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Dec 10 2019 11:57 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

1 **NOA**

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13 *Attorneys for APCO Construction, Inc.*
14 *and Safeco Insurance Company of America*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 HELIX ELECTRIC OF NEVADA, LLC, a Case No.: A-16-730091-B
18 Nevada limited liability company,
19 Plaintiff,
20

21 v.

22 Dept. No.: XI

23 **NOTICE OF APPEAL**

24 APCO CONSTRUCTION, a Nevada
25 corporation; SAFECO INSURANCE
26 COMPANY OF AMERICA; DOES I through X;
27 and BOE BONDING COMPANIES, I through
28 X.

Defendants.

NOTICE IS HEREBY GIVEN that Defendants APCO Construction, Inc. and Safeco Insurance Company of America in the above-captioned action, hereby appeal to the Supreme Court of Nevada from the following:

A. Final Judgment, written notice of entry of which was given November 6, 2019; the Findings of Fact and Conclusions of Law incorporated by reference in the Final Judgment, written notice of entry of which was given on July 10, 2019; both of which are attached as Exhibit "1"; and all orders prior to the entry of the Final Judgment, including but not limited to the following:

1. Denial of Appellants' Omnibus Motion in Limine 1-2;

2. Denial of Appellants' Motion in Limine No. 3 to Preclude the Introduction of Evidence Related to Helix's Extended General Conditions and Motion in Limine No. 4 to Preclude Any Evidence of Helix's Accounting Data or Job Cost Reports;
3. Denial of Appellants' Motion to Exclude the Testimony of Kurt Williams;
4. Denial of Appellants' Motion for Clarification and or Amendment of Findings of fact and Conclusions of Law; and
5. Grant of Respondent's Motion for Attorneys' Fees, Costs and Interest,

Dated this 6th day of December, 2019.

FENNEMORE CRAIG, P.C.

/s/ John Randall Jefferies

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

Brandi M. Planet, Esq. (Bar No. 11710)

Christopher H. Byrd, Esq. (Bar No. 1633)

Attorneys for APCO Construction, Inc.

and Safeco Insurance Company of America

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Fennemore Craig, P.C., and further certify that
3 the **NOTICE OF APPEAL** was served by electronic filing via Odyssey File & Serve e-filing
4 system and serving all parties with an email address on record, pursuant to the Administrative
5 Order 14-2 and Rule 9 N.E.F.C. as follows:

6 **Other Service Contacts:**

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Cary B. Domina cdominaatpeelbrimley.com

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Adam Miller amilleratspencerfane.com

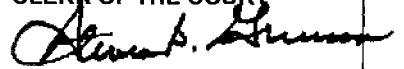
14 Brandi Planet bplanetatfclaw.com

Kassi Rife KRifeatfclaw.com

15
16 Dated this 6th day of December, 2019.

17 /s/ Trista Day
An Employee of Fennemore Craig, P.C.

Exhibit 1



1 **NEOJ**
2 CARY B. DOMINA, ESQ.
3 Nevada Bar No. 10567
4 JEREMY HOLMES, ESQ.
5 Nevada Bar No. 14379
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12 jholmes@peelbrimley.com
13 *Attorneys for Plaintiff*
14 *Helix Electric of Nevada, LLC*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 HELIX ELECTRIC OF NEVADA, LLC, a
11 Nevada limited liability company,

CASE NO. : A-16-730091-C
DEPT. NO. : XI

12 Plaintiff,

13 vs.

14 APCO CONSTRUCTION, a Nevada corporation;
15 SAFECO INSURANCE COMPANY OF
16 AMERICA; DOES I through X; and BOE
17 BONDING COMPANIES I through X,


Defendants.

18 **NOTICE OF ENTRY OF FINAL JUDGMENT**

19 PLEASE TAKE NOTICE that a Final Judgment entered November 4, 2019 and filed on
20 **November 6, 2019**, a copy of which is attached as Exhibit 1.

21 Dated this 6th day of November, 2019.

22 **PEEL BRIMLEY LLP**

23 
24 CARY B. DOMINA, ESQ. (10567)
25 JEREMY HOLMES, ESQ. (14379)
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of **PEEL BRIMLEY, LLP**, and that on this 14 day of November, 2019, I caused the above and foregoing document, **NOTICE OF ENTRY OF FINAL JUDGMENT**, to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☒ pursuant to NEFCR 9, upon all registered parties via the Court's electronic filing system;
- ☐ pursuant to EDCR 7.26, to be sent via **facsimile**;
- ☐ to be hand-delivered; and/or
- ☐ other _____

to the attorney(s) and/or party(ies) listed below at the address and/or facsimile number indicated below:

Attorneys for APCO Construction and Safeco Insurance Co.

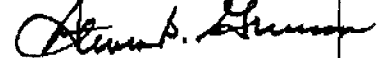
John Randall Jefferies, Esq. (rjefferies@fclaw.com)

Brandi M. Planet, Esq. (bplanet@fclaw.com)



An employee of **PEEL BRIMLEY, LLP**

EXHIBIT 1



JUDG

CARY B. DOMINA, ESQ.

Nevada Bar No. 10567

RONALD J. COX, ESQ.

Nevada Bar No. 12723

JEREMY HOLMES, ESQ.

Nevada Bar No. 14379

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Attorneys for Plaintiff

Helix Electric of Nevada, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

HELIX ELECTRIC OF NEVADA, LLC, a
Nevada limited liability company,

Plaintiff,

vs.

APCO CONSTRUCTION, a Nevada corporation;
SAFECO INSURANCE COMPANY OF
AMERICA; DOES I through X; and BOE
BONDING COMPANIES I through X,

Defendants.

CASE NO. : A-16-730091-B
DEPT. NO. : XI

FINAL JUDGMENT

This matter having come before the Honorable Elizabeth Gonzalez on for a non-jury trial beginning on June 3, 2019, and continuing day to day, until its completion on June 5, 2019; Plaintiff HELIX ELECTRIC OF NEVADA, LLC ("Helix"), was represented by and through its counsel, Cary B. Domina, Esq. and Ronald J. Cox, Esq., of the law firm of Peel Brimley LLP, and Defendants APCO CONSTRUCTION ("APCO") and SAFECO INSURANCE COMPANY OF AMERICA ("Safeco"), were represented by and through their counsel, Randy Jeffries, Esq. of Fennemore Craig; the Court having read and considered the pleadings filed by the parties; having reviewed the evidence admitted during the trial; having heard and carefully considered the

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1 testimony of the witnesses called to testify; having considered the oral and written arguments of
2 counsel, and with the intent of rendering a decision on all remaining claims before the Court
3 pursuant to NRCP 52(a) and 58, the Court hereby enters its Final Judgment pursuant to the Court's
4 Findings of Fact and Conclusions of Law¹ and the Court's ruling on Helix's Motion for Fees, Costs
5 and Interest as follows:

- 6 1. **IT IS HEREBY ORDERED** that, as to Helix's Claims for Breach of Contract and
7 Breach of the Implied Covenant of Good Faith and Fair Dealing against APCO, this
8 Court finds in favor of Helix and awards damages in the amount of \$43,992.39 together
9 with interest as provided by law and taxable costs of suit;
- 10 2. **IT IS FURTHER ORDERED** that, as to Helix's Claim for violations of NRS 338
11 against APCO, this Court finds in favor of Helix in the amount of \$1,960.85;
- 12 3. **IT IS FURTHER ORDERED** that, as to Helix's Motion for Attorney's Fees, Costs
13 and Interest, after careful consideration of the parties' briefing and the *Brunzell*² factors,
14 the Court awards Helix attorney's fees for the work provided by Cary B. Domina, Esq.,
15 Ronald J. Cox, Esq., and Terri Hansen only, in the amount of \$149,336.06, as the Court
16 believes the remaining requested fees were duplicative and should not be awarded. The
17 Court finds that the amount awarded is reasonable considering the qualifications of
18 Helix's counsel, the character of the work performed, the number of dispositive motions
19 filed in this matter that Helix successfully defended itself against, as well as the
20 favorable result obtained by Helix at trial.
- 21 4. **IT IS FURTHER ORDERED** that, the Court awards Helix its costs in the amount of
22 \$8,949.40, and interest in the amount of \$14,927.58.
- 23 5. **IT IS FURTHER ORDERED** that Judgment is hereby entered in favor of Helix and
24 against APCO and Safeco in the total amount of **\$219,166.28**.

25 ///

26 ///

27 ///

28 ¹ The Court's Findings of Fact and Conclusions of Law are incorporated herein to support the Court's Final Judgment.

² See *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

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6. Any claim not otherwise disposed of by this decision is dismissed.


IT IS SO ORDERED

Dated this 4 day of ^{November}~~October~~, 2019.


DISTRICT COURT JUDGE

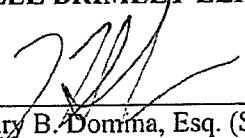
Approved as to Form and Content:

FENNEMORE CRAIG P.C.


John Randall Jeffries, Esq. (SBN 3512)
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300 South Fourth Street, Suite 1400
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Phone: (702) 692-8000
Attorneys for Defendants
APCO Construction and Safeco
Insurance Company of America


Submitted by:

PEEL BRIMLEY LLP


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ORIGINAL

Electronically Filed
11/6/2019 10:22 AM
Steven D. Grierson
CLERK OF THE COURT



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Attorneys for Plaintiff

Helix Electric of Nevada, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

HELIX ELECTRIC OF NEVADA, LLC, a
Nevada limited liability company,

Plaintiff,

vs.

APCO CONSTRUCTION, a Nevada corporation;
SAFECO INSURANCE COMPANY OF
AMERICA; DOES I through X; and BOE
BONDING COMPANIES I through X,

Defendants.

CASE NO. : A-16-730091-B
DEPT. NO. : XI

FINAL JUDGMENT

This matter having come before the Honorable Elizabeth Gonzalez on for a non-jury trial beginning on June 3, 2019, and continuing day to day, until its completion on June 5, 2019; Plaintiff HELIX ELECTRIC OF NEVADA, LLC ("Helix"), was represented by and through its counsel, Cary B. Domina, Esq. and Ronald J. Cox, Esq., of the law firm of Peel Brimley LLP, and Defendants APCO CONSTRUCTION ("APCO") and SAFECO INSURANCE COMPANY OF AMERICA ("Safeco"), were represented by and through their counsel, Randy Jeffries, Esq. of Fennemore Craig; the Court having read and considered the pleadings filed by the parties; having reviewed the evidence admitted during the trial; having heard and carefully considered the

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1 testimony of the witnesses called to testify; having considered the oral and written arguments of
2 counsel, and with the intent of rendering a decision on all remaining claims before the Court
3 pursuant to NRCP 52(a) and 58, the Court hereby enters its Final Judgment pursuant to the Court's
4 Findings of Fact and Conclusions of Law¹ and the Court's ruling on Helix's Motion for Fees, Costs
5 and Interest as follows:

- 6 1. **IT IS HEREBY ORDERED** that, as to Helix's Claims for Breach of Contract and
7 Breach of the Implied Covenant of Good Faith and Fair Dealing against APCO, this
8 Court finds in favor of Helix and awards damages in the amount of \$43,992.39 together
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15 Ronald J. Cox, Esq., and Terri Hansen only, in the amount of \$149,336.06, as the Court
16 believes the remaining requested fees were duplicative and should not be awarded. The
17 Court finds that the amount awarded is reasonable considering the qualifications of
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22 \$8,949.40, and interest in the amount of \$14,927.58.
- 23 5. **IT IS FURTHER ORDERED** that Judgment is hereby entered in favor of Helix and
24 against APCO and Safeco in the total amount of **\$219,166.28**.

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28 ¹ The Court's Findings of Fact and Conclusions of Law are incorporated herein to support the Court's Final Judgment.

² See *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

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6. Any claim not otherwise disposed of by this decision is dismissed.

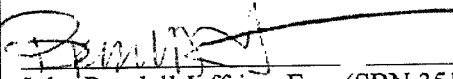
IT IS SO ORDERED

Dated this 4 day of ~~October~~^{November}, 2019.


DISTRICT COURT JUDGE

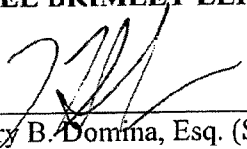
Approved as to Form and Content:

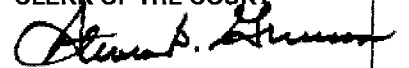
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Phone: (702) 692-8000
Attorneys for Defendants
APCO Construction and Safeco
Insurance Company of America

Submitted by:

PEEL BRIMLEY LLP


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15 jholmes@peelbrimley.com

16 *Attorneys for Plaintiff*
17 **HELIX ELECTRIC OF NEVADA, LLC**

18 **DISTRICT COURT**

19 **CLARK COUNTY, NEVADA**

20 HELIX ELECTRIC OF NEVADA, LLC, a
21 Nevada limited liability company,

22 Plaintiff,

23 vs.

24 APCO CONSTRUCTION, a Nevada corporation;
25 SAFECO INSURANCE COMPANY OF
26 AMERICA; DOES I through X; and BOE
27 BONDING COMPANIES I through X,

28 Defendants.

CASE NO. : A-16-730091-C
DEPT. NO. : XI

**NOTICE OF ENTRY OF FINDINGS
OF FACT AND CONCLUSIONS OF
LAW AND ORDER**

///

///

///

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**NOTICE OF ENTRY OF FINDINGS
OF FACT AND CONCLUSIONS OF LAW AND ORDER**

PLEASE TAKE NOTICE that the **FINDINGS OF FACT AND CONCLUSIONS OF
LAW AND ORDER** was filed on **July 8, 2019**, a copy of which is attached as Exhibit 1.

Dated this 10th day of July, 2019.

PEEL BRIMLEY LLP


CARY B. DOMINA, ESQ.
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RONALD J. COX, ESQ.
Nevada Bar No. 12723
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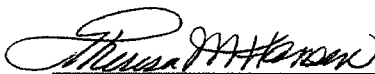
CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of **PEEL BRIMLEY, LLP**, and that on this 10th day of July, 2019, I caused the above and foregoing document, **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER**, to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☒ pursuant to NEFCR 9, upon all registered parties via the Court's electronic filing system;
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile**;
- ☐ to be hand-delivered; and/or
- ☐ other _____

to the attorney(s) and/or party(ies) listed below at the address and/or facsimile number indicated below:

Attorneys for APCO Construction and Safeco Insurance Co.
John Randall Jefferies, Esq. (rjefferies@fclaw.com)
Brandi M. Planet, Esq. (bplanet@fclaw.com)



An employee of **PEEL BRIMLEY, LLP**

EXHIBIT 1



1 FFCL

2
3 DISTRICT COURT

4 CLARK COUNTY, NEVADA

5 HELIX ELECTRIC OF NEVADA, LLC, a
6 Nevada limited liability company,

7 Plaintiff,

8 v.

9
10 APCO CONSTRUCTION, a Nevada
11 corporation; SAFECO INSURANCE
12 COMPANY OF AMERICA; DOES I through
13 X; and BOE BONDING COMPANIES, I
14 through X,

15 Defendants.

Case No.: A-16-730091-C

Dept.: XI

16 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

17 This matter having come on for non-jury trial before the Honorable Elizabeth Gonzalez
18 beginning on June 3, 2019, and continuing day to day, until its completion on June 5, 2019;
19 Plaintiff, HELIX ELECTRIC OF NEVADA, LLC ("Helix"), was represented by and through its
20 counsel, Cary B. Domina, Esq. and Ronald J. Cox, Esq. of the law firm of Peel Brimley LLP, and
21 Defendants, APCO CONSTRUCTION ("APCO") and SAFECO INSURANCE COMPANY OF
22 AMERICA ("Safeco"), were represented by and through their counsel, Randy Jefferies, Esq. of
23 Fennemore Craig; the Court having read and considered the pleadings filed by the parties; having
24 reviewed the evidence admitted during the trial; having heard and carefully considered the
25 testimony of the witnesses called to testify; having considered the oral and written arguments of
26 counsel, and with the intent of rendering a decision on all remaining claims before the Court,

RECEIVED

JUL 08 2019

CLERK OF THE COURT

1 pursuant to NRCP 52(a) and 58;¹ the Court makes the following findings of fact and conclusions
2 of law:

3 FINDINGS OF FACT

4 1. In July 2011, APCO submitted a bid for the Craig Ranch Regional Park – Phase II
5 - Project No. 10294 (“Project”) to the City of North Las Vegas (“CNLV”). At that time, the
6 anticipated Project duration was approximately 550 calendar days.
7

8 2. Helix submitted a bid of approximately \$4,600,000 to APCO for the electrical
9 work required on the Project. Helix’s estimate assumed a Project duration of 550 days.

10 3. CNLV canceled the original solicitation and ultimately requested a second round
11 of bids in October 2011. Among other things, CNLV changed the duration of the Project from 18
12 months to 12 months.
13

14 4. On or about October 26, 2011, APCO submitted its second bid to CNLV for the
15 Project with a 12-month schedule.

16 5. CNLV issued its notice to proceed to APCO on January 11, 2012. APCO started
17 work on the Project on approximately January 16, 2012.

18 6. Helix mobilized its equipment and started work full time on or about February 20,
19 2012.
20

21 7. In the spring of 2012, APCO entered into a construction agreement (the “Prime
22 Contract”) with the CNLV in which APCO agreed to serve as the general contractor on the
23 Project.

24 8. Section 6.3.2 the General Conditions of the Prime Contract which are incorporated
25 into the Subcontract, states in part:
26

27 ¹ In the pretrial statement, the parties have stipulated that the Contract time was extended from January 2013
28 into November 2013 through no fault of either APCO or Helix.

1 [a]ll other claims notices for extra work shall be filed in writing to the Construction
2 Manager prior to the commencement of such work. Written notices shall use the words
3 "Notice of Potential Claim." Such Notice of Potential Claim shall state the circumstances
4 and all reasons for the claim, but need not state the amount.

5 9. After receiving the notice of proposed award, APCO agreed to contract terms with
6 Helix subject to certain specially negotiated terms modifying the form subcontract ("Helix
7 Addendum").

8 10. As part of the negotiation, APCO agreed to purchase certain materials totaling
9 \$2,248,248 as specified by Helix, which was to be removed from Helix's original proposed scope
10 and pricing.

11 11. Helix entered into an agreement with APCO to provide certain electrical related
12 labor, materials and equipment (the "Work") to the Project for the lump sum amount of
13 \$2,356,520.

14 12. On or about April 19, 2012, APCO and Helix entered into a formal subcontract for
15 the electrical work required on the Project (the "Subcontract").

16 13. Helix's Daily Reports, Certified Pay Roll Records and the Project Sign-in Sheets
17 establish that Helix started performing work for the Project as early as January 23, 2012, and
18 mobilized on the Project on or about February 28, 2012.

19 14. Pursuant to Exhibit "A" of the Subcontract, Helix was required to supply "all
20 labor, materials, tools, equipment, hoisting, forklift, supervision, management, permits and taxes
21 necessary to complete all of the scope of work" for the 'complete electrical package' for the
22 Project.
23

24 15. Section 6.5 contains a "no damage for delay" provision.

25 If Subcontractor shall be delayed in the performance of the Work by any act or neglect of
26 the Owner or Architect, or by agents or representatives of either, or by changes ordered in
27 the Work, or by fire, unavoidable casualties, national emergency, or by any cause other
28 that [SIC] the intentional Interference of Contractor, Subcontractor shall be entitled, as
Subcontractor's exclusive remedy, to an extension of time reasonably necessary to

1 compensate for the time lost due to the delay, but only if Subcontractor shall notify
2 Contractor in writing within twenty four (24) hours after such occurrences, and only if
3 Contractor shall be granted such time extension by Owner.

4 This clause was not modified by the Helix Addendum.

5 16. Section 6.7 of the Subcontract provided in pertinent part:

6 Contractor shall not be liable to Subcontractor for delays caused by reason of fire or other
7 casualty, or on account of riots, strikes, labor trouble, terrorism, acts of God, cataclysmic
8 event, or by reason of any other event or cause beyond Contractor's control, or
9 contributed to by Subcontractor.

10 Section 6.7 was not modified by the Helix Addendum.

11 17. The Parties Contract requires proof of actual cost increase. Section 7.1—which
12 was unchanged by the Helix Addendum—provides:

13 Contractor may order or direct changes, additions, deletions or other revisions in the
14 Subcontract work without invalidating the Subcontract. No changes, additions, deletions,
15 or other revisions to the Subcontract shall be valid unless made in writing. Subcontractor
16 markup shall be limited to that stated in the contract documents in addition to the
17 direct/actual on-site cost of the work, however, no profit and overhead markup on
18 overtime shall be allowed.

19 18. Section 7.2 as modified by the Helix Addendum, provided:

20 Subcontractor, prior to the commencement of such changed or revised work, shall submit,
21 (within 5 days of Contractor's written request) to Contractor, written copies of the
22 breakdown of cost or credit proposal, including work schedule revisions, for changes,
23 additions, deletions, or other revisions in a manner consistent with the Contract
24 Documents. Contractor shall not be liable to Subcontractor for a greater sum, or
25 additional time extensions, than Contractor obtains from Owner for such additional work.

26 19. The parties negotiated additional language that was included in Section 6 by the
27 Helix Addendum:

28 In the event the schedule as set forth above is changed by Contractor for whatever reason
so that Subcontractor either is precluded from performing the work in accordance with
said schedule and thereby suffers delay, or, is not allowed the number of calendar days to
perform the work under such modified schedule and must accelerate its performance, then
Subcontractor shall be entitled to receive from Contractor payment representing the costs
and damages sustained by Subcontractor for such delay or acceleration, providing said
costs and damages are first paid to Contractor.

20. Section 4.4 of the Subcontract—as amended by the Helix Addendum provides:

1 Progress payments will be made by Contractor to Subcontractor within 10 calendar days
2 after Contractor actually receives payment for Subcontractor's work from Owner. The
3 progress payment to Subcontractor shall be one hundred percent (100%) of the value of
4 Subcontract work completed (less 10% retention) during the preceding month as
5 determined by the Owner, less such other amounts as Contractor shall determine as being
6 properly withheld as allowed under this Article or as provided elsewhere in this
7 Subcontract. The estimates of Owner as to the amount of Work completed by
8 Subcontractor shall be binding upon Contractor and Subcontractor and shall conclusively
9 establish the amount of Work performed by Subcontractor. As a condition precedent to
10 receiving partial payments from Contractor for Work performed, Subcontractor shall
11 execute and deliver to Contractor, with its application for payment, a full and complete
12 release (Forms attached) of all claims and causes of action Subcontractor may have
13 against Contractor and Owner through the date of the execution of said release, save and
14 except those claims specifically listed on said release and described in a manner sufficient
15 for Contractor to identify such claim or claims with certainty. Upon the request of
16 Contractor, Subcontractor shall provide an Unconditional Waiver of Release in form
17 required by Contractor for any previous payment made to Subcontractor. Any payments
18 to Subcontractor shall be conditioned upon receipt of the actual payments by Contractor
19 from Owner. Subcontractor herein agrees to assume the same risk that the Owner may
20 become insolvent that Contractor has assumed by entering into the Prime Contract with
21 the Owner per NRS Statutes.

22 21. The Subcontract also incorporated the Prime Contract, which included the claim
23 procedures set forth in the Contract.

24 22. Helix assigned Kurk Williams as its Project Manager. Williams never signed in
25 using APCO's sign in sheets that were maintained at the Project site. By his own admission,
26 Williams' time devoted to the Project was not accurately tracked in Helix's certified payroll
27 reports, only Helix's job cost report.

28 23. Richard Clement was Helix's Project Superintendent. Clement was on site
occasionally and signed in with APCO at the Project twice during 2012.

24 24. Clement did not work on the Project between June 11, 2012 and September 26,
25 2012. Clement only worked two weeks on the Project from September 27, 2012 to October 7,
26 2012. Clement did not work on the Project from October 8, 2012 through January 20, 2013. In
27 all of 2013, which was the extended Project time, Clement only worked 32 hours during the week
28 ending January 27, 2013.

1 25. In late January 2013, Helix assigned Clement to another project and designated
2 Rainer Prietzel, Helix's Foreman to oversee work in the field, as the new Project Superintendent
3 and foreman.

4 26. According to the Labor Commissioner, and OSHA regulations, Helix must always
5 have a project superintendent on site at all times during the Project.
6

7 27. From January 2013 to May 2013, Helix typically had a three to five man crew on
8 the Project.

9 28. In early May 2013, with the exception of a few days, Prietzel was the only Helix
10 employee on the Project, and he split his time as the Project Superintendent and self-performing
11 contract and change order work on the Project.

12 29. Prietzel remained the Project Superintendent until the end of the Project in mid-
13 October 2013.
14

15 30. Helix's original line item for its general conditions, as reflected in its pay
16 application, was \$108,040 on a Subcontract price of \$2,380,085, which represents 4.5%.

17 31. The Project encountered significant delays and was not substantially completed
18 until October 25, 2013, thus resulting in Helix claiming approximately, \$138,000 in additional
19 extended overhead costs.

20 32. The project was never abandoned by CNLV.
21

22 33. Prior to the original project completion date passing, on January 9, 2013, APCO
23 submitted its first request for an extension of time to CNLV. APCO submitted its Time Impact
24 Analysis #1 ("TIA #1") to CNLV where it sought extended general conditions and home office
25 overhead of \$418,059 (\$266,229 for general conditions and \$151,830 for home office overhead).

26 34. Helix first notified APCO in writing that it would be asserting a claim for extended
27 overhead costs on January 28, 2013 and reserved its rights to submit a claim for "all additional
28

1 costs incurred due to scheduled delays for this project" (the "Claim").

2 35. As of May 9, 2013, CNLV had not made a decision on APCO's TIA #1.

3 36. On May 9, 2013, APCO submitted a revised Time Impact Analysis ("TIA #2") to
4 CNLV seeking an additional five (5) months of compensation for general conditions and home
5 office overhead, among other claims, for a total delay claim of nine (9) months.
6

7 37. As part of TIA #2, APCO submitted Change Order Request No. 39.1 to CNLV
8 seeking compensation of \$752,499 for its extended general conditions and home office overhead
9 (\$479,205 for general conditions and \$273,294 for home office overhead).

10 38. This represented approximately seventy percent (70%) of APCO's \$1,090,066.50
11 total claim against CNLV for the 9-month delay to the Project.
12

13 39. APCO's claim did not include any amounts for its subcontractors, and APCO
14 acknowledges that as a company policy, it does not include its subcontractors' claims with its
15 own claims.

16 40. Through no fault of APCO, Helix did not take delivery of various light poles and
17 related equipment until approximately January 30, 2013.

18 41. On June 19, 2013, APCO and Helix exchanged emails regarding various Project
19 issues, including Helix's delay rates. APCO confirmed that if Helix submitted a request for
20 compensation that it would be forwarded to CNLV.
21

22 42. On June 19, 2013 Helix provided a supplemental notice of claim but did not
23 provide any back up to support its daily rates or the impacts alleged to be attributed to the delay.
24 At that time, Helix still only had Prietzel working on site.

25 43. On June 21, 2013 Helix and APCO exchanged emails related to the support for
26 Helix's claimed costs, with APCO noting that a project manager was considered home office
27 overhead. Helix indicated that its job cost reports would reflect the actual costs for the extended
28

1 overhead.

2 44. In June 2013, Helix realized the Project was still several months away from being
3 completed. According to Helix's June 19 letter entitled "Extended overhead cost", Helix's cost
4 for extended overhead was \$640/day.

5 45. The \$640/day cost is comprised of (1) \$260 for the Project Manager; (2) \$280 for
6 the Superintendent; (3) \$25 for the site trailer; (4) \$5 for the Connex box; (5) \$25 for the forklift;
7 and (6) \$45 for the truck.

8 46. The email that accompanied Helix's June 19, 2013 letter advised APCO that to
9 date, Helix's Claim totaled \$72,960, but that Helix's Claim would increase for each day the
10 Project continued past the original completion date.

11 47. Also on June 19, 2013, APCO informed Helix, by way of an email, that it "is in
12 the process of presenting CNLV with a Time Impact Analysis containing facts as to why the
13 additional costs should be paid." APCO had submitted TIA #2 to CNLV on May 9, 2013, six
14 weeks prior to this email.

15 48. In the email, APCO further advised Helix that "[o]nce we fight the battle, and
16 hopefully come out successfully, this will open the door for Helix...to present their case for the
17 same."

18 49. While APCO notified Helix that it would forward to CNLV any letter Helix
19 provided regarding its claim for extended overhead costs, APCO did not inform Helix that it
20 needed Helix's Claim immediately so it could include it with APCO's claim to CNLV. Indeed,
21 according to APCO, it would first "fight that battle, and hopefully come out successfully..."
22 which would only then "open the door for Helix...to present their case..."

23 50. On August 27, 2013, despite the fact that the Project was still ongoing, Helix
24 furnished APCO with its first invoice for its Claim in the amount of \$102,400, which constituted
25
26
27
28

1 32 weeks of extended overhead costs incurred between January 13, 2013, and August 30, 2013
2 (or 160 business days).

3 51. Helix's invoice identified an extended overhead cost of \$640/day for 32 weeks,
4 which had been provided to APCO in June 2013.

5 52. From May 6, 2013 through November 6, 2013, Prietzel was the only Helix person
6 on site. Prietzel confirmed that during that time period he was either working on completing
7 original Subcontract work for which Helix would be paid or change order work that was
8 acknowledged and paid by APCO and CNLV.
9

10 53. During construction, CNLV made changes or otherwise caused issues that
11 impacted Helix. In those instances, Helix submitted a request for additional compensation and
12 CNLV issued APCO change orders that compensated Helix for the related impacts. During the
13 extended Contract time, CNLV issued eleven change orders that resulted in additional
14 compensation to Helix through the Subcontract. Helix's pricing for the change orders included a
15 10% markup on materials and a 15% markup on labor to cover Helix's overhead.
16

17 54. APCO submitted Change Order Request No. 68 ("COR 68") to CNLV on
18 September 9, 2013, requesting compensation for Helix's Claim.

19 55. On September 16, 2013, CNLV rejected the COR 68 stating, "This COR is
20 REJECTED. The City of North Las Vegas does not have a contract with Helix Electric."
21

22 56. CNLV stated that it did not reject COR 68 for lack of backup or untimeliness.

23 57. The Construction Manager for CNLV during the Project, Joemel Llamado,
24 testified that the only reason he rejected Helix's Claim was because CNLV did not have a
25 contract with Helix. APCO should have included Helix's Claim in its own claim to CNLV since
26 Helix's Subcontract was with APCO, not CNLV.

27 58. Llamado did not look at the merits of the Claim because the Claim should have
28

1 been included with APCO's claim.

2 59. APCO informed Helix that CNLV rejected COR 68 because of lack of backup
3 documentation.

4 60. On October 2, 2013, CNLV issued its decision on APCO's request for additional
5 time and compensation. CNLV determined that the time period from January 11, 2013 to May
6 10, 2013 was an excusable but not compensable delay. APCO was not charged liquidated
7 damages, but also was not provided compensation from January thru May 10, 2013. CNLV did
8 confirm that it would pay APCO \$560,724.16 for the delay from May 10, 2013 to October 25,
9 2013. APCO accepted that determination on or about October 10, 2013.

10 61. On October 3, 2013, APCO sent Helix a letter requesting additional back-up
11 documentation for the Claim so it could resubmit the Claim to CNLV.

12 62. That letter states in relevant part:

13
14 Attached is your invoice of August 27, 2013 in the amount of \$102,400. At this time
15 APCO has not received any back-up documentation to undo the previous formal rejection
16 made by the City of North Las Vegas. If you want APCO to re-submit your request,
17 please provide appropriate back-up for review.

18 63. On October 2, 2013, CNLV and APCO entered into a settlement agreement
19 through which CNLV agreed to pay APCO \$560,724.16 for its claim submitted under TIA #2,
20 including APCO's claim for added overhead and general conditions it incurred as a result of the
21 nine-month delay to the Project.

22 64. According to that settlement agreement, APCO agreed to "forgo any claims for
23 delays, disruptions, general conditions and overtime costs associated with the weekend work
24 previously performed...and for any other claim, present or future, that may occur on the project.

25 65. APCO did not notify Helix that it had entered into this settlement agreement.

26 66. Llamado's position was that the settlement agreement resolved any and all claims
27 between CNLV and APCO for the nine-month delay to the Project, including any claims APCO's
28

1 subcontractors might have.²

2 67. Pursuant to this settlement agreement, CNLV issued Change Order No. 50 to
3 APCO and agreed to pay APCO \$560,724.16 for the added overhead and general conditions it
4 incurred as a result of the extended project completion date.

5 68. On October 3, 2013, APCO transmitted to Helix CNLV's rejection of its invoice
6 for extended overhead.

7 69. Near the end of the Project in October 2013, Pelan, notified Helix, that Helix could
8 not include the Claim for extended overhead in Helix's pay application for retention because
9 CNLV would not release the retention on the Project if there were outstanding Claims on the
10 Project.

11 70. In compliance with Pelan's instructions, on October 18, 2013, Helix submitted its
12 Pay Application for Retention only in the amount of \$105,677.01 and identified it as Pay
13 Application No. 161113-002 (the "Retention Pay App").

14 71. On October 18, 2013, Helix submitted its pay application for the time period up
15 through October 30, 2013. At that time, Helix billed its general conditions line item at 100%.

16 72. On October 18, 2013, Helix submitted its pay application for the release of
17 retention. As with prior pay applications, Helix enclosed a conditional waiver. The release was
18 conditioned on APCO issuing a final payment in the amount of \$105,677.01 and expressly
19 confirmed that there were "zero" claims outstanding. Helix signed and provided that release to
20 APCO after receiving CNLV's rejection of its extended overhead invoice.

21 73. Helix also provided to APCO a "Conditional Waiver and Release Upon Final
22 Payment" (the "Conditional Waiver") for the Retention Pay App only (i.e. Pay App No. 161113-
23

24
25
26
27 ² Joe Pelan, the Contract Manager for APCO, disagreed with this position, but APCO and Helix did not test it
28 through the claims process provided in the Prime Contract.

1 002).

2 74. Helix indicated in the Conditional Waiver that there was no "Disputed Claim
3 Amount" relating to the Retention Pay App.

4 75. Helix takes the position that the Conditional Waiver was not intended to release
5 Helix's Claim.
6

7 76. The evidence presented at trial of the circumstances surrounding the execution of
8 the Conditional Waiver do not support Helix's waiver of the Claim.

9 77. It took APCO more than a year to pay Helix for its Retention Pay App, during
10 which time, Helix made it clear to APCO that it would continue pursuing its Claim.

11 78. Between October 2013 and the end of October 2014 when APCO finally paid
12 Helix its retention, APCO forwarded Helix's Claim to CNLV on two separate occasions and
13 received multiple written notices from Helix that it maintained its Claim against APCO.
14

15 79. The project was substantially completed on October 25, 2013.

16 80. On October 31, 2013, in order to account for certain overhead items that were
17 omitted from the original Claim, Helix: (i) increased its Claim from \$102,400 to \$111,847; (ii)
18 resubmitted its Invoice to APCO; and (iii) provided additional backup information and
19 documents. Included with the revised invoice was a monthly breakdown of Helix's Claim from
20 January to August, which included the following categories of damages: (1) Project Manager; (2)
21 Project Engineer; (3) Superintendent; (4) Site trucks; (5) Project Fuel; (6) Site Trailer; (7) Wire
22 Trailer; (8) Office supplies; (9) Storage Connex boxes; (10) forklifts; (11) small tools; and (12)
23 consumables. According to the summary of the Claim, Helix charged the Project 4-hours a day
24 for its Project Manager, Kurk Williams at \$65/hour, and 4-hours a day for its Superintendent, Ray
25 Prietzel at \$70/day.
26

27 81. On or about November 5, 2013, three weeks after APCO received Helix's
28

1 Retention Pay App and Conditional Waiver, APCO submitted a revised COR 68 (68.1) to CNLV
2 seeking a total of \$111,847 for Helix's Claim.

3 82. Had APCO believed Helix's Conditional Waiver for the Retention Pay App
4 (received on October 18, 2013) waived any and all claims Helix had on the Project, including its
5 Claim for extended overhead, APCO would not have submitted revised COR 68.1 to CNLV three
6 weeks after receiving Helix's Conditional Waiver.
7

8 83. On November 18, 2013, CNLV again rejected the Change Order Request stating,
9 "This is the 2nd COR for Helix Electric's extended overhead submittal. The 1st one was submitted
10 on Sept. 9, 2013 and Rejected on Sept. 16, 2013. This submittal dated Nov. 5, 2013 is
11 REJECTED on Nov. 13, 2013."

12 84. Llamado's second rejection had nothing to do with lack of backup documents or
13 untimeliness and was rejected simply because APCO should have included Helix's Claim under
14 its own claim to CNLV.
15

16 85. By this time, APCO had already settled with CNLV to receive payment for its own
17 extended overhead costs, and in doing so, waived and released any further claims against CNLV,
18 including Helix's Claim.

19 86. As Helix had previously informed APCO it would, on or about November 13,
20 2013, Helix submitted to APCO another invoice including backup in the amount of \$26,304
21 accounting for the extended overhead costs for September and October ("COR 93").
22

23 87. APCO confirmed to Helix's Kurk Williams that there would be no APCO
24 approval unless and until CNLV approved Helix's request.

25 88. CNLV rejected COR 93.

26 89. By submitting COR 93 to CNLV on November 13, 2013, APCO once again
27 acknowledged that it knew Helix's Conditional Waiver submitted on October 18, 2013 related to
28

1 the Retention Pay App only, and did not waive Helix's Claim for extended overhead.

2 90. If APCO believed the Conditional Waiver released Helix's Claim, APCO would
3 not have continued to submit Helix's Claim to CNLV.

4 91. On January 28, 2014, APCO sent Helix's Victor Fuchs and Bob Johnson an email
5 confirming that he was meeting with CNLV to discuss the remaining change order issues on
6 February 4, 2014. Pelan testified that, CNLV advised APCO that it was rejecting Helix's claim
7 because it had no merit and Helix only had one person on the Project while completing Helix's
8 contract work in 2013. Pelan reported CNLV's position to Helix.³

10 92. The Subcontract incorporated APCO's prime contract with CNLV in Section 1.1,
11 which sets forth CNLV's claims procedure for requests for payment that are escalated to claims.
12 Helix did not request that APCO initiate these proceedings on its behalf regarding the claim for
13 extended overhead.

14 93. On March 31, 2014, CNLV and APCO agreed that there would be no further
15 COR's submitted on the Project.

17 94. On April 16, 2014, Helix's Victor Fuchs threatened to convert the outstanding
18 issues into a claim if Helix's retention was not released per its pay application and release that
19 were submitted on October 18, 2013.

20 95. APCO admitted that on June 10, 2014, it received final retention from CNLV.

21 96. However, because APCO had not paid Helix its Retention or its Claim, Helix sent
22 APCO another demand for payment on September 26, 2014, seeking payment for both its
23 Retention and the Claim.

24 97. CNLV issued the formal notice of completion of the project on July 8, 2014.

27 ³ While the Court finds Pelan's testimony on this issue credible, the testimony of Llamado
28 differs.

1 98. On October 21, 2014, APCO issued check number 1473 in the amount of
2 \$105,679, which represented final payment of Helix's retention, in accordance with the October
3 18, 2013 retention billing and related final release.⁴

4 99. On October 29, 2014, APCO sent Helix an email requesting that it sign a new
5 Conditional Waiver and Release Upon Final Payment which included Helix's Retention only, but
6 did not include any disputed amount for the Claim.
7

8 100. Attached to that email was a copy of the Retention Check APCO informed Helix it
9 could pickup once it received the new executed Conditional Release.

10 101. Upon receiving the new Conditional Waiver and before picking up the Retention
11 Check, Helix notified APCO that it was not going to sign the new Conditional Waiver without
12 reserving a right to its Claim.
13

14 102. APCO invited Helix to revise the new Conditional Waiver as it saw fit, and Helix
15 provided an unsigned copy of it seeking full payment of the Claim and the Retention for a total
16 amount of \$243,830.

17 103. APCO declined to pay the Claim, and after additional discussions between Helix
18 and APCO, it was decided that Helix would exchange for the Retention Check an Unconditional
19 Waiver and Release Upon Final Payment seeking payment of \$105,679 for Retention, and
20 reserving as its Disputed Claim, \$138,151.
21

22 104. As part of the "Disputed Claim" field, Helix referenced additional correspondence
23 which it had incorporated into the Unconditional Waiver and Release.

24 105. Helix included a letter dated October 30, 2014 clarifying that while it was
25 demanding its retention payment, it was also seeking payment for its Claim in the amount of
26

27 ⁴ Because of this lengthy delay in payment, Helix is entitled to interest on the retention amount under NRS
28 338.

1 \$138,151 for which it also provided a final invoice.

2 106. In one such email, Helix writes, "Joe, please accept this email as a 30 day
3 extension of time for the execution of [the] promissory note attached...In good faith we [are]
4 extending this time per your request, so you can come up with an arrangement to repay the
5 outstanding amount that is past due."
6

7 107. APCO never executed the Promissory Note or paid Helix its Claim.

8 108. On October 29, 2014, APCO tendered the check and another signed release for
9 final payment. That release mirrored the one that Helix submitted in October 2013.

10 109. On October 29, 2014, Helix's Victor Fuchs sent an email to Pelan stating: "this is
11 not going to work." Pelan responded that same day stating: "Victor, make changes for me to
12 approve. Thanks."
13

14 110. On October 18, 2013, the Senior Vice President of Helix, Robert D. Johnson,
15 signed a "Conditional Waiver and Release Upon Final Payment".

16 111. Helix received the funds on October 29, 2014.

17 112. On October 30, 2014, the day after negotiating the final payment check, Helix
18 tendered a signed final lien release that purported to reserve Helix's extended overhead invoices
19 in the amount of \$138,151.
20

21 113. Helix has established how certain of its costs increased due to the extended time
22 on the Project given its demobilization and reduction in crew size. Prietzel was the only person
23 on site after May 6, 2013 and he was completing base Subcontract work and change order work
24 that was paid by CNLV.

25 114. After weighing the testimony of the witnesses and a review of the admitted
26 documents, the Court finds, that the delay was not so unreasonable to amount to abandonment
27
28

1 and that therefore the provision limiting damages after a delay does not permit the recovery of
2 extended general conditions.

3 115. Since CNLV determined that the delays through May 13, 2013 were not
4 compensable, the only time period that APCO recovered payment for its delay costs was May 13,
5 2013 through October 13, 2013. During that same compensable time period, Helix's reasonable
6 costs totaled \$43,992.39.⁵ Although Helix was earning revenue and being paid during the time
7 period for the Work and certain approved change orders, APCO by its settlement with CNLV,
8 impaired Helix's ability to pursue the Claim.
9

10 116. Helix has supported its claim for certain additional costs. As Prietzel was paid for
11 his time on site under the approved change orders the claimed expense for acting as a
12 superintendent (supervising only himself) is not appropriate.
13

14 117. After weighing the testimony of the witnesses and a review of the admitted
15 documents, the Court finds, Helix has established that it suffered damages as a result of the delay
16 in project completion in the amount of \$43,992.39.

17 118. If any findings of fact are properly conclusions of law, they shall be treated as if
18 appropriately identified and designated.
19

20 CONCLUSIONS OF LAW

- 21 1. The Subcontract was a valid contract between Helix and APCO.

22
23 ⁵ The Court has utilized the summary used as D5 during the trial with the deletion of the line item
"Superintendent". Those totals for the compensable months with that modification are:

24 May 13	\$8501.05
25 June 13	\$7124.90
26 July 13	\$8270.69
27 August 13	\$6785.04
28 September 13	\$6170.56
October 13	\$7140.15
TOTAL	\$43992.39

1 2. The Court finds that the Conditional Waiver Helix submitted to APCO on or about
2 October 2013 did not constitute a waiver of Helix's Claim.

3 3. APCO's own conduct establishes that it knew Helix was not waiving its Claim as
4 it continued to submit Helix's Claim to CNLV after receiving the Conditional Waiver.

5 4. Helix provided sufficient evidence establishing that it incurred damages as a result
6 of the Project schedule extending nine months past its original completion date.

7 5. APCO had a duty to include Helix's Claim in its own claim to CNLV or otherwise
8 preserve the Claim when it settled, which it failed to do.

9 6. APCO's internal policy and decision to keep Helix's Claim separate from its own
10 claim impaired Helix's ability to pursue the Claim.

11 7. When APCO entered into the settlement agreement with CNLV on October 3,
12 2013 without Helix's knowledge, CNLV took the position that APCO waived and released any
13 and all claims arising from the nine month Project delay, including Helix's Claim.

14 8. In every contract, there is an implied covenant of good faith and fair dealing.

15 9. APCO's impairment of Helix's Claim constitutes a breach of the covenant of good
16 faith and fair dealing implied in the Subcontract.

17 10. APCO breached the covenant of good faith and fair dealing when it, without
18 notifying Helix, settled its claim with CNLV for extended general conditions, impairing Helix
19 from pursuing any pass-through claims to CNLV for its Claim, but continued to submit Helix's
20 Claim to CNLV knowing that CNLV rejected it because it had no contractual privity with Helix,
21 and now APCO had released any and all claims against CNLV.

22 11. Helix is entitled to judgment against APCO under its claim for Breach of Implied
23 Covenant of Good Faith and Fair Dealing and its damages are the damages it has established for
24

1 in the amount of \$43,992.39.⁶

2 12. Because the Project was a public works project, it was governed under NRS
3 Chapter 338.

4 13. Under NRS 338.490, a conditional waiver and release can only release payments
5 for work which is the subject of the payment application to which the wavier and release
6 corresponds.
7

8 14. The Conditional Waiver Helix provided APCO on October 18, 2013, was for
9 retention only and expressly referred to the Retention Pay App (Pay Application No. 161113-022)
10 which sought retention only.

11 15. The Retention Pay App did not include Helix's Claim.

12 16. Therefore, because by statute, the Conditional Waiver can only release work that is
13 the subject of the Retention Pay App, it did not constitute a waiver and release of Helix's Claim.
14

15 17. NRS 338.565 states in relevant part:

16 If a contractor makes payment to a subcontractor or supplier more
17 than 10 days after the occurrence of any of the following acts or
18 omissions: (a) the contractor fails to pay his or her subcontractor or
19 supplier in accordance with the provisions of subsection 1 of NRS
20 338.550...the contractor shall pay to the subcontractor or supplier,
21 in addition to the entire amount of the progress bill or the retainage
22 bill or any portion thereof, interest from the 10th day on the amount
23 delayed, at a rate equal to the lowest daily prime rate...plus 2
24 percent, until payment is made to the subcontractor or supplier.

25 18. NRS 338.550(1) required APCO to pay Helix its retention within 10 days of
26 receiving its retention payment from CNLV.

27 ⁶ The Court has not awarded separate damages for the breach of contract claim as those would be duplicative
28 of this award.

1 19. APCO admits it received its retention payment from CNLV on June 10, 2014, yet
2 it did not pay Helix its retention until October 30, 2014, more than four months later and in
3 violation of NRS 338.550(1).

4 20. APCO was required to pay Helix its retention amount of \$105,677.01, in addition
5 to interest at the rate of prime plus 2 percent from June 10, 2014 through October 30, 2014.
6
7 APCO failed to do so.

8 21. After providing APCO with the Conditional Waiver, Helix incurred additional
9 damages that could not be waived by way of the Conditional Waiver (i.e. the interest on its
10 wrongfully withheld retention).

11 22. On June 10, 2014, APCO received final retention from CNLV.

12 23. APCO failed to pay Helix its retention in the amount of \$105,679 until October 29,
13 2014.
14

15 24. Pursuant to NRS 338.550(1), APCO was required to pay Helix its retention no
16 later than June 21, 2014.

17 25. As a result of APCO's failure, and pursuant to NRS 338.565(1), APCO is required
18 to pay Helix interest on \$105,677.01 from June 22, 2014 through October 28, 2014, at a rate of
19 5.25% for a total of \$1,960.85.

20 26. Even if the pay-if-paid clause was enforceable, APCO cannot rely upon it to shield
21 itself from liability to Helix when its decision to submit Helix's Claim separately from its claim
22 led to CNLV rejecting Helix's Claim, and APCO's settlement with CNLV forever barred APCO
23 from receiving payment from CNLV for Helix's Claim.
24

25 27. To the extent the delays were caused by CNLV, APCO is still liable to Helix since
26 it impaired those claims in contradiction to NRS 624.628(3)(c) by entering into a settlement
27 agreement with CNLV on October 2, 2013.
28

1 28. Because this Court has found APCO breached the Subcontract and breached the
2 covenant of good faith and fair dealing, Helix is entitled to judgment against Safeco and the
3 Payment Bond as well.

4 29. NRS 339.025(1)(b) provides the following:
5

6 1. Before any contract,..., exceeding \$100,000 for any project
7 for the new construction, repair or reconstruction of any public
8 building or other public work or public improvement of any
9 contracting body is awarded to any contractor, the contractor shall
furnish to the contracting body the following bonds which become
binding upon the award of the contract to the contractor;

10 a.

11 b. A payment bond in an amount to be fixed by the
12 contracting body, but not less than 50 percent of the contract
13 amount, conditioned upon the faithful performance of the
14 contract in accordance with the plans, specifications and
15 conditions of the contract. The bond must be solely for the
protection of claimants supplying labor or materials to the
contractor to whom the contract was awarded, or to any of his
or her subcontractors, in the prosecution of the work provided
for in such contract.

16 30. NRS 339.035(1) provides:

17 ...any claimant who has performed labor or furnished material in
18 the prosecution of the work provided for in any contract for which
19 a payment bond has been given pursuant to the provisions of
20 subsection 1 of NRS 339.025, and who has not been paid in full
21 before the expiration of 90 days after the date on which the
22 claimant performed the last of such labor or furnished the last of
23 such materials for which the claimant claims payment, may bring
an action on such payment bond in his or her own name to recover
any amount due the claimant for such labor or material, and may
prosecute such action to final judgment and have execution on the
judgment.

24 31. SAFECO issued a Labor and Material Payment Bond, Bond No. 024043470,
25 wherein APCO is the principal and SAFECO is the surety.

26 32. Helix provided Work to the Project and remains unpaid for the same.

27 33. Therefore, Helix is a claimant against the Bond and may execute a judgment
28

1 against the same.

2 34. Section 20.5 of the Subcontract provides that “ [i]n the event either party employs
3 an attorney to institute a lawsuit or to demand arbitration for any cause arising out of the
4 Subcontract Work or the Subcontract, or any of the Contract Documents, the prevailing party
5 shall be entitled to all costs, attorney’s fees and any other reasonable expenses incurred therein.”
6

7 35. This provision was not modified by the Helix Addendum.

8 36. The Court finds that Helix is the prevailing party and is entitled to an award of its
9 attorneys’ fees and costs.

10 37. If any conclusions of law are properly findings of fact, they shall be treated as if
11 appropriately identified and designated.

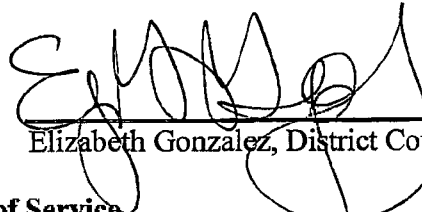
12 Based upon the foregoing Findings of Fact and Conclusions of Law **IT IS HEREBY**
13 **ORDERED, ADJUDGED AND DECREED** as follows:
14

- 15 1. **IT IS HEREBY ORDERED** that, as to Plaintiff’s Claim for Breach of Contract
16 against APCO, this Court finds in favor of Plaintiff but as the Claim was impaired
17 awards damages under the Breach of the Implied Covenant of Good Faith and
18 Fair Dealing, rather than awarding duplicative damages;
- 19 2. **IT IS FURTHER ORDERED** that, as to Plaintiff’s Claim for Breach of the
20 Implied Covenant of Good Faith and Fair Dealing against APCO, this Court finds
21 in favor of Plaintiff and awards damages in the amount of \$43,992.39 together
22 with interest as provided by law and taxable costs of suit;
- 23 3. **IT IS FURTHER ORDERED** that, as to Plaintiff’s Claim for violations of NRS
24 338 against APCO, this Court finds in favor of Plaintiff in the amount of
25 \$1,960.85;⁷
26
27

28 ⁷ These damages are in addition to those awarded under the claim of Breach of the Implied Covenant of Good


- 1 4. **IT IS FURTHER ORDERED** that, given the Court's findings against APCO,
2 the Court finds in favor of Plaintiff and against Safeco and the Bond;
3 5. **IT IS FURTHER ORDERED** that this Court will address any issues of
4 attorneys' fees through motions that may be filed with the Court.
5 6. Any claim not otherwise disposed of by this decision is dismissed.
6

7 DATED this 8th day of July, 2019.
8

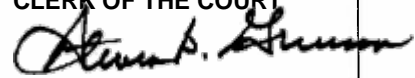
9 
10 Elizabeth Gonzalez, District Court Judge
11

12 **Certificate of Service**

13 I hereby certify that on the date filed, a copy of the foregoing Scheduling Order and
14 Order Setting Civil Jury Trial, Pre-Trial and Calendar Call was electronically served, pursuant to
15 N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing
16 Program.
17

18 
19 Dan Kutinac
20
21
22
23
24
25
26
27
28

Faith and Fair Dealing.



1 ASTA

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

2 Brandi M. Planet, Esq. (Bar No. 11710)

Christopher H. Byrd, Esq. (Bar No. 1633)

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4 Las Vegas, NV 89101

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6 bplanet@fclaw.com

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7 Attorneys for APCO Construction, Inc.

and Safeco Insurance Company of America

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 HELIX ELECTRIC OF NEVADA, LLC, a Case No.: A-16-730091-C

11 Nevada limited liability company,

Dept. No.: XI

12 Plaintiff,

13 v.

CASE APPEAL STATEMENT

14 APCO CONSTRUCTION, a Nevada
15 corporation; SAFECO INSURANCE
16 COMPANY OF AMERICA; DOES I through X;
17 and BOE BONDING COMPANIES, I through
X.

18 Defendants.

19 1. Appellants are: APCO Construction, Inc. and Safeco Insurance Company of
20 America.; Respondent is: Helix Electric of Nevada, LLC.

21 2. This is an appeal from Final Judgment, written notice of entry of which was given
22 November 6, 2019; the Findings of Fact and Conclusions of Law incorporated by reference in the
23 Final Judgment, written notice of entry of which was given on July 10, 2019, and related orders.

24 3. The name and address of counsel for the Appellants is as follows:

25 John Randall Jefferies, Esq.

Brandi M. Planet, Esq.

26 Christopher H. Byrd, Esq.

FENNEMORE CRAIG, P.C.

27 300 S. Fourth Street, Suite 1400

Las Vegas, NV 89101

28 Telephone: (702) 692-8000; Facsimile: (702) 692-8099

1 E-mail: rjefferies@fclaw.com
2 bplanet@fclaw.com
3 cbyrd@fclaw.com

Attorneys for APCO Construction, Inc. and Safeco Insurance Company of America

- 4 4. The name and address of Respondent's trial counsel is as follows:

5 Cary B. Domina, Esq.
6 Ronald J. Cox, Esq.
7 Jeremy Holmes, Esq.
8 Peel Brimley LLP
9 3333 E. Serene Avenue Suite 200
10 Henderson, NV 89074
11 Telephone: (702) 990-7272; Facsimile: (702) 990-7273
12 E-mail: cdomina@peelbrimley.com
13 rcox@peelbrimley.com
14 jholmes@peelbrimley.com
15 *Attorneys for Helix Electric of Nevada, LLC*

- 16 5. Appellants were not granted leave to proceed in forma pauperis.

- 17 6. Proceedings in the District Court commenced on January 12, 2016.

18 7. The original action brought by Respondent was for breach of contract, breach of the
19 implied covenant of good faith and fair dealing, unjust enrichment or in the alternative quantum
20 meruit, violation of NRS 338.550 and claim against payment bond. This is an appeal from the
21 Final Judgment written notice of entry of which was given November 6, 2019; the Findings of
22 Fact and Conclusions of Law incorporated by reference therein, written notice of which was given
23 on July 10, 2019; and all orders prior to the entry of the Final Judgment, including but not limited
24 to the following: (A) Denial of Appellants' Omnibus Motion in Limine 1-2; (B) Denial of
25 Appellants' Motion in Limine No. 3 to Preclude the Introduction of Evidence Related to Helix's
26 Extended General Conditions and Motion in Limine No. 4 to Preclude Any Evidence of Helix's
27 Accounting Data or Job Cost Reports; (C) Denial of Appellants' Motion to Exclude the Testimony
28 of Kurt Williams; (D) Denial of Appellants' Motion for Clarification and or Amendment of
Findings of fact and Conclusions of Law; and (E) Grant of Respondent's Motion for Attorneys'
Fees, Costs and Interest.

On July 20, 2018, Appellants filed their Omnibus Motion in Limine 1-2. The District Court
held a hearing on the Omnibus Motion in Limine 1-2 on November 28, 2018. The ruling on this
motion was deferred until the time of trial. On December 23, 2018, Appellants filed their

1 combined Motion in Limine No. 3 to Preclude the Introduction of Evidence Related to Helix's
2 Extended General Conditions and Motion in Limine No. 4 to Preclude Any Evidence of Helix's
3 Accounting Data or Job Cost Reports. The District Court held a hearing on Motions in Limine 3
4 and 4 on May 13, 2019 and denied the motions. On May 22, 2019, Appellants filed their Motion
5 to Exclude the Testimony of Kurt Williams. The District Court held a hearing on the Motion to
6 Exclude the Testimony of Kurt Williams on June 3, 2019 and denied the motion.

7 On July 15, 2019, Appellants filed their Motion for Clarification. The District Court held a
8 hearing on the Motion for Clarification on August 19, 2019 and denied the motion. Respondent
9 filed its Motion for Attorneys' Fees, Costs and Interest on July 31, 2019. The District Court held a
10 hearing on the Motion For Attorneys' Fees, Costs and Interest on September 30, 2019. By Final
11 Judgment, the District Court awarded Respondent 1) \$43,992.39 in damages for the breach of
12 contract and breach of the implied covenant of good faith and fair dealing claims; 2) \$1,960.85 for
13 violations of NRS 338; 3) \$149,336.06 in attorneys fees; 4) \$8,949.40 in costs; and 5) \$14,927.58
14 in interest.

15 8. There has been no appeal or writ proceeding in the Supreme Court related to the
16 above-captioned matter.

17 9. This appeal does not involve child custody or visitation.

18 10. This appeal involves issues with the possibility of settlement.

19 Dated this 6th day of December, 2019

20 **FENNEMORE CRAIG, P.C.**

21 /s/ John Randall Jefferies

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

23 Brandi M. Planet, Esq. (Bar No. 11710)

24 Christopher H. Byrd, Esq. (Bar No. 1633)

25 *Attorneys for APCO Construction, Inc.*

26 *and Safeco Insurance Company of America*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Fennemore Craig, P.C., and further certify that
3 the **CASE APPEAL STATEMENT** was served by electronic filing via Odyssey File & Serve e-
4 filing system and serving all parties with an email address on record, pursuant to the Administrative
5 Order 14-2 and Rule 9 N.E.F.C. as follows:

6 **Other Service Contacts:**

7 Amanda Armstrong aarmstrongatpeelbrimley.com

8 Cary B. Domina cdominaatpeelbrimley.com

9 Rosey Jeffrey rjeffreyatpeelbrimley.com

10 Terri Hansen thansenatpeelbrimley.com

11 Chelsie A. Adams cadamsatfclaw.com

12 Mary Bacon mbaconatspencerfane.com

13 Trista Day tdayatfclaw.com

14 Jeremy Holmes jholmesatpeelbrimley.com

15 Laura Hougard LHougardatfclaw.com

16 John Randy Jefferies rjefferiesatfclaw.com

17 Cheryl Landis clandisatfclaw.com

18 Adam Miller amilleratspencerfane.com

19 Brandi Planet bplanetatfclaw.com

20 Kassi Rife KRifeatfclaw.com

21 Dated this 6th day of December, 2019.

22 /s/ Trista Day

23 An Employee of Fennemore Craig, P.C.

CASE SUMMARY**CASE NO. A-16-730091-B**

Helix Electric of Nevada LLC, Plaintiff(s)
vs.
APCO Construction, Defendant(s)

§
§
§
§
§
§

Location: **Department 11**
 Judicial Officer: **Gonzalez, Elizabeth**
 Filed on: **01/12/2016**
 Case Number History: **A-16-730091-C**
 Cross-Reference Case Number: **A730091**

CASE INFORMATION**Statistical Closures**

07/09/2019 Judgment Reached (bench trial)

Case Type: **Other Business Court Matters**

Case Status: **07/09/2019 Closed**






DATE**CASE ASSIGNMENT****Current Case Assignment**

Case Number A-16-730091-B
 Court Department 11
 Date Assigned 01/28/2019
 Judicial Officer Gonzalez, Elizabeth

PARTY INFORMATION

		<i>Lead Attorneys</i>
Plaintiff	Helix Electric of Nevada LLC	Domina, Cary <i>Retained</i> 702-990-7272(W)
Defendant	APCO Construction	Jefferies, John R. <i>Retained</i> 702-408-3400(W)
	Safeco Insurance Company of America	Jefferies, John R. <i>Retained</i> 702-408-3400(W)

DATE**EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

01/12/2016	 Complaint Filed By: Plaintiff Helix Electric of Nevada LLC <i>Complaint</i>
01/19/2016	 Summons Filed by: Plaintiff Helix Electric of Nevada LLC <i>Summons</i>
01/20/2016	 Summons Filed by: Plaintiff Helix Electric of Nevada LLC <i>Summons</i>
03/16/2016	 Stipulation and Order Filed by: Defendant APCO Construction <i>Stipulation and Order to Stay Case Pending Arbitration</i>
03/17/2016	 Notice of Entry of Stipulation and Order

CASE SUMMARY

CASE NO. A-16-730091-B

Filed By: Plaintiff Helix Electric of Nevada LLC
Notice of Entry of Stipulation and Order

03/03/2017



Motion

Filed By: Plaintiff Helix Electric of Nevada LLC
Helix Electric of Nevada, LLC's Motion to Lift Stay

03/28/2017



Notice of Entry of Stipulation and Order

Filed By: Plaintiff Helix Electric of Nevada LLC
Notice of Entry of Stipulation and Order

03/28/2017



Stipulation and Order

Filed by: Defendant APCO Construction
Stipulation and Order to Lift Stay

04/11/2017



Answer to Complaint

Filed by: Defendant APCO Construction
Apco Constructions' Answer to Plaintiff's Complaint

04/11/2017



Initial Appearance Fee Disclosure

Filed By: Defendant APCO Construction
Defendants' Initial Appearance Fee Disclosure

04/11/2017



Motion to Dismiss

Filed By: Defendant APCO Construction
Safeco's Motion to Dismiss Plaintiff's Claims Against Bond and Countermotion for Fees and Costs of Motion

04/11/2017



Initial Appearance Fee Disclosure

Filed By: Defendant Safeco Insurance Company of America
Defendants' Initial Appearance Fee Disclosure

04/28/2017



Opposition to Motion to Dismiss

Filed By: Plaintiff Helix Electric of Nevada LLC
Helix Electric of Nevada, LLC's Opposition to Safeco Insurance Company of America's (i) Motion to Dismiss; and (ii) Countermotion for Fees and Costs

05/10/2017



Reply to Motion

Filed By: Defendant Safeco Insurance Company of America
Defendants' Reply in Support of Motion to Dismiss Plaintiff's Claims Against Bond and Countermotion for Fees and Costs of Motion

05/23/2017



Motion for Partial Summary Judgment

Filed By: Defendant APCO Construction; Defendant Safeco Insurance Company of America
Defendants' Motion for Partial Summary Judgment

05/23/2017



Initial Appearance Fee Disclosure

Filed By: Defendant APCO Construction; Defendant Safeco Insurance Company of America
Initial Appearance Fee Disclosure

06/09/2017



Opposition to Motion For Summary Judgment

Filed By: Plaintiff Helix Electric of Nevada LLC
Helix Electric of Nevada, LLC's Opposiiton to APCO Construction's Motion for Partial

CASE SUMMARY

CASE NO. A-16-730091-B

Summary Judgment

06/12/2017	 Commissioners Decision on Request for Exemption - Granted <i>Commissioner's Decision on Request for Exemption - Granted</i>
06/19/2017	 Arbitration File <i>Arbitration File</i>
06/21/2017	 Reply in Support Filed By: Defendant APCO Construction; Defendant Safeco Insurance Company of America <i>Defendants' Reply in Support of Motion for Partial Summary Judgment</i>
07/06/2017	 Stipulation and Order Filed by: Plaintiff Helix Electric of Nevada LLC <i>Stipulation and Order to Continue Hearing</i>
07/11/2017	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Helix Electric of Nevada LLC <i>Notice of Entry of Stipulation and Order</i>
07/14/2017	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Helix Electric of Nevada LLC <i>Notice of Entry of Stipulation and Order</i>
09/07/2017	 Order Denying Motion Filed By: Plaintiff Helix Electric of Nevada LLC <i>Order Denying Motion for Partial Summary Judgment</i>
09/07/2017	 Order Denying Motion Filed By: Plaintiff Helix Electric of Nevada LLC <i>Order Denying Motion to Dismiss and Motion for Fees and Costs</i>
09/07/2017	 Notice of Entry of Order Filed By: Plaintiff Helix Electric of Nevada LLC <i>Notice of Entry of Order</i>
09/07/2017	 Notice of Entry of Order Filed By: Plaintiff Helix Electric of Nevada LLC <i>Notice of Entry of Order</i>
10/26/2017	 Joint Case Conference Report Filed By: Plaintiff Helix Electric of Nevada LLC <i>Joint Case Conference Report</i>
01/03/2018	 Scheduling Order <i>Scheduling Order</i>
01/24/2018	 Order Setting Civil Non-Jury Trial <i>Order Setting Civil Non-Jury Trial and Calendar Call</i>
07/09/2018	 Notice of Appearance <i>Notice of Appearance and Request for Special Notice</i>

CASE SUMMARY

CASE NO. A-16-730091-B

07/20/2018	 Motion in Limine Filed By: Defendant APCO Construction <i>Apco Construction, Inc. and Safeco Insurance Company of America's Omnibus Motion in Limine 1-2</i>
08/03/2018	 Amended Order Setting Civil Non-Jury Trial <i>Amended Order Setting Civil Non-Jury Trial</i>
08/20/2018	 Stipulation and Order Filed by: Defendant APCO Construction <i>Stipulation and Order to Move Trial Date Only</i>
08/21/2018	 Notice of Entry of Stipulation and Order <i>Notice of Entry of Stipulation and Order to Move Trial Date Only</i>
11/20/2018	 Opposition to Motion in Limine Filed By: Plaintiff Helix Electric of Nevada LLC <i>Helix Electric of Nevada, LLC's Opposition to APCO Construction's Omnibus Motion in Limine 1-2</i>
11/21/2018	 Reply in Support <i>Apco Construction, Inc. and Safeco Insurance Company of America's Reply in Support of its Omnibus Motion in Limine 1-2</i>
11/27/2018	 Motion to Continue Trial Filed By: Defendant APCO Construction; Defendant Safeco Insurance Company of America <i>Apco Construction, Inc. and Safeco Insurance Company of America's Motion to Continue Trial (Second Request)</i>
11/29/2018	 Declaration Filed By: Plaintiff Helix Electric of Nevada LLC <i>Declaration of Victor Fuchs in Support of Helix Electric of Nevada, LLC's Opposition to APCO Construction's Omnibus Motion in Limine 1-2</i>
12/14/2018	 Opposition to Motion Filed By: Plaintiff Helix Electric of Nevada LLC <i>Helix Electric of Nevada, LLC's Opposition to APCO Construction and Safeco Insurance Company of America's Motion to Continue Trial</i>
12/23/2018	 Motion in Limine Filed By: Defendant APCO Construction; Defendant Safeco Insurance Company of America <i>Apco Construction, Inc. And Safeco Insurance Company Of America's Motion In Limine No. 3 To Preclude The Introduction Of Evidence Realated To Helix's Extened General Conditions And Motion In Limine No. 4 To Preclude Any Evidence Of Helix's Accounting Data Or Job Cost Reports</i>
01/02/2019	 Reply in Support Filed By: Defendant APCO Construction <i>Apco Construction, Inc.'s Reply in Support of its Motion to Continue Trial</i>
01/05/2019	 Notice of Change of Hearing <i>Notice of Change of Hearing</i>

CASE SUMMARY

CASE NO. A-16-730091-B

01/07/2019	Case Reassigned to Department 18 <i>Judicial Reassignment - From Judge Villani to Judge Holthus</i>
01/08/2019	 Peremptory Challenge Filed by: Plaintiff Helix Electric of Nevada LLC <i>Peremptory Challenge</i>
01/10/2019	 Notice of Department Reassignment <i>Notice of Department Reassignment</i>
01/25/2019	 Notice of Appearance Party: Defendant APCO Construction <i>Notice of Appearance</i>
01/25/2019	 Request to Transfer to Business Court Filed by: Plaintiff Helix Electric of Nevada LLC <i>Request to Transfer to Business Court</i>
01/28/2019	 Notice of Department Reassignment <i>Notice of Department Reassignment</i>
01/29/2019	 Business Court Order <i>Business Court Order</i>
01/30/2019	 Substitution of Attorney <i>Substitution of Counsel</i>
01/30/2019	 Consent <i>Consent to Substitution of Counsel</i>
03/04/2019	 Notice of Withdrawal of Attorney Filed by: Defendant APCO Construction; Defendant Safeco Insurance Company of America <i>Notice of Withdrawal of Co-Counsel of Record</i>
03/07/2019	 Business Court Order <i>Business Court Scheduling Order and Order Setting Civil Bench Trial and Calendar Call</i>
03/19/2019	 Order
03/25/2019	 Stipulation and Order Filed by: Plaintiff Helix Electric of Nevada LLC <i>Stipulation and Order to Extend Opposition and Reply Deadlines and Schedule Hearing</i>
03/25/2019	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Helix Electric of Nevada LLC <i>Notice of Entry of Stipulation and Order</i>
03/29/2019	 Opposition to Motion in Limine Filed By: Plaintiff Helix Electric of Nevada LLC <i>Helix Electric of Nevada, LLC's Opposition to APCO Construction's and Safeco Insurance Company of America's Motion in Limine No. 3 to Preclude the Introduction of Evidence Related to Helix's Extended General Conditions and Motion in Limine No. 4 to Preclude any Evidence of Helix's Accounting Date or Job Cost Reports</i>

CASE SUMMARY

CASE NO. A-16-730091-B

03/29/2019



Appendix

Filed By: Plaintiff Helix Electric of Nevada LLC
Appendix to Helix Electric of Nevada, LLC's Opposition to APCO Construction's and Safeco Insurance Company of America's Motion in Limine No. 3 to Preclude the Introduction of Evidence Related to Helix's Extended General Conditions and Motion in Limine No. 4 to Preclude any Evidence of Helix's Accounting Date or Job Cost Reports

04/08/2019



Reply in Support

Filed By: Defendant APCO Construction
APCO Construction, Inc. and Safeco Insurance Company of America's Reply in Support of: Motion in Limine No. 3 to Preclude the Introduction of Evidence Related to Helix's Extended General Conditions and Motion in Limine No. 4

05/16/2019



Answer

Safeco Insurance Company of American's Answer to Plaintiff's Complaint

05/22/2019



Motion to Exclude

Filed By: Defendant APCO Construction; Defendant Safeco Insurance Company of America
APCO Construction, Inc. and Safeco Insurance Company of America's Motion to Exclude the Testimony of Kurt Williams on Order Shortening Time

05/24/2019



Joint Pre-Trial Memorandum

Joint Pre-Trial Memorandum

05/29/2019



Deposition

Filed By: Plaintiff Helix Electric of Nevada LLC
Plaintiff's Designation of Deposition Testimony

05/30/2019



Deposition

Filed By: Plaintiff Helix Electric of Nevada LLC
Plaintiff's Supplemental Designation of Deposition Testimony

05/30/2019



Affidavit of Service

Filed By: Plaintiff Helix Electric of Nevada LLC
Affidavit/Declaration of Service - Joemel Llamado

05/30/2019



Deposition

Filed By: Defendant APCO Construction; Defendant Safeco Insurance Company of America
Defendants' Designation of Deposition Testimony

05/31/2019



Opposition to Motion

Filed By: Plaintiff Helix Electric of Nevada LLC
Helix Electric of Nevada, LLC's Opposition to APCO Construction's and Safeco Insurance Company of America's Motion to Exclude the Testimony of Kurt Williams

05/31/2019



Pre-trial Memorandum

Filed by: Defendant APCO Construction
APCO Construction, Inc. and Safeco Insurance Company of America's Pre-Trial Bench Memorandum

05/31/2019



Trial Memorandum

Filed by: Defendant APCO Construction

CASE SUMMARY

CASE NO. A-16-730091-B

APCO Construction, Inc.'s Trial Memorandum Pursuant to EDCR 7.27 re: Potential Evidentiary Issues

05/31/2019	 Finding of Fact and Conclusions of Law Filed By: Defendant APCO Construction <i>APCO Consturction, Inc.'s and Safeco Insurance Company of America's Proposed Findings of Fact and Conclusions of Law</i>
06/05/2019	 Receipt <i>Receipt of Trial Exhibits</i>
06/05/2019	 Receipt <i>Receipt of Deposition Transcripts</i>
06/05/2019	 Receipt <i>Receipt of Deposition Transcripts</i>
07/08/2019	 Findings of Fact, Conclusions of Law and Judgment <i>Findings of Fact and Conclusions of Law</i>
07/09/2019	 Order to Statistically Close Case <i>Civil Order to Statistically Close Case</i>
07/10/2019	 Notice of Entry of Order Filed By: Plaintiff Helix Electric of Nevada LLC <i>Notice of Entry of Findings of Facts and Conclusions of Law and Order</i>
07/12/2019	 Memorandum of Costs and Disbursements Filed By: Plaintiff Helix Electric of Nevada LLC <i>Helix Electric of Nevada, LLC's Memorandum of Costs and Disbursements</i>
07/15/2019	 Motion for Clarification Filed By: Defendant APCO Construction <i>APCO Construction, Inc.'s and Safeco Insurance Company of America's Motion for Clarification and/or Amendment to Findings of Fact and Conclusions of Law</i>
07/15/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
07/24/2019	 Transcript of Proceedings <i>Transcript of Proceedings: Bench Trial - Day 1</i>
07/24/2019	 Transcript of Proceedings <i>Transcript of Proceedings: Bench Trial - Day 2</i>
07/24/2019	 Transcript of Proceedings <i>Transcript of Proceedings: Bench Trial - Day 3</i>
07/29/2019	 Opposition and Countermotion Filed By: Plaintiff Helix Electric of Nevada LLC <i>Helix Electric of Nevada, LLC's (I) Opposition to APCO Construction, Inc.'s and Safe Insurance Company of America's Motion for Clarification and/or Amendment to Findings of Fact and Conclusions of Law; and (II) Countermotion for Amendment to Findings of Fact and Conclusions of Law</i>

CASE SUMMARY

CASE NO. A-16-730091-B

07/31/2019	 Motion for Attorney Fees and Costs Filed By: Plaintiff Helix Electric of Nevada LLC <i>Helix Electric of Nevada, LLC's Motion for Attorney's Fees, Costs and Interest</i>
08/01/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
08/12/2019	 Opposition Filed By: Defendant APCO Construction; Defendant Safeco Insurance Company of America <i>APCO Construction, Inc.'s and Safeco Insurance Company of America's Opposition to Helix's Countermotion for Amendment to Findings of Fact and Conclusions of Law; and Reply in Support of Motion for Clarification and/or Amendment to Findings of Fact and Conclusions of Law</i>
08/15/2019	 Stipulation and Order <i>Stipulation and Order to Extend Time to File Opposition to Motion for Attorneys' Fees, Costs and Interest</i>
08/15/2019	 Notice of Entry of Stipulation and Order Filed By: Defendant APCO Construction; Defendant Safeco Insurance Company of America <i>Notice of Entry of Stipulation and Order</i>
08/15/2019	 Reply in Support Filed By: Plaintiff Helix Electric of Nevada LLC <i>Helix Electric of Nevada, LLC's Reply in Support of Helix's Countermotion for Amendment to Findings of Facts and Conclusions of Law</i>
08/26/2019	 Stipulation and Order Filed by: Defendant APCO Construction <i>Stipulation and Order to Extend Time to File Opposition to Motion for Attorneys' Fees, Costs and Interest and Reschedule Hearing</i>
08/26/2019	 Notice of Entry of Stipulation and Order Filed By: Defendant APCO Construction <i>Notice of Entry of Stipulation and Order</i>
09/12/2019	 Opposition Filed By: Defendant APCO Construction <i>Defendants' Opposition to Motion for Attorneys' Fees, Costs and Interest</i>
09/23/2019	 Reply in Support Filed By: Plaintiff Helix Electric of Nevada LLC <i>Helix Electric of Nevada, LLC's Reply in Support of its Motion for Attorneys' Fees, Costs and Interest</i>
10/01/2019	 Supplement Filed by: Plaintiff Helix Electric of Nevada LLC <i>Helix Electric of Nevada, LLC's Supplement to its Motion for Attorneys' Fees, Costs and Interest</i>
11/06/2019	 Judgment Filed By: Plaintiff Helix Electric of Nevada LLC

CASE SUMMARY

CASE NO. A-16-730091-B

Final Judgment

11/06/2019



Notice of Entry of Order

Filed By: Plaintiff Helix Electric of Nevada LLC

Notice of Entry of Final Judgment

12/06/2019



Case Appeal Statement

Filed By: Defendant APCO Construction; Defendant Safeco Insurance Company of America

Case Appeal Statement

12/06/2019



Notice of Appeal

Filed By: Defendant APCO Construction; Defendant Safeco Insurance Company of America

Notice of Appeal

DISPOSITIONS

07/08/2019

Judgment (Judicial Officer: Gonzalez, Elizabeth)

Debtors: APCO Construction (Defendant)

Creditors: Helix Electric of Nevada LLC (Plaintiff)

Judgment: 07/08/2019, Docketed: 07/09/2019

Total Judgment: 43,992.39

Debtors: APCO Construction (Defendant)

Creditors: Helix Electric of Nevada LLC (Plaintiff)

Judgment: 07/08/2019, Docketed: 07/09/2019

Total Judgment: 1,960.85

Debtors: Safeco Insurance Company of America (Defendant)

Creditors: Helix Electric of Nevada LLC (Plaintiff)

Judgment: 07/08/2019, Docketed: 07/09/2019

07/08/2019

Order of Dismissal (Judicial Officer: Gonzalez, Elizabeth)

Debtors: APCO Construction (Defendant), Safeco Insurance Company of America (Defendant)

Creditors: Helix Electric of Nevada LLC (Plaintiff)

Judgment: 07/08/2019, Docketed: 07/09/2019

Comment: Certain Claims

11/06/2019

Judgment (Judicial Officer: Gonzalez, Elizabeth)

Debtors: APCO Construction (Defendant), Safeco Insurance Company of America (Defendant)

Creditors: Helix Electric of Nevada LLC (Plaintiff)

Judgment: 11/06/2019, Docketed: 11/06/2019

Total Judgment: 219,116.28

11/06/2019

Order of Dismissal (Judicial Officer: Gonzalez, Elizabeth)

Debtors: APCO Construction (Defendant), Safeco Insurance Company of America (Defendant)

Creditors: Helix Electric of Nevada LLC (Plaintiff)

Judgment: 11/06/2019, Docketed: 11/06/2019

Comment: Certain Claim

HEARINGS

04/05/2017

CANCELED Motion to Stay (3:00 AM) (Judicial Officer: Villani, Michael)

Vacated - per Law Clerk

Helix Electric of Nevada, LLC's Motion to Lift Stay

05/17/2017

Motion to Dismiss (8:30 AM) (Judicial Officer: Villani, Michael)






Safeco's Motion to Dismiss Plaintiff's Claims Against Bond and Countermotion for Fees and Costs of Motion

MINUTES

Under Advisement;






CASE SUMMARY

CASE NO. A-16-730091-B

05/17/2017	<p>Opposition and Countermotion (8:30 AM) (Judicial Officer: Villani, Michael) <i>Helix Electric of Nevada, LLC's Opposition to Safeco Insurance Company of America's (i) Motion to Dismiss; and (ii) Countermotion for Fees and Costs</i></p> <p>MINUTES Under Advisement;</p>
05/17/2017	<p> All Pending Motions (8:30 AM) (Judicial Officer: Villani, Michael) Matter Heard; Journal Entry Details: <i>Arguements by counsel regarding the merits of the motion. COURT ORDERED, Decision DEFERRED. The Court will prepare a written decision.;</i></p>
06/09/2017	<p> Minute Order (4:00 PM) (Judicial Officer: Villani, Michael) Decision Made; Journal Entry Details: <i>CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of Cary Domina, Esq. and Cody Mounteer, Esq.//ob/06/09/17.;</i></p>
07/26/2017	<p> Motion for Partial Summary Judgment (8:30 AM) (Judicial Officer: Villani, Michael) <i>Defendants' Motion for Partial Summary Judgment</i> Motion Denied; Journal Entry Details: <i>Arguments by counsel regarding the merits of the motion. Court stated there was a question of fact as far as the timeliness notice of extent of the submittals, the timing of the submittals, whether or not the submittals could have been supplemented in the settlement negotiation and the settlement package with the city. COURT ORDERED, Motion DENIED. Mr. Domina to prepare the Order and submit to opposing counsel as to form and content. Upon Court s inquiry, Mr. Domina advised this was a bench trial.;</i></p>
08/29/2018	<p>CANCELED Calendar Call (9:00 AM) (Judicial Officer: Villani, Michael) <i>Vacated</i></p>
09/04/2018	<p>CANCELED Bench Trial (10:00 AM) (Judicial Officer: Villani, Michael) <i>Vacated</i></p>
11/28/2018	<p> Omnibus Motion in Limine (8:30 AM) (Judicial Officer: Villani, Michael) <i>APCO Construction Inc and Safeco Insurance Company of America's Omnibus Motion in Limine 1-2</i> Per email from Law Clerk Per 10/23/18 email from law clerk Deferred Ruling; Journal Entry Details: <i>Arguments by counsel. Court does not find that there is a contract and stated there are still remaining questions; therefore, ORDERED, ruling DEFERRED as to Motions in Limine 1-2 to the time of trial. Upon Court's inquiry, Mr. Jefferies advised he has another trial going forward and has filed a Motion to Continue Trial. COURT SO NOTED. COURT FINDS this matter raises issue of fact that is better to be referred to the time of trial and ORDERED Mr. Domina to prepare the Order.;</i></p>
12/04/2018	<p> Minute Order (3:00 PM) (Judicial Officer: Villani, Michael) Minute Order - No Hearing Held; Journal Entry Details: <i>Due to the Court's schedule, COURT ORDERED, matter currently set for 01/02/19 is hereby RESCHEDULED to 01/09/19. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Haly Pannullo, to all registered parties for Odyssey File & Serve hyp/12/04/18;</i></p>
01/09/2019	<p>CANCELED Motion to Continue Trial (9:00 AM) (Judicial Officer: Villani, Michael)</p>

CASE SUMMARY

CASE NO. A-16-730091-B

	<p><i>Vacated</i> <i>Apco Construction, Inc. and Safeco Insurance Company of America's Motion to Continue Trial (Second Request)</i></p>
01/30/2019	<p>CANCELED Calendar Call (10:00 AM) (Judicial Officer: Villani, Michael) <i>Vacated</i></p>
02/11/2019	<p>CANCELED Bench Trial (9:00 AM) (Judicial Officer: Villani, Michael) <i>Vacated</i></p>
03/04/2019	<p> Mandatory Rule 16 Conference (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) Trial Date Set; Journal Entry Details: <i>Court inquired as to how long parties will need for discovery. Mr. Domina advised this is a very unique situation as they are done with discovery; the case started two years ago and they got all the way through arbitration; there was another attorney prior to Mr. Jefferies and that attorney decided to disqualify the arbitrator; they could not select a new one, so they decided to lift the stay and bring the case back to District Court; they are done with discovery and are ready for trial. Parties declined the offer of a settlement conference. COURT ORDERED, given the representations of counsel that discovery and designations occurred during the arbitration process, matter SET for Bench Trial on the stack beginning May 28, 2019. Trial Setting Order will ISSUE. The last day to file motions in limine and dispositive motions is April 5, 2019. Counsel advised there was one pending motion in limine which has not yet been fully briefed. COURT DIRECTED counsel to renote that motion.;</i></p>
05/13/2019	<p> Motion in Limine (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) <i>Apco Construction, Inc. And Safeco Insurance Company Of America's Motion In Limine No. 3 To Preclude The Introduction Of Evidence Related To Helix's Extended General Conditions And Motion In Limine No. 4 To Preclude Any Evidence Of Helix's Accounting Data Or Job Cost Reports</i> Vacated due to department reassignment. Hearing will be rescheduled. parties' agreement Denied; Journal Entry Details: <i>APPEARANCES CONTINUED: Joe Pelan, Client Representative for Defendant. Following arguments by counsel, COURT ORDERED, the Motions in Limine are both DENIED. While the issue related to the 30(b)(6) would be of concern the Court will treat that as a credibility issue as to the knowledge of the witness who appeared. The entire job cost report needs to be produced immediately, and if there are any issues related to the job cost report when counsel receives it, the Court will have a discussion about the timing of trial. Mr. Domina stated the job cost report will be generated this week. 5-14-19 9:30 AM CALENDAR CALL 5-28-19 1:30 PM BENCH TRIAL;</i></p>
05/14/2019	<p> Calendar Call (9:30 AM) (Judicial Officer: Gonzalez, Elizabeth) Trial Date Set; Journal Entry Details: <i>Parties announced ready and anticipated trial taking 2 to 3 days. COURT ORDERED, bench trial set to COMMENCE on Monday, June 3, 2019. 6-3-19 10:30 AM BENCH TRIAL;</i></p>
06/03/2019	<p> Motion (10:15 AM) (Judicial Officer: Gonzalez, Elizabeth) Events: 05/22/2019 Motion to Exclude <i>APCO Construction, Inc. and Safeco Insurance Company of America's Motion to Exclude the Testimony of Kurt Williams on Order Shortening Time</i> Denied; Journal Entry Details: <i>Following arguments by Mr. Jefferies and Mr. Holmes, COURT ORDERED, motion DENIED. While the Court understands the issues of the challenge of producing someone for a 30(b)(6), the corporation cannot be forced to provide a former employee. 6-3-19 10:30 AM BENCH TRIAL;</i></p>
06/03/2019	<p> Bench Trial (10:30 AM) (Judicial Officer: Gonzalez, Elizabeth)</p>

CASE SUMMARY

CASE NO. A-16-730091-B

06/03/2019-06/05/2019

MINUTES

Trial Continues;

Trial Continues;

Decision Made;

Journal Entry Details:

DAY 3 APPEARANCES CONTINUED: Robert "Bob" Johnson, Vice President of Helix Electric of Nevada, LLC; Joe Pelan, Client Representative for APCO Construction. Testimony and exhibits presented. (See worksheet.) RECESS. Testimony and exhibits continued. (See worksheet.) At the hour of 11:20 am, Defendant RESTED. Closing arguments by Mr. Domina and Mr. Jefferies. COURT ORDERED, matter taken UNDER ADVISEMENT and status check SET on the Court's decision. 6-21-19 CHAMBERS STATUS CHECK: DECISION;

Trial Continues;

Trial Continues;

Decision Made;

Journal Entry Details:

DAY 2 APPEARANCES CONTINUED: Victor Fuchs, President of Helix Electric of Nevada, LLC; Robert "Bob" Johnson, Vice President of Helix Electric of Nevada, LLC; Joe Pelan, Client Representative for APCO Construction. Testimony and exhibits presented. (See worksheet.) RECESS. Testimony and exhibits continued. (See worksheet.) LUNCH RECESS. Proceeding resumed. Testimony and exhibits presented. (See worksheet.) RECESS. At the hour of 2:37 pm, Plaintiff RESTED. Defendant's case in chief commenced. Testimony and exhibits continued. (See worksheet.) COURT ORDERED, trial CONTINUED. EVENING RECESS. 6-4-19 9:00 AM BENCH TRIAL;

MINUTES

Trial Continues;

Trial Continues;

Decision Made;

Journal Entry Details:

DAY 1 APPEARANCES CONTINUED: Bob Johnson, Vice President of Helix Electric of Nevada, LLC; Joe Pelan, Client Representative for APCO Construction. COURT ORDERED, all Proposed Joint Exhibits ADMITTED per stipulation, except for Proposed Joint Exhibit JX044 as objected to and for Proposed Joint Exhibit JX045 as not used. Counsel advised Plaintiff's and Defendants' Proposed Exhibits are all objected to at this point. Opening statements by Mr. Domina and Mr. Jefferies. EXCLUSIONARY RULE INVOKED. Testimony and exhibits presented. (See worksheet.) LUNCH RECESS. Proceeding resumed. Testimony and exhibits presented. (See worksheet.) RECESS. Testimony and exhibits continued. (See worksheet.) COURT ORDERED, trial CONTINUED. EVENING RECESS. 6-3-19 9:15 AM BENCH TRIAL;

06/21/2019



Status Check (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

06/21/2019, 07/05/2019

Status Check: Court's Decision

Matter Continued;

Off Calendar;

Journal Entry Details:

See Findings of Fact and Conclusions of Law filed 7/8/19.;

Matter Continued;

Off Calendar;

Journal Entry Details:

COURT ORDERED, status check CONTINUED two weeks. CONTINUED TO : 7/5/2019 (CHAMBERS) CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm 6/21/2019;

08/19/2019

Motion for Clarification (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

APCO Construction, Inc.'s and Safeco Insurance Company of America's Motion for Clarification and/or Amendment to Findings of Fact and Conclusions of Law oral argument requested

Denied;

08/19/2019



Opposition and Countermotion (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Plaintiff Helix Electric of Nevada, LLC's (I) Opposition to APCO Construction, Inc.'s and Safe

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-16-730091-B

	<i>Insurance Company of America's Motion for Clarification and/or Amendment to Findings of Fact and Conclusions of Law; and (II) Countermotion for Amendment to Findings of Fact and Conclusions of Law</i> Denied;
08/19/2019	 All Pending Motions (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) Matter Heard; Journal Entry Details: <i>APCO CONSTRUCTION, INC.'S AND SAFECO INSURANCE COMPANY OF AMERICA'S MOTION FOR CLARIFICATION AND/OR AMENDMENT TO FINDINGS OF FACT AND CONCLUSIONS OF LAW...PLAINTIFF HELIX ELECTRIC OF NEVADA, LLC'S (I) OPPOSITION TO APCO CONSTRUCTION, INC.'S AND SAFE INSURANCE COMPANY OF AMERICA'S MOTION FOR CLARIFICATION AND/OR AMENDMENT TO FINDINGS OF FACT AND CONCLUSIONS OF LAW; AND (II) COUNTERMOTION FOR AMENDMENT TO FINDINGS OF FACT AND CONCLUSIONS AF LAW Following arguments by counsel, COURT ORDERED both motions DENIED. 9-9-19 9:00 AM HELIX ELECTRIC OF NEVADA, LLC'S MOTION FOR ATTORNEY'S FEES, COSTS, AND INTEREST;</i>
09/30/2019	 Motion for Attorney Fees and Costs (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) 09/30/2019, 10/04/2019 <i>Helix Electric of Nevada, LLC's Motion for Attorney's Fees, Costs and Interest</i> Continued for Chambers Decision; chart re: fees to be provided Granted in Part; Journal Entry Details: <i>Court reviewed supplement. The attorney's fees of Mr. Domina, Mr. Cox, and Ms. Hansen are AWARDED. The Court has determined that there was duplication of work among other referenced counsel as well as administrative tasks billed and has reduced the requested fee award to those timekeepers. Mr. Domina to submit an order. CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 10-4-19;</i> Continued for Chambers Decision; chart re: fees to be provided Granted in Part; Journal Entry Details: <i>Following arguments by counsel, COURT ORDERED, \$14,927.58 in interest and \$8,949.40 in costs AWARDED. Motion CONTINUED to the chambers calendar for Friday, October 4th, for counsel for Plaintiff to PROVIDE a chart with the time keeper, rate, number of hours, and total amount billed on attorney's fees. 10-4-19 CHAMBERS HELIX ELECTRIC OF NEVADA, LLC'S MOTION FOR ATTORNEY'S FEES, COSTS, AND INTEREST ;</i>

DATE

FINANCIAL INFORMATION

Defendant APCO Construction	
Total Charges	694.50
Total Payments and Credits	694.50
Balance Due as of 12/10/2019	0.00
Defendant Safeco Insurance Company of America	
Total Charges	7.00
Total Payments and Credits	7.00
Balance Due as of 12/10/2019	0.00
Plaintiff Helix Electric of Nevada LLC	
Total Charges	1,983.50
Total Payments and Credits	1,983.50
Balance Due as of 12/10/2019	0.00

DISTRICT COURT CIVIL COVER SHEET

A-16-730091-C

County, Nevada

XVI I

Case No.

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): Helix Electric of Nevada, LLC	Defendant(s) (name/address/phone): APCO Construction; Safeco Insurance Company of America
Attorney (name/address/phone): Cary B. Domina, Esq. Peel Brimley LLP 3333 E. Serene Avenue, Suite 200 Henderson NV 89074 702-990-7272	Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input checked="" type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrantum <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

1/12/16
Date

 Signature of initiating party or representative

See other side for family-related case filings.

BUSINESS COURT CIVIL COVER SHEET

CLARK

A-16-730091-C

County, Nevada

Case No. A-16-730091-C
(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): <div style="text-align: center;">Helix Electric of Nevada, LLC</div>	Defendant(s) (name/address/phone): <div style="text-align: center;">APCO Construction</div> <div style="text-align: center;">Safeco Insurance Company of America</div>
Attorney (name/address/phone): <div style="text-align: center;">Cary B. Domina, Esq (10567) Phone: (702) 990-7272</div> <div style="text-align: center;">PEEL BRIMLEY LLP</div> <div style="text-align: center;">3333 E. Serene Ave, Suite 200</div> <div style="text-align: center;">Henderson, NV 89074</div>	Attorney (name/address/phone): <div style="text-align: center;">John Randall Jeffries, Esq. (3512)</div> <div style="text-align: center;">Mary Bacon, Esq. (12686)</div> <div style="text-align: center;">SPENCER FANE LLP (702) 408-3411</div> <div style="text-align: center;">300 S. Fourth Street, Suite 950, Las Vegas, NV 89101</div>

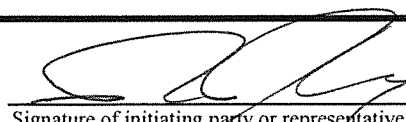
II. Nature of Controversy (Please check the applicable boxes for both the civil case type and business court case type)

☐ Arbitration Requested

Civil Case Filing Types		Business Court Filing Types		
Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input checked="" type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Torts Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort Civil Writs <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ	CLARK COUNTY BUSINESS COURT <input type="checkbox"/> NRS Chapters 78-89 <input type="checkbox"/> Commodities (NRS 91) <input type="checkbox"/> Securities (NRS 90) <input type="checkbox"/> Mergers (NRS 92A) <input type="checkbox"/> Uniform Commercial Code (NRS 104) <input type="checkbox"/> Purchase/Sale of Stock, Assets, or Real Estate <input type="checkbox"/> Trademark or Trade Name (NRS 600) <input type="checkbox"/> Enhanced Case Management <input checked="" type="checkbox"/> Other Business Court Matters WASHOE COUNTY BUSINESS COURT <input type="checkbox"/> NRS Chapters 78-88 <input type="checkbox"/> Commodities (NRS 91) <input type="checkbox"/> Securities (NRS 90) <input type="checkbox"/> Investments (NRS 104 Art.8) <input type="checkbox"/> Deceptive Trade Practices (NRS 598) <input type="checkbox"/> Trademark/Trade Name (NRS 600) <input type="checkbox"/> Trade Secrets (NRS 600A) <input type="checkbox"/> Enhanced Case Management <input type="checkbox"/> Other Business Court Matters		
Judicial Review/Appeal/Other Civil Filing <table style="width: 100%;"> <tr> <td style="width: 50%;"> Judicial Review <input type="checkbox"/> Foreclosure Mediation Case Appeal Other <input type="checkbox"/> Appeal from Lower Court </td> <td style="width: 50%;"> Other Civil Filing <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters </td> </tr> </table>		Judicial Review <input type="checkbox"/> Foreclosure Mediation Case Appeal Other <input type="checkbox"/> Appeal from Lower Court	Other Civil Filing <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters	
Judicial Review <input type="checkbox"/> Foreclosure Mediation Case Appeal Other <input type="checkbox"/> Appeal from Lower Court	Other Civil Filing <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters			

January 28, 2019

Date


 Signature of initiating party or representative

ORIGINAL

Electronically Filed
11/6/2019 10:22 AM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

JUDGE
CARY B. DOMINA, ESQ.
Nevada Bar No. 10567
RONALD J. COX, ESQ.
Nevada Bar No. 12723
JEREMY HOLMES, ESQ.
Nevada Bar No. 14379
PEEL BRIMLEY LLP
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jholmes@peelbrimley.com
Attorneys for Plaintiff
Helix Electric of Nevada, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

HELIX ELECTRIC OF NEVADA, LLC, a
Nevada limited liability company,

Plaintiff,

vs.

APCO CONSTRUCTION, a Nevada corporation;
SAFECO INSURANCE COMPANY OF
AMERICA; DOES I through X; and BOE
BONDING COMPANIES I through X,

Defendants.

CASE NO. : A-16-730091-B
DEPT. NO.: XI

FINAL JUDGMENT

This matter having come before the Honorable Elizabeth Gonzalez on for a non-jury trial beginning on June 3, 2019, and continuing day to day, until its completion on June 5, 2019; Plaintiff HELIX ELECTRIC OF NEVADA, LLC ("Helix"), was represented by and through its counsel, Cary B. Domina, Esq. and Ronald J. Cox, Esq., of the law firm of Peel Brimley LLP, and Defendants APCO CONSTRUCTION ("APCO") and SAFECO INSURANCE COMPANY OF AMERICA ("Safeco"), were represented by and through their counsel, Randy Jeffries, Esq. of Fennemore Craig; the Court having read and considered the pleadings filed by the parties; having reviewed the evidence admitted during the trial; having heard and carefully considered the

1 testimony of the witnesses called to testify; having considered the oral and written arguments of
2 counsel, and with the intent of rendering a decision on all remaining claims before the Court
3 pursuant to NRCp 52(a) and 58, the Court hereby enters its Final Judgment pursuant to the Court's
4 Findings of Fact and Conclusions of Law¹ and the Court's ruling on Helix's Motion for Fees, Costs
5 and Interest as follows:

- 6 1. **IT IS HEREBY ORDERED** that, as to Helix's Claims for Breach of Contract and
7 Breach of the Implied Covenant of Good Faith and Fair Dealing against APCO, this
8 Court finds in favor of Helix and awards damages in the amount of \$43,992.39 together
9 with interest as provided by law and taxable costs of suit;
- 10 2. **IT IS FURTHER ORDERED** that, as to Helix's Claim for violations of NRS 338
11 against APCO, this Court finds in favor of Helix in the amount of \$1,960.85;
- 12 3. **IT IS FURTHER ORDERED** that, as to Helix's Motion for Attorney's Fees, Costs
13 and Interest, after careful consideration of the parties' briefing and the *Brunzell*² factors,
14 the Court awards Helix attorney's fees for the work provided by Cary B. Domina, Esq.,
15 Ronald J. Cox, Esq., and Terri Hansen only, in the amount of \$149,336.06, as the Court
16 believes the remaining requested fees were duplicative and should not be awarded. The
17 Court finds that the amount awarded is reasonable considering the qualifications of
18 Helix's counsel, the character of the work performed, the number of dispositive motions
19 filed in this matter that Helix successfully defended itself against, as well as the
20 favorable result obtained by Helix at trial.
- 21 4. **IT IS FURTHER ORDERED** that, the Court awards Helix its costs in the amount of
22 \$8,949.40, and interest in the amount of \$14,927.58.
- 23 5. **IT IS FURTHER ORDERED** that Judgment is hereby entered in favor of Helix and
24 against APCO and Safeco in the total amount of **\$219,166.28**.

25 ///

26 ///

27 ///

28 ¹ The Court's Findings of Fact and Conclusions of Law are incorporated herein to support the Court's Final Judgment.

² See *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

PEEL BRIMLEY LLP
3333 E. SERENE AVENUE, STE. 200
HENDERSON, NEVADA 89074
(702) 990-7272 ♦ FAX (702) 990-7273

6. Any claim not otherwise disposed of by this decision is dismissed.


IT IS SO ORDERED

Dated this 4 ^{November}~~October~~, 2019.


DISTRICT COURT JUDGE

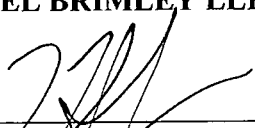
Approved as to Form and Content:

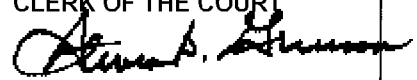
FENNEMORE CRAIG P.C.


John Randall Jeffries, Esq. (SBN 3512)
Brandi M. Planet, Esq. (SBN 11710)
300 South Fourth Street, Suite 1400
Las Vegas, Nevada 89101
Phone: (702) 692-8000
Attorneys for Defendants
APCO Construction and Safeco
Insurance Company of America

Submitted by:

PEEL BRIMLEY LLP


Cary B. Domina, Esq. (SBN 10567)
Ronald J. Cox, Esq. (SBN 12723)
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15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 HELIX ELECTRIC OF NEVADA, LLC, a
18 Nevada limited liability company,

CASE NO. : A-16-730091-C
DEPT. NO. : XI

19 Plaintiff,

20 vs.

21 APCO CONSTRUCTION, a Nevada corporation;
22 SAFECO INSURANCE COMPANY OF
23 AMERICA; DOES I through X; and BOE
24 BONDING COMPANIES I through X,


25 Defendants.

26 **NOTICE OF ENTRY OF FINAL JUDGMENT**

27 PLEASE TAKE NOTICE that a Final Judgment entered November 4, 2019 and filed on
28 **November 6, 2019**, a copy of which is attached as Exhibit 1.

Dated this 6th day of November, 2019.

PEEL BRIMLEY LLP



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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of **PEEL BRIMLEY, LLP**, and that on this 14 day of November, 2019, I caused the above and foregoing document, **NOTICE OF ENTRY OF FINAL JUDGMENT**, to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☒ pursuant to NEFCR 9, upon all registered parties via the Court's electronic filing system;
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile**;
- ☐ to be hand-delivered; and/or
- ☐ other _____

to the attorney(s) and/or party(ies) listed below at the address and/or facsimile number indicated below:

Attorneys for APCO Construction and Safeco Insurance Co.
John Randall Jefferies, Esq. (rjefferies@fclaw.com)
Brandi M. Planet, Esq. (bplanet@fclaw.com)



An employee of **PEEL BRIMLEY, LLP**

EXHIBIT 1

ORIGINAL

Electronically Filed
11/6/2019 10:22 AM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

JUDG
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DISTRICT COURT

CLARK COUNTY, NEVADA

HELIX ELECTRIC OF NEVADA, LLC, a
Nevada limited liability company,

Plaintiff,

vs.

APCO CONSTRUCTION, a Nevada corporation;
SAFECO INSURANCE COMPANY OF
AMERICA; DOES I through X; and BOE
BONDING COMPANIES I through X,

Defendants.

CASE NO. : A-16-730091-B
DEPT. NO. : XI

FINAL JUDGMENT

This matter having come before the Honorable Elizabeth Gonzalez on for a non-jury trial beginning on June 3, 2019, and continuing day to day, until its completion on June 5, 2019; Plaintiff HELIX ELECTRIC OF NEVADA, LLC ("Helix"), was represented by and through its counsel, Cary B. Domina, Esq. and Ronald J. Cox, Esq., of the law firm of Peel Brimley LLP, and Defendants APCO CONSTRUCTION ("APCO") and SAFECO INSURANCE COMPANY OF AMERICA ("Safeco"), were represented by and through their counsel, Randy Jeffries, Esq. of Fennemore Craig; the Court having read and considered the pleadings filed by the parties; having reviewed the evidence admitted during the trial; having heard and carefully considered the

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1 testimony of the witnesses called to testify; having considered the oral and written arguments of
2 counsel, and with the intent of rendering a decision on all remaining claims before the Court
3 pursuant to NRCP 52(a) and 58, the Court hereby enters its Final Judgment pursuant to the Court's
4 Findings of Fact and Conclusions of Law¹ and the Court's ruling on Helix's Motion for Fees, Costs
5 and Interest as follows:

- 6 1. **IT IS HEREBY ORDERED** that, as to Helix's Claims for Breach of Contract and
7 Breach of the Implied Covenant of Good Faith and Fair Dealing against APCO, this
8 Court finds in favor of Helix and awards damages in the amount of \$43,992.39 together
9 with interest as provided by law and taxable costs of suit;
- 10 2. **IT IS FURTHER ORDERED** that, as to Helix's Claim for violations of NRS 338
11 against APCO, this Court finds in favor of Helix in the amount of \$1,960.85;
- 12 3. **IT IS FURTHER ORDERED** that, as to Helix's Motion for Attorney's Fees, Costs
13 and Interest, after careful consideration of the parties' briefing and the *Brunzell*² factors,
14 the Court awards Helix attorney's fees for the work provided by Cary B. Domina, Esq.,
15 Ronald J. Cox, Esq., and Terri Hansen only, in the amount of \$149,336.06, as the Court
16 believes the remaining requested fees were duplicative and should not be awarded. The
17 Court finds that the amount awarded is reasonable considering the qualifications of
18 Helix's counsel, the character of the work performed, the number of dispositive motions
19 filed in this matter that Helix successfully defended itself against, as well as the
20 favorable result obtained by Helix at trial.
- 21 4. **IT IS FURTHER ORDERED** that, the Court awards Helix its costs in the amount of
22 \$8,949.40, and interest in the amount of \$14,927.58.
- 23 5. **IT IS FURTHER ORDERED** that Judgment is hereby entered in favor of Helix and
24 against APCO and Safeco in the total amount of **\$219,166.28**.

25 ///

26 ///

27 ///

28 ¹ The Court's Findings of Fact and Conclusions of Law are incorporated herein to support the Court's Final Judgment.
² See *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

1 6. Any claim not otherwise disposed of by this decision is dismissed.

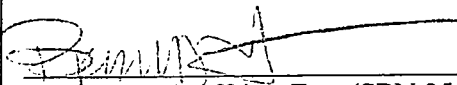
2 **IT IS SO ORDERED**

3 Dated this 4 day of ^{November}~~October~~, 2019.

4 
5 DISTRICT COURT JUDGE

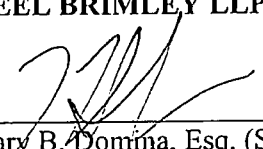
6 Approved as to Form and Content:

7 **FENNEMORE CRAIG P.C.**

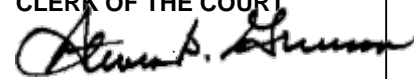
8 
9
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18 Submitted by:

19 **PEEL BRIMLEY LLP**

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1 FFCL

2
3 DISTRICT COURT

4 CLARK COUNTY, NEVADA

5 HELIX ELECTRIC OF NEVADA, LLC, a
6 Nevada limited liability company,

7 Plaintiff,

8 v.

9 APCO CONSTRUCTION, a Nevada
10 corporation; SAFECO INSURANCE
11 COMPANY OF AMERICA; DOES I through
12 X; and BOE BONDING COMPANIES, I
through X,

13 Defendants.

Case No.: A-16-730091-C

Dept.: XI

14
15 ***FINDINGS OF FACT AND CONCLUSIONS OF LAW***

16 This matter having come on for non-jury trial before the Honorable Elizabeth Gonzalez
17 beginning on June 3, 2019, and continuing day to day, until its completion on June 5, 2019;
18 Plaintiff, HELIX ELECTRIC OF NEVADA, LLC ("Helix"), was represented by and through its
19 counsel, Cary B. Domina, Esq. and Ronald J. Cox, Esq. of the law firm of Peel Brimley LLP, and
20 Defendants, APCO CONSTRUCTION ("APCO") and SAFECO INSURANCE COMPANY OF
21 AMERICA ("Safeco"), were represented by and through their counsel, Randy Jefferies, Esq. of
22 Fennemore Craig; the Court having read and considered the pleadings filed by the parties; having
23 reviewed the evidence admitted during the trial; having heard and carefully considered the
24 testimony of the witnesses called to testify; having considered the oral and written arguments of
25 counsel, and with the intent of rendering a decision on all remaining claims before the Court,

RECEIVED

JUL 08 2019

CLERK OF THE COURT

1 pursuant to NRCP 52(a) and 58;¹ the Court makes the following findings of fact and conclusions
2 of law:

3 FINDINGS OF FACT

4 1. In July 2011, APCO submitted a bid for the Craig Ranch Regional Park – Phase II
5 - Project No. 10294 (“Project”) to the City of North Las Vegas (“CNLV”). At that time, the
6 anticipated Project duration was approximately 550 calendar days.
7

8 2. Helix submitted a bid of approximately \$4,600,000 to APCO for the electrical
9 work required on the Project. Helix’s estimate assumed a Project duration of 550 days.

10 3. CNLV canceled the original solicitation and ultimately requested a second round
11 of bids in October 2011. Among other things, CNLV changed the duration of the Project from 18
12 months to 12 months.
13

14 4. On or about October 26, 2011, APCO submitted its second bid to CNLV for the
15 Project with a 12-month schedule.

16 5. CNLV issued its notice to proceed to APCO on January 11, 2012. APCO started
17 work on the Project on approximately January 16, 2012.

18 6. Helix mobilized its equipment and started work full time on or about February 20,
19 2012.
20

21 7. In the spring of 2012, APCO entered into a construction agreement (the “Prime
22 Contract”) with the CNLV in which APCO agreed to serve as the general contractor on the
23 Project.

24 8. Section 6.3.2 the General Conditions of the Prime Contract which are incorporated
25 into the Subcontract, states in part:
26

27 ¹ In the pretrial statement, the parties have stipulated that the Contract time was extended from January 2013
28 into November 2013 through no fault of either APCO or Helix.

1 [a]ll other claims notices for extra work shall be filed in writing to the Construction
2 Manager prior to the commencement of such work. Written notices shall use the words
3 "Notice of Potential Claim." Such Notice of Potential Claim shall state the circumstances
4 and all reasons for the claim, but need not state the amount.

5 9. After receiving the notice of proposed award, APCO agreed to contract terms with
6 Helix subject to certain specially negotiated terms modifying the form subcontract ("Helix
7 Addendum").

8 10. As part of the negotiation, APCO agreed to purchase certain materials totaling
9 \$2,248,248 as specified by Helix, which was to be removed from Helix's original proposed scope
10 and pricing.

11 11. Helix entered into an agreement with APCO to provide certain electrical related
12 labor, materials and equipment (the "Work") to the Project for the lump sum amount of
13 \$2,356,520.

14 12. On or about April 19, 2012, APCO and Helix entered into a formal subcontract for
15 the electrical work required on the Project (the "Subcontract").

16 13. Helix's Daily Reports, Certified Pay Roll Records and the Project Sign-in Sheets
17 establish that Helix started performing work for the Project as early as January 23, 2012, and
18 mobilized on the Project on or about February 28, 2012.

19 14. Pursuant to Exhibit "A" of the Subcontract, Helix was required to supply "all
20 labor, materials, tools, equipment, hoisting, forklift, supervision, management, permits and taxes
21 necessary to complete all of the scope of work" for the 'complete electrical package' for the
22 Project.
23

24 15. Section 6.5 contains a "no damage for delay" provision.

25
26 If Subcontractor shall be delayed in the performance of the Work by any act or neglect of
27 the Owner or Architect, or by agents or representatives of either, or by changes ordered in
28 the Work, or by fire, unavoidable casualties, national emergency, or by any cause other
that [SIC] the intentional Interference of Contractor, Subcontractor shall be entitled, as
Subcontractor's exclusive remedy, to an extension of time reasonably necessary to

1 compensate for the time lost due to the delay, but only if Subcontractor shall notify
2 Contractor in writing within twenty four (24) hours after such occurrences, and only if
3 Contractor shall be granted such time extension by Owner.

4 This clause was not modified by the Helix Addendum.

5 16. Section 6.7 of the Subcontract provided in pertinent part:

6 Contractor shall not be liable to Subcontractor for delays caused by reason of fire or other
7 casualty, or on account of riots, strikes, labor trouble, terrorism, acts of God, cataclysmic
8 event, or by reason of any other event or cause beyond Contractor's control, or
9 contributed to by Subcontractor.

10 Section 6.7 was not modified by the Helix Addendum.

11 17. The Parties Contract requires proof of actual cost increase. Section 7.1—which
12 was unchanged by the Helix Addendum—provides:

13 Contractor may order or direct changes, additions, deletions or other revisions in the
14 Subcontract work without invalidating the Subcontract. No changes, additions, deletions,
15 or other revisions to the Subcontract shall be valid unless made in writing. Subcontractor
16 markup shall be limited to that stated in the contract documents in addition to the
17 direct/actual on-site cost of the work, however, no profit and overhead markup on
18 overtime shall be allowed.

19 18. Section 7.2 as modified by the Helix Addendum, provided:

20 Subcontractor, prior to the commencement of such changed or revised work, shall submit,
21 (within 5 days of Contractor's written request) to Contractor, written copies of the
22 breakdown of cost or credit proposal, including work schedule revisions, for changes,
23 additions, deletions, or other revisions in a manner consistent with the Contract
24 Documents. Contractor shall not be liable to Subcontractor for a greater sum, or
25 additional time extensions, than Contractor obtains from Owner for such additional work.

26 19. The parties negotiated additional language that was included in Section 6 by the
27 Helix Addendum:

28 In the event the schedule as set forth above is changed by Contractor for whatever reason
so that Subcontractor either is precluded from performing the work in accordance with
said schedule and thereby suffers delay, or, is not allowed the number of calendar days to
perform the work under such modified schedule and must accelerate its performance, then
Subcontractor shall be entitled to receive from Contractor payment representing the costs
and damages sustained by Subcontractor for such delay or acceleration, providing said
costs and damages are first paid to Contractor.

20. Section 4.4 of the Subcontract—as amended by the Helix Addendum provides:

1 Progress payments will be made by Contractor to Subcontractor within 10 calendar days
2 after Contractor actually receives payment for Subcontractor's work from Owner. The
3 progress payment to Subcontractor shall be one hundred percent (100%) of the value of
4 Subcontract work completed (less 10% retention) during the preceding month as
5 determined by the Owner, less such other amounts as Contractor shall determine as being
6 properly withheld as allowed under this Article or as provided elsewhere in this
7 Subcontract. The estimates of Owner as to the amount of Work completed by
8 Subcontractor shall be binding upon Contractor and Subcontractor and shall conclusively
9 establish the amount of Work performed by Subcontractor. As a condition precedent to
10 receiving partial payments from Contractor for Work performed, Subcontractor shall
11 execute and deliver to Contractor, with its application for payment, a full and complete
12 release (Forms attached) of all claims and causes of action Subcontractor may have
13 against Contractor and Owner through the date of the execution of said release, save and
14 except those claims specifically listed on said release and described in a manner sufficient
15 for Contractor to identify such claim or claims with certainty. Upon the request of
16 Contractor, Subcontractor shall provide an Unconditional Waiver of Release in form
17 required by Contractor for any previous payment made to Subcontractor. Any payments
18 to Subcontractor shall be conditioned upon receipt of the actual payments by Contractor
19 from Owner. Subcontractor herein agrees to assume the same risk that the Owner may
20 become insolvent that Contractor has assumed by entering into the Prime Contract with
21 the Owner per NRS Statutes.

22 21. The Subcontract also incorporated the Prime Contract, which included the claim
23 procedures set forth in the Contract.

24 22. Helix assigned Kurk Williams as its Project Manager. Williams never signed in
25 using APCO's sign in sheets that were maintained at the Project site. By his own admission,
26 Williams' time devoted to the Project was not accurately tracked in Helix's certified payroll
27 reports, only Helix's job cost report.

28 23. Richard Clement was Helix's Project Superintendent. Clement was on site
occasionally and signed in with APCO at the Project twice during 2012.

24 24. Clement did not work on the Project between June 11, 2012 and September 26,
25 2012. Clement only worked two weeks on the Project from September 27, 2012 to October 7,
26 2012. Clement did not work on the Project from October 8, 2012 through January 20, 2013. In
27 all of 2013, which was the extended Project time, Clement only worked 32 hours during the week
28 ending January 27, 2013.

1 25. In late January 2013, Helix assigned Clement to another project and designated
2 Rainer Prietzel, Helix's Foreman to oversee work in the field, as the new Project Superintendent
3 and foreman.

4 26. According to the Labor Commissioner, and OSHA regulations, Helix must always
5 have a project superintendent on site at all times during the Project.
6

7 27. From January 2013 to May 2013, Helix typically had a three to five man crew on
8 the Project.

9 28. In early May 2013, with the exception of a few days, Prietzel was the only Helix
10 employee on the Project, and he split his time as the Project Superintendent and self-performing
11 contract and change order work on the Project.

12 29. Prietzel remained the Project Superintendent until the end of the Project in mid-
13 October 2013.
14

15 30. Helix's original line item for its general conditions, as reflected in its pay
16 application, was \$108,040 on a Subcontract price of \$2,380,085, which represents 4.5%.

17 31. The Project encountered significant delays and was not substantially completed
18 until October 25, 2013, thus resulting in Helix claiming approximately, \$138,000 in additional
19 extended overhead costs.

20 32. The project was never abandoned by CNLV.
21

22 33. Prior to the original project completion date passing, on January 9, 2013, APCO
23 submitted its first request for an extension of time to CNLV. APCO submitted its Time Impact
24 Analysis #1 ("TIA #1") to CNLV where it sought extended general conditions and home office
25 overhead of \$418,059 (\$266,229 for general conditions and \$151,830 for home office overhead).

26 34. Helix first notified APCO in writing that it would be asserting a claim for extended
27 overhead costs on January 28, 2013 and reserved its rights to submit a claim for "all additional
28

1 costs incurred due to scheduled delays for this project” (the “Claim”).

2 35. As of May 9, 2013, CNLV had not made a decision on APCO’s TIA #1.

3 36. On May 9, 2013, APCO submitted a revised Time Impact Analysis (“TIA #2”) to
4 CNLV seeking an additional five (5) months of compensation for general conditions and home
5 office overhead, among other claims, for a total delay claim of nine (9) months.
6

7 37. As part of TIA #2, APCO submitted Change Order Request No. 39.1 to CNLV
8 seeking compensation of \$752,499 for its extended general conditions and home office overhead
9 (\$479,205 for general conditions and \$273,294 for home office overhead).

10 38. This represented approximately seventy percent (70%) of APCO’s \$1,090,066.50
11 total claim against CNLV for the 9-month delay to the Project.
12

13 39. APCO’s claim did not include any amounts for its subcontractors, and APCO
14 acknowledges that as a company policy, it does not include its subcontractors’ claims with its
15 own claims.

16 40. Through no fault of APCO, Helix did not take delivery of various light poles and
17 related equipment until approximately January 30, 2013.

18 41. On June 19, 2013, APCO and Helix exchanged emails regarding various Project
19 issues, including Helix’s delay rates. APCO confirmed that if Helix submitted a request for
20 compensation that it would be forwarded to CNLV.
21

22 42. On June 19, 2013 Helix provided a supplemental notice of claim but did not
23 provide any back up to support its daily rates or the impacts alleged to be attributed to the delay.
24 At that time, Helix still only had Prietzel working on site.

25 43. On June 21, 2013 Helix and APCO exchanged emails related to the support for
26 Helix’s claimed costs, with APCO noting that a project manager was considered home office
27 overhead. Helix indicated that its job cost reports would reflect the actual costs for the extended
28

1 overhead.

2 44. In June 2013, Helix realized the Project was still several months away from being
3 completed. According to Helix's June 19 letter entitled "Extended overhead cost", Helix's cost
4 for extended overhead was \$640/day.

5 45. The \$640/day cost is comprised of (1) \$260 for the Project Manager; (2) \$280 for
6 the Superintendent; (3) \$25 for the site trailer; (4) \$5 for the Connex box; (5) \$25 for the forklift;
7 and (6) \$45 for the truck.

8 46. The email that accompanied Helix's June 19, 2013 letter advised APCO that to
9 date, Helix's Claim totaled \$72,960, but that Helix's Claim would increase for each day the
10 Project continued past the original completion date.

11 47. Also on June 19, 2013, APCO informed Helix, by way of an email, that it "is in
12 the process of presenting CNLV with a Time Impact Analysis containing facts as to why the
13 additional costs should be paid." APCO had submitted TIA #2 to CNLV on May 9, 2013, six
14 weeks prior to this email.

15 48. In the email, APCO further advised Helix that "[o]nce we fight the battle, and
16 hopefully come out successfully, this will open the door for Helix...to present their case for the
17 same."

18 49. While APCO notified Helix that it would forward to CNLV any letter Helix
19 provided regarding its claim for extended overhead costs, APCO did not inform Helix that it
20 needed Helix's Claim immediately so it could include it with APCO's claim to CNLV. Indeed,
21 according to APCO, it would first "fight that battle, and hopefully come out successfully..."
22 which would only then "open the door for Helix...to present their case..."

23 50. On August 27, 2013, despite the fact that the Project was still ongoing, Helix
24 furnished APCO with its first invoice for its Claim in the amount of \$102,400, which constituted
25
26
27
28

1 32 weeks of extended overhead costs incurred between January 13, 2013, and August 30, 2013
2 (or 160 business days).

3 51. Helix's invoice identified an extended overhead cost of \$640/day for 32 weeks,
4 which had been provided to APCO in June 2013.

5 52. From May 6, 2013 through November 6, 2013, Prietzel was the only Helix person
6 on site. Prietzel confirmed that during that time period he was either working on completing
7 original Subcontract work for which Helix would be paid or change order work that was
8 acknowledged and paid by APCO and CNLV.

9 53. During construction, CNLV made changes or otherwise caused issues that
10 impacted Helix. In those instances, Helix submitted a request for additional compensation and
11 CNLV issued APCO change orders that compensated Helix for the related impacts. During the
12 extended Contract time, CNLV issued eleven change orders that resulted in additional
13 compensation to Helix through the Subcontract. Helix's pricing for the change orders included a
14 10% markup on materials and a 15% markup on labor to cover Helix's overhead.

15 54. APCO submitted Change Order Request No. 68 ("COR 68") to CNLV on
16 September 9, 2013, requesting compensation for Helix's Claim.

17 55. On September 16, 2013, CNLV rejected the COR 68 stating, "This COR is
18 REJECTED. The City of North Las Vegas does not have a contract with Helix Electric."

19 56. CNLV stated that it did not reject COR 68 for lack of backup or untimeliness.

20 57. The Construction Manager for CNLV during the Project, Joemel Llamado,
21 testified that the only reason he rejected Helix's Claim was because CNLV did not have a
22 contract with Helix. APCO should have included Helix's Claim in its own claim to CNLV since
23 Helix's Subcontract was with APCO, not CNLV.

24 58. Llamado did not look at the merits of the Claim because the Claim should have
25
26
27
28

1 been included with APCO's claim.

2 59. APCO informed Helix that CNLV rejected COR 68 because of lack of backup
3 documentation.

4 60. On October 2, 2013, CNLV issued its decision on APCO's request for additional
5 time and compensation. CNLV determined that the time period from January 11, 2013 to May
6 10, 2013 was an excusable but not compensable delay. APCO was not charged liquidated
7 damages, but also was not provided compensation from January thru May 10, 2013. CNLV did
8 confirm that it would pay APCO \$560,724.16 for the delay from May 10, 2013 to October 25,
9 2013. APCO accepted that determination on or about October 10, 2013.

10 61. On October 3, 2013, APCO sent Helix a letter requesting additional back-up
11 documentation for the Claim so it could resubmit the Claim to CNLV.

12 62. That letter states in relevant part:

13
14 Attached is your invoice of August 27, 2013 in the amount of \$102,400. At this time
15 APCO has not received any back-up documentation to undo the previous formal rejection
16 made by the City of North Las Vegas. If you want APCO to re-submit your request,
17 please provide appropriate back-up for review.

18 63. On October 2, 2013, CNLV and APCO entered into a settlement agreement
19 through which CNLV agreed to pay APCO \$560,724.16 for its claim submitted under TIA #2,
20 including APCO's claim for added overhead and general conditions it incurred as a result of the
21 nine-month delay to the Project.

22 64. According to that settlement agreement, APCO agreed to "forgo any claims for
23 delays, disruptions, general conditions and overtime costs associated with the weekend work
24 previously performed...and for any other claim, present or future, that may occur on the project.

25 65. APCO did not notify Helix that it had entered into this settlement agreement.

26 66. Llamado's position was that the settlement agreement resolved any and all claims
27 between CNLV and APCO for the nine-month delay to the Project, including any claims APCO's
28

1 subcontractors might have.²

2 67. Pursuant to this settlement agreement, CNLV issued Change Order No. 50 to
3 APCO and agreed to pay APCO \$560,724.16 for the added overhead and general conditions it
4 incurred as a result of the extended project completion date.

5 68. On October 3, 2013, APCO transmitted to Helix CNLV's rejection of its invoice
6 for extended overhead.

7
8 69. Near the end of the Project in October 2013, Pelan, notified Helix, that Helix could
9 not include the Claim for extended overhead in Helix's pay application for retention because
10 CNLV would not release the retention on the Project if there were outstanding Claims on the
11 Project.

12 70. In compliance with Pelan's instructions, on October 18, 2013, Helix submitted its
13 Pay Application for Retention only in the amount of \$105,677.01 and identified it as Pay
14 Application No. 161113-002 (the "Retention Pay App").

15
16 71. On October 18, 2013, Helix submitted its pay application for the time period up
17 through October 30, 2013. At that time, Helix billed its general conditions line item at 100%.

18 72. On October 18, 2013, Helix submitted its pay application for the release of
19 retention. As with prior pay applications, Helix enclosed a conditional waiver. The release was
20 conditioned on APCO issuing a final payment in the amount of \$105,677.01 and expressly
21 confirmed that there were "zero" claims outstanding. Helix signed and provided that release to
22 APCO after receiving CNLV's rejection of its extended overhead invoice.

23
24 73. Helix also provided to APCO a "Conditional Waiver and Release Upon Final
25 Payment" (the "Conditional Waiver") for the Retention Pay App only (i.e. Pay App No. 161113-
26

27 ² Joe Pelan, the Contract Manager for APCO, disagreed with this position, but APCO and Helix did not test it
28 through the claims process provided in the Prime Contract.

1 002).

2 74. Helix indicated in the Conditional Waiver that there was no "Disputed Claim
3 Amount" relating to the Retention Pay App.

4 75. Helix takes the position that the Conditional Waiver was not intended to release
5 Helix's Claim.

6 76. The evidence presented at trial of the circumstances surrounding the execution of
7 the Conditional Waiver do not support Helix's waiver of the Claim.

8 77. It took APCO more than a year to pay Helix for its Retention Pay App, during
9 which time, Helix made it clear to APCO that it would continue pursuing its Claim.

10 78. Between October 2013 and the end of October 2014 when APCO finally paid
11 Helix its retention, APCO forwarded Helix's Claim to CNLV on two separate occasions and
12 received multiple written notices from Helix that it maintained its Claim against APCO.

13 79. The project was substantially completed on October 25, 2013.

14 80. On October 31, 2013, in order to account for certain overhead items that were
15 omitted from the original Claim, Helix: (i) increased its Claim from \$102,400 to \$111,847; (ii)
16 resubmitted its Invoice to APCO; and (iii) provided additional backup information and
17 documents. Included with the revised invoice was a monthly breakdown of Helix's Claim from
18 January to August, which included the following categories of damages: (1) Project Manager; (2)
19 Project Engineer; (3) Superintendent; (4) Site trucks; (5) Project Fuel; (6) Site Trailer; (7) Wire
20 Trailer; (8) Office supplies; (9) Storage Connex boxes; (10) forklifts; (11) small tools; and (12)
21 consumables. According to the summary of the Claim, Helix charged the Project 4-hours a day
22 for its Project Manager, Kurk Williams at \$65/hour, and 4-hours a day for its Superintendent, Ray
23 Prietzel at \$70/day.

24 81. On or about November 5, 2013, three weeks after APCO received Helix's
25
26
27
28

1 Retention Pay App and Conditional Waiver, APCO submitted a revised COR 68 (68.1) to CNLV
2 seeking a total of \$111,847 for Helix's Claim.

3 82. Had APCO believed Helix's Conditional Waiver for the Retention Pay App
4 (received on October 18, 2013) waived any and all claims Helix had on the Project, including its
5 Claim for extended overhead, APCO would not have submitted revised COR 68.1 to CNLV three
6 weeks after receiving Helix's Conditional Waiver.
7

8 83. On November 18, 2013, CNLV again rejected the Change Order Request stating,
9 "This is the 2nd COR for Helix Electric's extended overhead submittal. The 1st one was submitted
10 on Sept. 9, 2013 and Rejected on Sept. 16, 2013. This submittal dated Nov. 5, 2013 is
11 REJECTED on Nov. 13, 2013."

12 84. Llamado's second rejection had nothing to do with lack of backup documents or
13 untimeliness and was rejected simply because APCO should have included Helix's Claim under
14 its own claim to CNLV.
15

16 85. By this time, APCO had already settled with CNLV to receive payment for its own
17 extended overhead costs, and in doing so, waived and released any further claims against CNLV,
18 including Helix's Claim.
19

20 86. As Helix had previously informed APCO it would, on or about November 13,
21 2013, Helix submitted to APCO another invoice including backup in the amount of \$26,304
22 accounting for the extended overhead costs for September and October ("COR 93").

23 87. APCO confirmed to Helix's Kurk Williams that there would be no APCO
24 approval unless and until CNLV approved Helix's request.

25 88. CNLV rejected COR 93.

26 89. By submitting COR 93 to CNLV on November 13, 2013, APCO once again
27 acknowledged that it knew Helix's Conditional Waiver submitted on October 18, 2013 related to
28

1 the Retention Pay App only, and did not waive Helix's Claim for extended overhead.

2 90. If APCO believed the Conditional Waiver released Helix's Claim, APCO would
3 not have continued to submit Helix's Claim to CNLV.

4 91. On January 28, 2014, APCO sent Helix's Victor Fuchs and Bob Johnson an email
5 confirming that he was meeting with CNLV to discuss the remaining change order issues on
6 February 4, 2014. Pelan testified that, CNLV advised APCO that it was rejecting Helix's claim
7 because it had no merit and Helix only had one person on the Project while completing Helix's
8 contract work in 2013. Pelan reported CNLV's position to Helix.³

9 92. The Subcontract incorporated APCO's prime contract with CNLV in Section 1.1,
10 which sets forth CNLV's claims procedure for requests for payment that are escalated to claims.
11 Helix did not request that APCO initiate these proceedings on its behalf regarding the claim for
12 extended overhead.

13 93. On March 31, 2014, CNLV and APCO agreed that there would be no further
14 COR's submitted on the Project.

15 94. On April 16, 2014, Helix's Victor Fuchs threatened to convert the outstanding
16 issues into a claim if Helix's retention was not released per its pay application and release that
17 were submitted on October 18, 2013.

18 95. APCO admitted that on June 10, 2014, it received final retention from CNLV.

19 96. However, because APCO had not paid Helix its Retention or its Claim, Helix sent
20 APCO another demand for payment on September 26, 2014, seeking payment for both its
21 Retention and the Claim.

22 97. CNLV issued the formal notice of completion of the project on July 8, 2014.

23 ³ While the Court finds Pelan's testimony on this issue credible, the testimony of Llamado
24 differs.
25
26
27
28

1 98. On October 21, 2014, APCO issued check number 1473 in the amount of
2 \$105,679, which represented final payment of Helix's retention, in accordance with the October
3 18, 2013 retention billing and related final release.⁴

4 99. On October 29, 2014, APCO sent Helix an email requesting that it sign a new
5 Conditional Waiver and Release Upon Final Payment which included Helix's Retention only, but
6 did not include any disputed amount for the Claim.
7

8 100. Attached to that email was a copy of the Retention Check APCO informed Helix it
9 could pickup once it received the new executed Conditional Release.

10 101. Upon receiving the new Conditional Waiver and before picking up the Retention
11 Check, Helix notified APCO that it was not going to sign the new Conditional Waiver without
12 reserving a right to its Claim.
13

14 102. APCO invited Helix to revise the new Conditional Waiver as it saw fit, and Helix
15 provided an unsigned copy of it seeking full payment of the Claim and the Retention for a total
16 amount of \$243,830.

17 103. APCO declined to pay the Claim, and after additional discussions between Helix
18 and APCO, it was decided that Helix would exchange for the Retention Check an Unconditional
19 Waiver and Release Upon Final Payment seeking payment of \$105,679 for Retention, and
20 reserving as its Disputed Claim, \$138,151.
21

22 104. As part of the "Disputed Claim" field, Helix referenced additional correspondence
23 which it had incorporated into the Unconditional Waiver and Release.

24 105. Helix included a letter dated October 30, 2014 clarifying that while it was
25 demanding its retention payment, it was also seeking payment for its Claim in the amount of
26

27 ⁴ Because of this lengthy delay in payment, Helix is entitled to interest on the retention amount under NRS
28 338.

1 \$138,151 for which it also provided a final invoice.

2 106. In one such email, Helix writes, "Joe, please accept this email as a 30 day
3 extension of time for the execution of [the] promissory note attached...In good faith we [are]
4 extending this time per your request, so you can come up with an arrangement to repay the
5 outstanding amount that is past due."

6
7 107. APCO never executed the Promissory Note or paid Helix its Claim.

8 108. On October 29, 2014, APCO tendered the check and another signed release for
9 final payment. That release mirrored the one that Helix submitted in October 2013.

10 109. On October 29, 2014, Helix's Victor Fuchs sent an email to Pelan stating: "this is
11 not going to work." Pelan responded that same day stating: "Victor, make changes for me to
12 approve. Thanks."

13
14 110. On October 18, 2013, the Senior Vice President of Helix, Robert D. Johnson,
15 signed a "Conditional Waiver and Release Upon Final Payment".

16 111. Helix received the funds on October 29, 2014.

17 112. On October 30, 2014, the day after negotiating the final payment check, Helix
18 tendered a signed final lien release that purported to reserve Helix's extended overhead invoices
19 in the amount of \$138,151.

20
21 113. Helix has established how certain of its costs increased due to the extended time
22 on the Project given its demobilization and reduction in crew size. Prietzel was the only person
23 on site after May 6, 2013 and he was completing base Subcontract work and change order work
24 that was paid by CNLV.

25 114. After weighing the testimony of the witnesses and a review of the admitted
26 documents, the Court finds, that the delay was not so unreasonable to amount to abandonment
27
28

1 and that therefore the provision limiting damages after a delay does not permit the recovery of
2 extended general conditions.

3 115. Since CNLV determined that the delays through May 13, 2013 were not
4 compensable, the only time period that APCO recovered payment for its delay costs was May 13,
5 2013 through October 13, 2013. During that same compensable time period, Helix's reasonable
6 costs totaled \$43,992.39.⁵ Although Helix was earning revenue and being paid during the time
7 period for the Work and certain approved change orders, APCO by its settlement with CNLV,
8 impaired Helix's ability to pursue the Claim.
9

10 116. Helix has supported its claim for certain additional costs. As Prietzel was paid for
11 his time on site under the approved change orders the claimed expense for acting as a
12 superintendent (supervising only himself) is not appropriate.
13

14 117. After weighing the testimony of the witnesses and a review of the admitted
15 documents, the Court finds, Helix has established that it suffered damages as a result of the delay
16 in project completion in the amount of \$43,992.39.

17 118. If any findings of fact are properly conclusions of law, they shall be treated as if
18 appropriately identified and designated.
19

20 CONCLUSIONS OF LAW

- 21 1. The Subcontract was a valid contract between Helix and APCO.

22
23 ⁵ The Court has utilized the summary used as D5 during the trial with the deletion of the line item
"Superintendent". Those totals for the compensable months with that modification are:

24 May 13	\$8501.05
25 June 13	\$7124.90
26 July 13	\$8270.69
27 August 13	\$6785.04
28 September 13	\$6170.56
October 13	\$7140.15
TOTAL	\$43992.39

1 2. The Court finds that the Conditional Waiver Helix submitted to APCO on or about
2 October 2013 did not constitute a waiver of Helix's Claim.

3 3. APCO's own conduct establishes that it knew Helix was not waiving its Claim as
4 it continued to submit Helix's Claim to CNLV after receiving the Conditional Waiver.

5 4. Helix provided sufficient evidence establishing that it incurred damages as a result
6 of the Project schedule extending nine months past its original completion date.

7 5. APCO had a duty to include Helix's Claim in its own claim to CNLV or otherwise
8 preserve the Claim when it settled, which it failed to do.

9 6. APCO's internal policy and decision to keep Helix's Claim separate from its own
10 claim impaired Helix's ability to pursue the Claim.

11 7. When APCO entered into the settlement agreement with CNLV on October 3,
12 2013 without Helix's knowledge, CNLV took the position that APCO waived and released any
13 and all claims arising from the nine month Project delay, including Helix's Claim.

14 8. In every contract, there is an implied covenant of good faith and fair dealing.

15 9. APCO's impairment of Helix's Claim constitutes a breach of the covenant of good
16 faith and fair dealing implied in the Subcontract.

17 10. APCO breached the covenant of good faith and fair dealing when it, without
18 notifying Helix, settled its claim with CNLV for extended general conditions, impairing Helix
19 from pursuing any pass-through claims to CNLV for its Claim, but continued to submit Helix's
20 Claim to CNLV knowing that CNLV rejected it because it had no contractual privity with Helix,
21 and now APCO had released any and all claims against CNLV.

22 11. Helix is entitled to judgment against APCO under its claim for Breach of Implied
23 Covenant of Good Faith and Fair Dealing and its damages are the damages it has established for
24

1 in the amount of \$43,992.39.⁶

2 12. Because the Project was a public works project, it was governed under NRS
3 Chapter 338.

4 13. Under NRS 338.490, a conditional waiver and release can only release payments
5 for work which is the subject of the payment application to which the wavier and release
6 corresponds.
7

8 14. The Conditional Waiver Helix provided APCO on October 18, 2013, was for
9 retention only and expressly referred to the Retention Pay App (Pay Application No. 161113-022)
10 which sought retention only.

11 15. The Retention Pay App did not include Helix's Claim.

12 16. Therefore, because by statute, the Conditional Waiver can only release work that is
13 the subject of the Retention Pay App, it did not constitute a waiver and release of Helix's Claim.
14

15 17. NRS 338.565 states in relevant part:

16 If a contractor makes payment to a subcontractor or supplier more
17 than 10 days after the occurrence of any of the following acts or
18 omissions: (a) the contractor fails to pay his or her subcontractor or
19 supplier in accordance with the provisions of subsection 1 of NRS
20 338.550...the contractor shall pay to the subcontractor or supplier,
21 in addition to the entire amount of the progress bill or the retainage
22 bill or any portion thereof, interest from the 10th day on the amount
23 delayed, at a rate equal to the lowest daily prime rate...plus 2
24 percent, until payment is made to the subcontractor or supplier.

25 18. NRS 338.550(1) required APCO to pay Helix its retention within 10 days of
26 receiving its retention payment from CNLV.
27

28 ⁶ The Court has not awarded separate damages for the breach of contract claim as those would be duplicative of this award.

1 19. APCO admits it received its retention payment from CNLV on June 10, 2014, yet
2 it did not pay Helix its retention until October 30, 2014, more than four months later and in
3 violation of NRS 338.550(1).

4 20. APCO was required to pay Helix its retention amount of \$105,677.01, in addition
5 to interest at the rate of prime plus 2 percent from June 10, 2014 through October 30, 2014.
6 APCO failed to do so.

7 21. After providing APCO with the Conditional Waiver, Helix incurred additional
8 damages that could not be waived by way of the Conditional Waiver (i.e. the interest on its
9 wrongfully withheld retention).

10 22. On June 10, 2014, APCO received final retention from CNLV.

11 23. APCO failed to pay Helix its retention in the amount of \$105,679 until October 29,
12 2014.

13 24. Pursuant to NRS 338.550(1), APCO was required to pay Helix its retention no
14 later than June 21, 2014.

15 25. As a result of APCO's failure, and pursuant to NRS 338.565(1), APCO is required
16 to pay Helix interest on \$105,677.01 from June 22, 2014 through October 28, 2014, at a rate of
17 5.25% for a total of \$1,960.85.

18 26. Even if the pay-if-paid clause was enforceable, APCO cannot rely upon it to shield
19 itself from liability to Helix when its decision to submit Helix's Claim separately from its claim
20 led to CNLV rejecting Helix's Claim, and APCO's settlement with CNLV forever barred APCO
21 from receiving payment from CNLV for Helix's Claim.

22 27. To the extent the delays were caused by CNLV, APCO is still liable to Helix since
23 it impaired those claims in contradiction to NRS 624.628(3)(c) by entering into a settlement
24 agreement with CNLV on October 2, 2013.

1 28. Because this Court has found APCO breached the Subcontract and breached the
2 covenant of good faith and fair dealing, Helix is entitled to judgment against Safeco and the
3 Payment Bond as well.

4 29. NRS 339.025(1)(b) provides the following:
5

6 1. Before any contract,..., exceeding \$100,000 for any project
7 for the new construction, repair or reconstruction of any public
8 building or other public work or public improvement of any
9 contracting body is awarded to any contractor, the contractor shall
furnish to the contracting body the following bonds which become
binding upon the award of the contract to the contractor;

10 a.

11 b. A payment bond in an amount to be fixed by the
12 contracting body, but not less than 50 percent of the contract
13 amount, conditioned upon the faithful performance of the
14 contract in accordance with the plans, specifications and
15 conditions of the contract. The bond must be solely for the
protection of claimants supplying labor or materials to the
contractor to whom the contract was awarded, or to any of his
or her subcontractors, in the prosecution of the work provided
for in such contract.

16 30. NRS 339.035(1) provides:

17 ...any claimant who has performed labor or furnished material in
18 the prosecution of the work provided for in any contract for which
19 a payment bond has been given pursuant to the provisions of
20 subsection 1 of NRS 339.025, and who has not been paid in full
21 before the expiration of 90 days after the date on which the
22 claimant performed the last of such labor or furnished the last of
23 such materials for which the claimant claims payment, may bring
an action on such payment bond in his or her own name to recover
any amount due the claimant for such labor or material, and may
prosecute such action to final judgment and have execution on the
judgment.

24 31. SAFECO issued a Labor and Material Payment Bond, Bond No. 024043470,
25 wherein APCO is the principal and SAFECO is the surety.

26 32. Helix provided Work to the Project and remains unpaid for the same.

27 33. Therefore, Helix is a claimant against the Bond and may execute a judgment
28

1 against the same.

2 34. Section 20.5 of the Subcontract provides that “ [i]n the event either party employs
3 an attorney to institute a lawsuit or to demand arbitration for any cause arising out of the
4 Subcontract Work or the Subcontract, or any of the Contract Documents, the prevailing party
5 shall be entitled to all costs, attorney’s fees and any other reasonable expenses incurred therein.”
6

7 35. This provision was not modified by the Helix Addendum.

8 36. The Court finds that Helix is the prevailing party and is entitled to an award of its
9 attorneys’ fees and costs.

10 37. If any conclusions of law are properly findings of fact, they shall be treated as if
11 appropriately identified and designated.

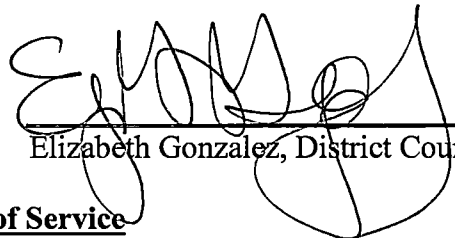
12 Based upon the foregoing Findings of Fact and Conclusions of Law **IT IS HEREBY**
13 **ORDERED, ADJUDGED AND DECREED** as follows:
14

- 15 1. **IT IS HEREBY ORDERED** that, as to Plaintiff’s Claim for Breach of Contract
16 against APCO, this Court finds in favor of Plaintiff but as the Claim was impaired
17 awards damages under the Breach of the Implied Covenant of Good Faith and
18 Fair Dealing, rather than awarding duplicative damages;
- 19 2. **IT IS FURTHER ORDERED** that, as to Plaintiff’s Claim for Breach of the
20 Implied Covenant of Good Faith and Fair Dealing against APCO, this Court finds
21 in favor of Plaintiff and awards damages in the amount of \$43,992.39 together
22 with interest as provided by law and taxable costs of suit;
- 23 3. **IT IS FURTHER ORDERED** that, as to Plaintiff’s Claim for violations of NRS
24 338 against APCO, this Court finds in favor of Plaintiff in the amount of
25 \$1,960.85;⁷
26
27

28 ⁷ These damages are in addition to those awarded under the claim of Breach of the Implied Covenant of Good

- 1 4. **IT IS FURTHER ORDERED** that, given the Court's findings against APCO,
2 the Court finds in favor of Plaintiff and against Safeco and the Bond;
3 5. **IT IS FURTHER ORDERED** that this Court will address any issues of
4 attorneys' fees through motions that may be filed with the Court.
5 6. Any claim not otherwise disposed of by this decision is dismissed.
6

7 DATED this 8th day of July, 2019.
8

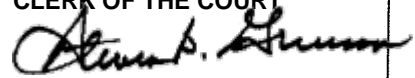
9 
10 Elizabeth Gonzalez, District Court Judge
11

12 **Certificate of Service**

13 I hereby certify that on the date filed, a copy of the foregoing Scheduling Order and
14 Order Setting Civil Jury Trial, Pre-Trial and Calendar Call was electronically served, pursuant to
15 N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing
16 Program.
17

18 
19 Dan Kutinac
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25
26
27
28

Faith and Fair Dealing.



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16 *Attorneys for Plaintiff*
17 *HELIX ELECTRIC OF NEVADA, LLC*

18 **DISTRICT COURT**
19 **CLARK COUNTY, NEVADA**

20 HELIX ELECTRIC OF NEVADA, LLC, a
21 Nevada limited liability company,

22 Plaintiff,

23 vs.

24 APCO CONSTRUCTION, a Nevada corporation;
25 SAFECO INSURANCE COMPANY OF
26 AMERICA; DOES I through X; and BOE
27 BONDING COMPANIES I through X,

28 Defendants.

CASE NO. : A-16-730091-C
DEPT. NO. : XI

**NOTICE OF ENTRY OF FINDINGS
OF FACT AND CONCLUSIONS OF
LAW AND ORDER**

///

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**NOTICE OF ENTRY OF FINDINGS
OF FACT AND CONCLUSIONS OF LAW AND ORDER**

PLEASE TAKE NOTICE that the **FINDINGS OF FACT AND CONCLUSIONS OF
LAW AND ORDER** was filed on **July 8, 2019**, a copy of which is attached as Exhibit 1.

Dated this 10th day of July, 2019.

PEEL BRIMLEY LLP



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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of **PEEL BRIMLEY, LLP**, and that on this 10th day of July, 2019, I caused the above and foregoing document, **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER**, to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☒ pursuant to NEFCR 9, upon all registered parties via the Court's electronic filing system;
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile**;
- ☐ to be hand-delivered; and/or
- ☐ other _____

to the attorney(s) and/or party(ies) listed below at the address and/or facsimile number indicated below:

Attorneys for APCO Construction and Safeco Insurance Co.

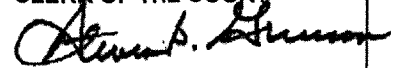
John Randall Jefferies, Esq. (rjefferies@fclaw.com)

Brandi M. Planet, Esq. (bplanet@fclaw.com)



An employee of **PEEL BRIMLEY, LLP**

EXHIBIT 1



1 FFCL

2
3 DISTRICT COURT

4 CLARK COUNTY, NEVADA

5 HELIX ELECTRIC OF NEVADA, LLC, a
6 Nevada limited liability company,

7 Plaintiff,

8 v.

9
10 APCO CONSTRUCTION, a Nevada
11 corporation; SAFECO INSURANCE
12 COMPANY OF AMERICA; DOES I through
13 X; and BOE BONDING COMPANIES, I
14 through X,

15 Defendants.

Case No.: A-16-730091-C

Dept.: XI

16 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

17 This matter having come on for non-jury trial before the Honorable Elizabeth Gonzalez
18 beginning on June 3, 2019, and continuing day to day, until its completion on June 5, 2019;
19 Plaintiff, HELIX ELECTRIC OF NEVADA, LLC ("Helix"), was represented by and through its
20 counsel, Cary B. Domina, Esq. and Ronald J. Cox, Esq. of the law firm of Peel Brimley LLP, and
21 Defendants, APCO CONSTRUCTION ("APCO") and SAFECO INSURANCE COMPANY OF
22 AMERICA ("Safeco"), were represented by and through their counsel, Randy Jefferies, Esq. of
23 Fennemore Craig; the Court having read and considered the pleadings filed by the parties; having
24 reviewed the evidence admitted during the trial; having heard and carefully considered the
25 testimony of the witnesses called to testify; having considered the oral and written arguments of
26 counsel, and with the intent of rendering a decision on all remaining claims before the Court,

RECEIVED
JUL 08 2019

CLERK OF THE COURT

1 pursuant to NRCP 52(a) and 58;¹ the Court makes the following findings of fact and conclusions
2 of law:

3
4 FINDINGS OF FACT

5 1. In July 2011, APCO submitted a bid for the Craig Ranch Regional Park – Phase II
6 - Project No. 10294 (“Project”) to the City of North Las Vegas (“CNLV”). At that time, the
7 anticipated Project duration was approximately 550 calendar days.

8 2. Helix submitted a bid of approximately \$4,600,000 to APCO for the electrical
9 work required on the Project. Helix’s estimate assumed a Project duration of 550 days.

10 3. CNLV canceled the original solicitation and ultimately requested a second round
11 of bids in October 2011. Among other things, CNLV changed the duration of the Project from 18
12 months to 12 months.

13 4. On or about October 26, 2011, APCO submitted its second bid to CNLV for the
14 Project with a 12-month schedule.

15 5. CNLV issued its notice to proceed to APCO on January 11, 2012. APCO started
16 work on the Project on approximately January 16, 2012.

17 6. Helix mobilized its equipment and started work full time on or about February 20,
18 2012.

19 7. In the spring of 2012, APCO entered into a construction agreement (the “Prime
20 Contract”) with the CNLV in which APCO agreed to serve as the general contractor on the
21 Project.

22 8. Section 6.3.2 the General Conditions of the Prime Contract which are incorporated
23 into the Subcontract, states in part:

24
25
26
27 ¹ In the pretrial statement, the parties have stipulated that the Contract time was extended from January 2013
28 into November 2013 through no fault of either APCO or Helix.

1 [a]ll other claims notices for extra work shall be filed in writing to the Construction
2 Manager prior to the commencement of such work. Written notices shall use the words
3 "Notice of Potential Claim." Such Notice of Potential Claim shall state the circumstances
4 and all reasons for the claim, but need not state the amount.

5 9. After receiving the notice of proposed award, APCO agreed to contract terms with
6 Helix subject to certain specially negotiated terms modifying the form subcontract ("Helix
7 Addendum").

8 10. As part of the negotiation, APCO agreed to purchase certain materials totaling
9 \$2,248,248 as specified by Helix, which was to be removed from Helix's original proposed scope
10 and pricing.

11 11. Helix entered into an agreement with APCO to provide certain electrical related
12 labor, materials and equipment (the "Work") to the Project for the lump sum amount of
13 \$2,356,520.

14 12. On or about April 19, 2012, APCO and Helix entered into a formal subcontract for
15 the electrical work required on the Project (the "Subcontract").

16 13. Helix's Daily Reports, Certified Pay Roll Records and the Project Sign-in Sheets
17 establish that Helix started performing work for the Project as early as January 23, 2012, and
18 mobilized on the Project on or about February 28, 2012.

19 14. Pursuant to Exhibit "A" of the Subcontract, Helix was required to supply "all
20 labor, materials, tools, equipment, hoisting, forklift, supervision, management, permits and taxes
21 necessary to complete all of the scope of work" for the 'complete electrical package' for the
22 Project.
23

24 15. Section 6.5 contains a "no damage for delay" provision.
25

26 If Subcontractor shall be delayed in the performance of the Work by any act or neglect of
27 the Owner or Architect, or by agents or representatives of either, or by changes ordered in
28 the Work, or by fire, unavoidable casualties, national emergency, or by any cause other
that [SIC] the intentional Interference of Contractor, Subcontractor shall be entitled, as
Subcontractor's exclusive remedy, to an extension of time reasonably necessary to

1 compensate for the time lost due to the delay, but only if Subcontractor shall notify
2 Contractor in writing within twenty four (24) hours after such occurrences, and only if
3 Contractor shall be granted such time extension by Owner.

4 This clause was not modified by the Helix Addendum.

5 16. Section 6.7 of the Subcontract provided in pertinent part:

6 Contractor shall not be liable to Subcontractor for delays caused by reason of fire or other
7 casualty, or on account of riots, strikes, labor trouble, terrorism, acts of God, cataclysmic
8 event, or by reason of any other event or cause beyond Contractor's control, or
9 contributed to by Subcontractor.

10 Section 6.7 was not modified by the Helix Addendum.

11 17. The Parties Contract requires proof of actual cost increase. Section 7.1—which
12 was unchanged by the Helix Addendum—provides:

13 Contractor may order or direct changes, additions, deletions or other revisions in the
14 Subcontract work without invalidating the Subcontract. No changes, additions, deletions,
15 or other revisions to the Subcontract shall be valid unless made in writing. Subcontractor
16 markup shall be limited to that stated in the contract documents in addition to the
17 direct/actual on-site cost of the work, however, no profit and overhead markup on
18 overtime shall be allowed.

19 18. Section 7.2 as modified by the Helix Addendum, provided:

20 Subcontractor, prior to the commencement of such changed or revised work, shall submit,
21 (within 5 days of Contractor's written request) to Contractor, written copies of the
22 breakdown of cost or credit proposal, including work schedule revisions, for changes,
23 additions, deletions, or other revisions in a manner consistent with the Contract
24 Documents. Contractor shall not be liable to Subcontractor for a greater sum, or
25 additional time extensions, than Contractor obtains from Owner for such additional work.

26 19. The parties negotiated additional language that was included in Section 6 by the
27 Helix Addendum:

28 In the event the schedule as set forth above is changed by Contractor for whatever reason
29 so that Subcontractor either is precluded from performing the work in accordance with
30 said schedule and thereby suffers delay, or, is not allowed the number of calendar days to
31 perform the work under such modified schedule and must accelerate its performance, then
32 Subcontractor shall be entitled to receive from Contractor payment representing the costs
33 and damages sustained by Subcontractor for such delay or acceleration, providing said
34 costs and damages are first paid to Contractor.

35 20. Section 4.4 of the Subcontract—as amended by the Helix Addendum provides:

1 Progress payments will be made by Contractor to Subcontractor within 10 calendar days
2 after Contractor actually receives payment for Subcontractor's work from Owner. The
3 progress payment to Subcontractor shall be one hundred percent (100%) of the value of
4 Subcontract work completed (less 10% retention) during the preceding month as
5 determined by the Owner, less such other amounts as Contractor shall determine as being
6 properly withheld as allowed under this Article or as provided elsewhere in this
7 Subcontract. The estimates of Owner as to the amount of Work completed by
8 Subcontractor shall be binding upon Contractor and Subcontractor and shall conclusively
9 establish the amount of Work performed by Subcontractor. As a condition precedent to
10 receiving partial payments from Contractor for Work performed, Subcontractor shall
11 execute and deliver to Contractor, with its application for payment, a full and complete
12 release (Forms attached) of all claims and causes of action Subcontractor may have
13 against Contractor and Owner through the date of the execution of said release, save and
14 except those claims specifically listed on said release and described in a manner sufficient
15 for Contractor to identify such claim or claims with certainty. Upon the request of
16 Contractor, Subcontractor shall provide an Unconditional Waiver of Release in form
17 required by Contractor for any previous payment made to Subcontractor. Any payments
18 to Subcontractor shall be conditioned upon receipt of the actual payments by Contractor
19 from Owner. Subcontractor herein agrees to assume the same risk that the Owner may
20 become insolvent that Contractor has assumed by entering into the Prime Contract with
21 the Owner per NRS Statutes.

22 21. The Subcontract also incorporated the Prime Contract, which included the claim
23 procedures set forth in the Contract.

24 22. Helix assigned Kurk Williams as its Project Manager. Williams never signed in
25 using APCO's sign in sheets that were maintained at the Project site. By his own admission,
26 Williams' time devoted to the Project was not accurately tracked in Helix's certified payroll
27 reports, only Helix's job cost report.

28 23. Richard Clement was Helix's Project Superintendent. Clement was on site
occasionally and signed in with APCO at the Project twice during 2012.

24 24. Clement did not work on the Project between June 11, 2012 and September 26,
25 2012. Clement only worked two weeks on the Project from September 27, 2012 to October 7,
26 2012. Clement did not work on the Project from October 8, 2012 through January 20, 2013. In
27 all of 2013, which was the extended Project time, Clement only worked 32 hours during the week
28 ending January 27, 2013.

1 25. In late January 2013, Helix assigned Clement to another project and designated
2 Rainer Prietzel, Helix's Foreman to oversee work in the field, as the new Project Superintendent
3 and foreman.

4 26. According to the Labor Commissioner, and OSHA regulations, Helix must always
5 have a project superintendent on site at all times during the Project.
6

7 27. From January 2013 to May 2013, Helix typically had a three to five man crew on
8 the Project.

9 28. In early May 2013, with the exception of a few days, Prietzel was the only Helix
10 employee on the Project, and he split his time as the Project Superintendent and self-performing
11 contract and change order work on the Project.

12 29. Prietzel remained the Project Superintendent until the end of the Project in mid-
13 October 2013.
14

15 30. Helix's original line item for its general conditions, as reflected in its pay
16 application, was \$108,040 on a Subcontract price of \$2,380,085, which represents 4.5%.

17 31. The Project encountered significant delays and was not substantially completed
18 until October 25, 2013, thus resulting in Helix claiming approximately, \$138,000 in additional
19 extended overhead costs.
20

21 32. The project was never abandoned by CNLV.

22 33. Prior to the original project completion date passing, on January 9, 2013, APCO
23 submitted its first request for an extension of time to CNLV. APCO submitted its Time Impact
24 Analysis #1 ("TIA #1") to CNLV where it sought extended general conditions and home office
25 overhead of \$418,059 (\$266,229 for general conditions and \$151,830 for home office overhead).

26 34. Helix first notified APCO in writing that it would be asserting a claim for extended
27 overhead costs on January 28, 2013 and reserved its rights to submit a claim for "all additional
28

1 costs incurred due to scheduled delays for this project" (the "Claim").

2 35. As of May 9, 2013, CNLV had not made a decision on APCO's TIA #1.

3 36. On May 9, 2013, APCO submitted a revised Time Impact Analysis ("TIA #2") to
4 CNLV seeking an additional five (5) months of compensation for general conditions and home
5 office overhead, among other claims, for a total delay claim of nine (9) months.
6

7 37. As part of TIA #2, APCO submitted Change Order Request No. 39.1 to CNLV
8 seeking compensation of \$752,499 for its extended general conditions and home office overhead
9 (\$479,205 for general conditions and \$273,294 for home office overhead).

10 38. This represented approximately seventy percent (70%) of APCO's \$1,090,066.50
11 total claim against CNLV for the 9-month delay to the Project.
12

13 39. APCO's claim did not include any amounts for its subcontractors, and APCO
14 acknowledges that as a company policy, it does not include its subcontractors' claims with its
15 own claims.

16 40. Through no fault of APCO, Helix did not take delivery of various light poles and
17 related equipment until approximately January 30, 2013.

18 41. On June 19, 2013, APCO and Helix exchanged emails regarding various Project
19 issues, including Helix's delay rates. APCO confirmed that if Helix submitted a request for
20 compensation that it would be forwarded to CNLV.
21

22 42. On June 19, 2013 Helix provided a supplemental notice of claim but did not
23 provide any back up to support its daily rates or the impacts alleged to be attributed to the delay.
24 At that time, Helix still only had Prietzel working on site.

25 43. On June 21, 2013 Helix and APCO exchanged emails related to the support for
26 Helix's claimed costs, with APCO noting that a project manager was considered home office
27 overhead. Helix indicated that its job cost reports would reflect the actual costs for the extended
28

1 overhead.

2 44. In June 2013, Helix realized the Project was still several months away from being
3 completed. According to Helix's June 19 letter entitled "Extended overhead cost", Helix's cost
4 for extended overhead was \$640/day.

5 45. The \$640/day cost is comprised of (1) \$260 for the Project Manager; (2) \$280 for
6 the Superintendent; (3) \$25 for the site trailer; (4) \$5 for the Connex box; (5) \$25 for the forklift;
7 and (6) \$45 for the truck.

8 46. The email that accompanied Helix's June 19, 2013 letter advised APCO that to
9 date, Helix's Claim totaled \$72,960, but that Helix's Claim would increase for each day the
10 Project continued past the original completion date.

11 47. Also on June 19, 2013, APCO informed Helix, by way of an email, that it "is in
12 the process of presenting CNLV with a Time Impact Analysis containing facts as to why the
13 additional costs should be paid." APCO had submitted TIA #2 to CNLV on May 9, 2013, six
14 weeks prior to this email.

15 48. In the email, APCO further advised Helix that "[o]nce we fight the battle, and
16 hopefully come out successfully, this will open the door for Helix...to present their case for the
17 same."

18 49. While APCO notified Helix that it would forward to CNLV any letter Helix
19 provided regarding its claim for extended overhead costs, APCO did not inform Helix that it
20 needed Helix's Claim immediately so it could include it with APCO's claim to CNLV. Indeed,
21 according to APCO, it would first "fight that battle, and hopefully come out successfully..."
22 which would only then "open the door for Helix...to present their case..."

23 50. On August 27, 2013, despite the fact that the Project was still ongoing, Helix
24 furnished APCO with its first invoice for its Claim in the amount of \$102,400, which constituted
25
26
27
28

1 32 weeks of extended overhead costs incurred between January 13, 2013, and August 30, 2013
2 (or 160 business days).

3 51. Helix's invoice identified an extended overhead cost of \$640/day for 32 weeks,
4 which had been provided to APCO in June 2013.

5 52. From May 6, 2013 through November 6, 2013, Prietzel was the only Helix person
6 on site. Prietzel confirmed that during that time period he was either working on completing
7 original Subcontract work for which Helix would be paid or change order work that was
8 acknowledged and paid by APCO and CNLV.
9

10 53. During construction, CNLV made changes or otherwise caused issues that
11 impacted Helix. In those instances, Helix submitted a request for additional compensation and
12 CNLV issued APCO change orders that compensated Helix for the related impacts. During the
13 extended Contract time, CNLV issued eleven change orders that resulted in additional
14 compensation to Helix through the Subcontract. Helix's pricing for the change orders included a
15 10% markup on materials and a 15% markup on labor to cover Helix's overhead.
16

17 54. APCO submitted Change Order Request No. 68 ("COR 68") to CNLV on
18 September 9, 2013, requesting compensation for Helix's Claim.

19 55. On September 16, 2013, CNLV rejected the COR 68 stating, "This COR is
20 REJECTED. The City of North Las Vegas does not have a contract with Helix Electric."
21

22 56. CNLV stated that it did not reject COR 68 for lack of backup or untimeliness.

23 57. The Construction Manager for CNLV during the Project, Joemel Llamado,
24 testified that the only reason he rejected Helix's Claim was because CNLV did not have a
25 contract with Helix. APCO should have included Helix's Claim in its own claim to CNLV since
26 Helix's Subcontract was with APCO, not CNLV.
27

28 58. Llamado did not look at the merits of the Claim because the Claim should have

1 been included with APCO's claim.

2 59. APCO informed Helix that CNLV rejected COR 68 because of lack of backup
3 documentation.

4 60. On October 2, 2013, CNLV issued its decision on APCO's request for additional
5 time and compensation. CNLV determined that the time period from January 11, 2013 to May
6 10, 2013 was an excusable but not compensable delay. APCO was not charged liquidated
7 damages, but also was not provided compensation from January thru May 10, 2013. CNLV did
8 confirm that it would pay APCO \$560,724.16 for the delay from May 10, 2013 to October 25,
9 2013. APCO accepted that determination on or about October 10, 2013.

10 61. On October 3, 2013, APCO sent Helix a letter requesting additional back-up
11 documentation for the Claim so it could resubmit the Claim to CNLV.

12 62. That letter states in relevant part:

13 Attached is your invoice of August 27, 2013 in the amount of \$102,400. At this time
14 APCO has not received any back-up documentation to undo the previous formal rejection
15 made by the City of North Las Vegas. If you want APCO to re-submit your request,
16 please provide appropriate back-up for review.

17 63. On October 2, 2013, CNLV and APCO entered into a settlement agreement
18 through which CNLV agreed to pay APCO \$560,724.16 for its claim submitted under TIA #2,
19 including APCO's claim for added overhead and general conditions it incurred as a result of the
20 nine-month delay to the Project.

21 64. According to that settlement agreement, APCO agreed to "forgo any claims for
22 delays, disruptions, general conditions and overtime costs associated with the weekend work
23 previously performed...and for any other claim, present or future, that may occur on the project.

24 65. APCO did not notify Helix that it had entered into this settlement agreement.

25 66. Llamado's position was that the settlement agreement resolved any and all claims
26 between CNLV and APCO for the nine-month delay to the Project, including any claims APCO's
27 28

1 subcontractors might have.²

2 67. Pursuant to this settlement agreement, CNLV issued Change Order No. 50 to
3 APCO and agreed to pay APCO \$560,724.16 for the added overhead and general conditions it
4 incurred as a result of the extended project completion date.

5 68. On October 3, 2013, APCO transmitted to Helix CNLV's rejection of its invoice
6 for extended overhead.

7 69. Near the end of the Project in October 2013, Pelan, notified Helix, that Helix could
8 not include the Claim for extended overhead in Helix's pay application for retention because
9 CNLV would not release the retention on the Project if there were outstanding Claims on the
10 Project.
11

12 70. In compliance with Pelan's instructions, on October 18, 2013, Helix submitted its
13 Pay Application for Retention only in the amount of \$105,677.01 and identified it as Pay
14 Application No. 161113-002 (the "Retention Pay App").
15

16 71. On October 18, 2013, Helix submitted its pay application for the time period up
17 through October 30, 2013. At that time, Helix billed its general conditions line item at 100%.

18 72. On October 18, 2013, Helix submitted its pay application for the release of
19 retention. As with prior pay applications, Helix enclosed a conditional waiver. The release was
20 conditioned on APCO issuing a final payment in the amount of \$105,677.01 and expressly
21 confirmed that there were "zero" claims outstanding. Helix signed and provided that release to
22 APCO after receiving CNLV's rejection of its extended overhead invoice.
23

24 73. Helix also provided to APCO a "Conditional Waiver and Release Upon Final
25 Payment" (the "Conditional Waiver") for the Retention Pay App only (i.e. Pay App No. 161113-
26

27 ² Joe Pelan, the Contract Manager for APCO, disagreed with this position, but APCO and Helix did not test it
28 through the claims process provided in the Prime Contract.

1 002).

2 74. Helix indicated in the Conditional Waiver that there was no "Disputed Claim
3 Amount" relating to the Retention Pay App.

4 75. Helix takes the position that the Conditional Waiver was not intended to release
5 Helix's Claim.

6 76. The evidence presented at trial of the circumstances surrounding the execution of
7 the Conditional Waiver do not support Helix's waiver of the Claim.

8 77. It took APCO more than a year to pay Helix for its Retention Pay App, during
9 which time, Helix made it clear to APCO that it would continue pursuing its Claim.

10 78. Between October 2013 and the end of October 2014 when APCO finally paid
11 Helix its retention, APCO forwarded Helix's Claim to CNLV on two separate occasions and
12 received multiple written notices from Helix that it maintained its Claim against APCO.

13 79. The project was substantially completed on October 25, 2013.

14 80. On October 31, 2013, in order to account for certain overhead items that were
15 omitted from the original Claim, Helix: (i) increased its Claim from \$102,400 to \$111,847; (ii)
16 resubmitted its Invoice to APCO; and (iii) provided additional backup information and
17 documents. Included with the revised invoice was a monthly breakdown of Helix's Claim from
18 January to August, which included the following categories of damages: (1) Project Manager; (2)
19 Project Engineer; (3) Superintendent; (4) Site trucks; (5) Project Fuel; (6) Site Trailer; (7) Wire
20 Trailer; (8) Office supplies; (9) Storage Connex boxes; (10) forklifts; (11) small tools; and (12)
21 consumables. According to the summary of the Claim, Helix charged the Project 4-hours a day
22 for its Project Manager, Kurk Williams at \$65/hour, and 4-hours a day for its Superintendent, Ray
23 Prietzel at \$70/day.

24 81. On or about November 5, 2013, three weeks after APCO received Helix's
25
26
27
28

1 Retention Pay App and Conditional Waiver, APCO submitted a revised COR 68 (68.1) to CNLV
2 seeking a total of \$111,847 for Helix's Claim.

3 82. Had APCO believed Helix's Conditional Waiver for the Retention Pay App
4 (received on October 18, 2013) waived any and all claims Helix had on the Project, including its
5 Claim for extended overhead, APCO would not have submitted revised COR 68.1 to CNLV three
6 weeks after receiving Helix's Conditional Waiver.
7

8 83. On November 18, 2013, CNLV again rejected the Change Order Request stating,
9 "This is the 2nd COR for Helix Electric's extended overhead submittal. The 1st one was submitted
10 on Sept. 9, 2013 and Rejected on Sept. 16, 2013. This submittal dated Nov. 5, 2013 is
11 REJECTED on Nov. 13, 2013."
12

13 84. Llamado's second rejection had nothing to do with lack of backup documents or
14 untimeliness and was rejected simply because APCO should have included Helix's Claim under
15 its own claim to CNLV.

16 85. By this time, APCO had already settled with CNLV to receive payment for its own
17 extended overhead costs, and in doing so, waived and released any further claims against CNLV,
18 including Helix's Claim.

19 86. As Helix had previously informed APCO it would, on or about November 13,
20 2013, Helix submitted to APCO another invoice including backup in the amount of \$26,304
21 accounting for the extended overhead costs for September and October ("COR 93").
22

23 87. APCO confirmed to Helix's Kurk Williams that there would be no APCO
24 approval unless and until CNLV approved Helix's request.

25 88. CNLV rejected COR 93.

26 89. By submitting COR 93 to CNLV on November 13, 2013, APCO once again
27 acknowledged that it knew Helix's Conditional Waiver submitted on October 18, 2013 related to
28

1 the Retention Pay App only, and did not waive Helix's Claim for extended overhead.

2 90. If APCO believed the Conditional Waiver released Helix's Claim, APCO would
3 not have continued to submit Helix's Claim to CNLV.

4 91. On January 28, 2014, APCO sent Helix's Victor Fuchs and Bob Johnson an email
5 confirming that he was meeting with CNLV to discuss the remaining change order issues on
6 February 4, 2014. Pelan testified that, CNLV advised APCO that it was rejecting Helix's claim
7 because it had no merit and Helix only had one person on the Project while completing Helix's
8 contract work in 2013. Pelan reported CNLV's position to Helix.³

9 92. The Subcontract incorporated APCO's prime contract with CNLV in Section 1.1,
10 which sets forth CNLV's claims procedure for requests for payment that are escalated to claims.
11 Helix did not request that APCO initiate these proceedings on its behalf regarding the claim for
12 extended overhead.
13

14 93. On March 31, 2014, CNLV and APCO agreed that there would be no further
15 COR's submitted on the Project.
16

17 94. On April 16, 2014, Helix's Victor Fuchs threatened to convert the outstanding
18 issues into a claim if Helix's retention was not released per its pay application and release that
19 were submitted on October 18, 2013.
20

21 95. APCO admitted that on June 10, 2014, it received final retention from CNLV.

22 96. However, because APCO had not paid Helix its Retention or its Claim, Helix sent
23 APCO another demand for payment on September 26, 2014, seeking payment for both its
24 Retention and the Claim.

25 97. CNLV issued the formal notice of completion of the project on July 8, 2014.
26

27 ³ While the Court finds Pelan's testimony on this issue credible, the testimony of Llamado
28 differs.

1 98. On October 21, 2014, APCO issued check number 1473 in the amount of
2 \$105,679, which represented final payment of Helix's retention, in accordance with the October
3 18, 2013 retention billing and related final release.⁴

4 99. On October 29, 2014, APCO sent Helix an email requesting that it sign a new
5 Conditional Waiver and Release Upon Final Payment which included Helix's Retention only, but
6 did not include any disputed amount for the Claim.
7

8 100. Attached to that email was a copy of the Retention Check APCO informed Helix it
9 could pickup once it received the new executed Conditional Release.

10 101. Upon receiving the new Conditional Waiver and before picking up the Retention
11 Check, Helix notified APCO that it was not going to sign the new Conditional Waiver without
12 reserving a right to its Claim.
13

14 102. APCO invited Helix to revise the new Conditional Waiver as it saw fit, and Helix
15 provided an unsigned copy of it seeking full payment of the Claim and the Retention for a total
16 amount of \$243,830.

17 103. APCO declined to pay the Claim, and after additional discussions between Helix
18 and APCO, it was decided that Helix would exchange for the Retention Check an Unconditional
19 Waiver and Release Upon Final Payment seeking payment of \$105,679 for Retention, and
20 reserving as its Disputed Claim, \$138,151.
21

22 104. As part of the "Disputed Claim" field, Helix referenced additional correspondence
23 which it had incorporated into the Unconditional Waiver and Release.

24 105. Helix included a letter dated October 30, 2014 clarifying that while it was
25 demanding its retention payment, it was also seeking payment for its Claim in the amount of
26

27 ⁴ Because of this lengthy delay in payment, Helix is entitled to interest on the retention amount under NRS
28 338.

1 \$138,151 for which it also provided a final invoice.

2 106. In one such email, Helix writes, "Joe, please accept this email as a 30 day
3 extension of time for the execution of [the] promissory note attached...In good faith we [are]
4 extending this time per your request, so you can come up with an arrangement to repay the
5 outstanding amount that is past due."
6

7 107. APCO never executed the Promissory Note or paid Helix its Claim.

8 108. On October 29, 2014, APCO tendered the check and another signed release for
9 final payment. That release mirrored the one that Helix submitted in October 2013.

10 109. On October 29, 2014, Helix's Victor Fuchs sent an email to Pelan stating: "this is
11 not going to work." Pelan responded that same day stating: "Victor, make changes for me to
12 approve. Thanks."
13

14 110. On October 18, 2013, the Senior Vice President of Helix, Robert D. Johnson,
15 signed a "Conditional Waiver and Release Upon Final Payment".

16 111. Helix received the funds on October 29, 2014.

17 112. On October 30, 2014, the day after negotiating the final payment check, Helix
18 tendered a signed final lien release that purported to reserve Helix's extended overhead invoices
19 in the amount of \$138,151.
20

21 113. Helix has established how certain of its costs increased due to the extended time
22 on the Project given its demobilization and reduction in crew size. Prietzel was the only person
23 on site after May 6, 2013 and he was completing base Subcontract work and change order work
24 that was paid by CNLV.

25 114. After weighing the testimony of the witnesses and a review of the admitted
26 documents, the Court finds, that the delay was not so unreasonable to amount to abandonment
27
28

1 and that therefore the provision limiting damages after a delay does not permit the recovery of
2 extended general conditions.

3 115. Since CNLV determined that the delays through May 13, 2013 were not
4 compensable, the only time period that APCO recovered payment for its delay costs was May 13,
5 2013 through October 13, 2013. During that same compensable time period, Helix's reasonable
6 costs totaled \$43,992.39.⁵ Although Helix was earning revenue and being paid during the time
7 period for the Work and certain approved change orders, APCO by its settlement with CNLV,
8 impaired Helix's ability to pursue the Claim.
9

10 116. Helix has supported its claim for certain additional costs. As Prietzel was paid for
11 his time on site under the approved change orders the claimed expense for acting as a
12 superintendent (supervising only himself) is not appropriate.
13

14 117. After weighing the testimony of the witnesses and a review of the admitted
15 documents, the Court finds, Helix has established that it suffered damages as a result of the delay
16 in project completion in the amount of \$43,992.39.

17 118. If any findings of fact are properly conclusions of law, they shall be treated as if
18 appropriately identified and designated.
19

20 CONCLUSIONS OF LAW

21 1. The Subcontract was a valid contract between Helix and APCO.
22

23 ⁵ The Court has utilized the summary used as D5 during the trial with the deletion of the line item
24 "Superintendent". Those totals for the compensable months with that modification are:

May 13	\$8501.05
June 13	\$7124.90
July 13	\$8270.69
August 13	\$6785.04
September 13	\$6170.56
October 13	\$7140.15
TOTAL	\$43992.39

1 2. The Court finds that the Conditional Waiver Helix submitted to APCO on or about
2 October 2013 did not constitute a waiver of Helix's Claim.

3 3. APCO's own conduct establishes that it knew Helix was not waiving its Claim as
4 it continued to submit Helix's Claim to CNLV after receiving the Conditional Waiver.

5 4. Helix provided sufficient evidence establishing that it incurred damages as a result
6 of the Project schedule extending nine months past its original completion date.

7 5. APCO had a duty to include Helix's Claim in its own claim to CNLV or otherwise
8 preserve the Claim when it settled, which it failed to do.

9 6. APCO's internal policy and decision to keep Helix's Claim separate from its own
10 claim impaired Helix's ability to pursue the Claim.

11 7. When APCO entered into the settlement agreement with CNLV on October 3,
12 2013 without Helix's knowledge, CNLV took the position that APCO waived and released any
13 and all claims arising from the nine month Project delay, including Helix's Claim.

14 8. In every contract, there is an implied covenant of good faith and fair dealing.

15 9. APCO's impairment of Helix's Claim constitutes a breach of the covenant of good
16 faith and fair dealing implied in the Subcontract.

17 10. APCO breached the covenant of good faith and fair dealing when it, without
18 notifying Helix, settled its claim with CNLV for extended general conditions, impairing Helix
19 from pursuing any pass-through claims to CNLV for its Claim, but continued to submit Helix's
20 Claim to CNLV knowing that CNLV rejected it because it had no contractual privity with Helix,
21 and now APCO had released any and all claims against CNLV.

22 11. Helix is entitled to judgment against APCO under its claim for Breach of Implied
23 Covenant of Good Faith and Fair Dealing and its damages are the damages it has established for
24

1 in the amount of \$43,992.39.⁶

2 12. Because the Project was a public works project, it was governed under NRS
3 Chapter 338.

4 13. Under NRS 338.490, a conditional waiver and release can only release payments
5 for work which is the subject of the payment application to which the wavier and release
6 corresponds.

7
8 14. The Conditional Waiver Helix provided APCO on October 18, 2013, was for
9 retention only and expressly referred to the Retention Pay App (Pay Application No. 161113-022)
10 which sought retention only.

11 15. The Retention Pay App did not include Helix's Claim.

12 16. Therefore, because by statute, the Conditional Waiver can only release work that is
13 the subject of the Retention Pay App, it did not constitute a waiver and release of Helix's Claim.
14

15 17. NRS 338.565 states in relevant part:

16 If a contractor makes payment to a subcontractor or supplier more
17 than 10 days after the occurrence of any of the following acts or
18 omissions: (a) the contractor fails to pay his or her subcontractor or
19 supplier in accordance with the provisions of subsection 1 of NRS
20 338.550...the contractor shall pay to the subcontractor or supplier,
21 in addition to the entire amount of the progress bill or the retainage
22 bill or any portion thereof, interest from the 10th day on the amount
23 delayed, at a rate equal to the lowest daily prime rate...plus 2
24 percent, until payment is made to the subcontractor or supplier.

25 18. NRS 338.550(1) required APCO to pay Helix its retention within 10 days of
26 receiving its retention payment from CNLV.

27 ⁶ The Court has not awarded separate damages for the breach of contract claim as those would be duplicative
28 of this award.

1 19. APCO admits it received its retention payment from CNLV on June 10, 2014, yet
2 it did not pay Helix its retention until October 30, 2014, more than four months later and in
3 violation of NRS 338.550(1).

4 20. APCO was required to pay Helix its retention amount of \$105,677.01, in addition
5 to interest at the rate of prime plus 2 percent from June 10, 2014 through October 30, 2014.
6 APCO failed to do so.

7 21. After providing APCO with the Conditional Waiver, Helix incurred additional
8 damages that could not be waived by way of the Conditional Waiver (i.e. the interest on its
9 wrongfully withheld retention).

10 22. On June 10, 2014, APCO received final retention from CNLV.

11 23. APCO failed to pay Helix its retention in the amount of \$105,679 until October 29,
12 2014.

13 24. Pursuant to NRS 338.550(1), APCO was required to pay Helix its retention no
14 later than June 21, 2014.

15 25. As a result of APCO's failure, and pursuant to NRS 338.565(1), APCO is required
16 to pay Helix interest on \$105,677.01 from June 22, 2014 through October 28, 2014, at a rate of
17 5.25% for a total of \$1,960.85.

18 26. Even if the pay-if-paid clause was enforceable, APCO cannot rely upon it to shield
19 itself from liability to Helix when its decision to submit Helix's Claim separately from its claim
20 led to CNLV rejecting Helix's Claim, and APCO's settlement with CNLV forever barred APCO
21 from receiving payment from CNLV for Helix's Claim.

22 27. To the extent the delays were caused by CNLV, APCO is still liable to Helix since
23 it impaired those claims in contradiction to NRS 624.628(3)(c) by entering into a settlement
24 agreement with CNLV on October 2, 2013.

1 28. Because this Court has found APCO breached the Subcontract and breached the
2 covenant of good faith and fair dealing, Helix is entitled to judgment against Safeco and the
3 Payment Bond as well.

4 29. NRS 339.025(1)(b) provides the following:

5
6 1. Before any contract,..., exceeding \$100,000 for any project
7 for the new construction, repair or reconstruction of any public
8 building or other public work or public improvement of any
9 contracting body is awarded to any contractor, the contractor shall
furnish to the contracting body the following bonds which become
binding upon the award of the contract to the contractor;

10 a.

11 b. A payment bond in an amount to be fixed by the
12 contracting body, but not less than 50 percent of the contract
13 amount, conditioned upon the faithful performance of the
14 contract in accordance with the plans, specifications and
15 conditions of the contract. The bond must be solely for the
protection of claimants supplying labor or materials to the
contractor to whom the contract was awarded, or to any of his
or her subcontractors, in the prosecution of the work provided
for in such contract.

16 30. NRS 339.035(1) provides:

17 ...any claimant who has performed labor or furnished material in
18 the prosecution of the work provided for in any contract for which
19 a payment bond has been given pursuant to the provisions of
20 subsection 1 of NRS 339.025, and who has not been paid in full
21 before the expiration of 90 days after the date on which the
22 claimant performed the last of such labor or furnished the last of
23 such materials for which the claimant claims payment, may bring
an action on such payment bond in his or her own name to recover
any amount due the claimant for such labor or material, and may
prosecute such action to final judgment and have execution on the
judgment.

24 31. SAFECO issued a Labor and Material Payment Bond, Bond No. 024043470,
25 wherein APCO is the principal and SAFECO is the surety.

26 32. Helix provided Work to the Project and remains unpaid for the same.

27 33. Therefore, Helix is a claimant against the Bond and may execute a judgment
28

1 against the same.

2 34. Section 20.5 of the Subcontract provides that “ [i]n the event either party employs
3 an attorney to institute a lawsuit or to demand arbitration for any cause arising out of the
4 Subcontract Work or the Subcontract, or any of the Contract Documents, the prevailing party
5 shall be entitled to all costs, attorney’s fees and any other reasonable expenses incurred therein.”
6

7 35. This provision was not modified by the Helix Addendum.

8 36. The Court finds that Helix is the prevailing party and is entitled to an award of its
9 attorneys’ fees and costs.

10 37. If any conclusions of law are properly findings of fact, they shall be treated as if
11 appropriately identified and designated.

12 Based upon the foregoing Findings of Fact and Conclusions of Law **IT IS HEREBY**
13 **ORDERED, ADJUDGED AND DECREED** as follows:
14

15 1. **IT IS HEREBY ORDERED** that, as to Plaintiff’s Claim for Breach of Contract
16 against APCO, this Court finds in favor of Plaintiff but as the Claim was impaired
17 awards damages under the Breach of the Implied Covenant of Good Faith and
18 Fair Dealing, rather than awarding duplicative damages;

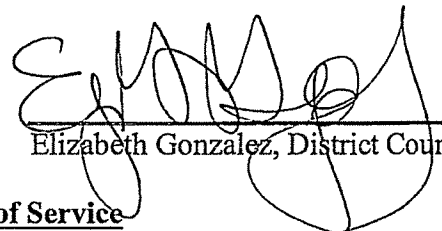
19 2. **IT IS FURTHER ORDERED** that, as to Plaintiff’s Claim for Breach of the
20 Implied Covenant of Good Faith and Fair Dealing against APCO, this Court finds
21 in favor of Plaintiff and awards damages in the amount of \$43,992.39 together
22 with interest as provided by law and taxable costs of suit;

23 3. **IT IS FURTHER ORDERED** that, as to Plaintiff’s Claim for violations of NRS
24 338 against APCO, this Court finds in favor of Plaintiff in the amount of
25 \$1,960.85;⁷
26
27

28 ⁷ These damages are in addition to those awarded under the claim of Breach of the Implied Covenant of Good

- 1 4. **IT IS FURTHER ORDERED** that, given the Court's findings against APCO,
2 the Court finds in favor of Plaintiff and against Safeco and the Bond;
3 5. **IT IS FURTHER ORDERED** that this Court will address any issues of
4 attorneys' fees through motions that may be filed with the Court.
5 6. Any claim not otherwise disposed of by this decision is dismissed.
6

7 DATED this 8th day of July, 2019.

8
9
10 
11 Elizabeth Gonzalez, District Court Judge
12 Certificate of Service

13 I hereby certify that on the date filed, a copy of the foregoing Scheduling Order and
14 Order Setting Civil Jury Trial, Pre-Trial and Calendar Call was electronically served, pursuant to
15 N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing
16 Program.
17

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19
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27 
28 Dan Kutinac

Faith and Fair Dealing.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

May 17, 2017

A-16-730091-B Helix Electric of Nevada LLC, Plaintiff(s)
vs.
APCO Construction, Defendant(s)

May 17, 2017

8:30 AM

All Pending Motions

HEARD BY: Villani, Michael

COURTROOM: RJC Courtroom 11A

COURT CLERK: Olivia Black

RECORDER: Michelle Ramsey

REPORTER:

PARTIES

PRESENT:

Domina, Cary
Munteer, Cody S.

Attorney
Attorney

JOURNAL ENTRIES

- Arguments by counsel regarding the merits of the motion. COURT ORDERED, Decision DEFERRED. The Court will prepare a written decision.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

June 09, 2017

A-16-730091-B Helix Electric of Nevada LLC, Plaintiff(s)
vs.
APCO Construction, Defendant(s)

June 09, 2017

4:00 PM

Minute Order

HEARD BY: Villani, Michael

COURTROOM: Chambers

COURT CLERK: Olivia Black

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of Cary Domina, Esq. and Cody Mounter, Esq. //ob/06/09/17.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

July 26, 2017

A-16-730091-B Helix Electric of Nevada LLC, Plaintiff(s)
vs.
APCO Construction, Defendant(s)

**July 26, 2017 8:30 AM Motion for Partial
Summary Judgment**

HEARD BY: Villani, Michael

COURTROOM: RJC Courtroom 11A

COURT CLERK: Olivia Black

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT: Domina, Cary Attorney
 Munteer, Cody S. Attorney

JOURNAL ENTRIES

- Arguments by counsel regarding the merits of the motion. Court stated there was a question of fact as far as the timeliness notice of extent of the submittals, the timing of the submittals, whether or not the submittals could have been supplemented in the settlement negotiation and the settlement package with the city. COURT ORDERED, Motion DENIED. Mr. Domina to prepare the Order and submit to opposing counsel as to form and content. Upon Court s inquiry, Mr. Domina advised this was a bench trial.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

November 28, 2018

A-16-730091-B Helix Electric of Nevada LLC, Plaintiff(s)
vs.
APCO Construction, Defendant(s)

November 28, 2018 8:30 AM Omnibus Motion in Limine

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Carol Donahoo

RECORDER: Michelle Ramsey

REPORTER:

PARTIES

PRESENT: Domina, Cary Attorney
 Jefferies, John R. Attorney

JOURNAL ENTRIES

- Arguments by counsel. Court does not find that there is a contract and stated there are still remaining questions; therefore, ORDERED, ruling DEFERRED as to Motions in Limine 1-2 to the time of trial. Upon Court's inquiry, Mr. Jefferies advised he has another trial going forward and has filed a Motion to Continue Trial. COURT SO NOTED. COURT FINDS this matter raises issue of fact that is better to be referred to the time of trial and ORDERED Mr. Domina to prepare the Order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

December 04, 2018

A-16-730091-B Helix Electric of Nevada LLC, Plaintiff(s)
vs.
APCO Construction, Defendant(s)

December 04, 2018 3:00 PM Minute Order

HEARD BY: Villani, Michael

COURTROOM: Chambers

COURT CLERK: Haly Pannullo

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Due to the Court's schedule, COURT ORDERED, matter currently set for 01/02/19 is hereby RESCHEDULED to 01/09/19.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Haly Pannullo, to all registered parties for Odyssey File & Serve hvp/12/04/18

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

March 04, 2019

A-16-730091-B Helix Electric of Nevada LLC, Plaintiff(s)
vs.
APCO Construction, Defendant(s)

**March 04, 2019 9:00 AM Mandatory Rule 16
Conference**

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT: Domina, Cary Attorney
 Jefferies, John R. Attorney

JOURNAL ENTRIES

- Court inquired as to how long parties will need for discovery. Mr. Domina advised this is a very unique situation as they are done with discovery; the case started two years ago and they got all the way through arbitration; there was another attorney prior to Mr. Jefferies and that attorney decided to disqualify the arbitrator; they could not select a new one, so they decided to lift the stay and bring the case back to District Court; they are done with discovery and are ready for trial. Parties declined the offer of a settlement conference.

COURT ORDERED, given the representations of counsel that discovery and designations occurred during the arbitration process, matter SET for Bench Trial on the stack beginning May 28, 2019. Trial Setting Order will ISSUE. The last day to file motions in limine and dispositive motions is April 5, 2019. Counsel advised there was one pending motion in limine which has not yet been fully briefed. COURT DIRECTED counsel to renote that motion.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

May 13, 2019

A-16-730091-B Helix Electric of Nevada LLC, Plaintiff(s)
vs.
APCO Construction, Defendant(s)

May 13, 2019 9:00 AM Motion in Limine

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT: Domina, Cary Attorney
 Jefferies, John R. Attorney

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Joe Pelan, Client Representative for Defendant.

Following arguments by counsel, COURT ORDERED, the Motions in Limine are both DENIED. While the issue related to the 30(b)(6) would be of concern the Court will treat that as a credibility issue as to the knowledge of the witness who appeared. The entire job cost report needs to be produced immediately, and if there are any issues related to the job cost report when counsel receives it, the Court will have a discussion about the timing of trial. Mr. Domina stated the job cost report will be generated this week.

5-14-19 9:30 AM CALENDAR CALL

5-28-19 1:30 PM BENCH TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

May 14, 2019

A-16-730091-B Helix Electric of Nevada LLC, Plaintiff(s)
vs.
APCO Construction, Defendant(s)

May 14, 2019 9:30 AM Calendar Call

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT: Domina, Cary Attorney
 Jefferies, John R. Attorney

JOURNAL ENTRIES

- Parties announced ready and anticipated trial taking 2 to 3 days. COURT ORDERED, bench trial set to COMMENCE on Monday, June 3, 2019.

6-3-19 10:30 AM BENCH TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

June 03, 2019

A-16-730091-B Helix Electric of Nevada LLC, Plaintiff(s)
vs.
APCO Construction, Defendant(s)

June 03, 2019

10:15 AM

Motion

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:

Domina, Cary

Attorney

Holmes, Jeremy D.

Attorney

Jefferies, John R.

Attorney

JOURNAL ENTRIES

- Following arguments by Mr. Jefferies and Mr. Holmes, COURT ORDERED, motion DENIED. While the Court understands the issues of the challenge of producing someone for a 30(b)(6), the corporation cannot be forced to provide a former employee.

6-3-19

10:30 AM

BENCH TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

June 03, 2019

A-16-730091-B Helix Electric of Nevada LLC, Plaintiff(s)
vs.
APCO Construction, Defendant(s)

June 03, 2019 10:30 AM Bench Trial

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT: Cox, Ronald J. Attorney
Domina, Cary Attorney
Holmes, Jeremy D. Attorney
Jefferies, John R. Attorney

JOURNAL ENTRIES

- DAY 1

APPEARANCES CONTINUED: Bob Johnson, Vice President of Helix Electric of Nevada, LLC; Joe Pelan, Client Representative for APCO Construction.

COURT ORDERED, all Proposed Joint Exhibits ADMITTED per stipulation, except for Proposed Joint Exhibit JX044 as objected to and for Proposed Joint Exhibit JX045 as not used.

Counsel advised Plaintiff's and Defendants' Proposed Exhibits are all objected to at this point.

Opening statements by Mr. Domina and Mr. Jefferies.

EXCLUSIONARY RULE INVOKED.

Testimony and exhibits presented. (See worksheet.) LUNCH RECESS.

Proceeding resumed. Testimony and exhibits presented. (See worksheet.) RECESS.

Testimony and exhibits continued. (See worksheet.)

COURT ORDERED, trial CONTINUED. EVENING RECESS.

6-3-19 9:15 AM BENCH TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

June 04, 2019

A-16-730091-B	Helix Electric of Nevada LLC, Plaintiff(s) vs. APCO Construction, Defendant(s)
---------------	--

June 04, 2019

9:15 AM

Bench Trial

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	Cox, Ronald J. Domina, Cary Holmes, Jeremy D. Jefferies, John R.	Attorney Attorney Attorney Attorney
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JOURNAL ENTRIES

- DAY 2

APPEARANCES CONTINUED: Victor Fuchs, President of Helix Electric of Nevada, LLC; Robert "Bob" Johnson, Vice President of Helix Electric of Nevada, LLC; Joe Pelan, Client Representative for APCO Construction.

Testimony and exhibits presented. (See worksheet.) RECESS.

Testimony and exhibits continued. (See worksheet.) LUNCH RECESS.

Proceeding resumed. Testimony and exhibits presented. (See worksheet.) RECESS.

At the hour of 2:37 pm, Plaintiff RESTED.

Defendant's case in chief commenced. Testimony and exhibits continued. (See worksheet.)

COURT ORDERED, trial CONTINUED. EVENING RECESS.

6-4-19 9:00 AM BENCH TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

June 05, 2019

A-16-730091-B	Helix Electric of Nevada LLC, Plaintiff(s) vs. APCO Construction, Defendant(s)
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June 05, 2019 9:00 AM Bench Trial

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Patti Slattery

REPORTER:

PARTIES

PRESENT:	Cox, Ronald J.	Attorney
	Domina, Cary	Attorney
	Holmes, Jeremy D.	Attorney
	Jefferies, John R.	Attorney

JOURNAL ENTRIES

- DAY 3

APPEARANCES CONTINUED: Robert "Bob" Johnson, Vice President of Helix Electric of Nevada, LLC; Joe Pelan, Client Representative for APCO Construction.

Testimony and exhibits presented. (See worksheet.) RECESS.

Testimony and exhibits continued. (See worksheet.) At the hour of 11:20 am, Defendant RESTED.

Closing arguments by Mr. Domina and Mr. Jefferies.

COURT ORDERED, matter taken UNDER ADVISEMENT and status check SET on the Court's decision.

A-16-730091-B

6-21-19

CHAMBERS

STATUS CHECK: DECISION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

June 21, 2019

A-16-730091-B Helix Electric of Nevada LLC, Plaintiff(s)
vs.
APCO Construction, Defendant(s)

June 21, 2019 3:00 AM Status Check

HEARD BY: Gonzalez, Elizabeth

COURTROOM: Chambers

COURT CLERK: Dulce Romea

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT ORDERED, status check CONTINUED two weeks.

CONTINUED TO : 7/5/2019 (CHAMBERS)

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm 6/21/2019

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

July 05, 2019

A-16-730091-B Helix Electric of Nevada LLC, Plaintiff(s)
vs.
APCO Construction, Defendant(s)

July 05, 2019 3:00 AM Status Check

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** Chambers

COURT CLERK: Dulce Romea

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- See Findings of Fact and Conclusions of Law filed 7/8/19.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

August 19, 2019

A-16-730091-B Helix Electric of Nevada LLC, Plaintiff(s)
vs.
APCO Construction, Defendant(s)

August 19, 2019 9:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT: Domina, Cary Attorney
 Jefferies, John R. Attorney

JOURNAL ENTRIES

- APCO CONSTRUCTION, INC.'S AND SAFECO INSURANCE COMPANY OF AMERICA'S MOTION FOR CLARIFICATION AND/OR AMENDMENT TO FINDINGS OF FACT AND CONCLUSIONS OF LAW...PLAINTIFF HELIX ELECTRIC OF NEVADA, LLC'S (I) OPPOSITION TO APCO CONSTRUCTION, INC.'S AND SAFE INSURANCE COMPANY OF AMERICA'S MOTION FOR CLARIFICATION AND/OR AMENDMENT TO FINDINGS OF FACT AND CONCLUSIONS OF LAW; AND (II) COUNTERMOTION FOR AMENDMENT TO FINDINGS OF FACT AND CONCLUSIONS AF LAW

Following arguments by counsel, COURT ORDERED both motions DENIED.

9-9-19 9:00 AM HELIX ELECTRIC OF NEVADA, LLC'S MOTION FOR ATTORNEY'S FEES, COSTS, AND INTEREST

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

September 30, 2019

A-16-730091-B Helix Electric of Nevada LLC, Plaintiff(s)
vs.
APCO Construction, Defendant(s)

September 30, 2019 9:00 AM Motion for Attorney Fees and Costs chart re: fees to be provided

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT: Domina, Cary Attorney
 Jefferies, John R. Attorney

JOURNAL ENTRIES

- Following arguments by counsel, COURT ORDERED, \$14,927.58 in interest and \$8,949.40 in costs AWARDED. Motion CONTINUED to the chambers calendar for Friday, October 4th, for counsel for Plaintiff to PROVIDE a chart with the time keeper, rate, number of hours, and total amount billed on attorney's fees.

10-4-19 CHAMBERS HELIX ELECTRIC OF NEVADA, LLC'S MOTION FOR ATTORNEY'S FEES, COSTS, AND INTEREST

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

October 04, 2019

A-16-730091-B Helix Electric of Nevada LLC, Plaintiff(s)
vs.
APCO Construction, Defendant(s)

**October 04, 2019 3:00 AM Motion for Attorney Fees
and Costs**

HEARD BY: Gonzalez, Elizabeth

COURTROOM: Chambers

COURT CLERK: Dulce Romea

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Court reviewed supplement. The attorney's fees of Mr. Domina, Mr. Cox, and Ms. Hansen are AWARDED. The Court has determined that there was duplication of work among other referenced counsel as well as administrative tasks billed and has reduced the requested fee award to those timekeepers. Mr. Domina to submit an order.

CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 10-4-19

Case No.: A-16-730091-3

Trial Date: June 3, 2019 - BENCH TRIAL

Dept. No.: XI

Judge: The Honorable Judge Gonzalez

Court Clerk: DULCE ROMERA

Recorder: JILL HAWKINS ^{DAYS PATTI & DAY} _{1+2; SLATTERY 3}

Counsel for Plaintiff: Cary B. Domina, Esq. of the law

firm of Peel Brimley LLP; JEREMY HOLMES, ESQ.;
RONALD COX, ESQ.

Counsel for Defendant: John Randall Jefferies, Esq.

Of the law firm of Fennemore Craig, P.C

Plaintiff: Helix Electric of Nevada, LLC

vs.

Defendant: APCO Construction; Safeco
Insurance Company of Nevada

TRIAL BEFORE THE COURT

JOINT EXHIBITS

Exhibit Number	Bates No.(s)	Exhibit Description	Date Offered	Objection	Date Admitted
JX001	APCO000001- APCO000003	APCO Craig Ranch Regional Park - Phase II Project Change Order Log	6-3-19	NO	6-3-19
JX002	APCO000479- APCO000731	Certified Payroll Reports			
JX003	APCO000437- APCO000438	Pages 44-45 of the Prime Contract			
JX004	APCO000166- APCO000436	Daily Sign In Log			
JX005	APCO000732- APCO001068	Helix Daily Reports			
JX006	HEL000659- HEL000725	Helix Daily Reports - supplement			
JX007	HEL000450	December 20, 2011 Performance Bond			
JX008	HEL000451	December 20, 2011 Labor and Material Payment Bond			
JX009	HEL000452- HEL000453	December 20, 2011 Guarantee Bond			
JX010	APCO001269- APCO001281; APCO001335	March 15, 2012 Graybar Electric Purchase Order			
JX011	APCO000439- APCO000478	April 4, 2012 Craig Ranch Regional Park - Phase II Subcontract Agreement			
JX012	HEL000456	January 28, 2013 Letter from Kurk Williams to Brian Bohn regarding Schedule delay/Extended overhead (Bob Johnson Deposition Ex. 7)			
JX013	APCO000059- APCO000060	January 29, 2013 Email to Helix from APCO RE Schedule Delay			
JX014	HEL00531- HEL00536	April 19, 2013 Helix's Invoice No. 16113-015 in the amount of \$157,890.00 (Bob Johnson Depo Ex. 1)	6-3-19	NO	6-3-19

EXHIBIT(S) LIST

Exhibit Number	Bates No.(s)	Exhibit Description	Date Offered	Objection	Date Admitted
JX015	APCO000008- APCO000019	Correspondence from APCO to CNLV dated May 9, 2013	6-3-19	NO	6-3-19
JX016	APCO001323- APCO001328	May 20, 2013 Invoice # 161113-016 for \$157,130.00, Application and Certificate for Payment, and Conditional Waivers (Bob Johnson Deposition Ex. 2)			
JX017	HEL000461	Correspondence from Helix to APCO dated June 19, 2013 regarding Extended Overhead Costs			
JX018	APCO000040- APCO000041	June 19, 2013 APCO Email between Brian Bohn (APCO) and Kurk Williams (Helix)			
JX019	APCO000052- APCO000054	June 21, 2013 Email to Joe Pelan and Brian Bohn from Kurk Williams RE: Craig Ranch Delay Notice (Helix)			
JX020	HEL000464- HEL000467	August 27, 2013 Helix Electric Invoice to APCO RE: Extended Overhead for a Total of \$111,847.00			
JX021	APCO000106- APCO000115	September 3, 2013 COR #68 & CNLV Response and Letter from APCO to Helix requesting back-up to substantiate amount			
JX022	APCO000006- APCO000007; APCO000005	Correspondence from CNLV to APCO dated October 2, 2013			
JX023	APCO001329- APCO001333	October 18, 2013 Invoice # 161113-021 for \$129,973.50, Application and Certificate for Payment, and Conditional Waivers (Bob Johnson Deposition Ex. 4)			
JX024	APCO000066- APCO000070	October 18, 2013 Application and Certificate for Payment and Conditional Waiver and Release Upon Final Payment			
JX025	APCO000117- APCO000130	November 6, 2013 COR #68.1 & CNLV Response			
JX026	APCO000132- APCO000140	November 18, 2013 COR #93 & CNLV Response			
JX027	HEL000251- HEL000254	January 28, 2014 Email to Victor Fuchs and Bob Johnson from Joe Pelan RE: Craig Ranch - Scheduled Meeting on February 4			
JX028	APCO000038	March 17, 2014 City of Las Vegas Construction Conflict Authorization No. 00062 to APCO			
JX029	HEL000255- HEL000257	April 16, 2014 Email to Victor Fuchs from Joe Pelan RE: Craig Ranch Park - Restoration	6-3-19	NO	6-3-19

EXHIBIT(S) LIST

Exhibit Number	Bates No.(s)	Exhibit Description	Date Offered	Objection	Date Admitted
JX030	HEL000493- HEL000519	City Council Meeting Minutes (July 2, 2014)	6-3-19	NO	6-3-19
JX031	HEL000426	July 8, 2014 Proof of recordation of Notice of Completion			
JX032	HEL00537	Correspondence from Helix to APCO dated September 26, 2014 regarding Demand for Payment			
JX033	HEL00538- HEL000541	October 15, 2014 Email from Kurk Williams to Eddie Bennett FW: Craig Ranch Delay Notice (Helix)			
JX034	APCO000079- APCO000080	October 21, 2014 Check #1473 for \$105,679.00 to Helix Electric from APCO			
JX035	APCO000071- APCO000074	October 29, 2014 Email from APCO to Helix regarding Check and attachments			
JX036	APCO000075- APCO000078	October 29, 2014 Email exchange between Helix and APCO			
JX037	APCO001334	October 29, 2014 copy of posted check #1473 for \$105,679.00 to Helix Electric from APCO (Bob Johnson Deposition Ex. 10)			
JX038	HEL000382- HEL000383	October 29, 2014 Email to Victor Fuchs from Joe Pelan RE: Craig Ranch Change Approval			
JX039	HEL000427	October 29, 2014 APCO Construction Unconditional Waiver and Release Upon Final Payment			
JX040	APCO001322	Bank of Nevada to APCO Business Analysis Account with October 29, 2014 check detail			
JX041	APCO000081- APCO000082	October 30, 2014 Email from Helix to APCO with executed Unconditional			
JX042	HEL000405- HEL000407	October 30, 2014 Unconditional Waiver and Release Upon Final Payment, Letter Helix to APCO RE: 10/29/2014 Unconditional Waiver and Release Upon Final Payment, and Invoice for Extended Overhead for a Total of \$138,151.00			
JX043	HEL000490- HEL000491; HEL000489	Correspondence from Helix to APCO dated October 30, 2014 regarding Unconditional Waiver	6-3-19	NO	6-3-19
JX044	HEL000415- HEL000419	January 13, 2015 Email to Joe Pelan from Victor Fuchs RE: Promissory Note			
JX045		NOT USED			
JX046	APCO000063- APCO000064	December 18, 2015 Letter to Cary Domina from Joe Pelan RE: Craig Ranch Park - Phase II	6-3-19	NO	6-3-19

EXHIBIT(S) LIST

Exhibit Number	Bates No.(s)	Exhibit Description	Date Offered	Objection	Date Admitted
WA JX047	APCO001088- APCO001090	January 18, 2016 Email Exchange between Joe Pelan & Bob Johnson after Complaint was Filed	6-3-19	NO	6-3-19
WA JX048	APCO000141	January 18, 2016 Email to Victor Fuchs from Joe Pelan RE: Claim			
WA JX049	HEL00542- HEL00550	January 29, 2016 Email from Bob Johnson to Joe Pelan RE: Claim			
WA JX050	HEL00551- HEL00658	Complete Craig Ranch Cost Report			
WA JX051	HEL000001- HEL000205	Partial Job Costs Report/Payroll Records			
WA JX052	APCO001091- APCO001095	Helix Pay Application #11 dated December 31, 2012			
WA JX053	APCO001096- APCO001104	Helix Pay Application #12 dated January 31, 2013			
WA JX054	APCO001105- APCO001109	Helix Pay Application #13 dated February 28, 2013			
WA JX055	APCO001110- APCO001114	Helix Pay Application #14 dated March 31, 2013			
WA JX056	APCO001115- APCO001120	Helix Pay Application #15 dated April 30, 2013			
WA JX057	APCO001121- APCO001126	Helix Pay Application #16 dated May 31, 2013			
WA JX058	APCO001127- APCO001131	Helix Pay Application #17 dated June 30, 2013			
WA JX059	APCO001132- APCO001136	Helix Pay Application #18 dated July 31, 2013			
WA JX060	APCO001137- APCO001141	Helix Pay Application #19 dated August 31, 2013			
WA JX061	APCO001142- APCO001146	Helix Pay Application #20 dated September 30, 2013			
WA JX062	APCO001147- APCO001151	Helix Pay Application #21 dated October 31, 2013			
WA JX063	APCO001152- APCO001156	Helix Pay Application #22 (billing #1) dated October 31, 2013			
WA JX064	APCO001157- APCO001160	Helix Pay Application #22 (billing #2) dated October 31, 2013			
WA JX065	APCO001161- APCO001164	Helix Pay Application #22 (billing #3) dated October 31, 2013			
WA JX066	APCO001165	Helix Change Order Log			
WA JX067	APCO001166- APCO001173	APCO COR #5			
WA JX068	APCO001174- APCO001185	APCO COR #57			
WA JX069	APCO001186- APCO001201	APCO COR #58			
WA JX070	APCO001202- APCO001209	APCO COR #59	6-3-19	NO	6-3-19

EXHIBIT(S) LIST

Exhibit Number	Bates No.(s)	Exhibit Description	Date Offered	Objection	Date Admitted
JX071	APCO001210- APCO001222	APCO COR #61	6-3-19	NO	6-3-19
JX072	APCO001223- APCO001229	APCO COR #64			
JX073	APCO001230- APCO001236	APCO COR #65			
JX074	APCO001237- APCO001243	APCO COR #70			
JX075	APCO001244- APCO001251	APCO COR #71			
JX076	APCO001252- APCO001258	APCO COR #75			
JX077	APCO001259- APCO001268	APCO COR #77			
JX078	APCO000004	APCO COR #39	6-3-19	NO	6-3-19
JX079					
JX080					
PX101	HEL000490- HEL000481; HEL000477- HEL000478	December 14, 2015 Email String regarding Promissory Note (with Promissory Note attached)	6-4-19	APCO Objection: Rule 408 Court notes Rule 408 is not used in state court.	6-4-19
PX102	NA	Exhibit 20 to Joe Pelan September 8, 2017 Deposition	6-4-19	OBJ	6-4-19
PX103	APCO000163- APCO000165	CITY OF NORTH LAS VEGAS 10/1/13 PAY ESTIMATE NO. 22 from 12/1/13	6-5-19	NO	6-5-19
PX104					
PX105					
PX106					
PX107					
PX108					
PX109					
PX110					

EXHIBIT(S) LIST

Exhibit Number	Bates No.(s)	Exhibit Description	Date Offered	Objection	Date Admitted
DX201	APCO001282- APCO001293	Helix Electric Labor Costs per Certified Payroll Reports	6-4-19	Helix Objects (Demonstrative) <i>See D-4.</i>	6-4-19
DX202	APCO001294- APCO001298	Helix Electric Labor Costs per Certified Payroll Reports (February 2013- November 2013)	6-4-19	Helix Objects (Demonstrative) NONE	6-4-19
DX203	APCO001299- APCO001301	Helix Electric Certified Payroll Summary of Hours and Gross Pay & Fringe Benefits for Richard Clement and Rainer Prietzel	6-4-19	Helix Objects (Demonstrative) NONE	6-4-19
DX204	APCO001302- APCO001317	Helix Electric Sign in Log and Certified Payroll Hours (January 2012- November 2013)	6-4-19	Helix Objects (Demonstrative) NONE	6-4-19
DX205	APCO001318	Helix Billed Amounts for General Conditions vs. Comparison to Helix Partial Job Cost		Helix Objects (Demonstrative)	
DX206	APCO001336	Helix billed Amounts for General Conditions vs. Comparison to Helix Partial Job Accounting Provided in 2016 & 2019 May 2013 - October 2013		WITHDRAWN. <i>SEE D-5.</i>	
DX207	N/A	December 28, 2016 Defendants First Request for Production of Documents and Things to Helix Electric of Nevada		Helix Objects (Pleadings/ Court Documents)	
DX208	APCO000057- APCO000058	September 7, 2017 Affidavit of Joemel Llamado		Helix Objects (Affidavit no chance to cross)	
DX209	N/A	October 13, 2017 Defendants' Second Request for Production of Documents and Things to Helix Electric of Nevada, LLC		WITHDRAWN Helix Objects (Pleadings/Court Documents)	
DX210	N/A	October 22, 2018 Fourth Amended Notice of Taking NRCP Rule Deposition of Person Most Knowledgeable for Helix		Helix Objects (Pleadings/Court Documents)	
DX211	APCO001337	Helix Electric - Craig Ranch Park Phase II Payments and Release Dates	6-4-19	NO	6-4-19
DX212	APCO001338	Summary of Helix Electric Accounting Report Dated 05/23/2019		<i>See D-2.</i>	
DX213	APCO001339	November 12, 2018 Email from C. Domina to M. Bacon re Project Monthly Equip List			
DX214		"RANDY'S WORK PRODUCT" SUMMARY OF HELIX ELECTRIC ACCOUNTING REPORT DATED 3/23/19	6-5-19	NO	6-5-19
DX215					

EXHIBIT(S) LIST

Case No.: A-16-730091-B

Trial Date:

JUNE 3, 2019 - BENCH TRIAL

ept. No.: **XI**

Judge: **HON. ELIZABETH GONZALEZ**

Court Clerk: DULCE ROMEA

Plaintiff: **HELIX ELECTRIC OF NEVADA**
LLC

Recorder: JILL HAWKINS ^{DAYS PATTI}
^{1+2 ; SLATTERY} ^{DAY} 3

Counsel for Plaintiff: CARYDOMINA, ESQ.;
JEREMY HOLMES, ESQ.; RONALD COX, ESQ.

Defendant: APCO CONSTRUCTION

Counsel for Defendant: *JOHN R. JEFFRIES, ESQ.*

BENCH TRIAL

DEMONSTRATIVE EXHIBITS

[illegible]



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

JOHN RANDALL JEFFERIES, ESQ.
300 S. FOURTH ST., SUITE 1400
LAS VEGAS, NV 89101

DATE: December 10, 2019
CASE: A-16-730091-B

RE CASE: HELIX ELECTRIC OF NEVADA, LLC vs. APCO CONSTRUCTION; SAFECO INSURANCE COMPANY OF AMERICA

NOTICE OF APPEAL FILED: December 6, 2019

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS NOT TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☒ Order *re: Written Orders for 1, 2, 3 and 4*
- ☒ Notice of Entry of Order *re: Written Orders for 1, 2, 3 and 4*

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

*****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.***

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; BUSINESS CIVIL COVER SHEET; FINAL JUDGMENT; NOTICE OF ENTRY OF FINAL JUDGMENT; FINDINGS OF FACT AND CONCLUSIONS OF LAW; NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

HELIX ELECTRIC OF NEVADA, LLC,

Plaintiff(s),

vs.

APCO CONSTRUCTION; SAFECO
INSURANCE COMPANY OF AMERICA,

Defendant(s),

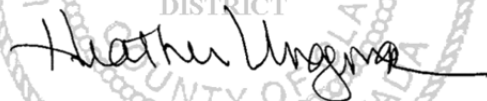
Case No: A-16-730091-B

Dept No: XI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 10 day of December 2019.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk