

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

2 APCO CONSTRUCTION, INC., A
3 NEVADA CORPORATION; AND
4 SAFECO INSURANCE COMPANY
 OF AMERICA,

5 Appellants,

6 vs.

7 HELIX ELECTRIC OF NEVADA,
8 LLC, A NEVADA LIMITED
 LIABILITY COMPANY,

9 Respondent.

Case No. 80177

Electronically Filed
Mar 19 2021 05:28 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

10 **APPEAL**

11 from the Eighth Judicial District Court, Clark County
12 The Honorable ELIZABETH GOFF GONZALEZ, District Judge
 District Court Case No. A-16-730091-B

13 Joint Appendix
14 Volume I

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DISTRICT COURT CIVIL COVER SHEET

A- 16- 730091- C

County, Nevada

XVI I

Case No.

(Assigned by Clerk's Office)

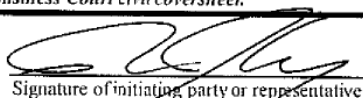
I. Party Information (provide both home and mailing addresses if different)

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 <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	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.


CLERK OF THE COURT

RICHARD L. PEEL ESQ.
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EIGHTH JUDICIAL 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- C
DEPT. NO.:

XVI I

COMPLAINT

Plaintiff, HELIX ELECTRIC OF NEVADA, LLC ("Helix"), by and through its attorneys of record, Richard L. Peel, Esq. and Cary B. Domina, Esq. of the law firm of PEEL BRIMLEY LLP, as for its Complaint against the above-named Defendants complains, avers and alleges as follows below:

THE PARTIES

1. Helix is and was at all times relevant to this action a Nevada limited liability company, duly authorized and qualified to do business in Clark County, Nevada as a duly licensed contractor holding a Nevada State Contractor's License.

2. Helix is informed and believes and therefore alleges that Defendant APCO CONSTRUCTION, ("APCO") is and was at all times relevant to this action a Nevada corporation, duly authorized and qualified to do business in the state of Nevada, as a contractor holding a Nevada State Contractor's license.

3. Helix is informed and believes and therefore alleges that Defendant SAFECO INSURANCE COMPANY OF AMERICA ("Safeco") is and was at all times relevant to this action a bonding company duly licensed and qualified to do business as a surety in Nevada.

4. Helix is informed and believes and therefore alleges that the City of North Las Vegas (“CNLV”), a non-party to this Case, is a political division of the State of Nevada and is a “contracting party” (as that term is defined by NRS 339.015) for purposes of this litigation.

5. Helix does not know the true names of the individuals, corporations, partnerships and entities sued and identified in fictitious names as DOES I through X, BOE BONDING COMPANIES I through X, (collectively, "Doe Defendants"). Helix alleges that such Defendants claim an interest in or to the Project and/or are responsible for damages suffered by Helix as more fully discussed under the claims for relief set forth below. Helix will request leave of this Honorable Court to amend this Complaint to show the true names and capacities of each such fictitious Defendant when Helix discovers such information.

6. Jurisdiction is proper under Nevada Const. Art. 6, §6 and NRS 4.370(1)(a), because this is an action for breach of contract seeking damages in excess of \$10,000.

7. Venue is proper under NRS 13.010(1) and NRS 339.055 because this action is for breach of a contract to be performed in Clark County.

8. Helix repeats and realleges each and every allegation contained in the preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

9. APCO was the prime contractor for CNLV's construction project commonly referred to as the Craig Ranch Regional Park Phase II project located in Clark County, Nevada (the "Project").

10. Helix entered into an agreement with APCO ("Agreement") wherein Helix agreed to provide certain electrical related labor, materials and equipment (the "Work") to the Project.

11. Pursuant to the provisions of NRS 339.025, Safeco, as surety, and APCO, as principal, executed and delivered to CNLV a Labor and Material Payment Bond, No. 024043470

1 (the "Bond") by which Safeco and APCO, jointly and severally, bound themselves to make
2 payment to all persons or entities furnishing materials, equipment, suppliers, or labor furnished in
3 connection with the Project, including Helix.

4 12. The Project was scheduled to be completed on January 9, 2013, but as a result of
5 APCO's failures to properly manage the Project, completion did not occur until July 2, 2014,
6 when the City Council for CNLV voted for approval of the Final Acceptance of the Project,
7 which resulted in substantial additional costs incurred by Helix.

8 **FIRST CAUSE OF ACTION**
9 **(Breach of Contract – Against APCO)**

10 13. Helix repeats and realleges each and every allegation contained in the preceding
11 paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

12 14. In or around December, 2011, Helix entered into the Agreement with APCO
13 wherein Helix agreed to furnish the Work to the Project.

14 15. Helix furnished the Work as required by the Agreement for the benefit of and at
15 the specific instance and request of APCO.

16 16. Pursuant to the Agreement, Helix was to be paid an amount in excess of Ten
17 Thousand and no/100 Dollars (\$10,000.00) for its Work pursuant to the Agreement.

18 17. Helix furnished the Work as required by the Agreement and has otherwise
19 performed its duties and obligations as required.

20 18. APCO breached the Agreement by, among other things:

- 21 a. Failing and/or refusing to pay the monies owed to Helix for its Work;
22 b. Failing to adjust the Agreement price to account for extra and/or changed
23 work, as well as suspensions and delays caused or ordered by APCO and/or its representatives;
24 c. Failing to promptly recognize and grant time extensions to reflect
25 additional time allowable under the Agreement and permit related adjustments in scheduled
26 performance;
27 d. Failing and/or refusing to comply with the Agreement and Nevada law;
28 and

1 e. Negligently or intentionally preventing, obstructing, hindering or
2 interfering with Helix's performance or provision of the Work as required under the Agreement.

3 19. Helix is owed an amount in excess of Ten Thousand and no/100 Dollars
4 (\$10,000.00) for the Work pursuant to the Agreement, ("Outstanding Balance").

5 20. Helix has been required to engage the services of an attorney to collect the
6 Outstanding Balance with respect to the Agreement, and Helix is entitled to recover its reasonable
7 costs, attorney's fees and interest therefore.

8 **SECOND CAUSE OF ACTION**

9 **(Breach of Implied Covenant of Good Faith & Fair Dealing – Against APCO)**

10 21. Helix repeats and realleges each and every allegation contained in the preceding
11 paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

12 22. There is a covenant of good faith and fair dealing implied in every agreement,
13 including the Agreement between Helix and APCO.

14 23. APCO breached its duty to act in good faith by performing the Agreement in a
15 manner that was unfaithful to the purpose of the Agreement, thereby denying Helix's justified
16 expectations.

17 24. Due to the actions of APCO, Helix has suffered damages in an amount to be
18 determined at trial for which Helix is entitled to judgment plus interest.

19 25. Helix has been required to engage the services of an attorney to collect the
20 Outstanding Balance, and Helix is entitled to recover its reasonable costs, attorney's fees and
21 interest therefore.

22 **THIRD CAUSE OF ACTION**

23 **(Unjust Enrichment or in the Alternative Quantum Meruit-Against APCO)**

24 26. Helix repeats and realleges each and every allegation contained in the preceding
25 paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

26 27. This cause of action is being pled in the alternative.

27 28. Helix furnished the Work for the benefit of and/or at the specific instance and
28 request of APCO.

29. APCO accepted, used and enjoyed the benefit of the Work.

1 30. APCO knew or should have known that Helix expected to be paid for the Work.

2 31. Helix has demanded payment of the Outstanding Balance.

3 32. To date, APCO has failed, neglected, and/or refused to pay the Outstanding
4 Balance.

5 33. APCO has been unjustly enriched, to the detriment of Helix.

6 34. Helix has been required to engage the services of an attorney to collect the
7 Outstanding Balance, and Helix is entitled to recover its reasonable costs, attorney's fees and
8 interest therefore.

9 **FOURTH CAUSE OF ACTION**
(Violation of NRS 338.550 Against APCO)

10 3. APCO repeats and realleges each and every allegation contained in the preceding
11 paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

12 4. NRS 338.550 to 338.645, inclusive (the "Statute"), requires contractors, such as
13 APCO, to, among other things, timely pay contractors and suppliers, such as Helix, as provided in
14 the Statute.

15 5. In violation of the Statute, APCO has failed and/or refused to timely pay Helix
16 monies due and owing.

17 6. Owing to APCO's violation of the Statute, Helix was damaged in an amount in
18 excess of Ten Thousand Dollars (\$10,000.00).

19 7. By reason of the foregoing, Helix is entitled to a judgment against APCO in the
20 amount of the Outstanding Balance.

21 8. Helix has been required to engage the services of an attorney to collect the
22 Outstanding Balance and Helix is entitled to recover its reasonable costs, attorney's fees and
23 interests therefore.

24 **FIFTH CAUSE OF ACTION**
(Claim Against Payment Bond – Against Safeco)

25 35. Helix repeats and realleges each and every allegation contained in the preceding
26 paragraphs of this Complaint, incorporates them herein by reference, and further alleges as
27 follows:
28

1 36. Pursuant to NRS 339.025, APCO and Safeco executed the Bond for the benefit of
2 APCO's subcontractors, laborers and suppliers, including Helix.

3 37. In compliance with the Agreement, Helix has furnished the Work for the benefit of
4 APCO.

5 38. Helix has not been paid in full for the Work under the Agreement.

6 39. Pursuant to the express language of the Bond, "it shall remain in effect until two
7 (2) years after the date of final acceptance of the Work by the CNLV City Council."¹

8 40. The City Council for CNLV approved the Final Acceptance of the Project and
9 Work on July 2, 2014.

10 41. It has been more than ninety (90) days but less than two (2) years since Helix
11 provided the Work for the Project under the Agreement and the City Council for CNLV gave
12 final acceptance of the Work.

13 42. As such, Helix has timely filed its claim against the Bond.

14 43. Pursuant to NRS 339.035 and the language of the Bond, Helix is entitled to
15 payment by Safeco of all sums owed to it by APCO.

16 44. Accordingly, Helix is entitled to payment by Safeco of all sums owed to it by
17 APCO, which are in excess of \$10,000.00.

18 45. Helix was required to engage the services of any attorney to collect the
19 Outstanding Balance, and Helix is entitled to recover its reasonable costs, attorney's fees and
20 interest therefor.

21 **WHEREFORE**, Helix prays that this Honorable Court:

22 1. Enters judgment against APCO and Safeco, and each of them, jointly and
23 severally, in the amount of the Outstanding Balance;

24 2. Enters judgment against APCO and Safeco, and each of them, jointly and
25 severally, for Helix's reasonable costs and attorney's fees incurred in the collection of the
26 Outstanding Balance, as well as an award of interest thereon;

27
28 ¹ See Exhibit "I" attached hereto, a true and correct copy of the Payment Bond.

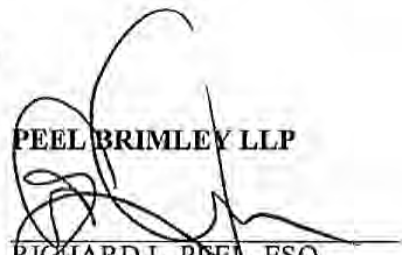
PEEL BRIMLEY LLP
3333 E. SERENE AVENUE, STE. 200
HENDERSON, NEVADA 89074
(702) 990-7272 ♦ FAX (702) 990-7273

1 3. Enters a judgment declaring that Helix has a valid and enforceable claim against
2 the Bond, in an amount of the Outstanding Balance, plus reasonable attorneys' fees, costs and
3 interest thereon; and

4 3. For such other and further relief as this Honorable Court deems just and proper in
5 the premises

6 DATED this 11 day of January, 2016.

PEEL BRIMLEY LLP


RICHARD L. PEEL, ESQ.

Nevada Bar No. 4359

CARY B. DOMINA, ESQ.

Nevada Bar No. 10567

3333 E. Serene Avenue, Suite 200

Henderson, Nevada 89074-6571

Attorneys for Helix Electric of Nevada, LLC

EXHIBIT “1”

CONTRACT AWARD
CRAIG RANCH REGIONAL PARK - PHASE II
BID NO. 1398

CITY OF NORTH LAS VEGAS

LABOR AND MATERIAL PAYMENT BOND

BOND NUMBER 024043470
DATE EXECUTED December 20, 2011

IMPORTANT: SURETY COMPANIES EXECUTING BONDS MUST BE LICENSED TO ISSUE SURETY BY THE STATE OF NEVADA INSURANCE DIVISION PURSUANT TO NRS 683A.090. NOTE: INDIVIDUAL SURETY BONDS ARE NOT ACCEPTABLE.

KNOW ALL MEN BY THESE PRESENTS, That we, the CONTRACTOR AND SURETY, are held and firmly bound unto the City of North Las Vegas, Nevada, hereinafter referred to as the City, in the penal sum of *** for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents. *** Twenty Eight Million, Five Hundred Twelve Thousand, Fifty-Four and No/100 Dollars (\$28,512,054.00)
THE CONDITION OF THIS OBLIGATION IS SUCH, That whereas the CONTRACTOR entered into a certain Contract with the City, to perform all Work required under the Bidding Schedule(s), Bid No. 1390, of the City's specifications, entitled CRAIG RANCH REGIONAL PARK - PHASE II.

NOW THEREFORE, If said CONTRACTOR, fails to pay for any materials, equipment, or other supplies, or for rental of same, used in connection with the performance of Work contracted to be done, or for amounts due under applicable State Law for any work or labor thereon, said Surety will pay for the same in an amount not exceeding the sum specified above and in the event suit is brought upon this bond, a reasonable attorney's fee to be fixed by the court. This bond shall insure to the benefit of any persons, companies or corporations entitled to file claims under applicable State Law. This bond shall remain in effect until two (2) years after the date of final acceptance of the Work by the City Council.

PROVIDED, that any modifications in the Work to be done or the materials to be furnished, which may be made pursuant to the terms of said Contract, shall not in any way release either said Contractor or said Surety thereunder, nor shall any extensions of time granted under the provisions of said Contract release either said Contractor or said Surety, and notice of such modifications or extensions of the Contract is hereby waived by said Surety.

SIGNED this 20th day of December, 2011.

(SEAL AND NOTARIAL ACKNOWLEDGMENT OF SURETY)

APCO Construction
(Principal Contractor)

Jay N. Smith, Secretary
(Authorized Representative and Title)

By: _____
(Signature)

Surety: Safeco Insurance Company of America

65561
(State of Nevada, License Number)

Tiffany Coronado / License No: 735000
(Managing General Agent)

By: 
(Signature)

HUB International Insurance Services
Address: 8925 W. Russell Road, Suite 220, Las Vegas, NV 89148

Telephone: (702) 365-9800

ISSUING COMPANY MUST HOLD CERTIFICATES OF AUTHORITY AS ACCEPTABLE SURETY ON FEDERAL BONDS AND AS ACCEPTABLE REINSURING COMPANY WITH LISTING IN THE DEPARTMENT OF TREASURY, FISCAL SERVICE, (DEPARTMENT CIRCULAR 570, CURRENT REVISION) AND AS LISTED WITH A. M. BEST COMPANY WITH A RATING OF A OR BETTER.

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

4735374

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

SAFECO INSURANCE COMPANY OF AMERICA
SEATTLE, WASHINGTON
POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS: That Safeco Insurance Company of America (the "Company"), a Washington stock insurance company, pursuant to and by authority of the By-law and Authorization hereinafter set forth, does hereby name, constitute and appoint GREGORY K. PIKE, BERNHARD TRUJILLO, LAURA BRICHETTO, TIFFANY GORNADO, ALL OF THE CITY OF LAS VEGAS, STATE OF NEVADA

, each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations in the penal sum not exceeding TWO HUNDRED FIFTY MILLION AND 00/100 DOLLARS (\$ 250,000,000.00) each, and the execution of such undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company in their own proper persons.

That this power is made and executed pursuant to and by authority of the following By-law and Authorization:

ARTICLE IV - Officers: Section 12: Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitations as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and executed, such instruments shall be as binding as if signed by the president and attested by the secretary.

By the following instrument the chairman or the president has authorized the officer or other official named therein to appoint attorneys-in-fact:

Pursuant to Article IV, Section 12 of the By-laws, David M. Carey, Assistant Secretary of Safeco Insurance Company of America, is authorized to appoint such attorneys-in-fact as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

That the By-law and the Authorization set forth above are true copies thereof and are now in full force and effect.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Company and the corporate seal of Safeco Insurance Company of America has been affixed thereto in Plymouth Meeting, Pennsylvania this 27th day of July 2011.



SAFECO INSURANCE COMPANY OF AMERICA

By David M. Carey
David M. Carey, Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA 85
COUNTY OF MONTGOMERY

On this 27th day of July, 2011, before me, a Notary Public, personally came David M. Carey, to me known, and acknowledged that he is an Assistant Secretary of Safeco Insurance Company of America; that he knows the seal of said corporation; and that he executed the above Power of Attorney and affixed the corporate seal of Safeco Insurance Company of America thereto with the authority and at the direction of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



Notarial Seal
Teresa Pastella, Notary Public
Plymouth Meeting, Montgomery County
My Commission Expires Mar. 20, 2013
Montgomery County Association of Notaries

By Teresa Pastella
Teresa Pastella, Notary Public

CERTIFICATE

I, the undersigned, Vice President of Safeco Insurance Company of America, do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy is in full force and effect on the date of this certificate; and I do further certify that the officer or official who executed the said power of attorney is an Officer specially authorized by the chairman or the president to appoint attorneys-in-fact as provided in Article IV, Section 12 of the By-laws of Safeco Insurance Company of America.

This certificate and the above power of attorney may be signed by facsimile or mechanically reproduced signatures under and by authority of the following vote of the board of directors of Safeco Insurance Company of America at a meeting duly called and held on the 18th day of September, 2009.

VOTED that the facsimile or mechanically reproduced signature of any assistant secretary of the company, wherever appearing upon a certified copy of any power of attorney issued by the company in connection with surety bonds, shall be valid and binding upon the company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said company, this 20th day of December, 2011.



By Gregory W. Davenport
Gregory W. Davenport, Vice President

Not valid for mortgage, note, loan, letter of credit, bank deposit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

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

RICHARD L. PEEL, ESQ.
Nevada Bar No. 4359
CARY B. DOMINA, ESQ.
Nevada Bar No. 10567
PEEL BRIMLEY LLP
3333 E. Serene Avenue, Suite 200
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Telephone: (702) 990-7272
Fax: (702) 990-7273
smeacham@peelbrimley.com
Attorneys for Plaintiff Helix Electric of Nevada, LLC

**EIGHTH JUDICIAL 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.:
DEPT. NO.:

**INITIAL APPEARANCE FEE
DISCLOSURE**

(NRS CHAPTER 19)

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for
parties appearing in the above-entitled action as indicated below:

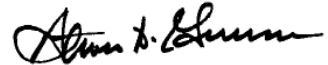
Name of Plaintiff – Helix Electric of Nevada, LLC ■ \$270.00 □ \$223.00
TOTAL REMITTED: \$270.00

DATED this 12th day of January, 2016.

PEEL BRIMLEY LLP

/s/Cary B. Domina

RICHARD L. PEEL, ESQ.
Nevada Bar No. 4359
CARY B. DOMINA, ESQ.
Nevada Bar No. 10567
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074-6571
Attorneys for Helix Electric of Nevada, LLC



CLERK OF THE COURT

RICHARD L. PEEL ESQ.
Nevada Bar No. 4359
CARY B. DOMINA, ESQ.
Nevada Bar No. 10567
PEEL BRIMLEY LLP
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074-6571
Telephone: (702) 990-7272
Fax: (702) 990-7273
rpeel@peelbrimley.com
cdomina@peelbrimley.com
Attorneys for Plaintiff Helix Electric of Nevada, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

Plaintiff,

vs.

SUMMONS

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

Defendants.

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TO THE DEFENDANT(S):

A civil Complaint has been filed by the Plaintiff(s) against you for the relief set forth in the Complaint.

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you, exclusive of the date of service, you must do the following:

a. File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court, with the appropriate filing fee.

b. Serve a copy of your response upon the attorney whose name and address is shown

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

below.

2. Unless you respond, your default will be entered upon application of the Plaintiff(s) and this court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.

3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators, each have 45 days after service of this Summons within which to file an Answer or other responsive pleading to the Complaint.

Submitted By:

CLERK OF THE COURT

RICHARD L. PEEL, Esq.
Nevada Bar No. 4359
CARY B. DOMINA, ESQ.
Nevada Bar No. 10567
PEEL BRIMLEY LLP
3333 E. Serene Avenue, Suite 200
Henderson, NV 89074-6571
Phone: (702) 990-7272
Attorneys for Plaintiff

BY: Lisamarie Vaquero 1.12.10
Deputy Clerk Date
Clark County Courthouse
200 Lewis Street
Las Vegas, Nevada 89101

LISAMARIE VAQUERO

Affidavit of Process Server

HELIX ELECTRIC OF NEVADA LLC
PLAINTIFF/PETITIONER

VS APCO CONSTRUCTION
DEFENDANT/RESPONDENT

A-16-730091-C
CASE NUMBER

I, JOHN WILKS LIC #1092, being first duly sworn, depose and say: that I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to perform said service.

Service: I served APCO CONSTRUCTION

NAME OF PERSON / ENTITY BEING SERVED

with (list documents) SUMMONS & COMPLAINT

RECEIVED ON
1-12-2016

by leaving with JAMES M. BARKER

AGENT FOR SERVICE

At

() Residence

ADDRESS

CITY / STATE

(X) Business 4420 S. DECATUR BLVD. LAS VEGAS NV 89103

ADDRESS

CITY / STATE

On JANUARY 13th 2016 At 9:38 A.M.

DATE

TIME

Manner of Service:

(X) Personal: By personally delivering copies to the person being served; or Agent for Service

() Substituted at Residence: By leaving copies at the dwelling house or usual place of abode of the person being served with a member of the household over the age of 14 and explaining the general nature of the papers.

() Substituted at Business: By leaving, during office hours, copies at the office of the person/entity being served with the person apparently in charge thereof.

() Posting: By posting copies in a conspicuous manner to the front door of the property/entity being served, thereafter copies of the documents were mailed by prepaid, first class mail on _____, from _____.

Non-Service: After due search, careful inquiry and diligent attempts at the address(es) listed above, I have been unable to effect process upon the person/entity being served because of the following reason(s):

() Unknown at Address () Moved, Left no Forwarding () Service Cancelled by Litigant () Unable to Serve in a Timely Fashion
() Address Does Not Exist () Other _____

Service Attempts: Service was attempted on: (1) _____

(2) _____

(3) _____

(4) _____

DATE TIME REPORT
DATE TIME REPORT

(5) _____

DATE TIME REPORT
DATE TIME REPORT

Description: Age 55 Sex M Race W Height 5'9" Weight 180 Hair BRN Beard _____ Glasses _____

Dated: _____ 2016

SIGNATURE OF PROCESS SERVER

SUBSCRIBED AND SWORN to before me this
_____ day of _____, 2016

NOTARY PUBLIC in and for the
County of _____ State of _____

OR: THE FOLLOWING: Per NRS 53.045

(a) If executed in this State (NEVADA):

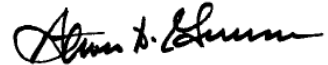
"I declare under the penalty of perjury that the foregoing is true and correct"

Executed on JANUARY 13th 2016

DATE

SIGNATURE OF PROCESS SERVER

JOHN WILKS PROCESS SERVING LIC#1092
6440 SKY POINTE DR. 140-122
LAS VEGAS NV 89131
(702) 839-2957



CLERK OF THE COURT

RICHARD L. PEEL ESQ.
Nevada Bar No. 4359
CARY B. DOMINA, ESQ.
Nevada Bar No. 10567
PEEL BRIMLEY LLP
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074-6571
Telephone: (702) 990-7272
Fax: (702) 990-7273
rpeel@peelbrimley.com
cdomina@peelbrimley.com
Attorneys for Plaintiff Helix Electric of Nevada, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

Plaintiff,

vs.

SUMMONS

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

Defendants.

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TO THE DEFENDANT(S):

A civil Complaint has been filed by the Plaintiff(s) against you for the relief set forth in the Complaint.

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you, exclusive of the date of service, you must do the following:

a. File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court, with the appropriate filing fee.

b. Serve a copy of your response upon the attorney whose name and address is shown

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

below.

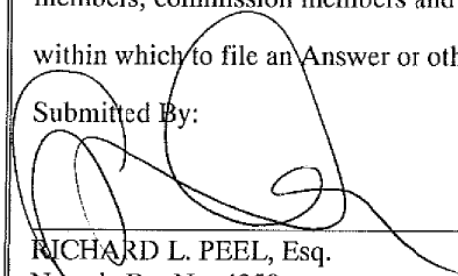
2. Unless you respond, your default will be entered upon application of the Plaintiff(s) and this court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.

3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

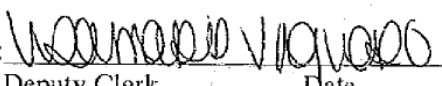
4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators, each have 45 days after service of this Summons within which to file an Answer or other responsive pleading to the Complaint.

Submitted By:

CLERK OF THE COURT


RICHARD L. PEEL, Esq.
Nevada Bar No. 4359
CARY B. DOMINA, ESQ.
Nevada Bar No. 10567
PEEL BRIMLEY LLP
3333 E. Serene Avenue, Suite 200
Henderson, NV 89074-6571
Phone: (702) 990-7272
Attorneys for Plaintiff

BY:



Deputy Clerk Date
Clark County Courthouse
200 Lewis Street
Las Vegas, Nevada 89101

LISAMARIE VAQUERO

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Safeco Insurance Company of America
c/o CSC Services of Nevada, Inc.
2215 Renaissance Dr., Ste. B
Las Vegas, NV 89119-6727
CERTIFIED MAIL NO. 7014 0150 0000 5227 1232

DATED this 14th day of January, 2016.

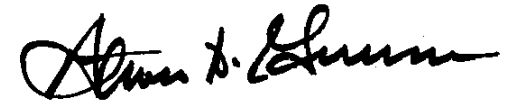

RHONDA KELLY
Employee of the State of Nevada
Department of Business and Industry
Division of Insurance

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State of Nevada, Division of Insurance
This document on which this certificate
is stamped is a full, true and correct
copy of the original

Date: 1/14/16 By: *Pranav Kalyan*



CLERK OF THE COURT

Marquis Aurbach Coffing
Avece M. Higbee, Esq.
Nevada Bar No. 3739
Cody S. Mounter, Esq.
Nevada Bar No. 11220
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
ahigbee@maclaw.com
cmounter@maclaw.com
Attorneys for APCO Construction

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-C
Dept. No.: XVII

APCO CONSTRUCTIONS' ANSWER TO PLAINTIFF'S COMPLAINT

Defendant APCO Construction ("APCO") (hereinafter "Defendant"), by and through the law firm of Marquis Aurbach Coffing, the law firm of Marquis Aurbach Coffing, hereby answers Plaintiff's Complaint as follows:

THE PARTIES

1. In answering Paragraphs 2 and 3 of Plaintiff's Complaint, Defendant admits the allegations contained therein.

2. In answering Paragraphs 1, 4 and 5 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore, denies the same.

//

//

JURISDICTIONAL ALLEGATIONS

1
2 1. In answering Paragraphs 6 and 7 of Plaintiff's Complaint, Defendant is without
3 knowledge or information sufficient to form a belief as to the truth of the allegations contained
4 therein, and therefore, while denying the same and without waiving any defenses or arguments
5 have stipulated to have the Court hear this matter.

GENERAL ALLEGATIONS

6
7 1. In answering Paragraph 8 of Plaintiff's Complaint, Defendant repeats and
8 realleges each and every response thereto.

9 2. In answering Paragraphs 9, and 10 of Plaintiff's Complaint, Defendant admits the
10 allegations contained therein.

11 3. In answering Paragraph 11 of Plaintiff's Complaint, Defendant admits that a bond
12 was executed and delivered, but denies the remaining allegations contained therein.

13 4. In answering Paragraph 12 of Plaintiff's Complaint, Defendant is without
14 knowledge or information sufficient to form a belief as to the truth of the allegations contained
15 therein, and therefore, denies the same.

FIRST CAUSE OF ACTION**(Breach of Contract – Against APCO)**

16
17
18 5. In answering Paragraph 13 of Plaintiff's Complaint, Defendant repeats and
19 realleges each and every response thereto.

20 6. In answering Paragraphs 14, 16 of Plaintiff's Complaint, Defendant admits the
21 allegations contained therein.

22 7. In answering Paragraphs 15 of Plaintiff's Complaint, Defendant is without
23 knowledge or information sufficient to form a belief as to the truth of the allegations contained
24 therein, and therefore, denies the same.

25 8. In answering Paragraphs 17, 18, a, b, c, d and e, 19 and 20 of Plaintiff's
26 Complaint, Defendant denies the allegations contained therein.

27 //

28 //

SECOND CAUSE OF ACTION

(Breach of Implied Covenant of Good Faith & Fair Dealing – Against APCO)

9. In answering Paragraph 21 of Plaintiff's Complaint, Defendant repeats and realleges each and every response thereto.

10. In answering Paragraph 22 of Plaintiff's Complaint, Defendant, admits the allegations contained herein.

11. In answering Paragraphs 23, 24 and 25 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

THIRD CAUSE OF ACTION

(Unjust Enrichment or in the Alternative Quantum Meruit – Against APCO)

12. In answering Paragraph 26 of Plaintiff's Complaint, Defendant repeats and realleges each and every response thereto.

13. In answering Paragraphs 29, 32, 33 and 34 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

14. In answering Paragraphs 27, 28, 30 and 31 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore, denies the same.

FOURTH CAUSE OF ACTION ¹

(Violation of NRS 338.550 Against APCO)

15. In answering Paragraph 3 of Plaintiff's Complaint, Defendant repeats and realleges each and every response thereto.

16. In answering Paragraphs 5, 6, 7 and 8 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

¹ Due to a clerical error in Plaintiff's Complaint, APCO's answers to Plaintiff's Fourth Cause of Action are limited to the paragraphs within that cause of action and have no reference to other paragraphs contained within Plaintiff's Complaint.

17. In answering Paragraph 4 of Plaintiff's Complaint, the allegations contained therein are a legal conclusion rather than a factual allegation; therefore Defendant is without knowledge to form a belief and therefore denies the same.

FIFTH CAUSE OF ACTION

(Claim Against Payment Bond Against Safeco)

18. In answering Paragraph 35 of Plaintiff's Complaint, Defendant repeats and realleges each and every response thereto.

19. In answering Paragraphs 40 of Plaintiff's Complaint, Defendant admits the allegations contained therein.

20. In answering Paragraph 41 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore, denies the same.

21. In answering Paragraphs 37, 38, 42, 43, 44 and 45 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

22. In answering Paragraphs 36 and 39 of Plaintiff's Complaint, the allegations contained therein are a legal conclusion rather than a factual allegation; therefore Defendant is without knowledge to form a belief and therefore denies the same.

23. As to any remaining allegations not specifically responded to herein, Defendant denies the same.

AFFIRMATIVE DEFENSES

1. Plaintiff's claims, and each of them, are barred by the applicable statute of limitation.

2. Plaintiff has failed to state a claim upon which relief can be granted.

3. Plaintiff is not equitably entitled to obtain any money from Defendant.

4. Plaintiff's claims against Defendant fail as a matter of law because Plaintiff is not a beneficiary under the bond.

5. The claims, and each of them, are barred by the failure of the Plaintiff to plead those claims with particularity

1 6. The claims, and each of them, are barred as a result of the failure of the Plaintiff
2 to timely make those claims against Defendant and allow Defendant to collect evidence
3 sufficient to establish its nonliability. Defendant relied upon Plaintiff's failure to allege these
4 claims and, as a result, Plaintiff is barred by the doctrine of laches.

5 7. Insofar as any alleged breach of contract is concerned, Plaintiff failed to give this
6 answering Defendant timely notice thereof.

7 8. Answering Defendant has not breached any contract.

8 9. Answering Defendant has substantially performed the contract.

9 10. Answering Defendant was justified in his failure to perform, if any.

10 11. The claims of Plaintiff have been waived as a result of the acts and the conduct of
11 the Plaintiff.

12 12. The claims for breach of contract are barred as a result of the failure to satisfy
13 conditions precedent.

14 13. Answering Defendant at all times herein acted reasonably and in good faith in
15 discharging its obligations and duties, if any.

16 14. These answering Defendant acted in conformity with the law and with
17 reasonableness in discharging its duties.

18 15. Plaintiff has received everything it was entitled to receive from its agreement with
19 answering Defendant.

20 16. The answering Defendant has properly and legally fulfilled its duties and
21 obligations, if any, to the Plaintiff.

22 17. Plaintiff's contractual causes of action are barred by Plaintiff's own anticipatory
23 breach of its contractual duties to answering Defendant, which breach relieved answering
24 Defendant of any and all contractual obligations or promises to Plaintiff (which obligations and
25 promises answering Defendant denies).

26 18. Answering Defendant fulfilled its duty to deal with Plaintiff in good faith.

27 19. Answering Defendant committed no intentional acts meant to disrupt or harm
28 Plaintiff.

- 1 20. No disruption or harm occurred to Plaintiff.
- 2 21. Plaintiff's cause of action for breach of the covenant of good faith and fair dealing
- 3 is barred because Plaintiff breached its reciprocal covenant of good faith and fair dealing.
- 4 22. The Plaintiff did not confer any benefit upon answering Defendant by either
- 5 substantially performing or satisfying conditions precedent to the contract.
- 6 23. Answering Defendant has made all necessary payments or abided by all necessary
- 7 provisions to Plaintiff.
- 8 24. Answering Defendant has not retained any benefit which in equity and good
- 9 conscience belongs to Plaintiff.
- 10 25. To the extent that answering Defendant has not received any benefits from
- 11 Plaintiff, answering Defendant has not been unjustly enriched.
- 12 26. Plaintiff is not equitably entitled to obtain any money from Defendant.
- 13 27. Plaintiff is not entitled to the reasonable value of any services.
- 14 28. There is no reasonable value for Plaintiff's services because Plaintiff damaged
- 15 Defendant.
- 16 29. Defendant has not retained any benefit, money or property against fundamental
- 17 principles of justice, equity, and good conscience.
- 18 30. Plaintiff's claims are merely conjecture and speculation.
- 19 31. Defendant has not failed nor refused to timely pay Helix monies due and owing.
- 20 32. Plaintiff has not been damaged.
- 21 33. Plaintiff first breached the contract agreement by not abiding by its terms of
- 22 submission of invoicing or payment.
- 23 34. Plaintiff's claims, and each of them, are barred as a result of an accord and
- 24 satisfaction.
- 25 35. Plaintiff's claims are barred, in whole or in part, by the parol evidence rule.
- 26 36. Any and all actions complained of by Plaintiff were approved or ratified by
- 27 Plaintiff.
- 28

1 37. Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have
2 been alleged herein, in so far as sufficient facts were not available after a reasonable inquiry
3 upon the filing of these Defendants' Answer to Plaintiff's Complaint; therefore, these
4 Defendants reserve the right to amend its answer to allege additional affirmative defenses if
5 subsequent investigations so warrant.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Defendants pray for judgment against Plaintiff as follows:

8 1. That Plaintiff take nothing by way of its Complaint and that the same be
9 dismissed with prejudice;

10 2. For an award of reasonable attorney fees and costs of suit; and

11 3. For any further relief as the Court deems to be just and proper.

12 Dated this 11th day of April, 2017.

13 MARQUIS AURBACH COFFING

14
15 By: 

16 Avece M. Higbee, Esq.
17 Nevada Bar No. 3739
18 Cody S. Mounteer, Esq.
19 Nevada Bar No. 11220
20 10001 Park Run Drive
21 Las Vegas, Nevada 89145
22 Attorneys for Defendant
23
24
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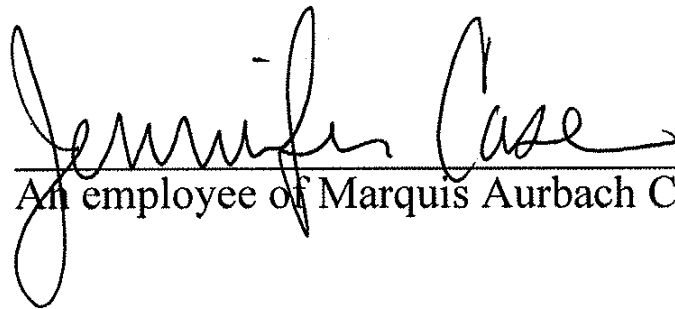
CERTIFICATE OF SERVICE

I hereby certify that the foregoing **APCO CONSTRUCTIONS' ANSWER TO PLAINTIFF'S COMPLAINT** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 11th day of April, 2017. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:²

Richard L. Peel, Esq.
Cary B. Comina, Esq.
Peel Brimley, LLP
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074-6571
Email: aarmstrong@peelbrimley.com
Email: cdomina@peelbrimley.com
Email: rjeffrey@peelbrimley.com
Attorneys for Plaintiff


I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A


An employee of Marquis Aurbach Coffing

² Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

1 **Marquis Aurbach Coffing**
 Avece M. Higbee, Esq.
 2 Nevada Bar No. 3739
 Cody S. Munteer, Esq.
 3 Nevada Bar No. 11220
 10001 Park Run Drive
 4 Las Vegas, Nevada 89145
 Telephone: (702) 382-0711
 5 Facsimile: (702) 382-5816
 ahigbee@maclaw.com
 6 cmunteer@maclaw.com
 nsansone@maclaw.com
 7 Attorneys for Safeco Insurance
 Company of America



CLERK OF THE COURT

DISTRICT COURT**CLARK COUNTY, NEVADA**

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

Plaintiff,

vs.

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

Defendants.

Case No.: A-16-730091-C
 Dept. No.: XVII

18 **SAFECO'S MOTION TO DISMISS PLAINTIFF'S CLAIMS AGAINST BOND AND**
 19 **COUNTERMOTION FOR FEES AND COSTS OF MOTION**

20 Defendant Safeco Insurance Company of America ("Safeco" or "Defendant") by and
 21 through the law firm of Marquis Aurbach Coffing, hereby submits its Motion to Dismiss.

...

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...

1 This Motion is made and based upon the points and authorities attached hereto, papers
2 and pleadings on file herein, and any argument of counsel at the time of hearing in this matter.

3 Dated this 11th day of April, 2017.

4
5 MARQUIS AURBACH COFFING

6
7 By: 

8 Avece M. Higbee, Esq.
9 Nevada Bar No. 3739
10 Cody S. Munteer, Esq.
11 Nevada Bar No. 11220
12 10001 Park Run Drive
13 Las Vegas, Nevada 89145
14 Attorneys for Defendants

15 **NOTICE OF MOTION**

16 You and each of you, will please take notice that the SAFCO'S MOTION TO DISMISS
17 will come on regularly for hearing on the 17 day of Ma y, 2017, at the
18 hour of 8:30a.m., or as soon thereafter as counsel may be heard, in Department XVII in the
19 above-referenced court.

20 Dated this 11th day of April, 2017.

21 MARQUIS AURBACH COFFING

22 By: 

23 Avece M. Higbee, Esq.
24 Nevada Bar No. 3739
25 Cody S. Munteer, Esq.
26 Nevada Bar No. 11220
27 10001 Park Run Drive
28 Las Vegas, Nevada 89145
Attorneys for Defendants

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND STATEMENT OF FACTS

The instant Action involves the construction of the public works project of Craig Ranch Regional Park Phase II (the "Project"). The Project was commissioned by the City of North Las Vegas (the "City"). APCO Construction ("APCO") acted as the General Contractor for the Project, with Helix Electric of Nevada, LLC ("Helix") acting as the electrical Subcontractor. The Parties executed a Subcontract Agreement wherein Helix agreed to provide certain electrical related labor, materials and equipment to the Project (the "Agreement"). Pursuant to the provisions of NRS 339.025, Safeco, as surety, and APCO, as principal, executed and delivered to CNLV a Labor and Material Payment Bond, No, 024043470 (the "Bond").¹ The City Council for CNLV voted for approval of the Final Acceptance of the Project on July 2, 2014.

Helix now brings its claims against APCO and Safeco by way of Complaint filed in the Eighth Judicial Court Clark County, Nevada on January 12, 2016.² Helix's Complaint asserts the following causes of action: (1) Breach of Contract – Against APCO; (2) Breach of the Implied Covenant of Good Faith & Fair Dealing – Against APCO; (3) Unjust Enrichment or in the Alternative Quantum Meruit – Against APCO; (4) Violation of NRS 338.550 – Against APCO; and (5) Claims Against the Bond – Against Safeco.³ As detailed herein, Helix's fifth cause of action against Safeco fails as a matter of law, because Helix failed to timely assert its claims against the payment bond within the applicable statute of limitations.

II. LEGAL STANDARD

NRS 339 governs actions against contractors' payment bonds on public works. See NRS Chapter 339, generally.⁴ Specifically, NRS 339.035 sets forth the requirements before initiating an action against a payment bond. Pursuant to NRS 339.035, subcontractors with a direct

¹ See Helix's Complaint filed January 12, 2016 at **Exhibit 1**.

² See Helix's Complaint, generally.

³ Id.

⁴ See NRS Chapter 339, generally.

contractual relationship with the contractor may only bring an action against the payment bond if:

- (1) the subcontractor has either performed labor or furnished materials in the prosecution of the work a contract that a payment bond has been given under NRS 339.025; and
- (2) the subcontractor has not been paid within 90 days from the date on which the claimant performed the last of the labor or furnished the last of the materials for which the subcontractor claims payment.⁵

Further, under NRS 339.055, claimants have one year to bring claims under NRS 339.035. Specifically, NRS 339.055 states in pertinent part:

NRS 339.055 Actions on payment bonds: Venue; limitation of actions.

1. Every action on a payment bond as provided in NRS 339.035 shall be brought in the appropriate court of the political subdivision where the contract for which the bond was given was to be performed.

2. No such action may be commenced **after the expiration of 1 year from the date on which the claimant performed the last of the labor or furnished the last of the materials for the payment of which such action is brought.**

(Added to NRS by 1963, 166)

Here, the statute of limitations on Helix's Fifth Cause of Action has lapsed. Consequently, Helix's Fifth Cause of Action must be dismissed, as Helix failed to file the instant Action within the statute of limitations provided by NRS 339.055.

III. LEGAL ARGUMENT

A. **HELIX'S FIFTH CAUSE OF ACTION MUST BE DISMISSED AS IT IS BARRED BY NRS 339.055**

Pursuant to NRS 339.055, Helix had one year to file the instant action from the date it last provided labor or materials for the specific payment it purports to be owed i.e., the one year deadline imposed by NRS 339.055 is triggered once the subcontractor provides the last labor or materials for which it claims payment.⁶

⁵ See NRS 339.035.

⁶ See NRS 339.055; NRS 339.035.

1 Here, Helix's Complaint does not allege a specific date Helix last provided labor or
2 materials for which it claims payment.⁷ However, of the utmost importance, Helix
3 acknowledges, "[t]he City Council for CNLV approved the Final Acceptance of the Project and
4 Work on July 2, 2014."⁸ Thus, even assuming, *arguendo*, that the money Helix alleges it is
5 owed is for labor or materials last provided on the same date CNLV issued its final acceptance of
6 the Project, Helix would still have had to file its Complaint **no later than July 2, 2015**.

7 Moreover, Helix specifically cites NRS 399.055 in its Complaint⁹ and thus, there is no
8 doubt that Helix is well aware of the statutory deadline to file a claim against the payment bond.
9 However, despite having this knowledge, Helix did not file its Complaint until January 12,
10 2016— **almost two years** after it could have last provided materials or labor on the Project.¹⁰

11 Accordingly, it is clear that NRS 339.055 bars Helix's Fifth Cause of Action, as Helix
12 failed to file the instant action within the one-year statutory deadline.

13 **B. THE BOND SPECIFICALLY UPHOLDS THE STATUTORY DEADLINE**
14 **IMPOSED BY NRS 339.055.**

15 It is anticipated that Helix will allege that the language in the payment bond somehow
16 allows them to overcome the one-year statute of limitation imposed by NRS 339.055.¹¹ More
17 specific, that "[t]his bond shall remain in effect until two (2) years after the date of final
18 acceptance of the Work by the City Council."¹²

19 While the bond does contain this language, the language only details a condition by the
20 city that does not alter the statutory limitation period i.e., NRS 339.055 still bars the instant
21 action, regardless of the duration of the bond. Further, nothing in the bond supersedes NRS

22
23 ⁷ See Helix's Complaint filed January 12, 2016, generally

24 ⁸ Id.

25 ⁹ Id. at 3:17.

26 ¹⁰ Id. generally.

27 ¹¹ Id. at 6:6-13.

28 ¹² Id. at **Exhibit 1**.

1 339.055.¹³ In fact, the language in the bond explicitly upholds and defers to NRS 339.055 as
2 applicable state law, as it states:

3 “This bond shall insure to the benefit of any persons, companies or corporations
4 *entitled to file claims under applicable State Law.*”¹⁴

5 Accordingly, notwithstanding the duration of the bond, the one year statute of limitations
6 imposed by NRS 339.055 still applies, and Helix is not a company that is entitled to file a claim
7 under applicable state law. Consequently, Helix’s Fifth Cause of Action for a claim against the
8 payment bond must be dismissed as it is barred by the statute of limitations.

9 **IV. SAFECO’S COUNTERMOTION FOR FEES AND COSTS**

10 **A. DEFENDANT, SAFECO INSURANCE, SHOULD BE AWARDED ITS
11 ATTORNEYS FEES AND COSTS INCURRED FOR HAVING TO
12 DEFEND THE BOND CLAIMS.**

13 Safeco should be awarded its attorneys fees and costs for having to defend Helix’s bond
14 claims and for having to bring the instant motion, as Helix’s claims are untimely and frivolous,
15 because Helix knew its Fifth Cause of Action against the bond was barred by NRS 339.055.
16 Further, as detailed above, Helix was well aware of the statutory deadline to file a claim against
17 the payment bond, as Helix specifically cited NRS 399.055 in its Complaint.¹⁵

18 Consequently, Helix was well aware of the statute of limitations, and, even assuming all
19 facts in Helix’s favor, Helix still missed the deadline by nearly two years. Likewise, without
20 regard to the recovery sought, Helix’s bond claim was brought and maintained without
21 reasonable ground and/or to harass APCO into a settlement.¹⁶ Pursuant to NRS 18.010, the
22 Court shall liberally construe the provisions of the rule in favor of awarding attorney’s fees in all
23 appropriate situations. Here, an award of Safeco’s attorneys’ fees and costs is appropriate, as
24 Helix filed the instant Action knowing its claims against the bond were barred by the statute of
25 limitation imposed by NRS 339.055.

26 ¹³ Id.

27 ¹⁴ Id.

28 ¹⁵ Id. at 3:17.

¹⁶ See, NRS 18.010, generally.

1 Accordingly, Safeco respectfully requests an awarded of its attorneys fees and costs
2 incurred in having to defend Helix's bond claims and for having to bring the instant Motion to
3 Dismiss when it is so clear that Helix's bond claims are barred by the NRS 339.055.

4 **V. CONCLUSION**

5 For the foregoing reasons, APCO respectfully requests that Helix's Fifth Cause of Action
6 for its claims against the bond be dismissed with prejudice.

7 Dated this 11th day of April, 2017.

8 MARQUIS AURBACH COFFING

9
10 By: 

Avece M. Higbee, Esq.
Nevada Bar No. 3739
Cody S. Munteer, Esq.
Nevada Bar No. 11220
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Safeco

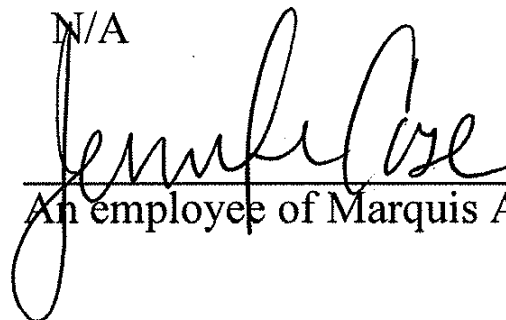
CERTIFICATE OF SERVICE

I hereby certify that the foregoing **SAFECO's MOTION TO DISMISS** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 11th day of April, 2017. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹⁷

Richard L. Peel, Esq.
Cary B. Comina, Esq.
Peel Brimley, LLP
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074-6571
Email: aarmstrong@peelbrimley.com
Email: cdomina@peelbrimley.com
Email: rjeffrey@peelbrimley.com
Attorneys for Plaintiff

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A



An employee of Marquis Aurbach Coffing

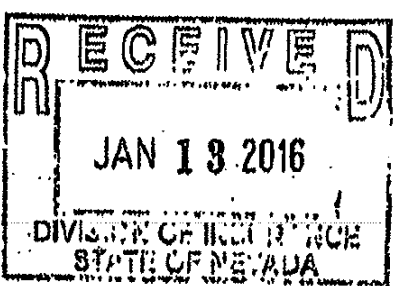
¹⁷ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

Exhibit 1

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3333 E. SERENE AVENUE, STE. 200
HENDERSON, NEVADA 89074
(702) 990-7272 • FAX (702) 990-7273

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RICHARD L. PEEL ESQ.
Nevada Bar No. 4359
CARY B. DOMINA, ESQ.
Nevada Bar No. 10567
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rpeel@peelbrimley.com
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Attorneys for Plaintiff Helix Electric of Nevada, LLC



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Alvin L. Quinn
CLERK OF THE COURT

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

HELIX ELECTRIC OF NEVADA, LLC, a Nevada limited liability company,	CASE NO.: A- 16- 730091- C DEPT. NO.:
Plaintiff,	XVI I
vs.	COMPLAINT
APCO CONSTRUCTION, a Nevada corporation; SAFECO INSURANCE COMPANY OF AMERICA; DOES I through X; and BOE BONDING COMPANIES I through X,	
Defendants.	

Plaintiff, HELIX ELECTRIC OF NEVADA, LLC ("Helix"), by and through its attorneys of record, Richard L. Peel, Esq. and Cary B. Domina, Esq. of the law firm of PEEL BRIMLEY LLP, as for its Complaint against the above-named Defendants complains, avers and alleges as follows below:

THE PARTIES

1. Helix is and was at all times relevant to this action a Nevada limited liability company, duly authorized and qualified to do business in Clark County, Nevada as a duly licensed contractor holding a Nevada State Contractor's License.
2. Helix is informed and believes and therefore alleges that Defendant APCO CONSTRUCTION, ("APCO") is and was at all times relevant to this action a Nevada corporation, duly authorized and qualified to do business in the state of Nevada, as a contractor holding a Nevada State Contractor's license.

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1 3. Helix is informed and believes and therefore alleges that Defendant SAFECO
2 INSURANCE COMPANY OF AMERICA ("Safeco") is and was at all times relevant to this
3 action a bonding company duly licensed and qualified to do business as a surety in Nevada.

4 4. Helix is informed and believes and therefore alleges that the City of North Las
5 Vegas ("CNLV"), a non-party to this Case, is a political division of the State of Nevada and is a
6 "contracting party" (as that term is defined by NRS 339.015) for purposes of this litigation.

7 5. Helix does not know the true names of the individuals, corporations, partnerships
8 and entities sued and identified in fictitious names as DOES I through X, BOB BONDING
9 COMPANIES I through X, (collectively, "Doe Defendants"). Helix alleges that such Defendants
10 claim an interest in or to the Project and/or are responsible for damages suffered by Helix as more
11 fully discussed under the claims for relief set forth below. Helix will request leave of this
12 Honorable Court to amend this Complaint to show the true names and capacities of each such
13 fictitious Defendant when Helix discovers such information.

14 **JURISDICTIONAL ALLEGATIONS**

15 6. Jurisdiction is proper under Nevada Const. Art. 6, §6 and NRS 4.370(1)(a),
16 because this is an action for breach of contract seeking damages in excess of \$10,000.

17 7. Venue is proper under NRS 13.010(1) and NRS 339.055 because this action is for
18 breach of a contract to be performed in Clark County.

19 **GENERAL ALLEGATIONS**

20 8. Helix repeats and realleges each and every allegation contained in the preceding
21 paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

22 9. APCO was the prime contractor for CNLV's construction project commonly
23 referred to as the Craig Ranch Regional Park Phase II project located in Clark County, Nevada
24 (the "Project").

25 10. Helix entered into an agreement with APCO ("Agreement") wherein Helix agreed
26 to provide certain electrical related labor, materials and equipment (the "Work") to the Project.

27 11. Pursuant to the provisions of NRS 339.025, Safeco, as surety, and APCO, as
28 principal, executed and delivered to CNLV a Labor and Material Payment Bond, No. 024043470.

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1 (the "Bond") by which Safeco and APCO, jointly and severally, bound themselves to make
2 payment to all persons or entities furnishing materials, equipment, suppliers, or labor furnished in
3 connection with the Project, including Helix.

4 12. The Project was scheduled to be completed on January 9, 2013, but as a result of
5 APCO's failures to properly manage the Project, completion did not occur until July 2, 2014,
6 when the City Council for CNLV voted for approval of the Final Acceptance of the Project,
7 which resulted in substantial additional costs incurred by Helix.

8 **FIRST CAUSE OF ACTION**
9 **(Breach of Contract – Against APCO)**

10 13. Helix repeats and realleges each and every allegation contained in the preceding
11 paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

12 14. In or around December, 2011, Helix entered into the Agreement with APCO
13 wherein Helix agreed to furnish the Work to the Project.

14 15. Helix furnished the Work as required by the Agreement for the benefit of and at
15 the specific instance and request of APCO.

16 16. Pursuant to the Agreement, Helix was to be paid an amount in excess of Ten
17 Thousand and no/100 Dollars (\$10,000.00) for its Work pursuant to the Agreement.

18 17. Helix furnished the Work as required by the Agreement and has otherwise
19 performed its duties and obligations as required.

20 18. APCO breached the Agreement by, among other things:

- 21 a. Failing and/or refusing to pay the monies owed to Helix for its Work;
22 b. Failing to adjust the Agreement price to account for extra and/or changed
23 work, as well as suspensions and delays caused or ordered by APCO and/or its representatives;
24 c. Failing to promptly recognize and grant time extensions to reflect
25 additional time allowable under the Agreement and permit related adjustments in scheduled
26 performance;
27 d. Failing and/or refusing to comply with the Agreement and Nevada law;
28 and

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1 e. Negligently or intentionally preventing, obstructing, hindering or
2 interfering with Helix's performance or provision of the Work as required under the Agreement.

3 19. Helix is owed an amount in excess of Ten Thousand and no/100 Dollars
4 (\$10,000.00) for the Work pursuant to the Agreement, ("Outstanding Balance").

5 20. Helix has been required to engage the services of an attorney to collect the
6 Outstanding Balance with respect to the Agreement, and Helix is entitled to recover its reasonable
7 costs, attorney's fees and interest therefore.

8 **SECOND CAUSE OF ACTION**

9 **(Breach of Implied Covenant of Good Faith & Fair Dealing -- Against APCO)**

10 21. Helix repeats and realleges each and every allegation contained in the preceding
11 paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

12 22. There is a covenant of good faith and fair dealing implied in every agreement,
13 including the Agreement between Helix and APCO.

14 23. APCO breached its duty to act in good faith by performing the Agreement in a
15 manner that was unfaithful to the purpose of the Agreement, thereby denying Helix's justified
16 expectations.

17 24. Due to the actions of APCO, Helix has suffered damages in an amount to be
18 determined at trial for which Helix is entitled to judgment plus interest.

19 25. Helix has been required to engage the services of an attorney to collect the
20 Outstanding Balance, and Helix is entitled to recover its reasonable costs, attorney's fees and
21 interest therefore.

22 **THIRD CAUSE OF ACTION**

23 **(Unjust Enrichment or in the Alternative Quantum Meruit-Against APCO)**

24 26. Helix repeats and realleges each and every allegation contained in the preceding
25 paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

26 27. This cause of action is being pled in the alternative.

27 28. Helix furnished the Work for the benefit of and/or at the specific instance and
28 request of APCO.

29. APCO accepted, used and enjoyed the benefit of the Work.

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1 30. APCO knew or should have known that Helix expected to be paid for the Work.

2 31. Helix has demanded payment of the Outstanding Balance.

3 32. To date, APCO has failed, neglected, and/or refused to pay the Outstanding
4 Balance.

5 33. APCO has been unjustly enriched, to the detriment of Helix.

6 34. Helix has been required to engage the services of an attorney to collect the
7 Outstanding Balance, and Helix is entitled to recover its reasonable costs, attorney's fees and
8 interest therefore.

9 **FOURTH CAUSE OF ACTION**
(Violation of NRS 338.550 Against APCO)

10 3. APCO repeats and realleges each and every allegation contained in the preceding
11 paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

12 4. NRS 338.550 to 338.645, inclusive (the "Statute"), requires contractors, such as
13 APCO, to, among other things, timely pay contractors and suppliers, such as Helix, as provided in
14 the Statute.

15 5. In violation of the Statute, APCO has failed and/or refused to timely pay Helix
16 monies due and owing.

17 6. Owing to APCO's violation of the Statute, Helix was damaged in an amount in
18 excess of Ten Thousand Dollars (\$10,000.00).

19 7. By reason of the foregoing, Helix is entitled to a judgment against APCO in the
20 amount of the Outstanding Balance.

21 8. Helix has been required to engage the services of an attorney to collect the
22 Outstanding Balance and Helix is entitled to recover its reasonable costs, attorney's fees and
23 interests therefore.

24 **FIFTH CAUSE OF ACTION**
(Claim Against Payment Bond – Against Safeco)

25 35. Helix repeats and realleges each and every allegation contained in the preceding
26 paragraphs of this Complaint, incorporates them herein by reference, and further alleges as
27 follows:
28

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1 36. Pursuant to NRS 339.025, APCO and Safeco executed the Bond for the benefit of
2 APCO's subcontractors, laborers and suppliers, including Helix.

3 37. In compliance with the Agreement, Helix has furnished the Work for the benefit of
4 APCO.

5 38. Helix has not been paid in full for the Work under the Agreement.

6 39. Pursuant to the express language of the Bond, "it shall remain in effect until two
7 (2) years after the date of final acceptance of the Work by the CNLV City Council."¹

8 40. The City Council for CNLV approved the Final Acceptance of the Project and
9 Work on July 2, 2014.

10 41. It has been more than ninety (90) days but less than two (2) years since Helix
11 provided the Work for the Project under the Agreement and the City Council for CNLV gave
12 final acceptance of the Work.

13 42. As such, Helix has timely filed its claim against the Bond.

14 43. Pursuant to NRS 339.035 and the language of the Bond, Helix is entitled to
15 payment by Safeco of all sums owed to it by APCO.

16 44. Accordingly, Helix is entitled to payment by Safeco of all sums owed to it by
17 APCO, which are in excess of \$10,000.00.

18 45. Helix was required to engage the services of any attorney to collect the
19 Outstanding Balance, and Helix is entitled to recover its reasonable costs, attorney's fees and
20 interest therefor.

21 **WHEREFORE**, Helix prays that this Honorable Court:

22 1. Enters judgment against APCO and Safeco, and each of them, jointly and
23 severally, in the amount of the Outstanding Balance;

24 2. Enters judgment against APCO and Safeco, and each of them, jointly and
25 severally, for Helix's reasonable costs and attorney's fees incurred in the collection of the
26 Outstanding Balance, as well as an award of interest thereon;

27
28 ¹ See Exhibit "1" attached hereto, a true and correct copy of the Payment Bond.

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HENDERSON, NEVADA 89074
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3. Enters a judgment declaring that Helix has a valid and enforceable claim against the Bond, in an amount of the Outstanding Balance, plus reasonable attorneys' fees, costs and interest thereon; and

3. For such other and further relief as this Honorable Court deems just and proper in the premises

DATED this 11 day of January, 2016.

PEEL BRIMLEY LLP

RICHARD L. PEEL, ESQ.

Nevada Bar No. 4339

CARY B. DOMINA, ESQ.

Nevada Bar No. 10567

3333 E. Serene Avenue, Suite 200

Henderson, Nevada 89074-6571

Attorneys for Helix Electric of Nevada, LLC

EXHIBIT "1"

CONTRACT AWARD
CRAIG RANCH REGIONAL PARK - PHASE II
BID NO. 1398

CITY OF NORTH LAS VEGAS
LABOR AND MATERIAL PAYMENT BOND

BOND NUMBER 024043470
DATE EXECUTED December 20, 2011

IMPORTANT: SURETY COMPANIES EXECUTING BONDS MUST BE LICENSED TO ISSUE SURETY BY THE STATE OF NEVADA INSURANCE DIVISION PURSUANT TO NRS 683A.090. NOTE: INDIVIDUAL SURETY BONDS ARE NOT ACCEPTABLE.

KNOW ALL MEN BY THESE PRESENTS, That we, the CONTRACTOR AND SURETY, are held and firmly bound unto the City of North Las Vegas, Nevada, hereinafter referred to as the City, in the penal sum of for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.
*** Twenty Eight Million, Five Hundred Twelve Thousand, Fifty-Four and No/100 Dollars (\$28,512,054.00)
THE CONDITION OF THIS OBLIGATION IS SUCH, That whereas the CONTRACTOR entered into a certain Contract with the City, to perform all Work required under the Bidding Schedule(s), Bid No. 1398, of the City's specifications, entitled CRAIG RANCH REGIONAL PARK - PHASE II,

NOW THEREFORE, If said CONTRACTOR, fails to pay for any materials, equipment, or other supplies, or for rental of same, used in connection with the performance of Work contracted to be done, or for amounts due under applicable State Law for any work or labor thereon, said Surety will pay for the same in an amount not exceeding the sum specified above and in the event suit is brought upon this bond, a reasonable attorney's fee to be fixed by the court. This bond shall insure to the benefit of any persons, companies or corporations entitled to file claims under applicable State Law. This bond shall remain in effect until two (2) years after the date of final acceptance of the Work by the City Council.

PROVIDED, that any modifications in the Work to be done or the materials to be furnished, which may be made pursuant to the terms of said Contract, shall not in any way release either said Contractor or said Surety thereunder, nor shall any extensions of time granted under the provisions of said Contract release either said Contractor or said Surety; and notice of such modifications or extensions of the Contract is hereby waived by said Surety.

SIGNED this 20th day of December, 2011.

(SEAL AND NOTARIAL ACKNOWLEDGMENT OF SURETY)

APCO Construction
(Principal Contractor)

Jay N. Smith, Secretary
(Authorized Representative and Title)

By: _____
(Signature)

Surety: Safeco Insurance Company of America

05561
(State of Nevada, License Number)

Tiffany Coronado / License No. 735000
(Managing General Agent)

By: [Signature]
(Signature)

HUB International Insurance Services
Address: 8925 W. Russell Road, Suite 220, Las Vegas, NV 89148

Telephone: (702)365-9800

ISSUING COMPANY MUST HOLD CERTIFICATES OF AUTHORITY AS ACCEPTABLE SURETY ON FEDERAL BONDS AND AS ACCEPTABLE REINSURING COMPANY WITH LISTING IN THE DEPARTMENT OF TREASURY, FISCAL SERVICE, (DEPARTMENT CIRCULAR 170, CURRENT REVISION) AND AS LISTED WITH A. M. BEST COMPANY WITH A RATING OF A OR BETTER.

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

4735374

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

**SAFECO INSURANCE COMPANY OF AMERICA
SEATTLE, WASHINGTON
POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS: That Safeco Insurance Company of America (the "Company"), a Washington stock insurance company, pursuant to and by authority of the By-law and Authorization hereinafter set forth, does hereby name, constitute and appoint GREGORY K. PIKE, BERNHARD TRUJILLO, LAURA BRICHETTO, TIFFANY CORONADO, ALL OF THE CITY OF LAS VEGAS, STATE OF NEVADA

each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations in the penal sum not exceeding TWO HUNDRED FIFTY MILLION AND 00/100 DOLLARS (\$ 250,000,000.00) each, and the execution of such undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company in their own proper persons.

That this power is made and executed pursuant to and by authority of the following By-law and Authorization:

ARTICLE IV - Officers: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitations as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and executed; such instruments shall be as binding as if signed by the president and attested by the secretary.

By the following instrument the chairman or the president has authorized the officer or other official named therein to appoint attorneys-in-fact:

Pursuant to Article IV, Section 12 of the By-laws, David M. Carey, Assistant Secretary of Safeco Insurance Company of America, is authorized to appoint such attorneys-in-fact as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

That the By-law and the Authorization set forth above are true copies thereof and are now in full force and effect.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Company and the corporate seal of Safeco Insurance Company of America has been affixed thereto in Plymouth Meeting, Pennsylvania this 27th day of July 2011.



SAFECO INSURANCE COMPANY OF AMERICA

By David M. Carey
David M. Carey, Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF MONTGOMERY

On this 27th day of July 2011, before me, a Notary Public, personally came David M. Carey, to me known, and acknowledged that he is an Assistant Secretary of Safeco Insurance Company of America; that he knows the seal of said corporation; and that he executed the above Power of Attorney and affixed the corporate seal of Safeco Insurance Company of America thereto with the authority and at the direction of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



Notarial Seal
Teresa Pastella, Notary Public
Plymouth Meeting, Montgomery County
My Commission Expires May 10, 2015
Member, Pennsylvania Association of Notaries

By Teresa Pastella
Teresa Pastella, Notary Public

CERTIFICATE

I, the undersigned, Vice President of Safeco Insurance Company of America, do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this certificate; and I do further certify that the officer or official who executed the said power of attorney is an Officer specially authorized by the chairman or the president to appoint attorneys-in-fact as provided in Article IV, Section 12 of the By-laws of Safeco Insurance Company of America.

This certificate and the above power of attorney may be signed by facsimile or mechanically reproduced signatures under and by authority of the following vote of the board of directors of Safeco Insurance Company of America at a meeting duly called and held on the 18th day of September, 2008.

VOTED that the facsimile or mechanically reproduced signature of any assistant secretary of the company, whenever appearing upon a certified copy of any power of attorney issued by the company in connection with surety bonds, shall be valid and binding upon the company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said company, this 20th day of December 2011.



By Gregory W. Dayenport
Gregory W. Dayenport, Vice President

Not valid for mortgage, note, loan, letter of credit, bank deposit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-810-832-8240 between 9:00 am and 4:30 pm EST on any business day.

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1 RICHARD L. PEEL, ESQ.
2 Nevada Bar No. 4359
3 CARY B. DOMINA, ESQ.
4 Nevada Bar No. 10567
5 PEEL BRIMLEY LLP
6 3333 E. Serene Avenue, Suite 200
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8 Telephone: (702) 990-7272
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10 smeacham@peelbrimley.com
11 Attorneys for Plaintiff Helix Electric of Nevada, LLC

8 EIGHTH JUDICIAL DISTRICT COURT
9 CLARK COUNTY, NEVADA

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

CASE NO.:
DEPT. NO.:

11 Plaintiff,

11 vs.

INITIAL APPEARANCE FEE
DISCLOSURE

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

(NRS CHAPTER 19)

15 Defendants.

16 Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for
17 parties appearing in the above-entitled action as indicated below:

18 Name of Plaintiff -- Helix Electric of Nevada, LLC
19 TOTAL REMITTED:

■ \$270.00 □ \$223.00
\$270.00

20 DATED this 12th day of January, 2016.

21 PEEL BRIMLEY LLP

22 /s/Cary B. Domina

23 RICHARD L. PEEL, ESQ.
24 Nevada Bar No. 4359
25 CARY B. DOMINA, ESQ.
26 Nevada Bar No. 10567
27 3333 E. Serene Avenue, Suite 200
28 Henderson, Nevada 89074-6571
Attorneys for Helix Electric of Nevada, LLC

3813
STATE OF NEVADA
COMMISSIONER OF INSURANCE
2501 E. Sahara Avenue, Suite 302
Las Vegas, NV 89104
Return Service Requested

CERTIFIED MAIL

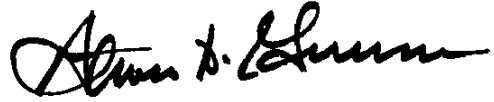


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CSC SERVICES OF NEVADA INC
2215B RENAISSANCE DR
LAS VEGAS NV 89119-6727

RECEIVED
REQUESTED

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REQUESTED



CLERK OF THE COURT

RICHARD L. PEEL, ESQ.
Nevada Bar No. 4359
CARY B. DOMINA, ESQ.
Nevada Bar No. 10567
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rpeel@peelbrimley.com
cdomina@peelbrimley.com
Attorneys for 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-C
DEPT. NO.: XVII

**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**

Plaintiff, HELIX ELECTRIC OF NEVADA, LLC ("Helix") by and through its attorneys,
the law firm of Peel Brimley LLP, hereby submits its Opposition to Defendant SAFECO
INSURANCE COMPANY OF AMERICA'S ("Safeco") Motion to Dismiss and Countermotion
for Fees and Costs ("Motion").

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PEEL BRIMLEY LLP
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HENDERSON, NEVADA 89074
(702) 990-7272 ♦ FAX (702) 990-7273

1 This Opposition is made and based on the following Memorandum of Points and
2 Authorities, the pleadings, declarations and papers on file herein, and any argument that the Court
3 entertains in this matter.

4 Dated this 28th day of April 2017.

5 PEEL BRIMLEY LLP

6  BAR 12723
7 FEL

8 RICHARD L. PEEL, ESQ.

9 Nevada Bar No. 4359

10 CARY B. DOMINA, ESQ.

11 Nevada Bar No. 10567

12 3333 E. Serene Avenue, Suite 200

13 Henderson, NV 89074-6571

14 Phone: (702) 990-7272

15 Attorneys for Helix Electric of Nevada, LLC

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I. INTRODUCTION**

14
15 Safeco ignores relevant case law and precedent which is binding on this Court in an
16 attempt to dismiss Helix's claim against the Bond (defined below). While it is true that NRS
17 339.055 provides for a one year statute of limitation from the date of the last work or material
18 provided by a claimant, the Nevada Supreme Court has expressly held that a "bond may be
19 conditioned more broadly than the statute..." *Royal Indemnity Co. v. Special Service*, 82 Nev.
20 148, 150, 413 P.2d 500, 502 (1966). NRS 339.055 provides the minimum allowable statute of
21 limitations and APCO Construction ("APCO") and Safeco agreed to broaden that requirement.
22 Because of this broadening, Safeco's Motion to Dismiss must be denied.

23 Additionally, by ignoring the relevant case law, Safeco seeks an award of its attorney's
24 fees and costs in defending Helix's claim against the Bond. As set forth below, the relevant
25 Nevada case law supports Helix's claim against the Bond and therefore Safeco's Countermotion
26 for Fees and Costs must also be denied.

27 ///

28 ///

///

///

1 **II. STATEMENT OF FACTS**

2 In the Spring of 2012, APCO entered into a construction agreement with the City of North
3 Las Vegas (“CNLV”) wherein APCO agreed to serve as the general contractor on a public works
4 project known as Craig Ranch Regional Park Phase II (the “Project”). On or about April 4, 2012,
5 Helix entered into an agreement with APCO (the “Subcontract”) wherein Helix agreed to provide
6 certain electrical related labor, materials and equipment (the “Work”) to the Project.

7 Pursuant to the provisions of NRS 339.025, Safeco, as surety, and APCO, as principal,
8 executed and delivered to CNLV a Labor and Material Payment Bond, No. 024043470 (the
9 “Bond”) by which Safeco and APCO, jointly and severally, bound themselves to make payment
10 to all persons or entities furnishing materials, equipment, suppliers, or labor furnished in
11 connection with the Project, including Helix.¹ The Bond is unique in that it provides for a two
12 year period for claims to be asserted against it as opposed to only one year as found in most
13 public works payment bonds.² Specifically, the Bond states that it “shall remain in effect until
14 two (2) years after the date of final acceptance of the Work by the City Council.”³ Notably, the
15 City Council for CNLV approved the Final Acceptance of the Project on July 2, 2014.⁴ As such,
16 the Bond remained in effect until July 1, 2016. Helix filed its claim against the Bond on January
17 12, 2016 and its claim is therefore timely.⁵

18 **III. LEGAL ARGUMENT**

19 **A. Helix’s Fifth Cause of Action Is Not Barred Because the Language of the**
20 **Bond Broadened NRS 339.055.**

21 Defendants’ Motion to Dismiss must be denied because the Nevada Supreme Court has
22 held that a bond may be conditioned more broadly than a statute. Here, the Bond broadens the
23 triggering event tolling the limitation, and the limitation itself.

24 NRS 339.055(2) states that “[n]o such action may be commenced after the expiration of 1
25 year from the date on which the claimant performed the last of the labor or furnished the last of

26 ¹ See **Exhibit 1** attached hereto, a true and correct copy of the Bond.

27 ² *Id.*

28 ³ *Id.*

⁴ See **Exhibit 2** attached hereto, a true and correct copy of the July 2, 2014 meeting minutes for the City of North Las Vegas’ City Council Meeting (see Agenda Item #10, pg. 7).

⁵ See **Exhibit 3** attached hereto, a true and correct copy of Helix’s Complaint.

1 the materials for the payment of which such action is brought.” In dealing with a license bond
2 required by NRS 624.270, the Nevada Supreme Court held that a “bond may be conditioned more
3 broadly than the statute requires and ‘is good at common law, if it is entered into voluntarily by
4 competent parties for a valid consideration, and is not repugnant to the letter or policy of the law.”
5 *Royal Indemnity Co. vs. Special Service*, 82 Nev. 148, 150, 413 P.2d 500, 502 (1966). The *Royal*
6 *Indemnity Co.* Court stated:

7 **Thus, we look exclusively to the particular bonding**
8 **contract here in issue.** We first resort to general rules of
9 contractual construction. Every word must be given effect if at
10 all possible. As was noted in *Reno Club v. Investment Co.*, 64
11 Nev. 312, 324, 182 P.2d 1011, 173 A.L.R. 1145 (1947), “[t]he
12 court is not at liberty, either to disregard words used by the
13 parties, descriptive of the subject matter or of any material
incident, or to insert words which the parties have not made use
of. It cannot reject what the parties inserted, unless it is
repugnant to some other part of the instrument.”

14 *Id.* The Court further stated:

15 The bonding requirements incident to a new contractor’s
16 license are expressly set forth in NRS 624.270, *supra*. **If the**
17 **instant bond was intended only to fulfill that statute, as**
18 **Royal insists, the parties could easily have drawn their**
19 **contract in the exact wording of the statute.** This to some
extent they did – but they also spoke of “defaults” and
“material bills.” The only reasonable inference is that **they**
intended to go beyond the statutory language.

20 *Id.* at 152.

21 In *Garff v. J.R. Bradley Co.*, 84 Nev. 79, 436 P.2d 428 (1968), a claimant failed to give
22 the statutorily required notices to allow them to bring a claim against a certain payment bond
23 given pursuant to NRS 339. The claimant relied upon the Court’s holding in *Royal Indemnity*
24 *Company*, and argued that the language of the payment bond modified the notice requirements of
25 NRS 339. The Nevada Supreme Court stated that the “bond did not provide a broader coverage
26 than contemplated by the statute, thus removing [the] case from the reach of the doctrine
27 announced in *Royal Indemnity Co. v. Special Service, supra.*” *Garff v. J.R. Bradley*, 84 Nev. 79,
28

1 82, 436 P.2d 428, 430 (1968). It is interesting to note that the Court did not contend that the
2 doctrine announced in *Royal Indemnity Co.* did not extend to bonds given pursuant to NRS 339.
3 Instead, the Court provided the reason the doctrine announced in *Royal Indemnity Co.* did not
4 apply because the “bond did not provide a broader coverage than contemplated by the statute.” *Id.*
5

6 The express language of the Bond in this Case broadens (i) the triggering event for claims
7 from the date the claimant last performed work to the date of final acceptance by the City
8 Council, and (ii) the time period to bring claims from one year to two years. Therefore, Helix’s
9 claim against the Bond is timely and Defendants’ Motion must be dismissed.

10 NRS 339.055(2) provides that a claim may be commenced no later than one year “from
11 the date on which the claimant performed the last of the labor or furnished the last of the
12 materials for the payment of which such action is being brought.” However, as *Royal Indemnity*
13 *Co.* and the *Garff* Courts held, the Bond provides “a broader coverage than contemplated by the
14 statute. Specifically, the Bond states:
15

16 NOW THEREFORE, if [APCO], fails to pay for any materials,
17 equipment, or other supplies, or for rental of same, used in
18 connection with the performance of Work contracted to be done, or
19 for amounts due under applicable State Law for any work or labor
20 thereon, [Safeco] will pay for the same in an amount not exceeding
21 the sum specified above and in the event suit is brought upon this
22 bond, a reasonable attorney’s fee to be fixed by the court. This
23 bond shall insure to the benefit of any person, companies or
24 corporation entitled to file claims under applicable State Law. **This**
25 **bond shall remain in effect until two (2) years after the date of**
26 **final acceptance of the Work by the City Council.**⁶

27 The Court must look to the language of the Bond and give effect to every word. The Court
28 cannot (i) “disregard words used by the parties,” (ii) “insert words which the parties have not
made use of,” or (iii) “reject what the parties inserted...” *Royal Indemnity Co. vs. Special Service*,
82 Nev. 148, 150, 413 P.2d 500, 502 (1966).

⁶ See **Exhibit 1** (emphasis added).

1 Here, APCO and Safeco inserted and agreed to the language that the Bond “shall remain
2 in effect until two (2) years after the date of final acceptance of the Work by the City Council.”⁷
3 Despite this, Safeco would like this Court to disregard that language and insert the language
4 provided in NRS 339.055(2). However, if the Bond “was intended only to fulfill that statute,”
5 APCO and Safeco “could easily have drawn up their contract in the exact wording of the statute.”
6 *Royal Indemnity Co., v. Special Service Supply Co.* They did not use the exact language of the
7 statute and instead broadened the same and the Nevada Supreme Court held that the “only
8 reasonable inference is that they intended to go beyond the statutory language.” *Id.*

9 The language of the Bond broadened the statutory language and therefore, Helix’s claim
10 against the Bond is timely and Defendants’ Motion must be denied.

11 **B. Helix’s Claim Against the Bond is Not Frivolous.**

12 Helix’s claim against the Bond is not frivolous and therefore, Safeco should not be
13 awarded attorney’s fees and costs for defending the same.

14 Safeco alleges that Helix’s claim against the Bond is “untimely and frivolous” and
15 “brought and maintained without reasonable ground and/or to harass APCO into a settlement.”⁸
16 Pursuant to NRS 18.010, a court may award attorney’s fees and costs if it finds that a claim was
17 brought or maintained without reasonable ground or to harass the prevailing party. NRS
18 18.010(2)(b) provides the legislative intent as follows:

19 It is the intent of the Legislature that the court award attorney’s
20 fees pursuant to this paragraph and impose sanctions pursuant to
21 Rule 11 of the Nevada Rules of Civil Procedure in all appropriate
22 situations to punish for and deter frivolous or vexatious claims and
23 defenses because such claims and defenses overburden limited
24 judicial resources, hinder the timely resolution of meritorious
25 claims and increase the costs of engaging in business and
26 providing professional services to the public.

27 *Id.*

28 A claim is “frivolous or groundless if there is no credible evidence to support it.

⁷ See, **Exhibit 1.**

⁸ See, the Motion, Page 5 lines 12 and 17-19.

1 *Rodriguez v. Primadonna Co., LLC*, 125 Nev. 578, 588, 216 P.3d 793, 800 (2009). A frivolous
2 claim is one that is “both baseless and made without reasonable and competent inquiry.”
3 *Bergmann v. Boyce*, 109 Nev. 670, 676, 856 P.2d 560, 564 (1993).

4 As set forth above, Helix’s claim against the Bond is supported by both the Nevada
5 Supreme Court and the facts. The language of the Bond expressly states that it “shall remain in
6 effect until two (2) years after the date of final acceptance of the Work by the City Council.”⁹ The
7 facts are clear: (i) the final acceptance by the City Council was July 2, 2014,¹⁰ and (ii) Helix filed
8 its claim against the Bond on January 12, 2016, clearly within the two year deadline. As a result,
9 Safeco’s Countermotion for Fees and Costs must be denied.

10 **IV. CONCLUSION**

11 For the reasons set forth above, the Motion to Dismiss and Countermotion for Fees and
12 Costs must be denied.

13 Dated this 28th day of April, 2017.

14
15 **PEEL BRIMLEY LLP**

16  **BAR 12723**
For

17 **RICHARD L. PEEL, ESQ.**

Nevada Bar No. 4359

18 **CARY B. DOMINA, ESQ.**

Nevada Bar No. 10567

19 3333 E. Serene Avenue, Suite 200

Henderson, NV 89074-6571

20 Phone: (702) 990-7272

21 *Attorneys for Helix Electric of Nevada, LLC*

22
23
24
25
26
27
28 ⁹ See, Exhibit 1.

¹⁰ See, Exhibit 2.

PEEL BRIMLEY LLP
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HENDERSON, NEVADA 89074
(702) 990-7272 ♦ FAX (702) 990-7273

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of PEEL BRIMLEY LLP and that on this 18th day of April, 2017, I caused the above and foregoing document entitled **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** 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
- ☐ emailed to all interested parties.

E-Service Master List

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

Marquis Aurbach Coffing

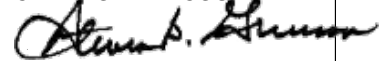
Contact

Avece M. Higbee, Esq.
Cody Munteer, Esq.
Jennifer Case
Penny Williams

Email

ahigbee@maclaw.com
cmunteer@marquisaurbach.com
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pwilliams@maclaw.com


An Employee of Peel Brimley LLP



1 **Marquis Aurbach Coffing**
 2 Avece M. Higbee, Esq.
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 12 Attorneys for Defendants

DISTRICT COURT**CLARK COUNTY, NEVADA**

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

15 Plaintiff,

16 vs.

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

22 Defendants.

Case No.: A-16-730091-C
 Dept. No.: XVII

(Arbitration)

**DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S
 CLAIMS AGAINST BOND AND COUNTERMOTION FOR FEES AND COSTS OF
 MOTION**

23 Defendant Safeco Insurance Company of America ("Safeco" or "Defendant") by and
 24 through the law firm of Marquis Aurbach Coffing, hereby submits its Reply In Support of their
 25 Motion to Dismiss.

26 ...

27 ...

28 ...

...

...

...

1 This Reply is made and based upon the points and authorities attached hereto, papers and
2 pleadings on file herein, and any argument of counsel at the time of hearing in this matter.

3 Dated this 16th day of May, 2017.

4 MARQUIS AURBACH COFFING

6 By: 

7 Avece M. Higbee, Esq.
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14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. INTRODUCTION**

16 This is a simple issue where the Plaintiff failed to file its claim against the Bond within
17 the time period allowed by NRS 339.055. Specifically, NRS 339.055 states:

18 1. Every action on a payment bond as provided in NRS 339.035 shall be
19 brought in the appropriate court of the political subdivision where the contract for
20 which the bond was given was to be performed.

21 2. *No such action may be commenced after the expiration of 1 year from
22 the date on which the claimant performed the last of the labor or furnished the
23 last of the materials for the payment of which such action is brought. (Emphasis
24 added).*

25 First, Helix concedes that the deadline in NRS 339.055(2) is triggered when the Project
26 closed and “[t]he City Council for CNLV approved the Final Acceptance of the Project and
27 Work on July 2, 2014.”¹ Nonetheless, Helix failed to file the instant action until January 12,
28 2016— nearly two years after the Project closed.² Second, the cases cited by Helix are highly
distinguishable, fail to dispute the explicit requirements set forth in NRS 339.055, and fail to
address the specific language in the Bond that provides the “bond shall insure to the benefit of

¹ Id; See Helix’s Complaint at ¶ 12.

² Id. generally.

1 any persons, companies or corporations entitled to *file claims under applicable State Law*.”³
2 Here, and of the utmost importance, Helix is not entitled to file a claim under “*applicable State*
3 *Law*,” e.g., NRS 339.055(2). Instead, Helix distorts the holdings in Royal and Garff in an
4 attempt to argue the Bond somehow tolls the one-year statute of limitation, which is a
5 completely separate issue than the bond remaining in “effect.”

6 Consequently, as detailed herein, Helix’s fifth cause of action fails as a matter of law, as
7 Helix failed to timely assert its claims against the Bond within the one-year statute of limitation
8 imposed by NRS 339.055.

9 **II. LEGAL ARGUMENT**

10 **A. NO LANGUAGE CONTAINED WITHIN THE BOND BROADENS THE** 11 **STATUTE OF LIMITATION CONTAINED IN NRS 339.055.**

12 Helix asserts that the parties “agreed to broaden the coverage under the Bond”.⁴ More
13 specific, Helix alleges the Bond’s language “broadens the triggering event tolling the limitation,
14 and the limitation itself.”⁵ In support of its argument, Helix cites two Nevada Supreme Court
15 cases, Royal⁶ and Garff⁷. Yet, neither Royal nor Garff stand for the proposition that the Bond (or
16 any contract for that matter) can extend an applicable statute of limitation. Further, as Helix
17 itself argues, the Court must give heed to the exact language of the Bond.⁸ In this case, and
18 converse to Helix’s arguments, the Bond specifically reserves and incorporates the statutory
19 language preserving the one-year statute of limitation.

20 //

21 //

22 //

23 //

24 ³ See Helix’s Complaint filed January 12, 2016 at **Exhibit 1**. (Emphasis added).

25 ⁴ See Opposition, generally.

26 ⁵ Id. at 3:21.

27 ⁶ Royal Indemnity Co. v. Special Service Supply Co., 82 Nev. 148, 413 P.2d 500 (1966).

28 ⁷ Garff v. J.R. Bradley Co., 84 Nev. 79, 436 P.2d 428 (1968).

⁸ See Opposition at 4.

1 1. **Royal is Inapposite and Does Not Allow Parties to Toll the Statue of**
2 **Limitations.**

3 Helix cites Royal v. Special Service for the proposition that parties can contract to extend
4 a statute of limitations.⁹ However, Royal is entirely void of any such holding and inapposite
5 from the instant matter. In Royal, a surety and contractor entered into a “bond agreement that
6 afforded coverage for labor and material bills incurred by the contractor, even though the
7 contractor’s licensing statute pursuant to which the bond was furnished [NRS 624] did not
8 require such coverage.”¹⁰ The surety argued he did not have to guaranty payments for the labor
9 and the material bills because NRS 624 did not specifically require such coverage and the
10 language in the bond mandated compliance with NRS 624.¹¹ While the Nevada Supreme Court
11 ultimately disagreed with the particular argument asserted by the surety in Royal, the Court did
12 explain that the parties could have avoided any issues with NRS 624 by drawing the contract to
13 conform to the exact wording of the statute. Specifically, the Court stated:

14 If the instant bond was intended only to fulfill that statute ... the parties could
15 easily have drawn their contract in the exact wording of the statute.”¹²

16 Simply put, the holding in Royal is limited to allow a bond to provide for coverage
17 outside of what is required by NRS 624 if the parties voluntarily agree to the broadened coverage
18 and it is not against public policy or other law.¹³ Thus, the Court’s statement that “a bond may
19 be conditioned more broadly than the statute requires” clearly refers to the contracting parties’
20 ability to include additional coverage or conditions not required by NRS 624, and does nothing
21 to change or alter the statute itself.¹⁴ Moreover, in no form or fashion does the Royal case
22 address or broaden the statute of limitation contained within NRS 339.055. In fact, the subject
23 Bond is “drawn . . . in the exact wording of the statute,” as the language of the Bond specifically

24 ⁹ See Opposition at 4:2 (citing Royal, 82 Nev. at 150, 413 P.2d at 502 (1966)).

25 ¹⁰ Garff, 84 Nev. at 82, 436 P.2d at 430 (1968)(distinguishing Royal 82 Nev. 148, 413 P.2d 500 (1966);
26 see also Royal, 82 Nev. at 151, 413 P.2d at 502 (1966).

27 ¹¹ Id. 82 Nev. at 149, 413 P.2d at 501 (1966).

28 ¹² Id. 82 Nev. at 152, 413 P.2d at 503 (1966).

¹³ Id.

¹⁴ Id. 82 Nev. at 150, 413 P.2d at 502 (1966).

1 incorporates and reserves the exact statutory language by directly referring to the “applicable
2 state law,” and nothing else.

3 Here, unlike Royal, Helix’s interpretation of the Bond’s language does not provide “a
4 broader coverage than contemplated by statute,” but instead, directly conflicts with the statute.
5 The illogicality of Helix’s interpretation is further illustrated by the fact that Helix contradicts
6 itself in its Opposition. The Bond language Helix is attempting to rely upon merely states, “This
7 bond shall remain in effect until two (2) years after the date of final acceptance of the Work by
8 the City Council.”¹⁵ However, to follow Helix’s logic would require the Court to completely
9 disregard the Bond’s specific language incorporating and reserving “applicable State Law.”

10 Indeed, Helix concedes in its Opposition that “every word must be given effect” and
11 “[t]he [C]ourt is not at liberty either to disregard words used by the parties ... or insert words
12 which the parties have not made use of.”¹⁶ Here, the Bond specifically states that Helix is only
13 “*entitled to file claims under applicable State Law*” and these “word[s] must be given effect” as
14 required by Royal.¹⁷

15 Thus, under Helix’s own line of reasoning, to interpret the Bond in any other way would
16 be prohibited under Royal as it would “disregard the words used by the parties” and “insert
17 words which the parties [did] not [make] use of.”¹⁸

18 **2. Garff is Inapposite and Does Not Allow Parties to Toll the Statue of**
19 **Limitations.**

20 Helix also attempts to support its interpretation of Royal’s holding by citing to Garff v.
21 J.R. Bradley Co.¹⁹ However, Garff only further affirms APCO’s stance that the one-year statute
22 of limitation pursuant to NRS 339.055 applies. In Garff, the Nevada Supreme Court denied two
23 material and labor suppliers their claim upon a payment bond issued pursuant to NRS 339 for

24
25 ¹⁵ See Helix’s Complaint filed January 12, 2016 at **Exhibit 1** (emphasis added).

26 ¹⁶ See Opposition at 4:7-12 (citing Royal, 82 Nev. at 150, 413 P.2d at 502 (1966)).

27 ¹⁷ Id.

28 ¹⁸ See Opposition at 4:7-12 and 5:23-27 (citing Royal, 82 Nev. at 150, 413 P.2d at 502 (1966)).

¹⁹ See Opposition at 4-5. (citing Garff, 84 Nev. at 82, 436 P.2d at 430 (1968)).

1 failing to give the 30-day notice required by NRS 339.035(2)(a).²⁰ The suppliers argued that
2 despite their failure to comply with the statute, recovery on the bond was still allowable under
3 Royal, because the bond's language extended its coverage "broader than required by NRS
4 339.025(1)(b)" by stating:

5 "if [the] contractor... shall fail to pay, or cause to be paid, all just debts contracted
6 by such contractor or any of his subcontractors, for labor performed upon or
materials furnished for the contractor...then said surety shall pay."²¹

7 The Court expressly rejected this reasoning and declined to apply Royal because, unlike
8 Royal, the bond in question "did not provide a broader coverage than contemplated by the
9 statute" and instead, "was given pursuant to the statute and conformed with it".²²

10 Contrary to Helix's assertions on Royal and Garff, nothing in either case states a bond's
11 coverage may contradict or supersede what is required by statute. If anything, Garff confirms
12 that a bond claimant must comply with the statutory conditions of NRS 339 for filing suit,
13 regardless of the language in the bond, and failure to do so will preclude any recovery premised
14 upon the bond.

15 Here, similar to Garff, Helix failed to comply with the statutory conditions of NRS 339
16 for filing suit within the one-year statute of limitation.²³ Further, like in Garff, the Bond at issue
17 was "given pursuant to the statute and conformed with it" because nothing in the Bond
18 supersedes NRS 339.055, and the Bond's language specifically conforms with and defers to
19 "applicable State Law" for filing claims.²⁴ Specifically, the Bond provides:

20 "This bond shall insure to the benefit of any persons, companies or corporations
21 entitled to file claims under applicable State Law."²⁵

22 Accordingly, neither Royal nor Garff stand for the proposition that parties can extend an
23 applicable statute of limitation. Further, even if APCO and Helix could extend the one-year

24 ²⁰ See, Garff, generally.

25 ²¹ Id. 84 Nev. at 81, 436 P.2d at 430 (1968).

26 ²² Id. (Emphasis added).

27 ²³ See NRS 339.055; NRS 339.035.

28 ²⁴ Emphasis added.

²⁵ Id. (Emphasis added).

1 statute of limitations, the Bond is void of any specific language where the parties contemplated
2 that parties could bring claims past the “applicable State Law,” i.e., simply stating the Bond
3 “shall remain in effect” is not the same as saying a company is entitled to bring a claim past the
4 applicable statute of limitation – which flies in the face of the actual language of the Bond that
5 only allows parties to file claims that are actually “entitled to file claims under applicable State
6 Law.”

7 **B. HELIX’S BOND CLAIM IS UNTIMELY**

8 Despite Helix’s attempts to contravene the holdings of Royal and Garff, the Bond does
9 not alter, extend or toll the one year deadline under NRS 339.055 to initiate an action against the
10 Bond. Thus, pursuant to NRS 339.055, Helix had one year to file the instant action from the date
11 it last provided labor or materials for the specific payment it purports to be owed.²⁶

12 Here, Helix acknowledges the last day it could have worked or provided materials on the
13 Project was on July 2, 2014 when “[t]he City Council for CNLV approved the Final Acceptance
14 of the Project and Work”.²⁷ Thus, under NRS 339.055, the one-year deadline began to run no
15 later than July 2, 2014, meaning Helix had until July 2, 2015 to file the instant action. However,
16 Helix waited until January 12, 2016 to file the instant action—six months too late.²⁸

17 Accordingly, NRS 339.055 bars Helix’s fifth cause of action, as Helix failed to file the
18 instant action within the statutory deadline and Helix has provided no case law or fact proving
19 otherwise.

20 **C. DEFENDANT, SAFECO INSURANCE, SHOULD BE AWARDED ITS**
21 **ATTORNEYS FEES AND COSTS INCURRED FOR HAVING TO**
22 **DEFEND THE BOND CLAIMS.**

23 Safeco should be awarded its attorneys fees and costs for having to defend Helix’s bond
24 claims and for having to bring the instant motion, as Helix’s claims are untimely. The
25 unsupported nature of Helix’s arguments are a clear attempt to contravene the holdings of Royal

26 ²⁶ See NRS 339.055; NRS 339.035.

27 ²⁷ Id.; See Helix’s Complaint at ¶ 12.

28 ²⁸ Id. generally.

1 and Garff to support its argument that the one-year statute of limitation in NRS 339 can be
2 extended.

3 In the end, Helix was well aware of the statute of limitation, and even assuming all facts
4 pled in Helix's favor, Helix still missed the deadline by six months. Likewise, without regard to
5 the recovery sought, Helix's bond claim was brought and maintained without reasonable
6 grounds.²⁹ Pursuant to NRS 18.010, the Court shall liberally construe the provisions of the rule
7 in favor of awarding attorney's fees in all appropriate situations. Here, an award of Safeco's
8 attorneys' fees and costs is appropriate, as Helix filed the instant action knowing its claims
9 against the Bond were barred by the statute of limitation imposed by NRS 339.055.

10 Accordingly, Safeco respectfully requests an awarded of its attorneys fees and costs
11 incurred in having to defend Helix's bond claims and for having to bring the instant Motion to
12 Dismiss when it is so clear that Helix's bond claims are barred by the NRS 339.055.

13 **III. CONCLUSION**

14 For the foregoing reasons, Safeco respectfully requests that Helix's fifth cause of action
15 for its claims against the bond be dismissed with prejudice, and fees and costs be awarded.

16 Dated this 10th day of May, 2017.

17 MARQUIS AURBACH COFFING

18
19 By: 

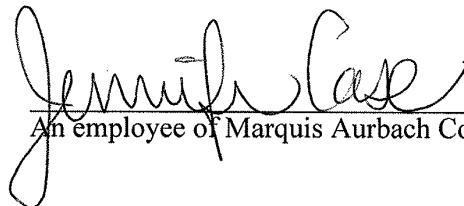
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Attorneys for Defendants

20
21
22
23
24
25
26
27
28 ²⁹ See, NRS 18.010, generally.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S CLAIMS AGAINST BOND AND COUNTERMOTION FOR FEES AND COSTS OF MOTION** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 10th day of May, 2017. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:³⁰

Richard L. Peel, Esq.
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An employee of Marquis Aurbach Coffing

³⁰ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Building and Construction

COURT MINUTES

May 17, 2017

A-16-730091-C 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

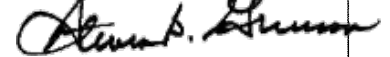
RECORDER: Michelle Ramsey

PARTIES

PRESENT:	Domina, Cary	Attorney for Plaintiff
	Munteer, Cody S.	Attorney for Defendant

JOURNAL ENTRIES

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



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8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

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

12 **Plaintiff,**

13 **vs.**

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

19 **Defendants.**

Case No.: A-16-730091-C
Dept. No.: XVII

18 **DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

19 Defendants APCO Construction ("APCO) and Safeco Insurance Company of America
20 ("Safeco") (collectively referred to as "Defendants") by and through the law firm of Marquis
21 Aurbach Coffing, hereby submit their Motion for Partial Summary Judgment.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

1 This Motion is made and based upon the points and authorities attached hereto, papers
2 and pleadings on file herein, and any argument of counsel at the time of hearing in this matter.

3 Dated this 23rd day of May, 2017.

4 MARQUIS AURBACH COFFING

6 By: 

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12 Las Vegas, Nevada 89145
13 *Attorneys for Defendants*

14 **NOTICE OF MOTION**

15 You and each of you, will please take notice that the SAFECO'S MOTION FOR
16 PARTIAL SUMMARY JUDGMENT will come on regularly for hearing on the 28 day of
17 June, 2017, at the hour of 8:30 a.m., or as soon thereafter as counsel may be
18 heard, in Department XVII in the above-referenced court.

19 Dated this 23rd day of May, 2017.

20 MARQUIS AURBACH COFFING

21 By: 

22 Avece M. Higbee, Esq.
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///

///

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

The instant Action involves the construction of the public works project of Craig Ranch Regional Park Phase II ("Project"). The Project was commissioned by the City of North Las Vegas ("City"). APCO acted as the General Contractor for the Project, with Helix Electric of Nevada, LLC ("Helix") acting as the electrical Subcontractor (collectively referred to as the "Parties").

The Project took longer than anticipated. So, APCO instructed Helix to provide timely documentation regarding extended overhead so that it could request additional payment from the City. After waiting several months for Helix's documents, APCO sent the City a TIA and Request for Change Order which documented the costs caused by the delays in the Project. Because Helix had not provided the relevant documentation, APCO's TIA naturally did not include Helix's additional costs.

Months after APCO submitted the TIA and Request for Change Order, Helix submitted three Change Orders which the City rejected. Although Helix was informed that the City had rejected the Change Orders, it took no further action for reconsideration. Over two years later, Helix filed a Complaint against APCO and Safeco in which it asserted five claims relating to the three Change Orders that the City rejected. In its first and second claims for relief, Helix alleged that APCO breached the parties' subcontract and the implied covenant of good faith and fair dealing by failing to pay Helix \$138,151 for extended overhead that resulted from the delays in the project.

The Defendants are entitled to partial summary judgment because Helix's contract-based claims fail as a matter of law. For one, Helix cannot sustain a claim for breach of contract because its failure to provide timely documentation to APCO breached the subcontract and, under Nevada law, "the party who commits the first breach of a contract cannot maintain an action against the other for a subsequent failure to perform." Bradley v. Nev.-Cal.-Or. Ry., 42 Nev. 411, 178 P. 906, 908-09 (1919). Moreover, Helix's claims are improper under the plain language of the Subcontract because Helix approved – and in fact, requested – a pay-if-paid

1 provision which conditioned Helix's receipt of payment upon APCO's receipt of payment from
2 the City. Indeed, while the Supreme Court of Nevada has indicated that a case-by-case analysis
3 is necessary to assess whether a pay-if-paid provision in a given case violates public policy, the
4 instant case involves unique facts and circumstances which warrant enforcement of the pay-if-
5 paid provision.

6 **II. STATEMENT OF FACTS.**

7 **A. THE PRIME CONTRACT AND EXECUTION OF THE SUBCONTRACT.**

8 In early 2012, APCO entered into a construction agreement with the City (the "Prime
9 Contract") in which APCO agreed to serve as General Contractor for the public works project of
10 Craig Ranch Regional Park Phase II¹ ("Project").²

11 Around the same time, APCO and Helix engaged in numerous rounds of negotiations
12 wherein Helix reviewed a proposed subcontract and provided section-by-section comments
13 and/or changes to APCO.³

14 During this revision process, Helix specifically reviewed Section 4.4 the proposed
15 subcontract, which stated:

16 4.4 Progress payments will be made by Contractor to Subcontractor within 15
17 days **after Contractor actually receives payment for Subcontractor's work**
18 **from Owner.**

19 ...

20 **Any payments to Subcontractor shall be conditioned upon receipt of the**
21 **actual payments by Contractor from Owner.** Subcontractor herein agrees to
assume the same risk that the Owner may become insolvent that Contractor has
assumed by entering into the Prime Contract with the Owner.⁴

22 ¹ See Declaration of Joe Pelan, attached hereto as Exhibit O, at ¶ 3.

23 ² The General Conditions ("GCs") for the project are 155 pages long. Because most of the GCs have no
24 bearing on the parties' dispute, APCO's Exhibits to the instant motion include only the relevant portions
25 of the GCs. In the event the Court wishes to review the agreement in its entirety, APCO will gladly
provide a supplemental exhibit.

26 ³ A true and accurate copy of the Subcontract is attached hereto as **Exhibit A**. Helix's revisions are
27 written in the "Helix Electric Exhibit to the Subcontract," which is attached hereto as **Exhibit B**. See also
Pelan Declaration at ¶¶ 4-7.

28 ⁴ See Exhibit A, pages 3-4.

1 Although Helix requested two changes with regard to this section, neither change altered the
2 conditional pay-if-paid language in any way.⁵ Similarly, Helix reviewed and approved Section
3 4.8, which stated:

4 Subcontractor agrees that Contractor shall have no obligation to pay
5 Subcontractor for any changed or extra work performed by Subcontractor until or
6 unless Contractor has actually been paid for such work by the Owner.⁶

7 In addition to the uncontroverted pay-if-paid language in Section 4.4 and Section 4.8,
8 Helix asked APCO to add conditional pay-if-paid language to an additional section of the
9 subcontract.⁷ Indeed, while Section 6 did not initially include such language, Helix specifically
10 instructed APCO:

11 **Section 6: Add the following:** "In the event the schedule as set forth above is
12 changed by Contractor for whatever reason so that Subcontractor either is
13 precluded from performing the work in accordance with said schedule and
14 thereby suffers delay, or, is not allowed the number of calendar days to perform
15 the work under such modified schedule and must accelerate its performance, then
16 Subcontractor shall be entitled to receive from Contractor payment representing
17 the costs and damages sustained by Subcontractor for such delay or acceleration,
18 providing said costs and damages are first paid to Contractor."⁸

19 On April 4, 2012, APCO and Helix executed a Subcontract Agreement ("Agreement") in
20 the amount of \$2,380,085.20 for Helix's scope of work on the Project. This Agreement
21 incorporated all of the revisions that the parties negotiated, including the pay-if-paid provisions
22 in Sections 4.4 and 6 that Helix requested.

23 **B. PROJECT DELAYS.**

24 The Project was originally scheduled for completion on January 9, 2013, but, due to
25 various delays, the Project was not completed until October 25, 2013.⁹ Because the Project took
26 longer than anticipated, APCO instructed Helix in a letter dated January 29, 2013, that it was

27 ⁵ See Exhibit B, page 28; see also Pelan Declaration at ¶6.

28 ⁶ See Exhibit A, page 4.

⁷ See Pelan Declaration at ¶6.

⁸ See Exhibit B, page 28.

⁹ See Pelan Declaration at ¶9.

1 important to timely submit documentation for any additional costs that were incurred so that
2 APCO could submit Helix's claim to the City for its review.¹⁰

3 APCO's instructions to Helix were wholly unsurprising, as APCO had routinely
4 submitted claims to the City on Helix's behalf without any difficulty. Further, APCO's emphasis
5 on documentation was consistent with the parties' course of conduct and the terms of the Prime
6 Contract which require detailed and itemized claims.¹¹ Thus, the letter simply served as a
7 reminder that the City would not cover the costs of extended overhead without proper
8 documentation.

9
10 **C. REQUESTS TO THE CITY FOR PAYMENT OF COSTS INCURRED
BECAUSE OF DELAYS.**

11 On May 9, 2013, APCO submitted a TIA and Change Order Request to the City in which
12 it requested an additional \$1,090,066.50 to cover the costs associated with the extended duration
13 of the Project.¹² Although the TIA accounted for various categories of costs, it did not include
14 costs attributable to Helix because Helix had failed to provide any documentation regarding its
15 additional costs.¹³ Nevertheless, while the TIA and APCO's Change Order Request were
16 pending, Helix sent APCO various change orders (with corresponding documentation) which
17 were submitted to the City, approved, and paid without issue.¹⁴

18 On or about August 27, 2013, Helix submitted Change Order 68 to APCO in order to
19 request \$102,400 for purported extended overhead.¹⁵ Unlike Helix's other changes orders,

20
21 ¹⁰ A true and accurate copy of the letter is attached hereto as **Exhibit C**; see also Pelan Declaration at ¶10.

22 ¹¹ Section 6.3.2(C) of the Primary Contract, entitled "Submission of Claim Costs," is attached hereto as
23 **Exhibit E**. The Primary Contract was also incorporated into Section 1.1 of the Subcontract. See Exhibit
24 A at page 1.

25 ¹² The TIA and Change Order are attached hereto as **Exhibit M**.

26 ¹³ Although Helix vaguely "reserved all rights" to payment for its additional costs in a letter dated
27 January 28, 2013, Helix did not provide any details regarding its costs until June 19, 2013. The June 19,
28 2013, letter is attached hereto as **Exhibit L**.

¹⁴ See Pelan Declaration at ¶16.

¹⁵ Change Order 68 is attached hereto as **Exhibit D**.

1 which properly included detailed and itemized claims, this Change Order inexplicably did not
2 include any documentation. So, unsurprisingly, the City rejected Helix's Change Order 68.¹⁶ In
3 an effort to help Helix get paid, APCO then sent a letter to Helix in which APCO explained that
4 back-up documentation was necessary for Change Order 68.¹⁷ In the letter, APCO also
5 volunteered to re-submit APCO's request once it received the appropriate back-up.¹⁸

6 Meanwhile, on October 2, 2013, the City finally responded to APCO's TIA and Change
7 Order Request by offering \$560,724.16, *i.e.*, 51% of the total that APCO requested.¹⁹ Naturally,
8 the City's Offer did not include payment for Helix's purported extended overhead because
9 APCO lacked documentation from Helix when it submitted the Request months earlier.²⁰

10 Work on the Project was completed on October 25, 2013. About a week later, Helix
11 submitted Change Order 68.1, which accounted for certain items that were omitted from Change
12 Order 68 and increased the requested payment to \$111,847.²¹ APCO forwarded Change Order
13 68.1 to the City on November 5, 2013. Two weeks later, the City denied the Change Order as
14 duplicative of the Change Order that it had already rejected.²² Thereafter, Helix took no further
15 action to address Change Order 68 or 68.1.

16 Thereafter, on November 18, 2013, Helix submitted Change Order 93 to request an
17 additional \$26,304 for the extended overhead costs for September and October.²³ Like Change
18 Orders 68 and 68.1, this Change Order did not include itemized supporting documentation. So,
19 while APCO promptly submitted the Change Order to the City, the City denied the Change

20
21 ¹⁶ The letter rejecting Change Order 68 is attached hereto as **Exhibit F**.

22 ¹⁷ The October 3, 2013, letter is attached hereto as **Exhibit G**.

23 ¹⁸ Id.

24 ¹⁹ The City's responsive letter is attached hereto as **Exhibit N**.

25 ²⁰ See Pelan Declaration at ¶14.

26 ²¹ Change Order 68.1 is attached hereto as **Exhibit H**.

27 ²² The City's rejection is attached hereto as **Exhibit I**.

28 ²³ Change Order 93 is attached hereto as **Exhibit J**.

1 Order without explanation.²⁴ Once again, Helix took no action to correct the rejected Change
2 Order or request reconsideration from the City.²⁵

3 **D. THE PROJECT IS CLOSED OUT.**

4 Because Helix made no attempt to correct or resubmit the rejected Change Orders, APCO
5 closed out the Project shortly after the Project's completion date.²⁶ Months later, on July 2,
6 2014, the City Council voted for approval of the Final Acceptance of the Project.²⁷

7 **III. PROCEDURAL HISTORY.**

8 Over two years later, on January 12, 2016, Helix resurrected its assertion that it is due
9 \$138,151 for Change Orders 68, 68.1, and 93²⁸ by bringing claims against APCO and Safeco by
10 way of a Complaint filed in the Eight Judicial District Court. Helix's Complaint asserts the
11 following causes of action: (1) Breach of Contract – Against APCO; (2) Breach of the Implied
12 Covenant of Good Faith & Fair Dealing – Against APCO; (3) Unjust Enrichment or in the
13 Alternative Quantum Meruit – Against APCO; (4) Violation of NRS 338.550 – Against APCO;
14 and (5) Claims Against the Bond – Against Safeco.

15 Because Section 19 of the Agreement contains a mandatory arbitration provision, the
16 parties agreed to stay litigation pending the outcome of mediation and arbitration. An order
17 accepting the stipulation followed on March 15, 2016.

18 On May 18, 2016, the parties participated in a mediation which was unsuccessful.
19 Thereafter, on August 9, 2016, Helix served the Defendants with a Demand for Arbitration. In
20 October 2016, the parties selected Attorney William Turner as their Arbitrator, and, an
21 arbitration hearing was scheduled for February 27 and 28, 2017.

22 _____
23 ²⁴ The City's rejection is attached hereto as **Exhibit K**.

24 ²⁵ See Pelan Declaration at ¶18.

25 ²⁶ See Pelan Declaration at ¶ 19.

26 ²⁷ See Pelan Declaration at ¶20.

27 ²⁸ Change Order 68.1 requested \$111,847 for purported extended overhead from January 13, 2013
28 through August 30, 2013; Change Order 93 requested \$26,304 for purported extended overhead from
September 1, 2013, through October 25, 2013.

1 While preparing for the arbitration hearing, the Arbitrator asked the parties to address
2 whether they had any concerns regarding the neutrality of the Arbitrator's professional
3 relationship with counsel. The Defendants expressed concerns, and, on January 24, 2017, Mr.
4 Turner officially withdrew from serving as Arbitrator.

5 For over a month, the parties worked together to identify neutrals who could potentially
6 preside over the arbitration. After discussing at least six different prospective arbitrators, the
7 parties reached an en passé.

8 On March 20, 2017, the parties filed a stipulation in which they asked this Court reinstate
9 litigation. Days later, this Court entered an Order to Lift Stay.

10 On April 11, 2017, Safeco filed a Motion to Dismiss Plaintiff's Claims Against Bond and
11 Countermotion for Fees and Costs of Motion in which it argued that Helix's fifth cause of action
12 for Claims Against the Bond is statutorily barred under NRS 330.055. Helix filed an opposition
13 to the motion on April 28, 2017, and a hearing regarding the matter is scheduled for May 17,
14 2017.²⁹

15 **IV. LEGAL STANDARD.**

16 "Summary judgment procedure is properly regarded not as a disfavored procedural
17 shortcut, but rather as an integral part of the [] Rules as a whole, which are designed 'to secure
18 the just, speedy and inexpensive determination of every action.'" Celotex Corp. v. Catrett, 477
19 U.S. 317, 327, 106 S. Ct. 2548, 2555 (1986) (quoting FRCP 1)); see also Dredge Corp. v. Husite
20 Co., 78 Nev. 69, 89 n.2, 369 P.2d 676, 687 n.2 (1962) (describing summary judgment as a
21 "salutary device" and reasoning that "[t]he very mission of the summary judgment procedure is
22 to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for
23 trial.").

24 Pursuant to NRCP 56(c), summary judgment is proper "if the pleadings, depositions,
25 answers to interrogatories, and admissions on file, together with the affidavits, if any, show that
26 there is no genuine issue as to any material fact and that the moving party is entitled to a

27 ²⁹ Defendants do not anticipate that the Court's decision regarding Safeco's motion to dismiss will have
28 any bearing on the instant motion because both pleadings involve different legal and factual issues.

1 judgment as a matter of law.” “A material issue of fact is one that affects the outcome of the
2 litigation.” S.E.C. v. Seaboard Corp., 677 F.2d 1289, 1293 (9th Cir. 1982); see also Posadas v.
3 City of Reno, 109 Nev. 448, 452, 851 P.2d 438, 441 (1993).

4 The party moving for summary judgment has the initial burden of showing the absence of
5 a genuine issue of material fact. See, e.g., Cuzze v. Univ. & Cmty. Coll. Sys. of Nev., 123 Nev.
6 598, 602, 172 P.3d 131, 134 (2007). But, where, as here, “the nonmoving party will bear the
7 burden of persuasion at trial, the party moving for summary judgment may satisfy the burden of
8 production by either (1) submitting evidence that negates an essential element of the nonmoving
9 party's claim, or (2) “pointing out . . . that there is an absence of evidence to support the
10 nonmoving party's case.” Id. at 602-03, 172 P.3d at 134 (quoting Celotex Corp., 477 U.S. at,
11 325, 106 S. Ct. at 2554).

12 Once the moving party has carried its initial burden, the party opposing summary
13 judgment must “transcend the pleadings and, by affidavit or other admissible evidence, introduce
14 specific facts that show a genuine issue of material fact.” Cuzze. Indeed, “[w]hile the pleadings
15 and other proof must be construed in a light most favorable to the nonmoving party, that party
16 bears the burden to ‘do more than simply show that there is some metaphysical doubt’ as to the
17 operative facts in order to avoid summary judgment being entered in the moving party's favor.
18 Wood v. Safeway, Inc., 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005) (quoting Matsushita
19 Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586, 106 S. Ct. 1348, 1356 (1986)); see
20 also Collins v. Union Fed. Sav. & Loan Ass’n, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983)
21 (“[T]he opposing party is not entitled to build a case on the gossamer threads of whimsy,
22 speculation and conjecture.”) (internal quotation marks and citation omitted).

23 **V. LEGAL ARGUMENT**

24 This Court should grant the Defendants’ motion for partial summary judgment and enter
25 judgment in their favor with regard to Helix’s first claim for breach of contract and second claim
26 for breach of the implied covenant of good faith and fair dealing because: (A) Helix’s breach of
27 contract claim fails because Helix committed the first breach of the Agreement by Failing to
28 Provide Timely Notice; (B) Nevada law allows for pay-if-paid provisions under some

1 circumstances; (C) the pay-if-paid provision is valid and enforceable because of the facts and
2 circumstances in this case; and (D) APCO did not receive payment for Helix's extended
3 overhead costs.

4 **A. HELIX'S BREACH OF CONTRACT CLAIM FAILS BECAUSE HELIX**
5 **COMMITTED THE FIRST BREACH OF THE AGREEMENT BY**
6 **FAILING TO PROVIDE TIMELY NOTICE.**

7 "[T]he party who commits the first breach of a contract cannot maintain an action against
8 the other for a subsequent failure to perform." Bradley, 42 Nev. 411, 178 P. 906, 908-09 (1919);
9 see also Cladianos v. Friedhoff, 69 Nev. 41, 45, 240 P.2d 208, 210 (1952) ("The law is clear,
10 however, that any affirmative tender of performance is excused when performance has in effect
11 been prevented by the other party to the contract").

12 Here, the Prime Contract between APCO and the City provides that all change orders
13 must be promptly submitted along with itemized and detailed supporting documentation. The
14 Prime Contract was incorporated into the subcontract between APCO and Helix and, in addition,
15 Helix agreed that it was bound by the same obligations, liabilities, and responsibilities that
16 APCO owed to the City.³⁰ Accordingly, the plain terms of the Subcontract required Helix to
17 submit timely, properly documented Changes Orders.

18 As is apparent from the Change Orders in question,³¹ Helix breached the Subcontract by
19 ignoring the documentation requirement. This breach is plainly evidenced by the Change Orders
20 themselves, as Helix included a broad request for extended overhead for a certain number of
21 days, without any itemization or explanation as to the daily costs.³²

22 Moreover, while the Subcontract is clear regarding promptness, Helix repeatedly failed to
23 make timely requests for payment. Indeed, the record evidences that Helix delayed in at least six
24 separate respects: (1) Helix failed to provide any explanation as to its purported costs until its

25 ³⁰ See Exhibit A at pages 1-2.

26 ³¹ See Exhibits D, H, and J.

27 ³² Admittedly, Change Order 68.1 includes a chart regarding daily expenses. See Exhibit H. It is
28 unknown whether the City found this documentation adequate, as its reason for rejecting Change Order
68.1 was simply because 68.1 was duplicative. See Exhibit I.

1 June 19, 2013, letter, *i.e.*, over a month after APCO submitted its TIA and Request for Change
2 Order to the City; (2) Helix waited to submit Change Order 68, which requested 33 weeks of
3 extended overhead until August 27, 2013 – more than three months after APCO submitted its
4 TIA and Request for Change Order to the City; (3) Helix did not provide documentation in
5 support of Change Order 68 until October 31, 2013; (4) Helix submitted Change Orders 68.1 and
6 93 after the City addressed and awarded additional payment for the delays in completing the
7 Project; (5) After learning of the rejections from the City, Helix made no effort to request
8 consideration, reserve its rights, or file additional claims for money owed on the Project; and (6)
9 Helix filed the demand letter regarding retention payment on September 26, 2014 – four months
10 after APCO closed the Project with the City on May 22, 2014.

11 In sum, Helix breached the material terms of the Prime Contract and Subcontract by
12 senselessly ignoring requirements with which it had no difficulty on dozens of other occasions.
13 And, in doing so, Helix created the very predicament of which it now complaint. After all,
14 Helix's failure to submit proper pass-through claims to APCO delayed APCO's ability to quickly
15 and accurately request compensation from the City until May 2013. In turn, because Helix
16 waited to assert its claims for extended overhead until after the close of the Project, the delays
17 altogether prevented APCO from requesting payment from the City for payment of Helix's
18 claims.

19 Thus, this Court should enter judgment in favor of the Defendants as to Helix's first and
20 second causes of action because Helix cannot fault the Defendants for their purported failure to
21 perform when Helix failed to uphold its end of the bargain and effectively prevented the
22 Defendants from performing.³³

23 ///

24 ///

25 ///

26 ³³ To be clear, Helix expects the Defendants to "perform" by using their own funds to pay for Helix's
27 extended overhead. Had Helix submitted its claims in a timely manner – or, at the very least, before the
28 City closed the project – the City would have paid for the work that Helix performed for the City's
benefit.

1 **B. NEVADA LAW ALLOWS FOR PAY-IF-PAID PROVISIONS UNDER**
2 **SOME CIRCUMSTANCES.**

3 Under NRS 624.626, subcontractors may stop work if a higher-tiered contractor fails to
4 make timely payments, “even if the higher-tiered contractor has not been paid and the agreement
5 contains a provision which requires the higher-tiered contractor to pay the lower-tiered
6 subcontractor only if or when the higher-tiered contractor is paid.” The next statutory
7 subsection, NRS 624.628, provides additional guidance regarding pay-if-paid provisions. In
8 particular, it provides that:

9 3. A condition, stipulation or provision in an agreement which:

10 ...

11 c) Requires a lower-tiered subcontractor to waive, release or extinguish a claim
12 or right for damages or an extension of time that the lower-tiered subcontractor
13 may otherwise possess or acquire as a result of delay, acceleration, disruption or
14 an impact event that is **unreasonable under the circumstances, that was not**
15 **within the contemplation of the parties at the time the agreement was entered**
16 **into**, or for which **the lower-tiered subcontractor is not responsible**, is against
17 public policy and is void and unenforceable. (Emphasis added).

18 Thus, while both of these provisions provide certain limitations regarding payment of
19 subcontractors, Nevada’s statutory law does not outright prohibit pay-if-paid clauses.

20 Unfortunately, the Supreme Court of Nevada’s decisions in Lehrer McGovern Bovis, Inc.
21 v. Bullock Insulation, Inc., 124 Nev. ___, 185 P.3d 1055 (June 2008) (“Lehrer I”), and Lehrer
22 McGovern Bovis, Inc. v. Bullock Insulation, Inc., 124 Nev. 1102, 197 P.3d 1032 (Oct. 2008)
23 (“Lehrer II”), caused significant confusion over this otherwise straight-forward statute.

24 Both Lehrer cases centered on a subcontract between subcontractor Bullock Insulation
25 (“Bullock”) and general contractor Lehrer McGovern Bovis (“Bovis”) in which Bullock agreed
26 to provide firestopping work needed for the construction of the Venetian hotel and casino. See
27 Lehrer I, 185 P.3d at 1058; Lehrer II, 124 Nev. at 1107, 197 P.3d at 1035. The subcontract
28 incorporated several terms from the Construction Management Agreement, including a lien
waiver clause and pay-if-paid provision. Lehrer I, 185 P.3d at 1058; Lehrer II, 124 Nev. at 1107-
08, 197 P.3d at 1036. After much of the work on the project had been completed, an inspection
revealed that Bullock had not properly installed putty pads in accordance with the subcontract.

1 Lehrer I, 185 P.3d at 1059; Lehrer II, 124 Nev. at 1107, 197 P.3d at 1036. In order to correct the
2 mistake, Bullock had to complete significant retrofit work. Lehrer I, 185 P.3d at 1059; Lehrer II,
3 124 Nev. at 1108, 197 P.3d at 1036. When the retrofitting was complete Bullock recorded a
4 mechanic's lien for the total value of the retrofit and initiated litigation. Lehrer I, 185 P.3d at
5 1059; Lehrer II, 124 Nev. at 1108, 197 P.3d at 1036.

6 The case proceeded to trial and a jury found in favor of Bullock. Lehrer I, 185 P.3d at
7 1057; Lehrer II, 124 Nev. at 1109, 197 P.3d at 1036-37. But, because the jury gave
8 contradictory responses to special interrogatories regarding the subcontract, Bovis moved for a
9 new trial. Lehrer I, 185 P.3d at 1060; Lehrer II, 124 Nev. at 1110, 197 P.3d at 1037. In both
10 cases, "the primary issue [was] whether a new trial [wa]s required when the district court creates
11 special interrogatories upon issues of fact and the jury's answers to those interrogatories are
12 inconsistent." Lehrer I, 185 P.3d at 1057; Lehrer II, 124 Nev. at 1105-06, 197 P.3d at 1034. As
13 secondary issues, Bovis questioned whether the district court erred by holding that the lien
14 waiver and pay-if-paid provisions which were incorporated into the subcontract were
15 unenforceable under Nevada law. Lehrer I, 185 P.3d at 1058; Lehrer II, 124 Nev. at 1106, 197
16 P.3d at 1035.

17 In both decisions, the Supreme Court held that remand was necessary because the general
18 verdict was irreconcilable with the interrogatory answers. Lehrer I, 185 P.3d at 1062; Lehrer II,
19 124 Nev. at 1113, 197 P.3d at 1039. The Court's position with regard to pay-if-paid clauses
20 shifted, however, from the first decision to the second.

21 In the first Lehrer decision, the Supreme Court noted that the parties entered into the
22 subcontract before the Legislature "proclaimed pay-if-paid provision unenforceable." Lehrer I,
23 185 P.3d at 1063. In a footnote, the Court further clarified that the Legislature amended NRS
24 Chapter 624 in 2001 to include "prompt payment provisions . . . which make pay-if-paid
25 provisions entered into subsequent to the Legislature's amendments unenforceable." Id. at 1063
26 n.33. Nevertheless, while new statutory language did not apply to parties' subcontract, the
27 Supreme Court determined that the pay-if-paid provision in the parties' subcontract was
28 unenforceable because "a pay-if-paid provision limits a subcontractor's ability to be paid for

1 work already performed,” and effectively “impair[ed] the [Bullock’s] statutory right to place a
2 mechanic’s lien on the construction project.” *Id.* at 1064.

3 The Supreme Court issued a second, amended opinion a few months later in order to
4 clarify a portion of its decision that “could be misconstrued as being contrary to this court’s
5 precedent.” *Lehrer II*, 124 Nev. at 1105, 197 P.3d at 1034. In the revised opinion, the Supreme
6 Court again noted that the parties entered into the subcontract before the Legislature “proclaimed
7 pay-if-paid provisions unenforceable.” *Id.* at 1117, 197 P.3d at 1042. But, in the related
8 footnote, the Court altered its explanation of the statutory amendment by stating, “[p]ay-if-paid
9 *provisions entered into subsequent to the Legislature’s amendments are enforceable only in*
10 *limited circumstances and are subject to the restrictions laid out in [the statute].*” *Id.* at 1117
11 n.50, 197 P.3d at 1042 n.50. Then, as in the previous decision, the Court held that the
12 subcontract between Bullock and Bovis was unenforceable because it effectively impaired
13 Bullock’s right to place a mechanic’s lien on the project. *Id.* at 1117, 197 P.3d at 1042.

14 In the aftermath of the *Lehrer* decisions, scholars and attorneys understandably expressed
15 confusion.³⁴ In particular, confusion remains regarding the actual impact of the Supreme Court’s
16 remarks regarding pay-if-paid clauses because the Court’s decision turned on the issue of
17 inconsistent verdicts and all other matters were purely dictum.³⁵ In addition, it remains unclear
18 how the Court reached its decision, given that NRS 624 does not contain any direct references to
19 pay-of-paid clauses. And, by the same token, it is unclear why the Supreme Court revised its
20 dicta regarding pay-if-paid clauses when the supposed purpose of the amended opinion was to
21 clarify confusion regarding inconsistent verdicts.

22
23 ³⁴ See, e.g., Leon F. Mead II, *Nevada Supreme Court Rules Pay-If-Paid Clause Unenforceable*, June 2008,
24 available at: http://www.swlaw.com/assets/pdf/publications/2008/06/16/NevadaSupremeCourtRules_6.08_indd.pdf; Gregory S. Gilbert, *Pay-if-Paid Clauses: Still Alive in Nevada*, Mar. 2009, available at:
25 <https://www.hollandhart.com/16931>; Greg Gledhill, *Nevada Supreme Court Declares Pay-If-Paid Clauses Unenforceable – Or Did It?*, available at: http://www.gcila.org/publications/files/pub_en_97.pdf.

26 ³⁵ *Argentina Consol. Min. Co. v. Jolley Uрга Wirth Woodbury & Standish*, 125 Nev. 527, 536, 216 P.3d
27 779, 785 (2009) (“A statement in a case is dictum when it is “unnecessary to a determination of the
28 questions involved.” (Quoting *Stanley v. Levy & Zentner Co.*, 60 Nev. 432, 448, 112 P.2d 1047, 1054 (1941)).

1 Thus, to summarize, there remain many questions regarding Nevada's law on pay-if-paid
2 provisions. But, under existing law there is no reason to believe that such provisions are *per se*
3 unenforceable because Supreme Court of Nevada simply would not have revised its opinion in
4 Lehrer if its intent was disallow pay-if-paid clauses under all circumstances.³⁶ Further, the
5 Supreme Court would not have noted the value of case-by-case assessments if pay-if-paid
6 provisions were never permissible.³⁷ So, for purposes of this litigation, this Court should
7 consider whether the pay-if-paid provision is appropriate under the unique circumstances of this
8 case and reject any attempt by Helix to impose a per se limitation that simply does not exist.

9 **C. THE PAY-IF-PAID PROVISION IS VALID AND ENFORCEABLE**
10 **BECAUSE OF THE FACTS AND CIRCUMSTANCES IN THIS CASE.**

11 Dicta is not controlling, *Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 282, 21 P.3d 16, 22
12 (2001), and, as such, there is a fair argument that the Lehrer decisions actually have no bearing
13 on the instant case. Nevertheless, even if this Court is inclined to treat the Supreme Court's
14 reasoning as persuasive,³⁸ it is best to consider the pay-if-paid clause under the unique facts and
15 circumstances in this case. Indeed, while the Supreme Court has yet to address how to assess the
16 enforceability of a pay-if-paid clause, it has stated that a case-by-case assessment is appropriate
17 where a contract includes a lien waiver provision. Lehrer II, 124 Nev. at 1116, 197 P.3d at 1041
18 ("The enforceability of each lien waiver clause must be resolved on a case-by-case basis"). And,
19 while the applicable law regarding liens differs from the prompt payment provisions in Chapter
20 624, the Supreme Court has indicated that its concerns regarding pay-if-paid provisions stem

21
22 ³⁶ See NRAP 40(c)(2) (providing that rehearing is only warranted "[w]hen it appears that [the Supreme
23 Court] has overlooked or misapprehended a material matter in the record or otherwise, or . . . in such
24 other circumstances as will promote substantial justice."); *Moore v. City of Las Vegas*, 92 Nev. 402, 405,
25 551 P.2d 244, 246 (1976) (a rehearing is proper "[o]nly in very rare instances in which new issues of fact
26 or law are raised supporting a ruling contrary to the ruling already reached").

27 ³⁷ *Vegas Franchises, Ltd. v. Culinary Workers Union, Local No. 226*, 83 Nev. 422, 424, 433 P.2d 263,
28 265 (1967) (stating the Supreme Court will not perpetuate error); *Nevada-California Transp. Co. v. Pub.*
Serv. Comm'n, 60 Nev. 310, 108 P.2d 850, 852 (1941) (holding that it is the Supreme Court's duty "to
correct rather than perpetuate [] errors.").

³⁸ *Humphrey's Ex'r v. United States*, 295 U.S. 602, 627, 55 S. Ct. 869, 874 (1935) (holding that "dicta []
may be followed if sufficiently persuasive" even though it is "not controlling").

1 from the same public policy concerns regarding secure payment for contractors. Id. at 1116-18,
2 197 P.3d at 1041-42.

3 Here, the pay-if-paid provisions are less problematic than the clause in the Lehrer
4 decisions because Helix had an opportunity to negotiate with APCO regarding the terms of the
5 subcontract and, in fact, it was Helix that added pay-if-paid language into Section 6-6.1 of the
6 Agreement. By contrast, the subcontractor in Lehrer had no say over the matter because the
7 subcontract simply incorporated the terms from the Construction Management Agreement.
8 Thus, while the subcontractor in Lehrer had two options regarding the pay-if-paid provision –
9 take it or leave it – here, the parties created a contract that satisfied their needs and expectations.

10 Moreover, the pay-if-paid provisions are reasonable under the circumstances of this case
11 because general contract and the subcontract set forth a reasonable method by which APCO
12 could request payment from the City for payment to subcontractors. So, in effect, the purpose of
13 the pay-if-paid provision was simply to improve the orderly administration of the project. By
14 contrast, the pay-if-paid provision in the Lehrer cases operated in tandem with other provisions
15 in order to prohibit subcontractors from receiving payment for work that was already completed.

16 Further, public policy concerns weigh in favor of APCO, rather than Helix. As the
17 Supreme Court stated in Lehrer, public policy favors secure payment for contractors. The
18 rationale for this public policy is easy to understand, as “contractors are generally in a vulnerable
19 position because they extend large blocks of credit; invest significant time, labor, and materials
20 into a project; and have any number of workers vitally depend upon them for eventual payment.”
21 Lehrer II, 124 Nev. at 1116, 197 P.3d at 1041. Here, the pay-if-paid provision provided valuable
22 protection to APCO by ensuring that APCO would not become a de factor lender to the City in
23 the event of non-payment.

24 In summation, the pay-if-paid provisions in this case were negotiated and intentionally
25 added to the Subcontract. The pay-if-paid provisions served a vital purpose by reinforcing the
26 orderly administration of claims by providing subcontractors an incentive to timely submit
27 claims and appropriate documentation. APCO relied upon the documentation from its
28 subcontractors in order to request payment from the City, and, in the absence of such

1 documentation *neither* APCO nor its subcontractors could receive payment from the City.
2 Although Helix now attempts to argue that the pay-if-paid provision violates public policy, the
3 reality is that Helix wants to backtrack on its own contractual language so that APCO is forced to
4 pay for Helix's mistakes. Accordingly, this Court should uphold the pay-if-paid provisions
5 because neither Lehrer nor Nevada public policy allow for a subcontractor to demand payment
6 from a contractor after the subcontractor has missed every opportunity to request payment from
7 an owner.

8
9 **D. HELIX'S CLAIMS MUST FAIL BECAUSE APCO DID NOT RECEIVE
PAYMENT FOR HELIX'S EXTENDED OVERHEAD COSTS.**

10 Helix claims that APCO breached the parties' Subcontract by "[f]ailing and/or refusing to
11 pay the monies owed to Helix for its Work."³⁹ This contention is fundamentally flawed because
12 APCO's actions with regard to Helix's change orders were wholly consistent the terms of the
13 Subcontract that Helix thoroughly read, revised, and, in fact, requested.

14 Indeed, it is undisputed that the majority of Helix's change orders were submitted to the
15 City, approved, and paid without any issue. Even with regard to Change Order 68, 68.1, and 93,
16 it is undisputed that APCO promptly submitted the claims to the City, even though Helix failed
17 to timely submit the claims with appropriate documentation. After the City unsurprisingly
18 rejected the claims, APCO notified Helix of the issue so that Helix would have an opportunity to
19 correct its errors and submit proper claims. Accordingly, there is no colorable argument that
20 APCO violated the letter of the Subcontract or the duty of good faith and fair dealing when
21 APCO went above and beyond its end of the bargain to help Helix get paid.

22 Further, while Helix contends that APCO had a contractual obligation to pay for the
23 Change Orders that the City rejected, the parties' Subcontract states that the opposite is true. As
24 noted above, Section 4.4 of the Subcontract provides that any payments to Helix "shall be
25 conditioned upon receipt of the actual payments by [APCO] from [the City]."⁴⁰ Similarly,

26
27 ³⁹ Complaint at page 3.

28 ⁴⁰ See Exhibit A at pages 3-4.

1 Section 4.8 states that the Defendants “have no obligation to pay [Helix] for any changed or
2 extra work performed by [Helix] until or unless [APCO] has actually been paid for such work by
3 the [City].”⁴¹

4 Here, the undisputed evidence proves that APCO *did not* receive payment form the City
5 for Helix’s extended overhead costs. Instead, APCO sent the City a TIA and Change Order in
6 May 2013 – months *before* Helix submitted Change Order 68, 68.1, and 93. In the TIA and
7 Change Order, APCO requested payment for an additional nine months of services, including
8 dust control, security, and home office overhead. The Change Order did not, however, request
9 additional payment for Helix’s extended overhead costs because Helix failed to provide APCO
10 with any documentation or detailed information regarding its costs. In fact, Helix did not even
11 provide an estimate that could have been used to approximate the costs that it would incur
12 because of Project delays. Then, when the City approved APCO’s Change Order *in part*,⁴²
13 APCO did not even receive payment for some of the *documented* costs that it requested, let alone
14 the costs that were unknown. Thus, under the parties’ Subcontract, APCO had no obligation to
15 pay Helix for its extended overhead costs because APCO was not actually paid for such work by
16 the City. And, as such, summary judgment is appropriate as to Helix’s first and second causes of
17 action because there is an absence of evidence to support Helix’s contract-based claims.

18 ///

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20 ///

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26 _____
27 ⁴¹ See Exhibit A at page 4.

28 ⁴² The City offered \$560,724.16, *i.e.*, 51% of the total that APCO requested.

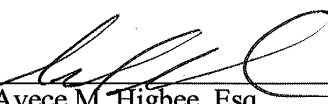
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VI. CONCLUSION

Based on the foregoing, the Defendants respectfully request that this Court grant summary judgment in their favor with regard to Helix's first claim for breach of contract and second claim for breach of the implied covenant of good faith and fair dealing.

Dated this 23rd day of May, 2017.

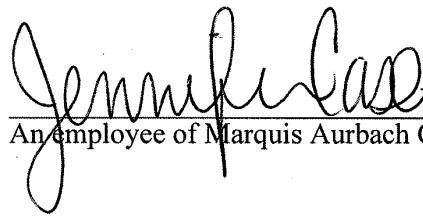
MARQUIS AURBACH COFFING

By: 
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Nevada Bar No. 11220
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 23 day of May, 2017. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:⁴³

Richard L. Peel, Esq.
Cary B. Comina, Esq.
Peel Brimley, LLP
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074-6571
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Attorneys for Plaintiff


An employee of Marquis Aurbach Coffing

⁴³ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

EXHIBIT A

SUBCONTRACT AGREEMENT

APCO CONSTRUCTION - CONTRACT No: 193-6 Cost Code: _____ CONTRACT Amount: \$ 2,380,085.20

PROJECT NO. : PWP# CL-2012-31 / Project No. 1398
DISCRIPTION: Craig Ranch Regional Park - Phase II
628 West Craig Road, NLV, NV 89032

OWNER: City of North Las Vegas
2250 Las Vegas Blvd. North
North Las Vegas, Nevada 89030

The above term 'Owner' as referenced in this subcontract agreement document shall mean the above entity or agent of the Owners as authorized representative.

ARCHITECT/ENGINEER:

Architect: SH Architecture - 7373 Peak Drive., Ste. 250, Las Vegas, NV 89128 (Tel.) 363-2222 (Fax) 363-6060; Mech.: MSA Engineering Consultants - 370 E. Windmill Lane Ste. 100, Las Vegas, NV 89123 (Tel.) 896-1100 (Fax) 896-1133; Structural Engineer: Mendenhall Smith - 3571 Red Rock Street, Ste. A, Las Vegas, NV 89103, (Tel.) 367-6725 (Fax) 367-2727; Civil / Landscape: Cardno WRG - 10649 Jeffreys St., Henderson, NV 89052 (Tel.) 990-9300 (Fax) 990-9305

THIS AGREEMENT is entered into in consideration of the commitments made the 26th day of October, 2011, between:

GENERAL CONTRACTOR

AND

SUBCONTRACTOR

APCO Construction
3840 North Commerce St.
North Las Vegas, NV 89032
P - (702)734-0198 F - (702)734-0396
License No. 0014563
Limit: Unlimited

Helix Electric
3076 E. Sunset Rd., Ste. 9
Las Vegas, NV 89120
P - (702) 732-1186 F - (702) 732-4386
License No. 0053810
Limit: Unlimited

Contractor and Subcontractor agree as follows:

1. Contract Documents

- 1.1 The Contract Documents for this Subcontract Agreement, shall include all exhibits and other documents attached hereto or made a part thereof by reference, all drawings and specifications as designed by Architect: SH Architecture - 7373 Peak Drive., Ste. 250, Las Vegas, NV 89128 (Tel.) 363-2222 (Fax) 363-6060; Mech.: MSA Engineering Consultants - 370 E. Windmill Lane Ste. 100, Las Vegas, NV 89123 (Tel.) 896-1100 (Fax) 896-1133; Structural Engineer: Mendenhall Smith - 3571 Red Rock Street, Ste. A, Las Vegas, NV 89103, (Tel.) 367-6725 (Fax) 367-2727; Civil / Landscape: Cardno WRG - 10649 Jeffreys St., Henderson, NV 89052 (Tel.) 990-9300 (Fax) 990-9305 as approved by City of North Las Vegas, 2266 Civic Center, North Las Vegas, NV 89030 and the Primary Contract between Owner and Contractor (hereinafter "the Prime Contract"), including all exhibits, and other documents attached thereto or made part hereof by reference to include but not limited to: Bid Documents, Owners Bid Instructions (ITB), Bid Addenda, Consultant Reports, Scope of Work, Schedule of Work, Contract General & Supplemental Conditions the Contract Documents and Plans & Specifications listed in Exhibit "A" subsequent modifications issued thereto. (All Contract Documents identified herein shall be hereinafter collectively referred to as the "Contract Documents").

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1.2 The Contract Documents are available in Contractor's office. Subcontractor acknowledges that it has carefully examined and fully understands the Contract Documents and site conditions. Additional copies of the Plans and Specifications will be provided to Subcontractor, upon request, at Subcontractor's Cost. Subcontractor shall, prior to the commencement of the Work, review and compare all of the Subcontract Documents relating to the performance of the Subcontractor and any and all errors, ambiguities and inconsistencies shall immediately be reported to the Contractor in writing and resolved to Subcontractor's satisfaction.

1.3 Subcontractor is bound to the Contractor to the same extent and duration that Contractor is bound to Owner. Subcontractor assumes toward Contractor all obligations, liabilities and responsibilities that Contractor, by the Contract Documents, has assumed toward APCO and Owner in the Prime Contract. Contractor shall further have the benefit of all rights, remedies, redress and limitations in respect to Subcontractor and all things done and used by Subcontractor in performance of its Work, which the APCO/Owner and its agents have against Contractor in the Contract Documents or by law. Any and all decisions by the APCO/Owner or its agents relative to interpretation of the Contract Documents or any ambiguity or discrepancy therein shall be binding on the Subcontractor to the same extent such are binding on Contractor. Subcontractor shall bind lower tier subcontractors and suppliers to full compliance with all Contract Documents, including all performance obligations and responsibilities which subcontractor assumes toward Contractor.

2. Scope of Work

2.1 Subcontractor agrees to furnish all supervision and labor, furnish and install all materials, equipment and supplies required, and do all things necessary to fully complete all its scope of work ("the Subcontract Work"), referred to in Exhibit "A": Subcontractor Scope of Work.

2.2 Subcontractor warrants to Contractor and Owner that all Work shall be performed in a neat, skillful, and workmanlike manner and will be fit for its intended use both as to workmanship and materials. Subcontractor agrees that all materials and equipment furnished by Subcontractor shall be new and of the best description and quality of their respective kinds, unless otherwise specified and ordered by Contractor in writing. Subcontractor warrants that the materials and equipment furnished and the Work performed will strictly comply with the Contract Documents and this Subcontract, and shall be satisfactory to Owner and Contractor. If the work or material is found to be noncompliant and deemed unacceptable by the SIA, General Contractor or the Owner, the total cost of remedial repair, inclusive of testing, inspections and any additional, labor cost associated with remedial work by others, will be the sole responsibility of the subcontractor.

2.3 Subcontractor understands and agrees to the Scope of Work included in the Plans and Specifications requirements as it pertains to the Subcontractors work. Subcontractor will cooperate and participate in Partnering Meetings Sponsored by Owner.

3. Equal Opportunity Clause

During the performance of any contract, Subcontractor, unless exempt, agrees to comply with Executive Order 11246 (Equal Opportunity Clause); Executive Order 11701 (Job Openings for Veterans); 41 CFR 60-741 et. Seq., 41 CFR 60-250 (a) and 41 CFR 60-741.5 (Employment for Handicapped) as follows:

3.1 Subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Subcontractor will take affirmative action to ensure that color, religion, sex or national origin. Such action shall include, but not limited to the following; employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Subcontractor agrees to post in conspicuous places, available to employee and applicants for employment, notices to be provided by the government contracting officer setting forth the provisions of this nondiscrimination clause.

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- 3.2 Subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- 3.3 If picketing arises at the jobsite and Contractor establishes a reserved gate for Subcontractor's use and access, it shall be the obligation of Subcontractor to continue the proper performance of its Work without interruption or delay. Subcontractor shall notify in writing and assign its employees, labors, subcontractors and suppliers to such gates or entrances as may be established for its use by the contractor and in accordance with such conditions and at such times as may be imposed by Contractor. Strict compliance with Contractor's gate usage procedures shall be required by Subcontractor, who shall be responsible for such gate usage by its employees, labors, subcontractors and suppliers, and their respective employees, labors, subcontractors and suppliers.
- 3.4 It is the Subcontractor's responsibility to maintain an adequate work force to complete the project on schedule. If the Subcontractor or his employees are the reason for work stoppage, the subcontractor will be responsible for any delay to the construction schedule and held liable for schedule correction, inclusive of overtime and monetary claims by other Subcontractors.
4. Contract Price and Payments
- 4.1 In consideration of the strict and complete and timely performance of all Subcontract Work, Contractor agrees to pay Subcontractor in the payment quantities and schedules as is more fully described in Exhibit "A": Subcontractor's Scope of Work.
- 4.2 In Consideration of the promises, covenants and agreements of Subcontractor herein contained, and the full, faithful and prompt performance of the Work in accordance with the Contract Documents, Contractor agrees to pay, and Subcontractor agrees to receive and accept as full compensation for doing all Work and furnishing all materials and equipment contemplated and embraced in this Subcontract, and for all loss or damage arising out of the nature of said Work, or from all actions of the elements or from any unforeseen difficulties or obstacles which may arise or be encountered in the performance of the Work, and for all risks of every description connected with the Work, and for all expense incurred by or in consequence of the suspension, interruption or discontinuance of the Work, and for well and faithfully completing the Work and the whole thereof in the manner and according to the requirements and instructions of Contractor and Owner or Owner's agents in charge of the Work, if any, payment in the amount of the Subcontract Price.
- 4.3 Subcontractor, upon request of Contractor, and on such date as Contractor shall designate, shall submit to Contractor, in form and content acceptable to Contractor, a monthly billing, (1) originals, showing quantities of Subcontract work that has been satisfactorily completed in the preceding month, as well as backup material, by Schedule of Values, for same for submittal to the Owner. Subcontractor shall also submit an original executed Conditional Release, in the form required by Contractor, verifying payment of all laborers, subcontractors, equipment and material suppliers. Subcontractor shall also furnish required releases from any sub-subcontractors and/or materials suppliers that have notified Contractor of their presence on the Project. Subcontractor further agrees to provide all required employment security department, fringe benefit trust funds, certified payroll, and/or other reports as may be required by the Contractor or the Contract Documents. Subcontractor will provide Unconditional Lien Releases upon receipt of payment of any monies provided the subcontractor, inclusive of deposits, fees or prior months billing. No checks will be issued or printed subject to delays in receipt of unconditional lien releases. All Unconditional Lien Releases shall be inclusive of sub-tier-contractors and suppliers.
- 4.4 Progress payments will be made by Contractor to Subcontractor within 15 days after Contractor actually receives payment for Subcontractor's work from Owner. The progress payment to Subcontractor shall be one hundred percent (100%) of the value of Subcontract work completed (less 10% retention) during the preceding month as determined by the Owner, less such other amounts as Contractor shall determine as

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being properly withheld as allowed under this Article or as provided elsewhere in this Subcontract. The estimates of Owner as to the amount of Work completed by Subcontractor shall be binding upon Contractor and Subcontractor and shall conclusively establish the amount of Work performed by Subcontractor. As a condition precedent to receiving partial payments from Contractor for Work performed, Subcontractor shall execute and deliver to Contractor, with its application for payment, a full and complete release (Forms attached) of all claims and causes of action Subcontractor may have against Contractor and Owner through the date of the execution of said release, save and except those claims specifically listed on said release and described in a manner sufficient for Contractor to identify such claim or claims with certainty. Upon the request of Contractor, Subcontractor shall provide an Unconditional Waiver of Release in form required by Contractor for any previous payment made to Subcontractor. Any payments to Subcontractor shall be conditioned upon receipt of the actual payments by Contractor from Owner. Subcontractor herein agrees to assume the same risk that the Owner may become insolvent that Contractor has assumed by entering into the Prime Contract with the Owner.

- 4.5 Contractor shall have the right at all times to contact lower tier subcontractors and suppliers to verify that they are being paid by Subcontractor for labor or materials furnished for use in the Subcontract Work. If it appears that labor, material or other costs incurred in the performance of the Subcontract Work are not being paid when due, Contractor may take whatever steps it deems necessary to insure that the progress payments will be utilized to pay such costs, including, but not limited to, the issuance of joint checks payable to the claimant after written notice to Subcontractor, or additionally, making payment directly to claimant after written notice to Subcontractor. If such payment by Contractor exceeds the balance of payments due or to become due to Subcontractor from Contractor, then Subcontractor shall be liable to Contractor for the difference. If the Owner requests proof of payment to a Sub-tier-contractor or supplier, the subcontractor obligated to provide same in a timely manner.
- 4.6 Contractor is hereby expressly granted the right to off-set any sums due the Subcontractor under the provisions of this Subcontract against any obligation that may be due from Subcontractor to Contractor regardless of the source of said obligation. When requested by Contractor, Subcontractor shall furnish to Contractor a verified and itemized statement showing the names and addresses of all entities who have furnished or may furnish labor, materials, and/or equipment for the Subcontract Work together with the amount due or to become due for such work.
- 4.7 The 10 percent withheld retention shall be payable to Subcontractor upon, and only upon the occurrence of all the following events, each of which is a condition precedent to Subcontractor's right to receive final payment hereunder and payment of such retention: (a) Completion of the entire project described in the Contract Documents; (b) The approval and final acceptance of the project Work by Owner; (c) Receipt of final payment by Contractor from Owner; (d) Delivery to Contractor from Subcontractor all as-built drawings for its scope of work and other close out documents; (e) Delivery to Contractor from Subcontractor a Release and Waiver of Claims from all of Subcontractor's laborers, material and equipment suppliers, and subcontractors providing labor, materials or services to the Project, (Forms attached). If any sub-subcontractor, supplier or other person refuses to furnish a release or waiver required by the Owner or Contractor, the Subcontractor shall, upon the request of Contractor, furnish a bond satisfactory to the owner and Contractor to indemnify them against any such claim or lien. Should the existence of any unsatisfied or un-discharged claim, obligation or lien arising in conjunction with Subcontractor's Work become known after final payment is received from Contractor, Subcontractor shall promptly pay on demand all actual amounts Contractor and/or Owner pay in bonding around, satisfying, discharging or defending any such claim, obligation or lien, including all costs and attorney's fees incurred in connection therewith. Final payment shall not relieve Subcontractor from liability, or for warranty or guaranty, or for indemnity obligations for faulty or defective Work.
- 4.8 Subcontractor agrees that Contractor shall have no obligation to pay Subcontractor for any changed or extra work performed by Subcontractor until or unless Contractor has actually been paid for such work by the Owner.

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- 4.9 Progress payments and Final Payment shall not be considered or construed as evidence of acceptance of any part of Subcontractor's work until final acceptance of the Project by Owner.

5. Liquidated Damages

- 5.1 Subcontractor acknowledges that liquidated damages are identified in the prime contract between the owner and contractor. If the owner exercises Liquidated Damages against contractor due to causes by the subcontractor, then contractor shall have recourse to collect those funds from any unpaid balances due subcontractor. If subcontractor's unpaid balance cannot satisfy the total amount of damages due, then Subcontractor agrees to interest of 1.5 % per month of the unpaid balance until paid in full.

6. Prosecution of Work

- 6.1 TIME IS OF THE ESSENCE OF THIS SUBCONTRACT.

6.1.1 Eight (8) copies of all Subcontractor submittals shall be received by Contractor to suit the requirements of the approved CPM target schedule unless otherwise agreed to in writing by Contractor. Subcontractor agrees to provide plan-sized sheets for all submittals of required size 24"x36" including one (1) sepi & seven (7) blue line prints. Product specifications shall be provided in standard 8-1/2" by 11" paper, three hole punched and inserted into three ring binders. Any required re-submittals shall be submitted as required by contract documents from the Owner.

6.1.2 Final acceptance and approval of this Subcontract Agreement is contingent upon approval of Subcontractor's Submittals by the Owner/Architect/Engineer.

6.1.3 Any delays in the submittal process caused in whole or part by Subcontractor may be grounds for immediate termination of this Subcontract Agreement and subject Subcontractor to damages as provided in Sections 8 and 9 below.

- 6.2 Subcontractor agrees to commence the Subcontract Work within five (5) calendar days after receiving notification from Contractor to proceed, or within such other time as may be specified by Contractor, and to proceed at such points as Contractor may designate, and to continue diligently in its performance in accordance with the project schedule and at a pace that will cause no delay in the progress of the Contractor's or other subcontractor's work.

- 6.3 Upon request, Subcontractor shall promptly provide Contractor with scheduling information, in the format required in the Contract Documents, or any other information relating to the order or nature of the Subcontract Work. Subcontractor agrees that the project schedule may be revised by Contractor as work progresses. Contractor may require Subcontractor to prosecute segments of the Subcontract Work in phases as Contractor may specify. Subcontractor shall comply with instructions given by Contractor, including any instructions to suspend, delay or accelerate the Subcontract Work. Subcontractor shall not be entitled to any extra compensation from Contractor for any such suspension, delay or acceleration unless specifically agreed to in writing by the Contractor and Owner and paid for by Owner. The Owner's payment to Contractor of extra compensation for any such suspension, delay, or acceleration shall be a condition precedent to Subcontractor's right, if any, to receive such extra compensation from Contractor.

- 6.4 Subcontractor shall keep the work area reasonably clean of debris, daily, resulting from the performance of its work and shall remove from the work area all debris generated by the execution of the Subcontract work. Non-compliance with verbal direction from Prime Contractor's Project Superintendent for cleanup shall result in one (1) written notice for clean-up. Upon failure to properly police the debris from their own activity, 24 hours after written notification this subcontractor will be fined \$500.00 plus the cost for clean-up deducted from your next pay application.

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- 6.5 Subcontractor, in undertaking to complete the Subcontract Work within the time specified, avows that it has considered ordinary delays incident to such work; including, but not limited to delays in securing materials, equipment or workmen, and minor changes, omissions or additions, unavoidable casualties, normal weather conditions, strikes or lockouts. If Subcontractor shall be delayed in the performance of the Work by any act or neglect of the Owner or Architect, or by agents or representatives of either, or by changes ordered in the Work, or by fire, unavoidable casualties, national emergency, or by any cause other than the intentional interference of Contractor, Subcontractor shall be entitled, as Subcontractor's exclusive remedy, to an extension of time reasonably necessary to compensate for the time lost due to the delay, but only if Subcontractor shall notify Contractor in writing within twenty four (24) hours after such occurrence, and only if Contractor shall be granted such time extension by Owner. No time extension will be allowed for delays or suspensions of work caused or contributed to by Subcontractor, and no time extension will be granted Subcontractor that will render Contractor liable for liquidated damages or other loss under the Contract Documents. The Subcontractor understands that this is an aggressive schedule and that should the Subcontractor fail to staff the Project with the proper workforce, to stay on schedule, then it is understood that the Subcontractor will have its workforce work overtime and/or weekends to maintain the pace of the schedule solely at the subcontractors expense.
- 6.6 In addition to other damages and remedies provided in this Subcontract, Subcontractor agrees to pay any liquidated damages that may be assessed against the Contractor by the Owner, as provided in the Contract Documents, for any project delays caused by Subcontractor. Such damages shall be paid for each working day the Subcontract Work remains incomplete beyond the time specified for subcontract completion plus any extension thereof agreed to in writing by the Contractor, and granted by Owner.
- 6.7 Contractor shall not be liable to Subcontractor for delays caused by reason of fire or other casualty, or on account of riots, strikes, labor trouble, terrorism, acts of God, cataclysmic event, or by reason of any other event or cause beyond Contractor's control, or contributed to by Subcontractor.
- 6.8 All Subcontract work done and all Subcontract materials delivered to the project site shall become Contractor's property, and said material shall not be removed by Subcontractor or any other party from the project site without Contractor's written consent. After completion and final acceptance of the Subcontract work and final payment, Subcontractor shall promptly remove all remaining material, equipment and debris of Subcontractor.
7. Changes and Claims
- 7.1 Contractor may order or direct changes, additions, deletions or other revisions in the Subcontract work without invalidating the Subcontract. No changes, additions, deletions, or other revisions to the Subcontract shall be valid unless made in writing. Subcontractor mark up shall be limited to that stated in the contract documents in addition to the direct/actual on-site cost of the work, however, no profit and overhead markup on overtime shall be allowed.
- 7.2 Subcontractor, prior to the commencement of such changed or revised work, shall submit, (within 24 hours of request) to Contractor, written copies of the breakdown of cost or credit proposal, including work schedule revisions, for changes, additions, deletions or other revisions in a manner consistent with the Contract Documents. Contractor shall not be liable to Subcontractor for a greater sum, or additional time extensions, than Contractor obtains from Owner for such additional work, less reasonable overhead and profit due to Contractor, and also less professional and attorney's fees, costs, and other expenses incurred by Contractor in the collection of any such sum or time extension. Payment to Subcontractor for such work shall be conditioned upon Contractor's actual receipt of payment from the Owner and such payment by Owner to Contractor with whatever documentation or support, as Contractor may deem necessary to negotiate with Owner.

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- 7.3 In any dispute between Contractor and Owner as to amount, classification, price, time or value of Subcontract Work, or any Subcontract material or supplies, or any delay in the prosecution of the Subcontract work caused by Owner, or any other matter whatsoever pertaining to the Subcontract work, Subcontractor agrees to promptly and adequately provide Contractor with whatever documentation or support as Contractor may deem necessary to negotiate with Owner.
- 7.4 Contractor may dispute, appeal, resist, litigate or arbitrate any decision of Owner, without being deemed to have admitted any obligation or liability to Subcontractor; and if the decision shall be against Contractor, then Subcontractor shall be bound thereby. Subcontractor may, at its own expense, participate with Contractor in arbitration or legal proceedings. Subcontractor shall bear part or all costs, including attorneys' fees and legal expenses, incurred by Contractor in any such proceeding involving a claim, which, if allowed, would result in one or more payments to Subcontractor. Subcontractor's costs shall bear to the total amount sought in the proceeding. Prosecution of any such claim or proceeding shall be at the sole risk of Subcontractor, and Contractor shall have no liability for or in relation to the outcome.
8. Assignments
- 8.1 Subcontractor shall not assign or sublet the Subcontract or any part of the Subcontract Work or any payments due hereunder, without prior written consent of Contractor. Any such assignment made by Subcontractor without Contractor's prior written consent is void, and shall be grounds for termination of this Subcontract by Contractor; terminates the Subcontractor's right to any further payment and authorizes Contractor to withhold all monies due or to become due to Subcontractor.
9. Taxes
- 9.1 All applicable taxes, contributions, interest and/or penalties due under any federal, state, county or municipal statute or regulation arising from Subcontractor's Work are included in the price to be paid to Subcontractor under the Subcontract. Subcontractor shall indemnify, defend, and save Contractor and Owner harmless from all liability, loss, and expense resulting from Subcontractor's failure to satisfy such obligations. Subcontractor shall, on demand, provide proof that all taxes and other charges have been, and are being properly paid.
- 9.2 If Contractor is assessed or charged for any Subcontractor taxes, contributions, interest or penalties, Contractor shall have the right to withhold such amount from funds due or to become due under the Subcontract, and to pay directly to taxing authorities any sums otherwise due Subcontractor, but not otherwise subject to offset in accordance with Section 3 above, upon receipt of a tax levy from such taxing authority.
10. Default and Termination
- 10.1 If, in the opinion of Contractor or Owner, Subcontractor fails, at any time, to supply a sufficient number of properly skilled workmen or sufficient materials and equipment of the proper quality; or fails to adequately or timely perform the Subcontract work to the satisfaction of Contractor or Owner; or becomes insolvent or makes any filing under the Acts of Congress relating the bankruptcy; or fails, neglects and/or refuses to comply with the project plans and specification; or fails to perform the Subcontract work in a good and workmanlike manner; or causes any stoppage of the work of the other trades upon the project; or fails to correct defective work; or fails to comply in any other respect with the terms and conditions of this Subcontract, Contractor may declare a default by Subcontractor as herein provided.
- 10.2 Contractor shall provide prompt written notice of default to Subcontractor, by regular mail or as may otherwise be considered to reasonably provide notice to Subcontractor at Subcontractor's place of business described above. Such notice shall be complete upon deposit at a regular receptacle of the U.S. mail, Fax Transmission or upon actual hand delivery as provided herein.

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In the event of default by Subcontractor as provided above, Contractor may, at his option, demand Subcontractor to cure or otherwise correct the default and breach within three calendar days after written notice by Contractor. If, after three days, Subcontractor has failed to cure and correct the default, Contractor may, at his sole option, provide any such labor, materials or equipment as may be necessary to complete the Work covered by this Subcontract Agreement and thereafter deduct the cost thereof from any money then due or thereafter to become due to Subcontractor under this Agreement. Alternatively, Contractor may terminate Subcontractor's right to proceed with the Work and thereafter enter upon the premises and take control of all materials, tools, equipment, and/or appliances of Subcontractor, and may employ any other person, persons, or organizations to finish the Work and provide the labor, materials and equipment to accomplish that purpose. Following completion of the Work by the Contractor or other persons or organizations, all unused materials, tools, equipment and/ or appliances shall be returned to Subcontractor. Subcontractor shall not be entitled to rent or payment of any kind for the use of Subcontractor owned equipment or materials, nor shall Contractor be liable for any damages arising from said use unless resulting from gross negligence, or willful destruction by Contractor.

In the event Subcontractor has provided a payment or performance bond to Contractor, in accordance with Section 10 of this Agreement, and following expiration of the three days cure period, Contractor will make notice and demand by registered mail upon Subcontractor's surety to complete the Work covered by this Subcontract Agreement. In the event Subcontractor's surety fails to notify Contractor within (10) days after receipt of notice and demand by Contractor of surety's election to complete the work on behalf of Subcontractor, such failure shall be deemed a waiver by surety to exercise its rights to complete the Work. Thereafter, Contractor may at his sole option, complete the Work as otherwise provided by this Section.

- 10.3 In case of any such termination of Subcontractor's right to proceed with the Work, Subcontractor shall not be entitled to receive any further payment under this Subcontract Agreement until the Work undertaken by Contractor in his prime contract is completely finished. At that time, if the unpaid balance of the amount to be paid under this Agreement exceeds the expenses incurred by Contractor in finishing Subcontractor's Work, such excess shall be paid by Contractor to Subcontractor; but, if such expense shall exceed the unpaid balance, then Subcontractor shall promptly pay to Contractor the amount by which such expense exceeds the unpaid balance.

"Expense" as referred to in this Section shall include all direct and indirect costs incurred by Contractor for furnishing labor, materials, and equipment; to complete the Work covered by this Subcontract Agreement. "Expense" shall further include, but shall not be limited to, replacement of Subcontractor costs, liquidated damages incurred by Contractor, extended field office overhead, and home office overhead, Contractor's attorneys fees and costs, and any and all other damages sustained by Contractor by reason of Subcontractor's default.

- 10.4 In the event Contractor elects to use its own labor forces to complete Subcontractor's Work, Subcontractor and Subcontractor's surety agree to pay Contractor for such Work at the following rates: (a) Labor - At Contractor's then prevailing labor rates, plus labor burden, including, but not limited to, employment taxes, liability insurance, workmen compensation insurance, and all other benefits; (b) Contractor Owned Equipment-At the then prevailing Equipment Rental Rates as established by the Blue Book for Construction Equipment as published by Data Quest; all rental costs shall be determined by dividing the monthly rental rate by twenty-two days per month to determine a daily rental rate. Hourly rental rates shall be determined by dividing the daily rate by eight; (c) Materials, Rental Equipment-Direct Invoice Costs, including transportation, if any; (d) Replacement Subcontractor-Direct Invoice Costs paid Replacement Subcontractor; (e) Field and home office overhead; (f) Ten percent profit on all expenses indicated in a-e above.

In lieu of computing overhead, as provided for above, Contractor may, at his sole option, elect to assess a charge, on items a, b, and c above, of 15% for General Overhead expenses. In addition, Contractor may assess a charge on items a, b, and c above 10% for Profit. Contractor shall be entitled to an additional markup on any and all of such expenses. Contractor shall also be entitled to an additional markup of 5% for General Overhead and 10% for Profit on all expenses and cost incurred pursuant to item d and e above.

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- 10.5 If the cost to complete the Subcontract work is more than the unpaid balance of the Subcontract, then Subcontractor shall be liable to Contractor for the deficiency, and Contractor may hold, sell or otherwise realize upon any Subcontractor materials or equipment, or take other steps to collect the deficiency, including making a claim against Subcontractor's surety.
- 10.6 Whether Contractor exercises one or more of the above options or rights, nothing contained herein shall release Subcontractor within the specified time. Subcontractor agrees in the event of default that it will immediately assign and turn over to Contractor all sub-contracts, material contracts, or orders, bills of lading for material en route, and any other necessary data or information that would minimize the cost of completion of the Subcontract work.

11. Termination for Convenience

- 11.1 Right to Terminate for Convenience. The Contractor shall have the right to terminate for convenience, at any time, and with or without cause, Subcontractor's performance of all or part of the Subcontract or Subcontract Work, as defined in paragraph 2.1.
- 11.2 Notice to Subcontractor. The Contractor shall provide Subcontractor with written notice of the termination two calendar days in advance of the effective date of the termination. The two-day period shall begin to run upon receipt of the termination for convenience notice by the Subcontractor.
- 11.3 Subcontractor's Obligations. Upon receipt of the written notice of termination, the Subcontractor shall:
- A. Stop all work or its performance of all the Subcontractor or Subcontract Work that has been terminated, or stop work on the part of the Subcontract Work that has been terminated if its performance of only part of the Subcontract Work has been terminated.
 - B. Enter into no further sub-subcontracts or place any orders for supplies, materials, or facilities, except as necessary to complete any portion of the Subcontract Work not terminated for convenience.
 - C. Terminate all sub-subcontracts or orders to the extent related to the terminated Subcontract Work.
 - D. As directed by the Contractor, transfer title and deliver to the Contractor any fabricated or unfabricated parts, work in progress, completed work, supplies, and other materials produced or acquired for the Subcontractor or Subcontract Work terminated and the completed or partially completed plans, drawings, information, and other property that, if the Subcontract had been completed, the Subcontractor would be required to furnish to the Contractor.
 - E. Complete non-terminated portions of the Subcontractor Work if the Subcontractor's performance of only a part of the Subcontract Work has been terminated.
 - F. Use its best efforts to sell, as directed by the Contractor, any materials of the types referred to in paragraph (D) above; provided, however, that the Subcontractor is not required to extend credit to any purchaser of this material and may acquire the material under the conditions prescribed by, and at prices approved by, the Contractor. The proceeds from the sale of such material shall be applied to reduce any payment due from the Contractor under this Subcontract, and credited to the price or cost of the Subcontract Work, or paid in any other manner directed by the Contractor.
 - G. Submit with 60 days of the effective date of termination, to the Contractor, a written termination claim, along with all documentation required to support the claim.

Subcontractor OR

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H. Take any other action toward termination as directed by the General Contractor.

11.4 Effect of Owner's Termination of Contractor: If there has been a termination of the Contractor's contract with the Owner, the Subcontractor shall be paid the amount due from the Owner to the Contractor for the Subcontractor's completed work, as provided in the Contract Documents, after payment by the Owner to the Contractor.

11.5 Compensation: If the Contractor's contract has not been terminated, the Contractor shall pay the Subcontractor as follows:

- A. The direct cost of the work performed by Subcontractor prior to termination.
- B. Overhead, general, and administrative expenses (including those for any sub-subcontracts) in an amount equal to 5% percent of direct costs.
- C. 5% percent profit of the total of the amounts allowed in paragraphs (A) and (B) above. If, however, it appears that the Subcontractor would have sustained a loss on the entire Subcontract had it been completed, no profit shall be compensated by the Contractor, and the amounts paid for the termination shall not be compensated for.

11.6 Items Not Compensated: The Subcontractor shall not be compensated for.

- A. Any accounting, legal, clerical, or other expenses incurred by the Subcontractor in the preparation of the Subcontractor's termination claim.
- B. Unabsorbed overhead and anticipated lost profits.

11.7 Permitted Deductions: The Contractor shall be entitled to deduct from any payment due the Subcontractor (A) any advance payment it has made to the Subcontractor for work not yet performed under the terms of the Subcontract and (B) the amount of any claim that the Contractor has against the Subcontractor.

11.8 Consideration: If no work has been performed by the Subcontractor at the time of termination, Subcontractor shall be paid the sum of \$100.00 for its undertaking an obligation to perform.

11.9 Settlement and Release of Any and All Claims: The settlement of termination costs pursuant to Paragraph 9.5 of this Clause shall constitute a settlement and release of any and all claims, known and unknown by the Subcontractor, arising prior to termination.

12 Bonds

12.1 Should the Contractor or project specifications require it, the Subcontractor shall execute a Labor and Material Bond and Faithful Performance Bond and Guaranty Bond in an amount equal to 100% of the Subcontract Price in Section 3. Said bonds shall be executed by a corporate surety acceptable to and entitles to the same extent as may be required of Contractor pursuant to the Prime Contract. The cost of the bonds shall be included in the Subcontract amount. The terms of this Subcontract Agreement are incorporated by reference into the bonds required by this section, and the terms, conditions, and remedies of Contractor, shall prevail over any similar terms contained in said bond. By issuing a bond to Subcontractor pursuant to this Agreement, the Subcontractor's surety specifically agrees to be bound to Contractor to the same extent and in the same amount as Subcontractor.

13 Indemnity and Insurance

Subcontractor 

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13.1 INSURANCE REQUIREMENTS – Unless the Contract Documents require otherwise, Subcontractor agrees to procure and maintain, at his sole cost and expense, the following insurance coverage,

1. **Worker's Compensation:** Coverage A. Statutory policy form; Coverage B. Employer's liability; Bodily injury by accident - \$1,000,000 each accident; Bodily injury by disease- \$1,000,000 each employee. Coverage shall be maintained in accordance with NRS 616 and 617.
2. **Commercial Auto Coverage:** Auto liability limits of not less than \$1,000,000 each accident, Aggregate Limit - \$2,000,000, combined bodily injury and property damage liability insurance including, but not limited to, owned autos, hired or non-owned autos.
3. **Comprehensive General Liability or Commercial General Liability, "Occurrence Form" only. "Claims Made" is not acceptable. The limits of liability shall not be less than:**
 - a) Comprehensive General Liability: \$1,000,000 combined single limit bodily/property damage per occurrence or,
 - b) Commercial General Liability: The limits of liability shall not be less than: Each Occurrence limit - \$1,000,000, Aggregate Limit - \$2,000,000; Personal Injury limit - \$1,000,000; Products Completed Operations Aggregate Limit - \$5,000,000; General Aggregate Limit (other than products-completed operations).
4. **Excess Liability:** Umbrella Form or Follow Form Excess where necessary to meet required minimum amounts of coverage.
5. **Any deductible or self-insured retention must be declared on the Certificate and is subject to prior approval.**

Liability Policy forms must include: a) Premises and operation with no X, C or U exclusions; b) Products and completed operations coverage (Subcontractor agrees to maintain this coverage for a minimum of 1 year following completion of his work); c) Full blanket contractual coverage; d) Broad form property damage including completed operations or its equivalent; e) An endorsement naming APCO Construction (its officers, employees and agents) and any other required interest as additional insured(s); f) An endorsement stating: "Such coverage as is afforded by this policy for the benefit of the additional insured(s) shall be noncontributing with the coverage provided under this policy."

6. **Other Requirements:** (a) All policies must contain an endorsement affording an unqualified thirty (30) days notice of cancellation to the additional insured(s) in the event of cancellation or reduction in coverage; (b) All policies must be written by insurance companies whose rating in the most recent Best's rating guide, is not less than A:VII Rating must be shown on Certificate under "Companies Affording Coverage"; (c) Certificates of insurance with the required endorsement evidencing the coverage must be delivered to APCO Construction prior to commencement of any work under this Contract; (see attached samples) (d) If the Subcontractor fails to secure and maintain the required insurance, APCO Construction shall have the right (without obligation to do so, however) to secure same in the name and for the account of the Subcontractor in which event the Subcontractor shall pay the costs thereof and furnish upon demand all information that may be required in connection therewith. (e) Liability insurance policies containing warranties must be reviewed for prior approval and acceptance by Contractor/Owner. (f) The Subcontractor's insurance shall be primary with respects to APCO Construction, its officers, employees and volunteers.

13.2 INDEMNIFICATION

Subcontractor 

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- a) **General Indemnity:** All work covered by this agreement that is performed at the project site, or performed in preparing or delivering materials or equipment to the project site, or in providing services for the Project, shall be at the sole risk of the Subcontractor. Subcontractor, to the fullest extent permitted by law, with respect to all such work which is covered by or incidental to this agreement, shall defend all claims through legal counsel acceptable to Contractor, and indemnify and hold Contractor, its insurance carriers and bonding companies, Owner and any other interested party designated by Contractor, or their agents, employees or representatives (collectively referred to as "Indemnitees") harmless from and against any claim, liability, loss, damage, cost, expense, including attorney's fees, awards, fines or judgments arising by reason of the death or bodily injury to persons, injury or damage to tangible property, including the loss of use therefrom, whether or not it is caused in part by an Indemnitee; provided, however, that the Subcontractor shall not be obligated under this agreement to indemnify the Indemnitees with respect to damages which are ultimately determined to be due the sole negligence or willful misconduct of the Indemnitees.
- b) **Indemnity Not Limited:** In any and all claims against the Indemnitees by any employee of the Subcontractor, or lower tier subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under any Workers' or Workmen Compensation Acts, disability benefit acts or other employee benefit acts. Said indemnity is intended to apply during the period of this Agreement and shall survive the expiration or termination of the Agreement until such time as action on account of any matter covered by such indemnity is barred by the applicable Statute of Limitations.

14. **Warranty and Guarantee**

- 14.1 Subcontractor agrees to promptly repair, rebuild, replace or make good, without cost to Contractor or Owner, any defects due to faulty workmanship and/or materials which may appear within the guarantee or warranty period established in the Contract Documents. If no such period is stipulated in the contract Documents, then Subcontractor's guarantee shall be for a period of one year from the date Certificate of Occupancy is obtained for the project. Subcontractor shall require similar guarantees from all vendors and lower tier subcontractors.

15. **Patents**

- 15.1 Subcontractor agrees to pay all applicable patent royalties and license fees and to defend all suits or claims made for infringement of any patent rights involved in the Subcontract work.

16. **Compliance with Regulations, Applicable Law and Safety**

- 16.1 All Work, labor, services and materials to be furnished by Subcontractor shall strictly comply with all applicable federal, state, and local laws, rules, regulations, statutes, ordinances, building codes, and directives now in force or hereafter in effect as may be required by the Prime Contract. Subcontractor shall satisfy and comply with the foregoing as a part of the Subcontract without any additional compensation.
- 16.2 Subcontractor agrees that the prevention of accidents to workmen engaged in the work under the Subcontract is solely its responsibility. If requested, Subcontractor shall submit a safety plan for review by Contractor. Contractor's review of any safety plan shall not be deemed to release Subcontractor, or in any way diminish its indemnity or other liability as assumed under the Subcontract, nor shall it constitute an assumption of liability by Contractor. (See Section 5.8 for additional requirements)

Subcontractor UR

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APCO 0012

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- 16.3 When so ordered, Subcontractor shall stop any part of the Work that the Contractor or Owner deems unsafe until corrective safety measures, satisfactory to Contractor and or Owner, have been taken. Should Subcontractor neglect to adopt such corrective measures, Contractor may do so and deduct the cost from payments due or to become due to Subcontractor. Upon request, Subcontractor shall timely submit copies of all accident or injury reports to Contractor.
- 16.4 Subcontractor agrees to cooperate with the Contractor in efforts to prevent injuries to workmen employed by either party in carrying out operations covered by this agreement, and to adopt and place in effect OSHA requirements and such practical suggestions as may be offered by the Contractor and/or the Owner to promote safety and safe working conditions. Should the Subcontractor fail to fulfill its obligations in relation to safety matters on the job site, at the option of the Contractor, this Agreement, upon ten (10) days written notice to Subcontractor, may be cancelled, and the Subcontractor required to immediately remove his equipment and employees from the project.
17. Damage to Work
- 17.1 All loss or damage to Subcontractors' work resulting from any cause whatsoever shall be borne and sustained by Subcontractor and shall be solely at its risk until final acceptance by Contractor, Owner, or Owner's Representative. Subcontractor shall at its sole expense promptly repair or replace damage to the work of others, or to any part of the project, resulting from Subcontractor's activities.
18. Inspection and Approvals
- 18.1 Contractor and Owner at all times shall have the right to inspect Subcontractor's materials, workmanship and equipment. Subcontractor shall provide facilities necessary to effect such inspection, whether at the place of manufacture, the project site, or any intermediate point. This point of inspection may be exercised at any time during performance of the Subcontract Work.
- 18.2 Any Subcontract work or material furnished that fails to meet the requirements or specifications of the Contract Documents, or the Subcontract, shall be promptly removed and replaced by Subcontractor at its own cost and expense. If, in the opinion of Contractor or Owner, it would not be economical or expedient to correct or remedy all or any part of the rejected Subcontract work or materials, then Contractor, at its option may deduct from payments due or to become due to Subcontractor either: (a) such amount as in Contractor's sole judgment represents the difference between the fair value of the Subcontract work and materials rejected and the value if same had been performed in full compliance with the Contract documents; or (b) such reductions in price that are provided for or determined for this purpose under the Contract Documents.
- 18.3 The Subcontractor shall keep on site: up to date "as-builts" and Daily Reports, and update/maintain them daily and require its subcontractors and suppliers to keep and maintain all books, papers, records, files, accounts, reports, bid documents with backup data, and all other materials relating to the Contract Documents and Project.
- 18.4 All of the material set forth in paragraph 18.3 shall be made available to the Owner and to Contractor for auditing, inspection and copying and shall be produced, upon request, at either the Owner's offices or such other place as Contractor may specify. Said request for information shall be limited to instances when specifically required to comply with at request for information by the Owner, and should not be construed as a general right by Contractor to request proprietary or privileged information of Subcontractor.

19. Arbitration - Contractor / Subcontractor

- ~~19.1~~ Contractor shall have the option to, and Subcontractor shall be required to resolve all claims, disputes and matters in question arising out of, or relating to the Subcontract, or breach thereof, except for claims which have been waived by the making or acceptance of final payment, by submission to arbitration in the time period and in accordance with the Contract Documents.
- ~~19.2~~ In accordance with Paragraph 17.1, Subcontractor hereby waive its right to otherwise litigate any and all such disputes, claims and matters in question in any court or governmental tribunal in any jurisdiction. If Subcontractor submits any matter to arbitration hereunder, at its sole option, Contractor may refuse to arbitrate any such disputes, claims, and matters in question. In that event, and in only that event, Subcontractor may litigate the matters subject to its demand for arbitration.
- 19.3 All arbitration and other legal proceedings instituted pursuant to this Section shall be conducted in the same County the work was performed, or at such other venue as Contractor and Subcontractor shall agree to in writing.
- ~~19.4~~ The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.
- 19.5 Unless otherwise agreed in writing, the Subcontractor shall carry on the Subcontract work and maintain the schedule of work pending arbitration or litigation, and the Contractor shall continue to make payments in accordance with the Subcontract.
- 19.6 To the extent not prohibited by their contracts with others, the claims and disputes of Owner, Contractor, Subcontractor and other Subcontractors involving a common question of fact or law shall be heard by the same arbitrator(s) in a single proceeding.
- ~~19.7~~ This Agreement to arbitrate shall not apply to any claim of contribution or indemnity asserted by one party to the Subcontract against the other party and arising out of any action brought in a state or federal court, or in arbitration by a person who is under no obligation to arbitrate the subject matter of such action with either of the parties hereto; or does not consent to such arbitration.
- ~~19.8~~ In any dispute arising over the application of paragraph 19.7, all questions regarding the arbitration requirements of this section shall be decided by the appropriate court and not by arbitration.

20. Miscellaneous

- 20.1 Contractor's waiver of any of the provisions of the Subcontract, or Contractor's failure to exercise any options or legal remedies provided therein, shall not be construed as a general waiver of its right thereafter to require such compliance or to exercise such option or remedy.
- 20.2 The Subcontract, including all Contract Documents as provided in Section One, comprises the entire Agreement between the parties relating to the Subcontract Work and no other agreements, representations, terms, provisions or understandings concerning the Subcontract Work have been made. All modifications or amendments to the Subcontract must be in writing.
- 20.3 To the best knowledge and belief of the parties, the Subcontract contains no provision that is contrary to Federal or State law, ruling or regulation. However, if any provision of this Subcontract shall conflict with any such law, ruling or regulation, then such provision shall continue in effect to the extent permissible. The illegality of any provisions, or parts thereof, shall not affect the enforceability of any other provisions of this Subcontract.
- 20.4 The Subcontract shall be construed and interpreted according to the laws of the State of Nevada.

Subcontractor 

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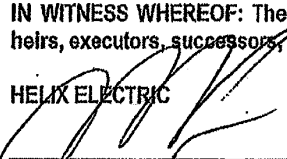
APCO 0014

JA101

- 20.5 In the event either party employs an attorney to institute a lawsuit or to demand arbitration for any cause arising out of the Subcontract Work or the Subcontract, or any of the Contract Documents, the prevailing party shall be entitled to all costs, attorney's fees and any other reasonable expenses incurred therein.
- 20.6 All sections and headings are descriptive only and are not controlling.
- 20.7 Contractor's rights and remedies under the Subcontract are not exclusive and Contractor shall have all other remedies available at law or in equity to enforce the Subcontract.

IN WITNESS WHEREOF: The parties hereto have executed this Agreement for themselves, their heirs, executors, successors, administrators, and assignees on the day and year first above written.

HELIX ELECTRIC



Victor Fuchs, President
NAME / TITLE

DATED: APR 04 2012

APCO CONSTRUCTION



Joe Pelan - Contract Manager
NAME / TITLE

DATED: 4/19/12

Subcontractor 

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APCO 0015

JA102

EXHIBIT 'A'
Subcontractor Scope of Work
APCO Contract No. 193-6

This Agreement includes the supply of all labor, materials, tools, equipment, hauling, forfeit, supervision, management, permits and taxes necessary to complete all of the scope work listed below (inclusive of but not limited to North Las Vegas Issued Bid Plans and Specifications dated February, 2010 including work reasonably anticipated to complete the below listed scope of work for the project including Addendums Numbered 1 & 2. Subcontractor acknowledges that he has performed his own take-off, site visit and therefore, any items necessary to complete the work depicted in accordance with the Contract Documents, shall be included in this Agreement. This Subcontractor also acknowledges that all of the costs related to the successful completion of a complete system including any unforeseen or unseen items, or as described herein, is included in the costs reflected below. No Additional Work Authorization (AWA) or Change Orders will be issued to Subcontractor unless the General Contractor or Owner reviews the scope of work shown on the Contract Documents. The scope of work, as defined by the contract documents, will be performed in National Industry Standards under the observation of the Special Inspection Agency, SIA, as provided by the Owner. The SIA, Owner, Owner Representative, Building Department and Quality Assurance Agency (Inspector, QAA) will be present on the job site during the installation of the scope of work listed below. The subcontractor will comply and cooperate with the Owner Representative and its agents, and the QAA as they perform quality assurance inspections as required by the Building & Safety Codes and Industry Standards.

The Scope of Work shall specifically include but not be limited to the following list of bid items:

ITEM #	DESCRIPTION	UNIT	QTY	PRICE	TOTAL
--------	-------------	------	-----	-------	-------

To furnish and install complete Electrical Package in accordance and with strict conformance with drawings, specifications and Addendums (1&2) at the time of Bid and throughout the duration of the Project including but not limited to:

Complete Set of Plans (dated 4/2011), Specifications (dated 10/2011) and Alternates 2-6

COMPLETE ELECTRICAL PACKAGE: \$2,356,520.00
(Excluding Trenching & Pole Bases)
BONDING @ (1%): \$23,565.20

The Contract total is (\$2,380,085.20) Two Million Three Hundred Eighty Thousand Eighty Five Dollars and Twenty Cents.

Our understanding of the qualifications / qualifications associated with your bid is as follows: Your proposal is hereby amended to reflect the terms and conditions of this subcontract. APCO Construction may at its option exercise its right to choose any or all Bid alternate option items of work as shown on your proposal at the stated alternate price during the course of construction. Schedule of Values is for payment purposes and does not reflect entire scope of work.

HELIK ELECTRIC

Victor Fuchs, President

NAME / TITLE

DATED: APR 04 2012

APCO CONSTRUCTION

Joe Pelan - Contract Manager

NAME / TITLE

DATED: 4/19/12

**** Helix Exhibit - Attached ****

Subcontractor

UR

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APCO 0016

SPECIAL CONDITIONS

In addition to the conditions outlined in the Subcontract Agreement, the following Special Conditions shall form a part of the Subcontract Agreement.

- (a) The Subcontractor shall be responsible for clean up of employees break & lunch trash on the job site.
- (b) The Contractor will provide an adequate temporary construction area for staging. Contractor shall not supply subcontractor with forklift or security of materials or power, telephone, water or sewer at subcontractor's project trailer.
- (c) The Contractor will provide reasonable access to all working areas.
- (d) The Subcontractor shall be responsible for the Daily rough cleaning of his work area and removing its debris from the job site and all work shall be left in a clean condition following his activities. The APCO project manager/superintendent shall be the sole judge to determine the cleanliness.
- (e) The Contractor will provide one (1) set of full size conformed construction documents for the Subcontractor's use. Additional sets may be purchased by the Subcontractor from a source designated by the Contractor. Plan change drawings will be supplied in the same quantities.
- (f) Subcontractor must submit an accurate "Daily Work Report" (see attached Appendix 'C') prior to 10:00 a.m. the following day for all man power and work performed on the job site the previous day. Subcontractor monthly pay requests will not be accepted for processing unless all "Daily Work Reports" for the pay period have been submitted to the Contractor. Certified Payroll Reports are due to APCO Construction no later than 5 calendar days after the end of the month.
- (g) Subcontractor is required to submit a Pay Request representing all work performed on the job site on a monthly basis. The Pay Request must be submitted no later than the 25th of the month for all work performed during that month. Subcontractor shall use a format similar to AIA G702 & G703, NO EXCEPTIONS.
- (h) The Subcontractor is required to attend weekly site progress meetings prepared to discuss its progress or lack thereof and to participate in the preparation of Monthly updates of the Project schedule until scope of work is complete.
- (i) The Contractor cannot guarantee continuity of progress of work; Subcontractor shall employ as many mobilizations as required to complete the work as required by the project schedule.
- (j) Subcontractor shall at all times protect stored equipment, materials from: damage from weather, sun and is responsible to clean all mud, snow, etc from its materials prior to setting into its final position. Materials shall be stored off the ground and not in contact with the ground, and not in traffic areas subject to damage by vehicles or other construction activities.
- (k) APCO Construction cannot guarantee price stability and therefore cannot grant any additional monies to subcontractor due to escalation of price between bid/quote times and when materials/labor/shipping is actually purchased and/or incorporated into the project.
- (l) The Subcontractor shall provide drinking water for its own employees.
- (m) All applicable taxes, freight, shipping and land cargo insurance, etc. inclusive of unloading and handling related to the Subcontractor's scope of work is a part of the contract per the State of Nevada Revised Statutes.
- (n) The Subcontractor shall execute a Labor and Material Bond and Faithful Performance Bond and Guaranty Bond in an amount equal to 100% of the Subcontract Price.
- (o) NO Profit and Overhead markup on overtime shall be allowed unless contracted by Owner.

Subcontractor URE

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NOTICE TO ALL SUBCONTRACTORS

We have been requested by the Internal Revenue Service to comply with Regulation 1.604-1(d), which requires that we issue a 1099 Form on the compensation paid to you by APCO Construction.

Please indicate whether you are a Corporation or not and furnish your Social Security Number if you are not a Corporation or your Federal Tax ID Number, if you are a Corporation.

Corporation: Yes ☒ or No ☐

Social Security No.: _____

Federal Tax ID No.: 36-4486672

By: _____
Signature Victor Fuchs

Date: APR 04 2012

Date

President
Title

Subcontractor UR

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APCO 0018

JA105



OCT. 26. 2011 11:49AM

NO. 5119 P. 1



Helix Electric
CONSTRUCTORS • ENGINEERS

Bld Proposal

October 26, 2011

VIA FAX (702) 734-0396

APCO
Attn: Max Holm
3432 N. 6th Street
North Las Vegas, NV 89032
(702) 734-0196

PROJECT: Craig Ranch Regional Park Phase II

Helix Electric is providing a proposal for the electrical section for the Phase II park improvements at Craig Ranch Regional Park per drawings by Cardno WRG dated 8/23/11 and 10/9/11. Electrical drawings by TJK and MSA dated 10/6/11 were used in preparation of this proposal. NV Energy and Century Link utility drawings were received. Addenda 1 and 2 were received. Specifications dated April 2011 were received. All information contained in the bid documents is subject to our proposal qualifications.

Inclusions:

- Div0-1 General requirements as pertains to this craft only
- 024116- structure demolition as pertains to this craft only
- 024216- selective electrical demolition
- 079008- joint sealers as pertains to this craft only
- 083100- access doors and panels as pertains to this craft only
- 131500- water feature construction as pertains to this craft only
- 225200- water feature mechanical system as pertains to this craft only
- 260001- basic electrical requirements
- 260603- equip wiring connects
- 260519- low voltage electrical power conductors and cables
- 260526- grounding and bonding
- 260526- hangers and supports
- 260533- raceways and boxes
- 260553- identification
- 260573- overcurrent protection device coordination study
- 262200- low voltage transformers
- 262413- switchboards
- 262416- panelboards
- 262716- electrical cabinets and enclosures
- 262726- wiring devices
- 262613- fuses
- 262618- enclosed switches
- 262616- enclosed contactors
- 266200- sports lighting
- 266600- exterior lighting
- 270533- conduit and back boxes for comm. Systems
- 271600- data/phone premise wiring system
- 328210- submersible lake recirculation pump electrical connections
- 328213- pump intake systems electrical connections
- 328400- irrigation system electrical connections
- 328426- lake recirculating water feature and transfer electrical connections
- 334713- lake/stream waterfall electrical connections

(CONTINUED)

3078 E. Sunset Rd., Suite 9 • Las Vegas, NV 89120 • Tel: (702) 732-1188 Fax: (702) 732-4386
Nevada License #0053810 • #0073392 • #0073465 • Arizona License #ROC232191 IC-11 • Idaho License #002984 • Montana License #2412
New Mexico License #367103 • South Dakota License #EC 2703 • Utah License #2314771-SS01 • Wyoming License #C-24040

APCO 0019

JA106

Helix Electric
Craig Ranch Park
October 26, 2011
Page 2

Base Bid:	\$ 1,830,000
Light Fixtures	ADD \$ 1,675,000
Alternate 1:	\$4,000,886
Alternate 2:	\$ 100,000
Alternate 3:	\$ 300,000
Alternate 4:	\$ 600,000
Alternate 5:	\$ N/A
Alternate 6:	\$ 100,000

**Alternates include light fixtures

Proposal Qualifications:

1. Wiring methods are typical for this type of construction and meet code requirements. This includes the use of MC cable, aluminum feeder conductors based on NEC sized conduit and conductors, die cast set screw fittings, under-slab PVC conduits, embedded PVC conduits in above grade decks, PVC through-slab transitions, etc.
2. For any fixtures that are not specified, those fixtures are as selected by Helix Electric and subject to approval.
3. Exit and emergency lights are provided as shown on the electrical drawings. No provision is made for additional.
4. If any light fixtures, equipment, and materials are furnished by others they shall be provided to the jobsite complete with lamps, accessories, special mounting hardware, etc. All items shall be shipped fully assembled.
5. Any price breakouts are provided for accounting purposes only. This proposal is based on all parts performed under one continuous schedule.
6. Wages are based on prevailing rates.
7. This proposal is based on a 12 month schedule.
8. This proposal is based on work performed during regular business hours.
9. This proposal is valid for 60 days. Beyond that timeframe our price may be subject to cost escalation. Materials are priced based on copper at \$3.40 /lb.

Exclusions:

1. Utility Company fees.
2. Formed concrete (bollards, pole bases, housekeeping pads, etc.).
3. Sacking of pole bases.
4. Crashcops.
5. Temporary power and lighting.
6. Cutting, patching, and painting of any kind.
7. Hauling of trenching spoils.
8. Import of water for backfill operation.
9. Trenching requiring equipment larger than Case 680 backhoe.
10. Trenching in caliche, rock or blasting and any de-watering required.
11. Fixture safety and support wires.
12. Conduit and wiring for HVAC controls.
13. Dumpsters for trash.
14. Light fixtures not shown on the electrical drawings.
15. Payment and performance bonds.
16. Site surveying and staking.
17. Trench plates, traffic and pedestrian barriers.
18. Trenching
19. Concrete Encasement

Thank you for the opportunity to submit this proposal.

Sincerely,
HELIX ELECTRIC

Darren Vanderford
Vice President, Estimating
DV/wr

3078 E. Sunset Rd., Suite 9 • Las Vegas, NV 89120 • Tel: (702) 732-1188 Fax: (702) 732-4386
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Nevada State Contractors Board

2310 Corporate Circle, Suite 200 Henderson NV 89024 (702) 366-1100 Fax: (702) 366-1100 Investigation: (702) 366-1110
3670 Gateway Circle, Suite 100 Reno NV 89521 (775) 688-1141 Fax: (775) 688-1271 Investigation: (775) 688-1150
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Press "New Search" to select a different search.

License Number:
0053810

Current Date: 12/20/2011 04:30 PM (mm/dd/yyyy)

Business Primary Name: HELIX ELECTRIC OF NEVADA LLC DBA License **Unlimited**
Monetary Limit:

Fictitious Business Name: HELIX ELECTRIC

Business Address: 3078 E SUNSET RD STE 9

LAS VEGAS, NV 89120

Phone Number: (702) 732-1188

Status: Active

Status Date: 03/22/2010 (mm/dd/yyyy)

Origin Date: 05/16/2002 (mm/dd/yyyy)

Expiration Date: 05/31/2012 (mm/dd/yyyy)

Business Type: Limited Liability Company

Classification(s): C-2 - ELECTRICAL CONTRACTING

Principal Name	Relation Description
FUCHS, VICTOR	Manager Qualified Individual
JOHNSON, ROBERT DEAN	Employee Qualified Individual

Bonds

Bond Type: Surety Bond

Bond Number: 10370349

Bond Agent: STEVENS, LISA D

Surety Company: TRAVELERS CASUALTY & SURETY CO OF AMERICA

Bond Amount: \$50,000.00

Effective Date: 05/01/2002 (mm/dd/yyyy)

<https://www.nvcontractorsboard.com/datamart/nvscobSearchDetails.do?anchor=e064222.0...> 12/20/2011

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JA108

Disciplinary Actions (during last 5 years)

Date: **04/28/2008** (mm/dd/yyyy)
Discipline Type: **Administrative Citation**
Citation Number: **720**
Number Of Complaints: **1** complaint is associated with this action.
Violation(s): **NRS 624.3011(1)(b) (1)Disregard or violation of building laws**
Action(s): **Fine Assessed**
Investigative Costs Assessed

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Disciplinary Actions During Last 5 Years	Previous Record	Next Record
Disciplinary Actions Older Than 5 Years	How Search Criteria	Search Results
		Reset Search

2011-12-20 4:30:14 PM



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**HELIX ELECTRIC EXHIBIT
TO THE SUBCONTRACT
BETWEEN APCO CONSTRUCTION AND
HELIX ELECTRIC OF NEVADA, LLC DBA HELIX ELECTRIC
FOR CRAIG RANCH REGIONAL PARK – PHASE II
HE JOB #161113**

The following terms will be added to or replace portions of the paragraphs in the Subcontract:

Subcontract
Agreement
Page 1 of 18

CONTRACT Amount: Delete: \$4,628,025.00 and Replace with: \$2,356,520.00

Contract
Documents
Page 2 of 18

Section 1, Paragraph 1.3: Revise as follows: add the phrase "... except to the extent a particular obligation of the Subcontractor is set forth in this Subcontract" to the end of the first sentence; add the phrase "... with respect to the Work of this Subcontract" to the end of the second sentence; and delete the third sentence.

Contract Price
and Payments
Page 3 of 18

Section 4, Paragraph 4.2: Revise to read as follows: "In Consideration of the promises, covenants and agreements of Subcontractor herein contained, and the full, faithful and prompt performance of the work in accordance with the Contract Documents, Contractor agrees to pay, and Subcontractor agrees to receive and accept as full compensation for doing all Work and furnishing all materials and equipment contemplated and embraced in this Subcontract."

Contract Price
and Payments
Page 3 of 18

Section 4, Paragraph 4.4: Delete (15), Replace with (10 Calendar Days).

Contract Price
and Payments
Page 4 of 18

Section 4, Paragraph 4.4: Add the following to the end of this section: "Per NRS Statutes."

Contract Price
and Payments
Page 4 of 18

Section 4, Paragraph 4.6: Revise as follows: Third line delete "...regardless of the source of said obligation." And replace with "...under the provisions of this Subcontract."

Prosecution of
Work
Page 5 of 18

Section 6: Add the following: "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."

Prosecution of
Work
Page 5 of 18

Section 6, Paragraph 6.1: Add the following new paragraph: "Contractor shall make available to Subcontractor in a prompt fashion, all information in its possession that affects Subcontractor's ability to meet its obligations under this Subcontract. Information that affects this Subcontract shall include, but not be limited to, information relating to such matters as delays, modifications to the Contractor's agreement with the Owner or other subcontracts that affect the work of the

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HE JOB #161113**

Subcontractor, impending strikes or work stoppages by any trade and deterioration of the Owner's ability to pay for the Work on the Project."

Prosecution of
Work
Page 5 of 18

Section 6, Paragraph 6.4 Delete in its entirety and replace with following: "6.4
Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract, and shall regularly haul such waste materials and rubbish to trash receptacles provided by Contractor in convenient locations on the Project's premises. Subcontractor shall not be held responsible for unclean conditions caused by other contractors or subcontractors and shall not be subject to any charge by Contractor for trash removal or cleanup determined on a pro rata or similar basis."

Prosecution of
Work
Page 6 of 18

Section 6, Paragraph 6.6: Revise as follows: add the words "negligent or wrongful acts of the . . ." after the words "delays caused by" in the third line of Paragraph 4.6; then add the following to the end of Paragraph 6.6: "Further, in the event Contractor seeks to assess liquidated or other delay damages against Subcontractor, such an award of liquidated damages shall be assessed against Subcontractor only to the extent caused by Subcontractor, Subcontractor's employees and agents, sub-subcontractors or their agents or employees or other persons performing portions of the work under contract with Subcontractor, or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Subcontract. Contractor shall not assess liquidated damages against Subcontractor unless and until the Contractor gives written notification of intent and basis of determination of amounts and degree of responsibility Subcontractor and all other subcontractors. Such written notification must be given within a reasonable period of time after the occurrence for which the Contractor seeks to assess liquidated damages, not to exceed ten (10) days after the alleged event causing the damage.

Changes and
Claims
Page 6 of 18

Section 7, Paragraph 7.2: Revise as follows: First line delete "24 hours" and replace with "5 days". add the words "Contractor's written" after the word "of" at the beginning of the second line in Paragraph 7.2; and delete the text of Paragraph 7.2, starting with the words "less reasonable overhead . . ." in the fifth line, through the end of the paragraph.

Changes and
Claims
Page 7 of 18

Section 7, Paragraph 7.4: Delete in its entirety.

Changes and
Claims
Page 7 of 18

Section 7, Add the following new paragraph: "Notwithstanding any other provision of this Subcontract, the parties agree that at no time shall the value of additional labor and materials put in place by Subcontractor at the written direction of Contractor exceed \$15,000.00 without a fully executed, agreed upon change order modifying the Subcontract Price."

Default and
Termination
Page 7 of 18

Section 10, Paragraph 10.4: Delete the second paragraph in its entirety.

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HE JOB #161113**

**Default and
Termination
Page 9 of 18**

Section 10, Add the following new paragraph: "Subcontractor may terminate this Subcontract or its obligations under the Contract Documents, for the same reasons and under the same circumstances and procedures with respect to the Contractor as Contractor may terminate its agreement with respect to the Owner, or for nonpayment of amounts due under this Subcontract for 90 days or longer. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, its subcontractors or their agents or employees or other persons performing portions of the Work under contract with Subcontractor, Subcontractor shall be entitled to recover from Contractor payment for work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages, providing Contractor first received payment from Owner."

**Indemnity and
Insurance
Page 11 of 18**

Section 13, Subparagraph 13.2(a): Revise as follows: delete the phrase "whether or not it is caused in part by an Indemnitee; provided, however, that the . . ." from the 11th line of subparagraph 13.2(a), and replace it with the following phrase: "but only to the extent such claims, etc. arise from the negligence or wrongful acts of Subcontractor, and . . ." delete the word "sole" after the words "due the . . ." in the last line of subparagraph 13.2(a), and add the words "or any third party" at the end of the last sentence in this subparagraph.

**Indemnity and
Insurance
Page 12 of 18**

Section 13, Add the following new paragraph: "Notwithstanding the foregoing, the indemnification obligations of the Subcontractor under this Subcontract shall not extend to the liability of the Architect, the Architect's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, authorization for extra work, designs or specifications, or (2) the giving of or failure to give directions or instructions by the Architect, the Architect's consultants, and agents and employees of any of them, provided such giving or failure to give is a proximate cause of the injury or damage."

**Damage to
Work
Page 13 of 18**

Section 17, Paragraph 17.1: Revise as follows: delete the first sentence of the paragraph (in lines 1-3); delete the words "at all times and at its sole expense . . ." from the third line; delete the words "all work, and . . ." from the fourth line; and add the following to the end of Paragraph 17.1: "Notwithstanding anything contained in this Subcontract to the contrary, once Subcontractor has received final payment for its Work in place, title to same shall pass to Owner and Subcontractor shall no longer be responsible for any damage or loss thereto so long as said damage is not caused by Subcontractor or anyone for whom Subcontractor is contractually responsible, and the Owner shall rely on the project's "all-risk" insurance policy to pay for any loss or damage to Subcontractor's work."

**Arbitration
Page 14 of 18**

Section 19, Delete Paragraph 19.1, 19.2, 19.4, 19.6, 19.7, and 19.8 and add the following new paragraph 19.1: "The parties agree that active, good faith participation in mediation is a condition precedent to the institution of any formal dispute resolution procedures. The parties shall mutually agree on the person or alternative dispute resolution agency to conduct the mediation. The initiating party shall then undertake to schedule the mediation. If the parties are unable to agree

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HE JOB #161113**

on the person or alternative dispute resolution agency to conduct the mediation, the initiating party may contact the Las Vegas, Nevada office of the American Arbitration Association to schedule the conference. The costs of the mediation and fees of the mediator, if any, shall be shared equally by the parties. If a party fails or refuses to participate in the mediation, or if on completion of such mediation the parties are unable to agree and settle the dispute, then the dispute shall be referred to resolution in accordance with the procedures set forth herein. Thus, with the exception of procedures to preserve or enforce mechanic's lien or bond rights, any party that refuses or fails to participate in the mediation, or pay its proportional share of the cost of the mediation, shall be deemed to have waived its right to recover its attorney's fees hereunder, even if said party is later determined by the court or arbitrator to be a prevailing party." Parties will be bound by the Prime Contract.

Arbitration Page 14 of 18	Section 19, Paragraph 19.3: Delete the phrase "arbitration and other" from the first line and add the following paragraph: "This Subcontract and any dispute resolution proceeding brought to enforce or interpret its provisions, shall be governed by the laws of the place where the Project is located."
Miscellaneous Page 14 of 18	Section 20, Paragraph 20.1: Revise as follows: Change the word "Contractor's" in the first line, to the words "either party's" in both places where it appears.
Miscellaneous Page 15 of 18	Section 20, Paragraph 20.7: Revise as following: add the words "and Subcontractor's. . ." after the word "Contractor's . . ." at the beginning of the paragraph, and add the words "and Subcontractor . . ." after the word "Contractor" at the end of the first line.
Exhibit A Page 16 of 18	Subcontractor Scope of work, 2nd and 3rd Lines Delete the following: "...including work reasonably anticipated..."
Exhibit A Page 16 of 18	Subcontractor Scope of Work, 5th and 6th Lines Delete the following: "...including any unforeseen or unseen items, or as described therein..."
Exhibit A Page 16 of 18	Subcontractor Scope of Work, 6th and 7th Lines Delete the following: "No additional Work Authorization (AWA's) or Change Orders's will be issued to Subcontractor unless the General Contractor or Owner revises the scope of work shown on the Contract Documents." Unless Contractor and Subcontractor agree as stated in Section 7 of this Exhibit.
Exhibit A Page 16 of 18	Subcontractor Scope of Work, COMPLETE ELECTRICAL PACKAGE: Delete "4,605,000.00" and Replace with "\$2,356,520.00"
Exhibit A Page 16 of 18	Subcontractor Scope of Work, BONDING: Delete "(.50%)" and Replace with "(1%)"

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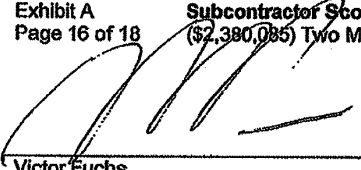


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FOR CRAIG RANCH REGIONAL PARK – PHASE II
HE JOB #161113**

Exhibit A
Page 16 of 18

**Subcontractor Scope of Work The Contract Total is, Revise to Read: "The Contract total is
(\$2,380,085) Two Million Three Hundred Eighty Thousand Eighty Five Dollars and Zero Cents."**


Victor Fuchs
President

APR 04 2012

By: _____
Title: _____
Date: _____

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EXHIBIT B



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FOR CRAIG RANCH REGIONAL PARK – PHASE II
HE JOB #161113**

The following terms will be added to or replace portions of the paragraphs in the Subcontract:

Subcontract Agreement Page 1 of 18	CONTRACT Amount: Delete: \$4,628,025.00 and Replace with: \$2,356,520.00
Contract Documents Page 2 of 18	Section 1, Paragraph 1.3: Revise as follows: add the phrase "... except to the extent a particular obligation of the Subcontractor is set forth in this Subcontract" to the end of the first sentence; add the phrase "... with respect to the Work of this Subcontract" to the end of the second sentence; and delete the third sentence.
Contract Price and Payments Page 3 of 18	Section 4, Paragraph 4.2: Revise to read as follows: "In Consideration of the promises, covenants and agreements of Subcontractor herein contained, and the full, faithful and prompt performance of the work in accordance with the Contract Documents, Contractor agrees to pay, and Subcontractor agrees to receive and accept as full compensation for doing all Work and furnishing all materials and equipment contemplated and embraced in this Subcontract."
Contract Price and Payments Page 3 of 18	Section 4, Paragraph 4.4: Delete (15), Replace with (10 Calendar Days).
Contract Price and Payments Page 4 of 18	Section 4, Paragraph 4.4: Add the following to the end of this section: "Per NRS Statutes."
Contract Price and Payments Page 4 of 18	Section 4, Paragraph 4.6: Revise as follows: Third line delete "... regardless of the source of said obligation." And replace with "... under the provisions of this Subcontract."
Prosecution of Work Page 5 of 18	Section 6: Add the following: "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."
Prosecution of Work Page 5 of 18	Section 6, Paragraph 6.1: Add the following new paragraph: "Contractor shall make available to Subcontractor in a prompt fashion, all information in its possession that affects Subcontractor's ability to meet its obligations under this Subcontract. Information that affects this Subcontract shall include, but not be limited to, information relating to such matters as delays, modifications to the Contractor's agreement with the Owner or other subcontracts that affect the work of the

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Subcontractor, impending strikes or work stoppages by any trade and deterioration of the Owner's ability to pay for the Work on the Project."

Prosecution of
Work
Page 5 of 18

Section 6, Paragraph 6.4 Delete in its entirety and replace with following: "6.4
Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract, and shall regularly haul such waste materials and rubbish to trash receptacles provided by Contractor in convenient locations on the Project's premises. Subcontractor shall not be held responsible for unclean conditions caused by other contractors or subcontractors and shall not be subject to any charge by Contractor for trash removal or cleanup determined on a pro rata or similar basis."

Prosecution of
Work
Page 6 of 18

Section 6, Paragraph 6.6: Revise as follows: add the words "negligent or wrongful acts of the
" after the words "delays caused by" in the third line of Paragraph 6.5; then add the following to the end of Paragraph 6.6: "Further, in the event Contractor seeks to assess liquidated or other delay damages against Subcontractor, such an award of liquidated damages shall be assessed against Subcontractor only to the extent caused by Subcontractor, Subcontractor's employees and agents, sub-subcontractors or their agents or employees or other persons performing portions of the work under contract with Subcontractor, or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Subcontract. Contractor shall not assess liquidated damages against Subcontractor unless and until the Contractor gives written notification of intent and basis of determination of amounts and degree of responsibility Subcontractor and all other subcontractors. Such written notification must be given within a reasonable period of time after the occurrence for which the Contractor seeks to assess liquidated damages, not to exceed ten (10) days after the alleged event causing the damage.

Changes and
Claims
Page 6 of 18

Section 7, Paragraph 7.2: Revise as follows: First line delete "24 hours" and replace with "5 days"; add the words "Contractor's written" after the word "of" at the beginning of the second line in Paragraph 7.2; and delete the text of Paragraph 7.2, starting with the words "less reasonable overhead ..." in the fifth line, through the end of the paragraph.

Changes and
Claims
Page 7 of 18

Section 7, Paragraph 7.4: Delete in its entirety.

Changes and
Claims
Page 7 of 18

Section 7, Add the following new paragraph: "Notwithstanding any other provision of this Subcontract, the parties agree that at no time shall the value of additional labor and materials put in place by Subcontractor at the written direction of Contractor exceed \$15,000.00 without a fully executed, agreed upon change order modifying the Subcontract Price."

Default and
Termination
Page 7 of 18

Section 10, Paragraph 10.4: Delete the second paragraph in its entirety.

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Default and
Termination
Page 9 of 18

Section 10. Add the following new paragraph: "Subcontractor may terminate this Subcontract or its obligations under the Contract Documents, for the same reasons and under the same circumstances and procedures with respect to the Contractor as Contractor may terminate its agreement with respect to the Owner, or for nonpayment of amounts due under this Subcontract for 90 days or longer. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, its subcontractors or their agents or employees or other persons performing portions of the Work under contract with Subcontractor, Subcontractor shall be entitled to recover from Contractor payment for work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages, providing Contractor first received payment from Owner."

Indemnity and
Insurance
Page 11 of 18

Section 13. Subparagraph 13.2(a): Revise as follows: delete the phrase "whether or not it is caused in part by an Indemnitee; provided, however, that the . . ." from the 11th line of subparagraph 13.2(a), and replace it with the following phrase: "but only to the extent such claims, etc. arise from the negligence or wrongful acts of Subcontractor, and . . ." delete the word "sole" after the words "due the . . ." in the last line of subparagraph 13.2(a), and add the words "or any third party" at the end of the last sentence in this subparagraph.

Indemnity and
Insurance
Page 12 of 18

Section 13. Add the following new paragraph: "Notwithstanding the foregoing, the indemnification obligations of the Subcontractor under this Subcontract shall not extend to the liability of the Architect, the Architect's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, authorization for extra work, designs or specifications, or (2) the giving of or failure to give directions or instructions by the Architect, the Architect's consultants, and agents and employees of any of them, provided such giving or failure to give is a proximate cause of the injury or damage."

Damage to
Work
Page 13 of 18

Section 17. Paragraph 17.1: Revise as follows: delete the first sentence of the paragraph (in lines 1-3); delete the words "at all times and at its sole expense . . ." from the third line; delete the words "all work, and . . ." from the fourth line; and add the following to the end of Paragraph 17.1: "Notwithstanding anything contained in this Subcontract to the contrary, once Subcontractor has received final payment for its Work in place, title to same shall pass to Owner and Subcontractor shall no longer be responsible for any damage or loss thereto so long as said damage is not caused by Subcontractor or anyone for whom Subcontractor is contractually responsible, and the Owner shall rely on the project's "all-risk" insurance policy to pay for any loss or damage to Subcontractor's work."

Arbitration
Page 14 of 18

Section 19. Delete Paragraph 19.1, 19.2, 19.4, 19.6, 19.7, and 19.8 and add the following new paragraph 19.1: "The parties agree that active, good faith participation in mediation is a condition precedent to the institution of any formal dispute resolution procedures. The parties shall mutually agree on the person or alternative dispute resolution agency to conduct the mediation. The initiating party shall then undertake to schedule the mediation. If the parties are unable to agree,

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on the person or alternative dispute resolution agency to conduct the mediation, the initiating party may contact the Las Vegas, Nevada office of the American Arbitration Association to schedule the conference. The costs of the mediation and fees of the mediator, if any, shall be shared equally by the parties. If a party fails or refuses to participate in the mediation, or if on completion of such mediation the parties are unable to agree and settle the dispute, then the dispute shall be referred to resolution in accordance with the procedures set forth herein. Thus, with the exception of procedures to preserve or enforce mechanic's lien or bond rights, any party that refuses or fails to participate in the mediation, or pay its proportional share of the cost of the mediation, shall be deemed to have waived its right to recover its attorney's fees hereunder, even if said party is later determined by the court or arbitrator to be a prevailing party. Parties will be bound by the Prime Contract.

Arbitration Page 14 of 18	Section 19, Paragraph 19.3: Delete the phrase "arbitration and other" from the first line and add the following paragraph: "This Subcontract and any dispute resolution proceeding brought to enforce or interpret its provisions, shall be governed by the laws of the place where the Project is located."
Miscellaneous Page 14 of 18	Section 20, Paragraph 20.1: Revise as follows: Change the word "Contractor's" in the first line, to the words "either party's" in both places where it appears.
Miscellaneous Page 15 of 18	Section 20, Paragraph 20.7: Revise as following: add the words "and Subcontractor's" after the word "Contractor's" at the beginning of the paragraph, and add the words "and Subcontractor" after the word "Contractor" at the end of the first line.
Exhibit A Page 16 of 18	Subcontractor Scope of work, 2nd and 3rd Lines Delete the following: "...including work reasonably anticipated..."
Exhibit A Page 16 of 18	Subcontractor Scope of Work, 5th and 6th Lines Delete the following: "...including any unforeseen or unseen items, or as described therein..."
Exhibit A Page 16 of 18	Subcontractor Scope of Work, 6th and 7th Lines Delete the following: "No additional Work Authorization (AWA's) or Change Orders will be issued to Subcontractor unless the General Contractor or Owner revises the scope of work shown on the Contract Documents." Unless Contractor and Subcontractor agree as stated in Section 7 of this Exhibit.
Exhibit A Page 16 of 18	Subcontractor Scope of Work, COMPLETE ELECTRICAL PACKAGE: Delete "\$4,605,000.00" and Replace with "\$2,356,520.00"
Exhibit A Page 16 of 18	Subcontractor Scope of Work, BONDING: Delete "(50%)" and Replace with "(1%)"

3078 E. Sunset Rd., Suite 9 • Las Vegas, NV 89120 • Tel: (702) 732-1188 Fax: (702) 732-4386
Nevada License #0065810 • #0073392 • #0073455 • Arizona License #ROC232191 R-11 • Idaho License #005985 • Montana License #2412
New Mexico License #987103 • North Dakota License #41860 • South Dakota License #EC2703 • Utah License #7314771-5501 S200 • Wyoming License # C-24040

APCO 0031

JA119



Helix Electric

CONSTRUCTORS • ENGINEERS

**HELIX ELECTRIC EXHIBIT
TO THE SUBCONTRACT
BETWEEN APCO CONSTRUCTION AND
HELIX ELECTRIC OF NEVADA, LLC DBA HELIX ELECTRIC
FOR CRAIG RANCH REGIONAL PARK - PHASE II
HE JOB #161113**

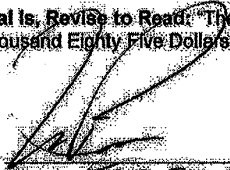
Exhibit A
Page 16 of 18

Subcontractor Scope of Work The Contract Total is, Revise to Read: "The Contract total is (\$2,380,085) Two Million Three Hundred Eighty Thousand Eighty Five Dollars and Zero Cents."



Victor Fuchs
President

APR 04 2012



By: JOE PELAN
Title: CONTRACT MANAGER
Date: 4/19/12

3078 E. Sunset Rd., Suite 9 • Las Vegas, NV 89120 • Tel: (702) 732-1168 Fax: (702) 732-4386
Nevada License #0053810 • #0073392 • #0073455 • Arizona License #ROC232101 K-11 • Idaho License #995988 • Montana License #2412
New Mexico License #307103 • North Dakota License #41680 • South Dakota License #EC2703 • Utah License #7314774-5501 S200 • Wyoming License # C-24040

APCO 0032

JA120

EXHIBIT C

From: Brian Bohn
Sent: Tuesday, January 29, 2013 12:59 PM
To: Kurk Williams
Cc: Mark Yoakum; Kim Stevenson; Joe Pelan
Subject: RE: Craig Ranch Delay Notice (Helix)
Attachments: Letter 20130129 Helix Schedule Delay.pdf

Kurk,

Please see the attached letter in response to your notice.

Feel free to contact me with any questions.

Thank you,

Brian Bohn

Project Manager
APCO Construction
C: (702) 286-1798
O: (702) 538-8737
F: (702) 538-7406
bbohn@apcoconstruction.com

From: Kurk Williams [<mailto:kwilliams@helixelectric.com>]
Sent: Monday, January 28, 2013 4:40 PM
To: Brian Bohn
Cc: Mark Yoakum
Subject: Craig Ranch Delay Notice

Brian,

Please see attached schedule delay notice.

Please let me know if you have any questions.

Thanks,

Kurk Williams
Project Manager
Helix Electric
3078 E. Sunset Rd. Suite #9
Las Vegas, NV 89120
Main (702) 732-1188
Fax (702) 732-4386
Cell (702) 580-2251
kwilliams@helixelectric.com



January 29, 2013

Kurk Williams
Helix Electric
3078 E. Sunset Road, Suite 9
Las Vegas, NV 89120

Re: Craig Ranch Regional Park Phase II
Schedule Delay / Extended Overhead

Dear Kurk,

This letter is in response to your letter dated January 28th regarding Helix Electric's right to pursue any and all additional costs incurred due to schedule delays on this project. Should Helix Electric feel that additional costs are incurred, please submit to APCO Construction in a timely manner a claim including all related documentation. APCO Construction will submit Helix Electric's claim to the City of North Las Vegas for their review.

Please feel free to contact me with any questions at (702) 286-1798.

Sincerely,

A handwritten signature in black ink that reads "Brian Bohn".

Brian Bohn
Project Manager

Cc: Joe Pelan
Mark Yoakum
Kim Stevenson

EXHIBIT D

HELIX ELECTRIC
CHANGE ORDER REQUEST
#68
(\$102,400.00)

APCO Construction44 W. Mayflower
North Las Vegas, NEVADA 89030Phone: 702-734-0198
Fax: 702-734-0396**CHANGE ORDER REQUEST**

No. 00068

TITLE: HELIX ELECTRIC - EXTENDED OVERHEAD**DATE:** 8/28/2013**PROJECT:** Craig Ranch Regional Park - Phase 2**JOB:** 0193**TO:** Attn: Joemel Llamado
City of North Las Vegas
Phone: 702-633-1230**CONTRACT NO:** 1**RE: To: From: Number:**

Item	Description	Stock#	Quantity	Units	Unit Price	Tax Rate	Tax Amount	Net Amount
00001	HELIX ELECTRIC- EXTENDED OVERHEAD		32.000	WEEKS	\$3,200.00	0.00%	\$0.00	\$102,400.00

Unit Cost: \$102,400.00**Unit Tax:** \$0.00**Total:** \$102,400.00**APPROVAL:****By:** _____
Joemel Llamado**Date:** _____

Expedition 6

By: _____
Joe Pelan**Date:** 9/3/13

APCO 0035

JA126



Helix Electric
CONSTRUCTORS - ENGINEERS

MISCELLANEOUS INVOICE # 161113M-001

APCO Construction
44 W Mayflower
North Las Vegas, NV 89030
ATTN: Joe Pelan

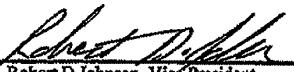
INVOICE DATE: August 27, 2013
THRU DATE:
SUBCONTRACT:

PROJECT NAME: Craig Ranch Regional Park
Phase II

DESCRIPTION: Extended Overhead

Extended Overhead - \$640/day - \$3,200/week for 32 weeks \$ 102,400.00

Total Amount Due \$ 102,400.00


Robert D Johnson, Vice President

Due and Payable within ten (10) days of receipt of invoice.

Pursuant to B&P code section 7108.5 a penalty of 2% per month of the amount owed, plus attorney's fees if required for collection, shall be assessed to this invoice for payments not received within 10 days of receipt of progress payments from owner.

3078 E. Sunset Road, Suite 9, Las Vegas, NV 89120 Tel: (702) 732-1188 Fax: (702) 732-4386
Nevada Contractor's License No. 0053810

APCO 0036

JA127

Lisa Lynn

From: Lisa Lynn
Sent: Monday, September 09, 2013 2:58 PM
To: Joemel Llamado (llamadoj@cityofnorthlasvegas.com)
Cc: Joe Pelan; Noah Holm
Subject: CRAIG RANCH COR's - 68, 69, 70 & 71
Attachments: COR #68.pdf; COR #69.pdf; COR #70.pdf; COR #71.pdf

Joemel:

Please see attached COR's 68, 69, 70 & 71 for your review and approval.

Thank You,

Lisa Lynn



44 W. Mayflower Ave.
North Las Vegas, NV 89030
(P) (702)734-0198
(F) (702)734-0396

EXHIBIT E

The Construction Manager shall promptly investigate the conditions, and if it finds that the conditions do materially differ, or do involve hazardous waste, and cause an increase or decrease in the Contractor's cost of, or the time required for performance of any part of the Work, the City shall cause to be issued a change order under the procedures provided herein.

In the event that a dispute arises between the City and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the parties.

No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required.

GC 6.3 RESOLUTION OF DISPUTES

6.3.1 Contract Interpretation by the Construction Manager

The Construction Manager will decide all questions which may arise as to the quality and acceptability of materials furnished and work performed and as to rate of progress of the work; and all questions which may arise as to the interpretation of the plans and specifications.

6.3.2 Claims

A. Notice

If the Contractor disagrees with the Construction Manager's decision, or in any case where the Contractor deems additional compensation or a time extension to the Contract period is due the Contractor for work or materials not covered in the Contract or which the Construction Manager has not recognized as extra work, the Contractor shall notify the Construction Manager, in writing, of its intention to make claim. Claims pertaining to decisions based on Contract Interpretation or such other determinations by the Construction Manager shall be filed in writing to the Construction Manager within five (5) days of receipt of such decision. All other claims notices for extra work shall be filed in writing to the Construction Manager prior to the commencement of such work. Written notice shall use the words "Notice of Potential Claim". Such Notice of Potential Claim shall state the circumstances and all reasons for the claim, but need not state the amount.

It is agreed that unless notice is properly given, the Contractor shall not recover costs incurred by it as a result of the alleged extra work, changed work or other situation which, had proper notice been given, would have given rise to a right for additional compensation. The Contractor should understand that timely Notice of Potential Claim is of great importance to the Construction Manager and City, and is not merely a formality. Such notice allows the City to consider preventative action, to monitor the Contractor's increased costs resulting from the situation, to marshal facts, and to plan its affairs. Such notice by the Contractor, and the fact that the Construction Manager has kept account of the cost as aforesaid, shall not in any way be construed as proving the validity of the claim.

B. Records of Disputed Work

In proceeding with a disputed portion of the Work, the Contractor shall keep accurate and complete records of its costs and shall make available to the Construction Manager a daily summary of the hours and classifications of equipment and labor utilized on the disputed work, as well as a summary of any materials or any specialized services which are used which shall be signed by the Construction Manager and Contractor daily. Such information shall be submitted to the Construction Manager on a weekly or daily basis as determined by the Construction Manager, receipt of which shall not be construed as an authorization for or acceptance of the disputed work.

C. Submission of Claim Costs

Within 30 days after the last cost of work for which the Contractor contends it is due additional compensation is incurred, but if costs are incurred over a span of more than 30 days, then within 15 days after the thirtieth day and every month thereafter, the Contractor shall submit to the Construction Manager, as best the Contractor is able, its costs incurred for the claimed matter. Claims shall be made in itemized detail. Should the Construction Manager be dissatisfied with format or detail of presentation, and upon request for more or different information, the Contractor will promptly comply to the satisfaction of the Construction Manager. If the additional costs are in any respect not knowable with certainty, they shall be estimated as best can be done. In case the claim is found to be just, it shall be allowed and paid for as provided in Paragraph GC 6.4, MODIFICATION PROCEDURES.

D. Claim Meetings

The Construction Manager may call special meetings to discuss outstanding claims. The Contractor shall cooperate and attend prepared to discuss its claims, making available the personnel necessary for resolution, and all documents which may reasonably be requested by the Construction Manager.

GC 6.4 MODIFICATION PROCEDURES

6.4.1 Changes in Contract Price

Whenever corrections, alterations, or modifications of the Work under this Contract are ordered by the Construction Manager, approved by the City, and increase the amount of work to be done, such added work shall be known as extra work. When such corrections, alterations, or modifications decrease the amount of work to be done, such subtracted work shall be known as work omitted.

The difference in cost of the work affected by such change will be added to or deducted from the amount of said Contract Amount, as the case may be, by a fair and reasonable valuation, which shall be determined in one or more of the following ways as directed by the Construction Manager:

- a. By unit prices accepted by the City and stated in the Contract Documents or Schedule of Values;
- b. By unit prices subsequently fixed by agreement between the parties;
- c. By an acceptable lump sum proposal from the Contractor; or

EXHIBIT F

CHANGE MANAGEMENT

Engineering Services Division
2250 N Las Vegas Boulevard, Ste 610
North Las Vegas, NV 89030

Phone: 633-1230
Fax: 642-0390

NO: 00068

PROJECT: Craig Ranch Regional Park Phase 2

JOB: 1398

TITLE: Helix Electric - Extended Overhead

CHANGE ISSUE:

REASON CODE:

SCOPE: Out of Scope

ACTIVITY ID:

STATUS: REJ

Current Status:

	Estimated	Quoted	Negotiated	Final
Budgeted:	\$0.00	\$0.00	\$0.00	\$0.00
Committed:				

Budget Contract Summary:

Original Contract Sum: \$28,512,054.00

Approved Changes: \$0.00

Revised Contract Sum: \$28,512,054.00

Current Change Value: \$0.00

Contract Sum if Approved at this Value: \$28,512,054.00

Budget:

Contract	PO Type	CON	No:	1	To: APCO	BE	From: CNLV	JDL
			Estimated	Quoted		Negotiated		Final
Time Change:	0		0		0		0	
Values:	\$0.00		\$0.00		\$0.00		\$0.00	

Commitments:**Remarks:**

This CO# is REJECTED. This City of North Las Vegas does not have a contract with Helix Electric.

[Signature]
9-16-13

Journal Llamado
CITY OF NORTH LAS VEGAS
CONSTRUCTION MGR.

APCO Construction44 W. Mayflower
North Las Vegas, NEVADA 89030Phone: 702-734-0198
Fax: 702-734-0396**CHANGE ORDER REQUEST****No. 00068****TITLE:** HELIX ELECTRIC - EXTENDED OVERHEAD**DATE:** 8/28/2013**PROJECT:** Craig Ranch Regional Park - Phase 2**JOB:** 0193**TO:** Attn: Joemel Llamado
City of North Las Vegas
Phone: 702-633-1230**CONTRACT NO:** 1**RE:****To:****From:****Number:**

Item	Description	Stock#	Quantity	Units	Unit Price	Tax Rate	Tax Amount	Net Amount
00001	HELIX ELECTRIC - EXTENDED OVERHEAD		32,000	WEEKS	\$3,200.00	0.00%	\$0.00	\$102,400.00

Unit Cost: \$102,400.00**Unit Tax:** \$0.00**Total:** \$102,400.00**APPROVAL:****By:** _____
Joemel Llamado**Date:** _____

Expedition 6

By:  _____
Joe Pelan**Date:** 9/5/13

APCO 0041

JA134



Helix Electric
CONSTRUCTORS - ENGINEERS

MISCELLANEOUS INVOICE # 161113M-001

APCO Construction
44 W Mayflower
North Las Vegas, NV 89030
ATTN: Joe Pelan

INVOICE DATE: August 27, 2013
THRU DATE:
SUBCONTRACT:

PROJECT NAME: Craig Ranch Regional Park
Phase II

DESCRIPTION: Extended Overhead

Extended Overhead - \$640/day - \$3,200/week for 32 weeks \$ 102,400.00

Total Amount Due **\$ 102,400.00**


Robert D. Johnson, Vice President

Due and Payable within ten (10) days of receipt of invoice.

Pursuant to B&P code section 7108.5 a penalty of 2% per month of the amount owed, plus attorney's fees if required for collection, shall be assessed to this invoice for payments not received within 10 days of receipt of progress payments from owner.

3078 E. Sunset Road, Suite 9, Las Vegas, NV 89120 Tel: (702) 732-1188 Fax: (702) 732-4386
Nevada Contractor's License No. 0053810

APCO 0042

JA135

EXHIBIT G



October 3, 2013

VIA FACSIMILE ONLY: (702)732-4386

Mr. Bob Johnson
Helix Electric
3078 E. Sunset Road, Ste. 9
Las Vegas, NV 89120

RE: Craig Ranch Project
Helix Electric – Extended Overhead

Dear Mr. Johnson:

Attached is your invoice of August 27, 2013 in the amount of \$102,400. At this time APCO has not received any back-up documentation to undo the previous formal rejection made by the City of North Las Vegas.

If you want APCO to re-submit your request, please provide the appropriate back-up for review.

Yours truly,

A handwritten signature in black ink, appearing to read "Joe Pelan", is written over a horizontal line.

Joe Pelan
Contract Manager
APCO CONSTRUCTION

44 W. Mayflower Ave. • North Las Vegas, Nevada 89030 • Phone: (702)734-0198 • Fax: (702)734-0396
E-Mail: apcoconstruction.com • Nevada Contractor's License: 0014563 • A/B • Unlimited

APCO 0043

JA137

* * * Communication Result Report (Oct. 8. 2013 10:30AM) * * *

1) APCO Construction
2)

Date/Time: Oct. 8. 2013 10:29AM

File No. Mode	Destination	Pg(s)	Result	Page Not Sent
2030 Memory TX	7324386	P. 4	OK	

Reason for error
 E. 1) Hang up or line fail
 E. 3) No answer
 E. 5) Exceeded max. E-mail size

E. 2) Busy
 E. 4) No facsimile connection



October 3, 2013

VIA FACSIMILE ONLY: (702)732-4386

Mr. Rob Johnson
 Holic Electric
 3078 E. Sunset Road, Ste. 9
 Las Vegas, NV 89120

RE: Craig Ranch Project
Holic Electric - Extended Overhead

Dear Mr. Johnson:

Attached is your invoice of August 27, 2013 in the amount of \$102,400. At this time APCO has not received any back-up documentation to undo the previous formal rejection made by the City of North Las Vegas.

If you want APCO to re-submit your request, please provide the appropriate back-up for review.

Yours truly,

Jon Felan
 Contract Manager
 APCO CONSTRUCTION

44 W. Maylin Ave. • North Las Vegas, Nevada 89030 • Phone: (702)734-0138 • Fax: (702)734-0396
 E-Mail: apcoconstruction.com • Nevada Contractor's License: 0014563 • A/O • Unlimited

APCO 0044

JA138

EXHIBIT H

**HELIX ELECTRIC
CHANGE ORDER REQUEST**

#68.1

(\$111,847.00)

APCO 0045

JA140

APCO Construction44 W. Mayflower
North Las Vegas, NEVADA 89030Phone: 702-734-0198
Fax: 702-734-0396**CHANGE ORDER REQUEST**

No. 00068.1

TITLE: HELIX ELECTRIC - EXTENDED OVERHEAD**DATE:** 11/5/2013**PROJECT:** Craig Ranch Regional Park - Phase 2**JOB:** 0193**TO:** Attn: Joemel Llamado
City of North Las Vegas
Phone: 702-633-1230**CONTRACT NO:** 1**RE: To: From: Number:**

Item	Description	Stock#	Quantity	Units	Unit Price	Tax Rate	Tax Amount	Net Amount
00001	HELIX ELECTRIC - EXTENDED OVERHEAD (1/13/13 - 8/30/13)		1.000		\$111,847.00	0.00%	\$0.00	\$111,847.00

Unit Cost:	\$111,847.00
Unit Tax:	\$0.00
Total:	\$111,847.00

APPROVAL:**By:** _____
Joemel Llamado**Date:** _____

Expedition ©

By: _____
Joe Pelan**Date:** 11/6/13

APCO 0046

JA141



Helix Electric
CONSTRUCTORS • ENGINEERS

October 31, 2013

VIA EMAIL ONLY: jpelan@apcoconstruction.com

Joe Pelan
Apco Construction
44 W. mayflower Ave.
North Las Vegas, Nevada 89030

Regarding: Rejected Invoice 161113M-001
Craig Ranch Park Phase II

Dear Mr. Pelan:

Attached please find the requested back-up documentation requested to support our invoice 161113M-001. Please note that after additional review of our extended overhead for the dates of January 13, 2013 – August 30, 2013, we found that our calculated extended overhead was actually \$111,847 and not \$102,400 that we originally requested. We will be submitting a revised invoice in the Amount of \$111,847.

In addition will we will be submitting a separate invoice for extended overhead for the dates of September 2, 2013 – October 25, 2013.

Please do not hesitate to call me if you have any questions.

Sincerely,

Kirk Williams
Project Manager

3078 E. Sunset Rd., Suite 9 • Las Vegas, NV 89120 • Tel: (702) 732-1188 Fax: (702) 737-7494
Nevada License #0053810 • #0073392 • #0073455
Arizona License #ROC232191 K-II • Utah License #7314771-5501

APCO 0047

JA142



Helix Electric
CONSTRUCTORS - ENGINEERS

MISCELLANEOUS INVOICE # 161113M-001R1

APCO Construction
44 W Mayflower
North Las Vegas, NV 89030
ATTN: Joe Pelan

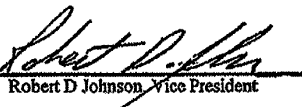
INVOICE DATE: August 27, 2013
THRU DATE:
SUBCONTRACT:

PROJECT NAME: Craig Ranch Regional Park
Phase II

DESCRIPTION: Extended Overhead

Extended Overhead - See Attached \$ 111,847.00

Total Amount Due \$ 111,847.00


Robert D. Johnson, Vice President

Due and Payable within ten (10) days of receipt of invoice.

Pursuant to B&P code section 7108.5 a penalty of 2% per month of the amount owed, plus attorney's fees if required for collection, shall be assessed to this invoice for payments not received within 10 days of receipt of progress payments from owner.

3078 E. Sunset Road, Suite 9, Las Vegas, NV 89120 Tel: (702) 732-1188 Fax: (702) 732-4386
Nevada Contractor's License No. 0053810

APCO 0048

JA143

	January	February	March	April	May	June	July	August
Project Manager	\$ 2,600.00	\$ 3,200.00	\$ 3,200.00	\$ 5,200.00	\$ 6,500.00	\$ 5,200.00	\$ 6,500.00	\$ 5,200.00
Project Engineer	\$ 301.90	\$ 301.90	\$ 301.90	\$ 301.90	\$ 301.90	\$ 301.90	\$ 301.90	\$ 301.90
Superintendent	\$ 2,800.00	\$ 3,600.00	\$ 3,600.00	\$ 5,600.00	\$ 7,000.00	\$ 5,600.00	\$ 7,000.00	\$ 5,600.00
Site Truck/s	\$ 302.50	\$ 505.00	\$ 440.00	\$ 440.00	\$ 165.00	\$ 165.00	\$ 165.00	\$ 165.00
Project Fuel	\$ 457.24	\$ 1,238.11	\$ 680.66	\$ 603.20	\$ 286.19	\$ 383.82	\$ 373.79	\$ 298.14
Site Trailer	\$ 110.00	\$ 220.00	\$ 220.00	\$ 220.00	\$ 220.00	\$ 220.00	\$ 220.00	\$ 220.00
Wire Trailer/s	\$ 55.00	\$ 110.00	\$ 110.00	\$ 110.00	\$ 35.00			
Office Supplies								
Storage Container/s	\$ 110.00	\$ 220.00	\$ 110.00	\$ 110.00	\$ 110.00	\$ 110.00	\$ 110.00	
Tools/Trucks	\$ 3,328.48	\$ 3,426.54						
Small Tools	\$ 379.02	\$ 655.09	\$ 501.40	\$ 414.16	\$ 292.96	\$ 174.77	\$ 214.52	\$ 166.83
Consultants								
Total	\$ 6,813.66	\$ 17,980.58	\$ 17,190.28	\$ 13,599.76	\$ 15,501.05	\$ 12,724.99	\$ 15,485.21	\$ 12,551.87

\$110,847

Grand total for extended overhead for months January 21, 2013 - August 30, 2013
Project Manager Based on 4 Hours a Day @ \$85/Hr.
Superintendent @ 4 Hours a Day \$70/Hr.

EXHIBIT I

City of North Las Vegas

Engineering Services Division
2250 N Las Vegas Boulevard, Ste 610
North Las Vegas, NV 89030

Phone: 633-1230
Fax: 642-0390

CHANGE MANAGEMENT**NO: 00068.1****PROJECT:** Craig Ranch Regional Park Phase 2 **JOB:** 1398**TITLE:** Helix Electric Ext. Overhead 2 **CHANGE ISSUE:****REASON CODE:** **SCOPE:** Out of Scope**ACTIVITY ID:** **STATUS:** REJ**Current Status:**

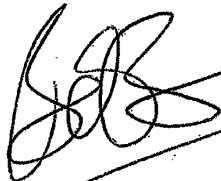
	Estimated	Quoted	Negotiated	Final
Budgeted:	\$0.00	\$0.00	\$0.00	\$0.00
Committed:				

Budget Contract Summary:**Original Contract Sum:** \$28,512,054.00**Approved Changes:** \$0.00**Revised Contract Sum:** \$28,512,054.00**Current Change Value:** \$0.00**Contract Sum if Approved at this Value:** \$28,512,054.00**Budget:**

Contract/PO Type :	CON	No:	1	To:	APCO	BE	From:	CNLV	JDL
		Estimated		Quoted		Negotiated		Final	
Time Change:		0		0		0		0	
Values:		\$0.00		\$0.00		\$0.00		\$0.00	

Commitments:**Remarks:**

This is the 2nd COR for Helix Electric's extended overhead submittal. The 1st one was submitted on Sept. 9, 2013 and Rejected on Sept. 16, 2013. This submittal dated Nov. 5, 2013 is **REJECTED on Nov. 13, 2013**

 11/18/13
REJECTED

APCO Construction44 W. Mayflower
North Las Vegas, NEVADA 89030Phone: 702-734-0198
Fax: 702-734-0396**CHANGE ORDER REQUEST**
No. 00068.1**TITLE:** HELIX ELECTRIC - EXTENDED OVERHEAD**DATE:** 11/5/2013**PROJECT:** Craig Ranch Regional Park - Phase 2**JOB:** 0193**TO:** Attn: Joemel Llamado
City of North Las Vegas
Phone: 702-633-1230**CONTRACT NO:** 1**RE:****To:****From:****Number:**

Item	Description	Stock#	Quantity	Units	Unit Price	Tax Rate	Tax Amount	Net Amount
00001	HELIX ELECTRIC - EXTENDED OVERHEAD (1/13/13 - 8/30/13)		1.000		\$111,847.00	0.00%	\$0.00	\$111,847.00

Unit Cost: \$111,847.00**Unit Tax:** \$0.00**Total:** \$111,847.00**APPROVAL:****By:** _____
Joemel Llamado**Date:** _____

Expedition ©

By: _____
Joe Pelan**Date:** 11/4/13

APCO 0051

JA147



Helix Electric
CONSTRUCTORS • ENGINEERS

October 31, 2013

VIA EMAIL ONLY: jpelan@apcoconstruction.com

Joe Pelan
Apco Construction
44 W. Mayflower Ave.
North Las Vegas, Nevada 89030

Regarding: **Rejected Invoice 16113M-001**
Craig Ranch Park Phase II

Dear Mr. Pelan:

Attached please find the requested back-up documentation requested to support our invoice 16113M-001. Please note that after additional review of our extended overhead for the dates of January 13, 2013 - August 30, 2013, we found that our calculated extended overhead was actually \$111,847 and not \$102,400 that we originally requested. We will be submitting a revised invoice in the amount of \$111,847.

In addition we will be submitting a separate invoice for extended overhead for the dates of September 2, 2013 - October 25, 2013.

Please do not hesitate to call me if you have any questions.

Sincerely,

Kirk Williams
Project Manager

3079 E. Sahara Rd., Suite 9 • Las Vegas, NV 89120 • Tel: (702) 732-1188 Fax: (702) 737-7494
Nevada License #0053610 • #0073392 • #0073453
Arizona License #ROC232191 K-11 • Utah License #7314771-5501

APCO 0052

JA148



Helix Electric
CONSTRUCTORS - ENGINEERS

MISCELLANEOUS INVOICE # 161113M-001R1

APCO Construction
44 W Mayflower
North Las Vegas, NV 89030
ATTN: Joe Pelan

INVOICE DATE: August 27, 2013
THRU DATE:
SUBCONTRACT:

PROJECT NAME: Craig Ranch Regional Park
Phase II

DESCRIPTION: Extended Overhead

Extended Overhead - See Attached

\$ 111,847.00

Total Amount Due

\$ 111,847.00


Robert D. Johnson, Vice President

Due and Payable within ten (10) days of receipt of invoice.

Pursuant to B&P code section 7108.5 a penalty of 2% per month of the amount owed, plus attorney's fees if required for collection, shall be assessed to this invoice for payments not received within 10 days of receipt of progress payments from owner.

3078 E. Sunset Road, Suite 9, Las Vegas, NV 89120 Tel: (702) 732-1188 Fax: (702) 732-4386
Nevada Contractor's License No. 0053810

APCO 0053

JA149

	January	February	March	April	May	June	July	August
Project Manager	\$ 2,800.00	\$ 5,200.00	\$ 5,200.00	\$ 5,200.00	\$ 6,500.00	\$ 3,200.00	\$ 5,500.00	\$ 5,200.00
Project Engineer		\$ 901.90	\$ 901.90	\$ 901.90	\$ 901.90	\$ 901.90	\$ 901.90	\$ 901.90
Superintendent	\$ 2,800.00	\$ 5,500.00	\$ 5,500.00	\$ 5,500.00	\$ 7,000.00	\$ 5,500.00	\$ 7,000.00	\$ 5,500.00
Site Truck/s	\$ 302.50	\$ 505.00	\$ 440.00	\$ 440.00	\$ 165.00	\$ 165.00	\$ 165.00	\$ 165.00
Project Fuel	\$ 457.12	\$ 1,239.17	\$ 660.66	\$ 603.20	\$ 256.15	\$ 353.42	\$ 373.75	\$ 298.14
Site Trailer	\$ 110.00	\$ 220.00	\$ 220.00	\$ 220.00	\$ 220.00	\$ 220.00	\$ 220.00	\$ 220.00
Wire Trailer/s	\$ 55.00	\$ 110.00	\$ 110.00	\$ 110.00	\$ 55.00			
Office Supplies								
Storage Containers	\$ 110.00	\$ 220.00	\$ 110.00	\$ 110.00	\$ 110.00	\$ 110.00	\$ 110.00	
Forklift/s		\$ 3,329.48	\$ 3,446.32					
Small Tools	\$ 379.02	\$ 695.09	\$ 501.40	\$ 414.16	\$ 292.98	\$ 174.77	\$ 214.52	\$ 166.83
Consultables								
Total	\$ 6,813.66	\$ 17,980.53	\$ 17,140.28	\$ 13,589.76	\$ 15,501.05	\$ 12,724.99	\$ 15,485.21	\$ 12,551.87

Grand Total for extended overhead for months January 21, 2013 - August 20, 2013
Project Manager Based on 4 Hours a Day @ \$85/Hr.
Superintendent @ 4 Hours a Day \$70/Hr.

\$113,847

EXHIBIT J

HELIX ELECTRIC
CHANGE ORDER REQUEST
#93
(\$26,304.00)

APCO 0055

JA152

APCO Construction44 W. Mayflower
North Las Vegas, NEVADA 89030Phone: 702-734-0198
Fax: 702-734-0396**CHANGE ORDER REQUEST**
No. 00093**TITLE:** HELIX ELECTRIC-EXT.GC'S Sept.-Oct**DATE:** 11/18/2013**PROJECT:** Craig Ranch Regional Park - Phase 2**JOB:** 0193**TO:** Attn: Joemel Llamado
City of North Las Vegas
Phone: 702-633-1230**CONTRACT NO:** 1**RE:****To:****From:****Number:**

Item	Description	Stock#	Quantity	Units	Unit Price	Tax Rate	Tax Amount	Net Amount
00001	HELIIX ELECTRIC - EXTENDED OVERHEAD (9/1/2013 - 10/25/13)		1.000		\$26,304.00	0.00%	\$0.00	\$26,304.00

Unit Cost: \$26,304.00**Unit Tax:** \$0.00**Total:** \$26,304.00**APPROVAL:****By:** _____
Joemel Llamado**Date:** _____

Expedition ©

By: _____
Joe Pelan**Date:** 11/18/13

APCO 0056

JA153



Helix Electric
CONSTRUCTORS • ENGINEERS

MISCELLANEOUS INVOICE # 161113M-002

APCO Construction
44 W Mayflower
North Las Vegas, NV 89030
ATTN: Joe Pelan

INVOICE DATE: November 13, 2013
THRU DATE:
SUBCONTRACT:

PROJECT NAME: Craig Ranch Regional Park
Phase II

DESCRIPTION: Extended Overhead

Extended Overhead - See Attached \$ 26,304.00

Total Amount Due \$ 26,304.00


Robert D Johnson, Vice President

Due and Payable within ten (10) days of receipt of invoice.

Pursuant to B&P code section 7108.5 a penalty of 2% per month of the amount owed, plus attorney's fees if required for collection, shall be assessed to this invoice for payments not received within 10 days of receipt of progress payments from owner.

3078 E. Sunset Road, Suite 9, Las Vegas, NV 89120 Tel: (702) 732-1188 Fax: (702) 732-4386
Nevada Contractor's License No. 0053810

APCO 0057

JA154

	September	October							
Project Manager	\$ 5,200.00	\$ 6,500.00							
Project Engineer	\$ 512.12	\$ 640.15							
Superintendent	\$ 5,600.00	\$ 7,000.00							
Site Truck/s	\$ 165.00								
Project Fuel	\$ 293.44								
Site Trailer									
Wire Trailer/s									
Office Supplies									
Storage Connex/es									
Forklift/s									
Small Tools	\$ 174.77	\$ 218.52							
Consumables									
Total	\$ 11,945.33	\$ 14,358.67	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

Grand total for extended overhead for months September 2013 - October 2013 \$ 26,304.00
Project Manager Based on 4 Hours a Day @ \$65/Hr.
Superintendent @ 4 Hours a Day \$70/Hr.

EXHIBIT K

City of North Las Vegas

Engineering Services Division
2250 N Las Vegas Boulevard, Ste 610
North Las Vegas, NV 89030

Phone: 633-1230
Fax: 642-0390

CHANGE MANAGEMENT**NO: 00093**

PROJECT: Craig Ranch Regional Park Phase 2 **JOB:** 1398
TITLE: Helix Electric Extended GC's **CHANGE ISSUE:**
REASON CODE: **SCOPE:** Out of Scope
ACTIVITY ID: **STATUS:** REJ

Current Status

	Estimated	Quoted	Negotiated	Final
Budgeted:	\$0.00	\$0.00	\$0.00	\$0.00
Committed:				

Budget Contract Summary

Original Contract Sum: \$28,512,054.00
Approved Changes: \$0.00
Revised Contract Sum: \$28,512,054.00
Current Change Value: \$0.00
Contract Sum if Approved at this Value: \$28,512,054.00

Budget

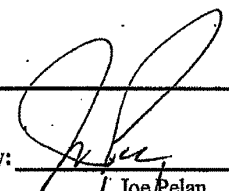
Contract/PO Type :CON	No: 1	To: APCO	BB	From: CNLV	IDL
	Estimated	Quoted	Negotiated	Final	
Time Change:	0	0	0	0	
Values:	\$0.00	\$0.00	\$0.00	\$0.00	

Commitments**Remarks:**

This COR in the amount of \$26,304.00 for Helix Electric Extended GC's is REJECTED on 12/4/13.

APCO Construction**CHANGE ORDER REQUEST****No. 00093**44 W. Mayflower
North Las Vegas, NEVADA 89030Phone: 702-734-0198
Fax: 702-734-0396**TITLE:** HELIX ELECTRIC-EXT.GC'S Sept.-Oct**DATE:** 11/18/2013**PROJECT:** Craig Ranch Regional Park - Phase 2**JOB:** 0193**TO:** Attn: Joemel Llamado
City of North Las Vegas
Phone: 702-633-1230**CONTRACT NO:** 1**RE:****To:****From:****Number:**

Item	Description	Stock#	Quantity	Units	Unit Price	Tax Rate	Tax Amount	Net Amount
00001	HELIX ELECTRIC - EXTENDED OVERHEAD (9/1/2013 - 10/25/13)		1.000		\$26,304.00	0.00%	\$0.00	\$26,304.00

Unit Cost: \$26,304.00**Unit Tax:** \$0.00**Total:** \$26,304.00**APPROVAL:****By:** _____
Joemel Llamado**Date:** _____**By:**  _____
Joe Pelan**Date:** 11/18/13

Expedition ©

APCO 0060

JA158



Helix Electric
CONSTRUCTORS • ENGINEERS

MISCELLANEOUS INVOICE # 161113M-002

APCO Construction
44 W Mayflower
North Las Vegas, NV 89030
ATTN: Joe Pelan

INVOICE DATE: November 13, 2013
THRU DATE:
SUBCONTRACT:

PROJECT NAME: Craig Ranch Regional Park
Phase II

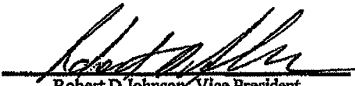
DESCRIPTION: Extended Overhead

Extended Overhead - See Attached

\$ 26,304.00

Total Amount Due

\$ 26,304.00


Robert D. Johnson, Vice President

Due and Payable within ten (10) days of receipt of invoice.

Pursuant to B&P code section 7108.5 a penalty of 2% per month of the amount owed, plus attorney's fees if required for collection, shall be assessed to this invoice for payments not received within 10 days of receipt of progress payments from owner.

3078 E. Sunset Road, Suite 9, Las Vegas, NV 89120 Tel: (702) 732-1188 Fax: (702) 732-4386
Nevada Contractor's License No. 0053810

APCO 0061

JA159

	September	October							
Project Manager	\$ 5,200.00	\$ 6,500.00							
Project Engineer	\$ 512.12	\$ 640.15							
Superintendent	\$ 5,600.00	\$ 7,000.00							
Site Truck/s	\$ 165.00								
Project Fuel	\$ 293.44								
Site Trailer									
Wire Trailer/s									
Office Supplies									
Storage Conex/es									
Forklift/s									
Small Tools	\$ 174.77	\$ 218.52							
Consumables									
Total	\$ 11,945.33	\$ 14,358.67	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

Grand total for extended overhead for months September 2013 - October 2013 \$ 26,304.00
Project Manager Based on 4 Hours a Day @ \$65/Hr.
Superintendent @ 4 Hours a Day \$70/Hr.

EXHIBIT L



Helix Electric

CONSTRUCTORS • ENGINEERS

June 19, 2013

Brian Bohn
Apco Construction
3432 N. 5th Street
North Las Vegas, Nevada 89032

Regarding: **Extended overhead Cost**
Craig Ranch Park Phase II

Dear Brian:

This letter is a follow up to our Notice letter of Schedule delay/Extended overhead dated January 28, 2013. Based on the original scheduled final completion date of January 9, 2013 for the above referenced project Helix Electric is incurring daily cost of extended overhead. Below is our daily cost associated to this extended overhead.

<i>Project Manager</i>	<i>\$280</i>
<i>Superintendent</i>	<i>\$280</i>
<i>Site Trailer</i>	<i>\$25</i>
<i>Connex</i>	<i>\$5</i>
<i>Forklift</i>	<i>\$25</i>
<i>Truck</i>	<i>\$45</i>

Please be advised that Helix will be pursuing payment for the cost as the project continues to run beyond the original bid documents schedule and the contract schedule.

Please do not hesitate to call me if you have any questions.

Sincerely,

Kirk Williams
Project Manager

3078 E. Sunset Rd., Suite 9 • Las Vegas, NV 89120 • Tel: (702) 732-1188 Fax: (702) 737-7494

Nevada License #0053810 • #0073392 • #0073455

Arizona License #ROC232191 K-11 • Utah License #7314771-5501

APCO 0063

JA162

EXHIBIT M



May 9, 2013

VIA EMAIL ONLY: llamadoj@cityofnorthlasvegas.com

Mr. Joemel D. Llamado
Construction Management, Senior Engineer
City of North Las Vegas
2266 Civic Center
North Las Vegas, Nevada 89030

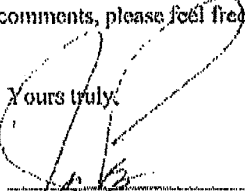
RE: CRAIG RANCH COR #39.1 & TIA #2

Dear Mr. Llamado:

Please find attached TIA #2 prepared by Hill International indicating the causations and delays associated with the 3 critical path items. Also please find attached Change Order Request #39.1 in the amount of \$1,090,066.50 as compensation for the costs associated with the extended schedule. In partnering with the City of North Las Vegas, APCO requests a meeting sometime during the week of May 20th - 24th at the City's convenience. We are in hopes of an amicable resolution to this issue and look forward to meeting with your staff.

If you have any questions or comments, please feel free to contact me at any time.

Yours truly,



Joe Pelan
Contract Manager
APCO Construction

cc: Jim Barker - Las Vegas Paving (via email)
Randy Nickerl - APCO Construction (via email)
Brian Bohn - APCO Construction (via email)

44 West Mayflower Ave. • North Las Vegas, Nevada 89030 • Phone: (702)734-0198 • Fax: (702)734-0396
E-Mail: apcoconstruction.com • Nevada Contractor's License: 0014563 • A/B • Unlimited

APCO 0064

JA164

APCO Construction44 W. Mayflower
North Las Vegas, NEVADA 89030Phone: 702-734-0198
Fax: 702-734-0396**CHANGE ORDER REQUEST**

No. 00039.1

TITLE: TIA#1&#2 -COMPLETION DATE - 7/17/13

DATE: 5/9/2013

PROJECT: Craig Ranch Regional Park - Phase 2

JOB: 0193

TO: Attn: Joemel Llamado
City of North Las Vegas
Phone: 702-633-1230

CONTRACT NO: 1

RE:

To:

From:

Number:

DESCRIPTION OF PROPOSAL

TIA #1 & #2 WITH COMPLETION DATE OF OCTOBER 22, 2013.

Item	Description	Stock#	Quantity	Units	Unit Price	Tax Rate	Tax Amount	Net Amount
00001	DUST CONTROL & TRACK CUT (9 MONTHS)		9.000	MONTHS	\$14,583.00	0.00%	\$0.00	\$131,247.00
00002	SWPP (9 MONTHS)		9.000	MONTHS	\$833.00	0.00%	\$0.00	\$7,497.00
00003	SITE SECURITY (9 MONTHS)		9.000	MONTHS	\$12,491.50	0.00%	\$0.00	\$112,423.50
00004	GENERAL CONDITIONS		9.000	MONTHS	\$53,245.00	0.00%	\$0.00	\$479,205.00
00005	HOME OFFICE OVERHEAD (9 MONTHS)		9.000	MONTHS	\$30,366.00	0.00%	\$0.00	\$273,294.00
00006	MAINTENANCE (9 MONTHS)		9.000	MONTHS	\$9,600.00	0.00%	\$0.00	\$86,400.00

Unit Cost: \$1,090,066.50

Unit Tax: \$0.00

Total: \$1,090,066.50

APPROVAL:By: _____
Joemel LlamadoBy: _____
Joe Polan

Date: _____

Date: 5/9/2013

Exposition 39

APCO 0065

JA165

EXHIBIT N

Mayor
John J. Lee

Council Members
Anita G. Wood
Patricia A. Gaynes-Brown
Wade W. Wagner
Imae K. Barron



It is a Community of Choice

Department of Public Works -- Dr. Qiong Liu, P.E., PTOE
2250 Las Vegas Boulevard, North - Suite 200 - North Las Vegas, Nevada 89030
Telephone: (702) 633-1919 - Fax: (702) 649-4696 - TDD: (800) 326-6868
www.cityofnorthlasvegas.com

Interim City Manager
Jeffrey L. Buchanan

October 2, 2013

Mr. Joe Pelan
APCO Construction
3432 N. 5th Street
North Las Vegas, NV 89032

Re: Craig Ranch Regional Park Phase II, Project No. 10294
Response to Time Impact Analysis Reports 1 and 2

Dear Mr. Pelan:

The City of North Las Vegas has reviewed the subject Time Impact Analysis (TIA's) submitted May 9, 2013 requesting \$1,090,066.50, based on 270 calendar days of compensatory delays. In our review, it was determined that APCO was granted 119 non compensatory calendar days bringing the contract completion from January 11, 2013 to May 10, 2013. Further review of the subject TIA's indicate APCO should be given an additional 61 calendar days of additional time extension is justifiable, but not compensatory.

Given the numerous changes and multiple delays that occurred during this project, but not included in your TIA's, the City is prepared to offer you compensatory delays of 165 days from May 10, 2013 to October 25, 2013, for a total amount of \$500,724.10 based on the following evaluation:

Bid Item	Description	Contr Days	Qty	Units	Unit Price (\$)	Daily Price (\$) (365 Days)
200.05	Dust Control & Track-Out	365	1.0	LS	\$ 66,000.00	\$ 180.00
200.06	SWPPP Control	365	1.0	LS	\$ 10,000.00	\$ 27.40
200.08	General Conditions	365	1.0	LS	\$ 636,960.00	\$ 1,745.63
200.09	Site Security	365	1.0	LS	\$ 140,808.00	\$ 410.68
200.10	Home Office Overhead	365	1.0	LS	\$ 384,352.00	\$ 986.33
	Total				\$ 1,433,910.00	\$ 3,337.64

This offer is based on the following conditions:

It is understood that by accepting this offer that both parties agree that the terms herein are full and final acceptance by both parties. Specifically APCO and the City of North Las Vegas agree that the City will provide APCO a notice of Substantial Completion on October 1, 2013. Any items that may be incomplete at that time will be included into the City's punchlist giving APCO (30) days to complete the

APCO 0066

JA167

punchlist and any remaining items by November 25, 2013. The City will provide a final punchlist to APCO by October 11, 2013.

APCO will continue to have its crews work the necessary weekends to achieve the dates indicated herein at its expense.

All trailers, dumpsters, conex boxes, and appurtenances shall be removed from the site by October 14, 2013. All temporary fencing shall be removed from the site by October 24, 2013. The City shall provide locations at the Craig Ranch Maintenance Facility for storage of equipment and office space.

The City agrees to begin providing its own security forces on October 26, 2013.

By agreeing to and meeting the terms of this offer, it is understood by both parties that the City waives any and all liquidated damages accrued prior to the date of this offer. The City does not waive or limit its ability to enforce the terms of this offer.

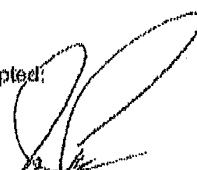
It is also understood that APCO will forgo any claims for delays, disruptions, general conditions and overtime costs associated with the weekend work previously performed and presently ongoing to achieve the above dates and for any other claim, present or future, that may occur on the project.

Upon acceptance of this offer by APCO the City agrees to allow APCO to bill the balance of the funds indicated above less prior payments on its September billing for the Project.

Sincerely,

Jeffrey L. Buchanan, Interim City Manager

Accepted:



APCO Construction

Date: 10/3/13

APCO 0067

JA168



CONSTRUCTION CONFLICT AUTHORIZATION NO. 00050

Engineering Services Division
2250 N Las Vegas Boulevard, Suite
North Las Vegas, NV 89030

Phone: 633-1230
Fax: 642-0390
TDD: (800) 326-6000 E-Mail: hamadoj@cityofnorthlasvegas.com

City of North Las Vegas

Craig Ranch Regional Park Phase 2 Project

TO: APCO Construction
3840 N. Commerce Street
North Las Vegas NV 89032

Date: October 10, 2013

ATTN: Joe Pelan

Subject: TIA #1 thru 10/25/13

Reference Spec. Section:

Gentlemen:

You are hereby directed to make the herein described changes from the plans and specifications or do the following described work not included in the plans and specifications of this contract. All new work herein described shall be done in accordance with the applicable provisions of the plans and specifications, except as modified by this document. NOTE: This order is not effective until approved by the Owner, or until an authorized Field Directive is executed.

DESCRIPTION OF CHANGE/REASON FOR CHANGE:

Time Impact Analysis offer to APCO (see attached).

COST OF CHANGE:

\$560,724.16

CONTRACT TIME ADJUSTMENT:

0 Day(s)

This construction conflict authorization constitutes full and complete compensation for all labor, equipment, materials, overhead, profit any and all indirect costs, and time adjustment to perform the above described change. All other costs are non-compensable.

Accepted By:
APCO Construction

Joe Pelan

Date:

10/10/13

Accepted By:

City of North Las Vegas

Manager

Construction Manager

Date:

10/15/13

10/16/13

File No.: 10294

Issue File:

Page 1 of 1

L.A. 00003

APCO 0068

JA169

EXHIBIT O

**DECLARATION OF JOE PELAN IN SUPPORT OF
DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

Joe Pelan, declares as follows:

1. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

2. I am the Contract Manager for APCO Construction and I make this Declaration in support of the Defendants' Motion for Partial Summary Judgment (the "Defendants' motion").

3. In 2012, APCO entered in a construction agreement with the City of North Las Vegas (the "City") in which APCO agreed to serve as General Contractor for Phase II of the Craig Ranch Regional Park project (the "Project").

4. Around the same time period, APCO engaged in several rounds of negotiations with Helix Electric of Nevada, LLC ("Helix") to complete electrical work for the Project.

5. During these negotiations, APCO sent Helix a draft subcontract for its review and approval. In turn, Helix provided APCO with feedback and suggestions that were incorporated into the final Subcontract. A true and accurate copy of Helix's suggestions is attached as Exhibit B to the Defendants' motion.

6. Given the negotiations and Helix's suggestions, there is no doubt that Helix read and understood that any payments to Helix would be conditions upon receipt of the actual payments from the City. In fact, Helix proposed an additional "pay-if-paid" provision in Section 6 of the Subcontract.

7. A true and accurate copy of the finalized Subcontract is attached as Exhibit A to the Defendants' motion.

8. Further, there is no doubt that Helix knew any requests for claims costs would be subject to the terms of APCO's Primary Contract with the City.

9. The initial work on the Project was completed without incident, but, due to delays which were beyond anyone's control, the Project took ten months longer than anticipated.

1 10. When the Project was not completed by the anticipated completion date, APCO
2 informed Helix that it would need to submit timely documentation for any additional costs that it
3 incurred. A copy of the letter is attached to the Defendants' motion as Exhibit C.

4 11. In response, to APCO's letter Helix sent a vague letter in which it purportedly
5 reserved all rights to payment. Helix did not, however, submit at documentation regarding its
6 additional costs.

7 12. When APCO submitted a TIA and Change Order Request to the City in May 9,
8 2013, the Request did not request payment for any of Helix's costs. A true and accurate copy of
9 the TIA and Change Order is attached as Exhibit M to the Defendants' motion.

10 13. On October 2, 2013, the City responded to APCO's TIA and Change Order
11 Request with an offer that was half of what APCO requested. A true and accurate copy of the
12 City's response is attached as Exhibit N to the Defendants' motion.

13 14. Because the City denied payment for many of the enumerated costs that APCO
14 submitted, APCO certainly did not receive payment for other, unaccounted for costs, such as
15 Helix's purported extended overhead.

16 15. Although Helix did not provide APCO with any information to include with the
17 TIA and Change Order Request, Helix submitted numerous change orders that were submitted to
18 the City and paid without issue.

19 16. In fact, Change Orders 68, 68.1, and 93 are the only change orders for which the
20 City did not provide payment. True and accurate copies of these Change Orders are attached as
21 Exhibits D, H, and J to the Defendants' motion.

22 17. It is unclear why Helix did not provide documentation in support of these three
23 Change Orders. But, when the City denied payment, see Exhibits F, I, and K, to the Defendants'
24 motion, APCO informed Helix that it would gladly ask the City to reconsider its decision if
25 Helix submitted the necessary information.

26 18. Helix did not correct the rejected Change Orders or otherwise request
27 reconsideration from the City.
28

MARQUIS AURBACH COFFING


10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 19. Because Helix made no attempt to correct or resubmit the rejected Change
2 Orders, APCO closed out the Project shortly after the Project's completion date.

3 20. The City Council voted to approve the Final Acceptance of the Project around
4 July 2014. Accordingly, there is no way for APCO to request any additional payment from the
5 City.

6 Pursuant to NRS § 53.045, I declare under penalty of perjury under the laws of the State
7 of Nevada that the foregoing is true and correct.

8
9 Dated this 22 day of May, 2017.

10
11 
12 _____
13 Joe Pelan

Service, 82 Nev. 148, 150, 413 P.2d 500, 502 (1966). The language of the Bond in dispute is the following: "This bond shall insure [sic] to the benefit of any persons, companies or corporations entitled to the claims under applicable State law. This bond shall remain in effect until two (2) years after the date of the final acceptance of the Work by the City Council."

It is undisputed that NRS 339.005 provides that a claim under a bond must be brought within one year. The first sentence in the quoted language "persons, companies or corporations entitled to the claims under applicable State law" incorporates those entities covered under NRS 339.035. However, the second sentence of the bond language in question demonstrates a clear intent by the parties to extend the claims period of the bond to two years. To support its conclusion, the Court looks to the language "shall remain in effect until two (2) years after the date of the final acceptance." The plain meaning of "in effect" is defined as "operating or functioning; in force". See TAKE EFFECT, Black's Law Dictionary (10th ed. 2014). Therefore, based on a plain interpretation of the clause in question, the two year language expands the contract, as allowed under Royal for the following reasons.

The purpose of NRS 339.025 cannot be read in harmony with the two year claims provision contained on the face of the Bond. NRS 339.025(1)(b) states "***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.***"(emphasis added). Such language makes it clear that the bond in question was only required for claims of labor or materials and for nothing else. Therefore, the only parties who could make a claim to this bond would be those who supply labor or materials and by statute, these parties would be bound to a one year Statute of Limitations period under NRS 339.055, which directly conflicts with the two year language on the face of the bond. Because such a conflict exists, the Court finds that no other intent could have existed, except for the drafter to have intended to extend the claims period in excess of the time allowed by statute. See generally, Royal Indemnity Co. v. Special Service, 82 Nev. 148, 150, 413 P.2d 500, 502 (1966); Balboa Ins. Co. v. S. Distributors Corp., 101 Nev. 774, 710 P.2d 725 (1985),(Holding that bonds should be liberally construed to the benefit of beneficiaries under the bond, as opposed to in favor a surety).

Therefore, COURT ORDERED Safeco's Motion to Dismiss is DENIED as well as its counter motion for fees and costs. Plaintiff is directed to submit a proposed Order consistent with the foregoing within ten (10) days after counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing.

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.