix cannot plausibly assert that it had a substantial interest in having APCO pay retention once APCO was terminated,

when Helix agreed in the Subcontract to the substitution of Gemstone, and later Camco, for APCO as the obligor once APCO left the project.

Second, the assignee (Gemstone) can expressly agree to assume the obligations of the assignor (APCO), resulting in the assignee (Gemstone) becoming the liable party under the agreement. *Id.* at § 318(3) and cmt. d. Under Paragraph 10.04 of the Prime Contract, Gemstone expressly assumed liability for retention payments to Helix:

Upon acceptance by [Gemstone] of [a subcontract] . . . [Gemstone] shall pay to the corresponding [subcontractor] ***any undisputed amounts owed for any Work completed*** by such [subcontractor], ***prior to the underlying termination*** for which [Gemstone] has not yet paid [APCO] prior to such underlying termination.

29 JA 1850 (Emphasis added). Gemstone's obligation would ultimately include the retention payment for the work done by Helix while APCO was the general contractor once Helix's satisfied all of the conditions precedent for such payment.

Third, and most importantly, when the original parties to the contract consent to both the assignment and the assumption of the duty by the assignee, the assignor/obligor is discharged of liability. *Restatement (Second) of Contracts*, § 318(3) (1981); *see also Eagle Indus., Inc. v. Thompson*, 900 P.2d 475, 483 (Or. 1995) (when party to original agreement assented to substitution of obligors, the original obligation was discharged). As a result, the plain language of the Subcontract shifted the responsibility for payment from APCO to Gemstone and refutes Helix's

argument that “discharging APCO of the payment obligation was never even considered, let alone intended or consented to.” Pet., p. 11.

In the Subcontract, Helix agreed to discharge APCO from future payments. Specifically, as the district court correctly found, Paragraph 1.1 of the Subcontract incorporated all terms of the Prime Contract between APCO and Gemstone into Helix’s Subcontract with APCO. 22 JA 1218; 84 JA 6201-02. Under Paragraph 1.2, Helix agreed that it had read and understood the terms of the Prime Contract that were incorporated into the Subcontract. *Id.* Paragraph 10.04 of the Prime Contract, which was expressly incorporated into the Subcontract, not only expressly required APCO to assign the subcontracts to Gemstone upon leaving the project, but also expressly required that Gemstone, not APCO, become liable for all future payments due to Helix 29 JA 1850. Thus, the substitution of Gemstone for APCO as the obligor for all future payments after APCO left, was expressly bargained for as part of the Subcontract and eliminated the need for a formal novation.

Finally, Helix’s petition ignores several key facts determined by the district court and confirmed by this Court that conclusively demonstrate that Helix chose to replace APCO with Gemstone and ultimately Camco for all executory obligations, which would include payment of retention when all conditions precedent were satisfied. An assignment can be ratified by the parties’ conduct. *See, e.g., Purnell v. Atkinson*, 451 S.W.2d 734, 736 (Ark. 1970); *Riverside Cnty. Transp. Comm’n v.*

*S. Cal. Gas Co.*, 268 Cal. Rptr. 3d 196, 2012 (Ct. App. 2020); *Smith v. Cumberland Grp., Ltd.*, 687 A.2d 1167, 1173 (Pa. Super. Ct. 1997). This Court expressly found that Helix’s conduct indicated Helix had accepted and ratified the assignment, because Helix “negotiated terms [of a ratification agreement], continued to work on the project under Camco, and submitted billing statements [containing retention amounts] to Camco.” *Helix Elec. of Nev., LLC*, 506 P.3d at 1052-53. In its pleadings, Helix admitted that it entered into the ratification agreement the Court references.<sup>1</sup> Under the terms of the ratification agreement, Helix agreed Camco would replace APCO as Contractor under the Subcontract and that Camco would perform and fulfill all of the executory terms, covenants, conditions and obligations required to be performed. 47 JA 2723, 47 JA 2699 and 48 JA 6237. Thus, this Court’s holding that the assignment in this case relieved APCO of liability is correct because Helix consented to the assignment of the payment obligation in the Subcontract and the ratification agreement and released APCO from further obligations under the Subcontract by substituting Gemstone and later Camco.

Helix’s reliance on this Court’s holding in *Easton Business Opportunity v. Town Executive Suites*, 126 Nev. 119, 230 P.3d 827 (2010) is misplaced, as under

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<sup>1</sup> Helix’s admission in its complaint that it entered into the ratification agreement is binding upon Helix and this Court, and fatal to Helix’s arguments in this petition. *See* 84 JA 6237; *see also* 29A Am. Jur. 2d *Evidence*, § 772 (“Admissions . . . in the pleadings are . . . binding on the parties and the court.”).

*Easton*, an assignment of contractual rights will only be prohibited if it results in a material change of obligations. 126 Nev. at 124, 230 P.3d at 830. But, again, a change in who must pay Helix was not a material change, particularly when Helix expressly consented to it by signing the Subcontract. *Restatement (Second) of Contracts*, §§ 317 cmt. d, § 318; *see also Campanelli v. Conservas Altamira, S.A.*, 86 Nev. 838, 841, 477 P.2d 870, 872 (1970). The assignment did not materially change any “obligation” owed to Helix because the assignment did not limit Helix’s right to seek retention, nor did it reduce the amounts that could be paid to Helix if the project was completed and Helix satisfied the conditions precedent for payment.

Furthermore, Helix’s subsequent conduct with Camco, ratified the assignment. 84 JA 6231-37. Accordingly, this Court’s opinion is neither misleading nor inaccurate. Rehearing is not warranted as this Court was not required to find that a novation occurred in order to affirm the district court. *See Mona v. Eighth Jud. Dist. Ct.*, 132 Nev. 719, 724, 380 P.3d 836, 840 (Nev. 2016) (“As a general principle, [this Court] practices judicial restraint, avoiding legal and constitutional issues if unnecessary to resolve the case at hand.”)

**C. THIS COURT’S FINDINGS ALSO SUPPORT A FINDING OF NOVATION.**

Regardless, this Court’s findings support the existence of a valid novation between Helix and APCO based upon Helix’s conduct and performance under the

assignment and ratification agreements after APCO was kicked off the project by Gemstone. Helix's intent to discharge APCO may be implied from the facts and circumstances. *Lazovich & Lazovich, Inc. v. Harding*, 86 Nev. 434, 438, 470 P.2d 125, 128 (1970) (internal citation and quotations omitted). Helix's assent to a novation may also be inferred from Helix's conduct and acceptance of "part performance by the third party, knowing that it is made with the understanding that a complete substitution (novation) is proposed, may be sufficient evidence of assent." *Nevada Bank of Commerce v. Esquire Real Estate, Inc.*, 86 Nev. 238, 240–41, 468 P.2d 22, 23 (1970) (internal quotations omitted); *see also Lazovich*, 86 Nev. at 437, 470 P.2d at 127 ( "An existing claim can be instantly discharged by the substitution of a new executory agreement in its place."). Novation can occur even if the "prior claim is not yet matured at the time of the substitution." *Id.*

As Helix correctly notes, if the contracting party (Helix) deals exclusively with assignee (Gemstone/Camco) or only pursues payment from the assignee, a novation is properly inferred. *Pet.*, p. 7 (citing 58 Am. Jur. 2d Novation, §15). Furthermore, it does not matter what the parties call the agreement for a novation to occur. *Lazovich*, 86 Nev. at 437, 470 P.2d at 128. Although here the parties used the terms assignment and ratification agreement, if the effect is a substitute agreement it is a novation. *See id.*

Substantial evidence supported the district court's conclusion that Helix assented to the discharge of APCO by consenting to Gemstone's (and later Camco's) assumption of APCO's obligation to pay Helix its retention, should retention become due. First, the plain language of the Subcontract and the ratification agreement evidenced an intent to replace APCO on all executory obligations. As discussed above, there was an express agreement to enter into a new contract because the language of Paragraph 10.04 in the Prime Contract clearly states that Gemstone, not APCO, would become liable for future payment, which would include retention. 29 JA 1850. Furthermore, paragraph 5 of the ratification agreement expressly provided that Camco replaced APCO as contractor and would perform and fulfill all of the executory terms, covenants, conditions and obligations required to be performed. 48 JA 6236. The exhibit Helix added to the ratification agreement does not modify that language and confirms that APCO was removed as the general contractor. 48 JA 6237. Thus, the parties clearly intended to extinguish APCO's obligations under the original Subcontract by the assignment and the ratification agreement.

Second, Helix dealt exclusively with Gemstone and Camco after APCO was terminated. This Court found that "Helix worked directly with Gemstone and Camco after APCO left the project and Helix billed Camco for its payment including retention." *Op.*, p. 12. In addition, the district court found that Helix never billed APCO for retention. 48 JA 6230. Instead, Helix rolled its retention account over to

Camco in all post APCO billings. *Id.* “The fact that Helix did not bill retention confirms that Helix recognized that retention never became due from APCO...” *Id.* Furthermore, the district court found Helix had no further communication with APCO after Camco took over because Helix knew APCO was no longer involved and had no further liability. 48 JA 6238<sup>2</sup>. These findings are consistent with Helix assent to the substitution of Gemstone and Camco for APCO and refute Helix’s claim that it never stopped seeking payment from APCO. Pet., p. 11.

Finally, to the extent Helix claims it never consented to the assignment of APCO’s obligation to make payment, Courts look to the manifest intent of the parties, not their subjective intent. *Granite Constr. Co. v. Remote Energy Sols., LLC*, 133 Nev. 1016, 403 P.3d 683 (2017)) (citing *Ford v. Am. Express Fin. Advisors, Inc.*, 98 P.3d 15, 22 (Utah 2004)). Helix’s subjective claim that it never intended to discharge APCO (Pet. P.10-11) is not relevant and both the district court and this Court found to the contrary based upon Helix’s conduct and the terms of the assignment and ratification agreement.

Helix’s explanation for continuing to work with for Gemstone and Camco is refuted by the court’s findings. Helix blames APCO for not terminating Helix’s

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<sup>2</sup> Helix’s willingness to substitute Gemstone and Camco for APCO is further supported by Helix’s close relationship with Gemstone. Gemstone first hired Helix for the project design and then required APCO to subcontract with Helix for the electrical work. 48 JA 6201-02.

Subcontract when APCO left the project. However, as the district court found, APCO never gave Helix written notice of termination because Helix's Subcontract was not terminated by APCO, but assigned to Gemstone, since a termination of any Subcontract would breach the Prime Contract. 29 JA 1850; 84 JA 6220. The district court also found that Helix never requested APCO to clarify or provide information about APCO's status on the project. 84 JA 6235. Moreover, Helix repeatedly ignores that it had the statutory right to unilaterally terminate its Subcontract once APCO terminated its contract, but, instead, elected to work for Gemstone and Camco. *See* NRS 624.610(7).

This Court must give deference to the district court's factual findings on the evidence. *See United Fire Ins. Co.*, 105 Nev. at 508, 780 P.2d at 196 (whether a novation occurred is a question of fact); *Beverly Enter.*, 90 Nev. at 365, 526 P.2d at 1180 (findings of fact reversed only where clearly erroneous). This Court will not "reassess witness credibility on appeal." *Res. Grp., LLC v. Nev. Ass'n Servs., Inc.*, 135 Nev. 145, 152 n. 6, 161 P.3d 239, 244 n.6 (2007); *see also Beverly Enter. v. Globe Land Corp.*, 90 Nev. 363, 365, 526 P.2d 1179, 1180 (1974) ("[I]t is not within the province of the appellate court to instruct the trier of fact that certain witnesses or testimony must be believed."). Thus, the factual findings that Helix replaced APCO with Gemstone and later Camco and relieved APCO of any obligation to pay retention support a finding of a novation and rehearing is not warranted.

### **III. THE ASSIGNMENT DID NOT VIOLATE NRS 624.628.**

This Court's finding that the Subcontract was assigned does not violate NRS 624.628 or any other settled principles of contract law. As an initial matter, these arguments were not raised in the briefs and are not appropriate for disposition upon rehearing. But even if they were, this Court's findings of assignment does not violate NRS 624.628, and is wholly consistent with all settled principles of contract law.

#### **A. THIS ARGUMENT MAY NOT BE RAISED FOR THE FIRST TIME ON REHEARING.**

In its briefs, Helix argued that the Prime Contract was terminated by APCO, not by Gemstone, and that Paragraph 10.04 therefore did not apply. Appellant/Cross-Respondent's Opening Brief, pp. 51-54; Appellant/Cross-Respondent's Reply and Answering Brief on Cross-Appeal, pp. 22-24. Helix did not argue or otherwise suggest that any assignment would violate NRS 624.628 or any other settled principle of contract law in either of its briefs. *See id.* Accordingly, this Court should deny rehearing because a party cannot raise a new issue at this juncture. NRAP 40(c)(1) (stating that "no point may be raised for the first time on rehearing").

#### **B. THE ASSIGNMENT DID NOT VIOLATE NRS 624.628.**

Like all of Helix's arguments, this issue is not material because the obligation to pay Helix's retention never arose. Therefore, the assignment could not affect a

payment that was never due or release a higher tiered contractor from an obligation. Furthermore, the assignment did not violate NRS 624.628(3) because it did not waive, release or extinguish any of Helix's rights or the general contractor's obligations to Helix under NRS Chapter 624. Under NRS 624.628(3)(a)-(b), provisions in a contract are void as against public policy if they:

(a) Require[] a lower-tiered subcontractor to waive any rights provided in NRS 624.624 to 624.630, inclusive, or which limits those rights; [or]

(b) Relieve[] a higher-tiered subcontractor of any obligation or liability imposed pursuant to NRS 624.624 to 624.630, inclusive[.]

None of these events occurred here.

Assignments do not modify contractual rights or obligations, but instead leave the terms of the underlying agreement "in full force and effect."<sup>3</sup> *Easton Bus. Opp., Inc. v. Town Exec. Suites-E Marketplace, LLC*, 126 Nev. 119, 125, 230 P.3d 827, 831 (2010). Thus, the terms of the underlying Subcontract were not modified in any manner by an assignment. If, prior to assignment, the Subcontract did not violate NRS 624.628(3), and Helix impliedly concedes that it did not, then the assignment also cannot violate NRS 624.628(3) even if it substituted one obligor for another.

Nevada's Prompt Pay Act only imposes time limitations on payment from higher-tiered contractors to lower-tiered contractors, but it does limit the assignability of these obligations. *See* NRS Chapter 624. Nowhere does the Prompt

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<sup>3</sup> Helix misquotes *Easton* to suggest that APCO's contractual obligations remain unchanged by an assignment, but this is not true. *Easton* makes clear that while the contractual terms and obligations remain the same, the parties who must perform those terms and obligations change when an assignment occurs.

Pay Act require payments to be made by the original higher tiered contractor, only that the higher tiered contractor make timely payment to the subcontractor once the right to payment matures. Here, although the assignment changed the parties who must perform some of the Subcontract's obligations, it did not change the conditions precedent for payment to Helix. As long as the conditions for payment remained the same, it does not matter that the assignment changed *who* would pay the retention to the Helix. Neither Paragraph 10.04 incorporated into the Subcontract nor the ratification agreement changed the conditions for payment to Helix, and, therefore, the assignment did not violate NRS 624.628(3)(a) because Helix's right to a retention payment was not waived nor was the higher tiered contractor relieved from any payment obligation.

Nothing in NRS Chapter 624 requires that the original contractor remain the same through the entire project. And, notably, nothing in NRS Chapter 624 prohibits assignment of subcontracts. *See* NRS Chapter 624. Thus, the assignment also did not violate NRS 624.628(3)(b).

To find that a general contractor may never assign its obligations to a successor contractor would create an unreasonable and absurd result, which this Court may not do. *See Bergna v. State*, 120 Nev. 869, 873, 102 P.3d 549, 551 (2004) (“Statutes . . . should not be read to produce unreasonable or absurd results.”). General contractors have the right to stop work and terminate the prime contract

under certain circumstances, including non-payment. NRS 624.610. When this happens, subcontracts are *not* automatically terminated. NRS 624.610(7). Although a subcontractor, like Helix, has the absolute right to also terminate its subcontract, it is not required to do so. *See id.* (stating a subcontractor “may” terminate its subcontract); *see also Nev. Pub. Empee’s Ret. Bd. v. Smith*, 129 Nev. 618, 627, 310 P.3d 560, 566 (2013) (explaining that the use of the word “may” in a statute indicates a permissive, rather than mandatory action). Thus, the Legislature clearly contemplated that some other general contractor could assume the contractual obligations of the subcontracts if the original general contractor terminated the prime contract but the subcontractor chose not to terminate its subcontract. However, under Helix’s interpretation an assignment would only be valid if the original higher tiered contractor continued to be liable for payment for work it did not direct or supervise and for payment of retention based upon conditions precedent, the satisfaction of which would be unknown to the original contractor. Clearly, that was not the intent of the Prompt Pay Act.

## **CONCLUSION**

This Court correctly found that APCO was not liable for retention payments to Helix because Helix never satisfied the conditions precedent for payment of retention while continuing to perform after an assignment of its Subcontract to Gemstone/Camo. Thus, Helix’s failure to satisfy conditions precedent determined

whether APCO was required to pay retention, not whether APCO's payment obligations were assigned or novated, which they were based upon the findings of this Court and the district court. Additionally, Helix's petition is improper because it raises arguments that have already been rejected by this Court or are raised for the first time on rehearing. For all the reasons set forth above, APCO respectfully requests that this Court deny the petition for rehearing.

DATED this 20<sup>th</sup> day of July, 2022.

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## CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Response to Petition for Rehearing complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because:

This Writ has been prepared in a proportionally spaced typeface using Microsoft Word 16 in 14 font and Times New Roman type.

2. I further certify that this Writ complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the Writ exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 4,175 words.

3. Finally, I hereby certify that I have read this Response to Petition for Rehearing, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Response complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I

may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 20<sup>th</sup> day of July, 2022.

**FENNEMORE CRAIG, P.C.**

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## CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 20<sup>th</sup> day of July 2022 and was served on the following by the Supreme Court Electronic Filing System (eFlex):

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