

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 05:30 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 III

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                    and Safeco Insurance Company of America*

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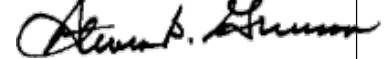
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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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 CONSTRUCTION, INC. AND**  
**SAFECO INSURANCE COMPANY OF**  
**AMERICA'S OMNIBUS MOTION IN**  
**LIMINE 1-2.**

APCO Construction, Inc. ("APCO"), by and through its attorneys, Spencer Fane  
LLP and Marquis Aurbach Coffing, hereby submits its motions in limine to exclude  
factually and legally irrelevant evidence and for the limitations set forth below. This  
Motion is made and based upon NRCP 30 and 37, the attached Declaration of Mary E.

1 Bacon, Esq., the following Memorandum of Points and Authorities, the exhibits attached  
2 hereto, the papers and pleadings on file herein, and any argument presented at the time of  
3 hearing on this matter.

4 DATED: July 20, 2018.

5  
6 **SPENCER FANE LLP**

7 By: /s/ Mary Bacon  
8 John Randall Jefferies, Esq. (Bar No.  
3512)  
9 Mary E. Bacon, Esq. (Bar No. 12686)  
300 S. Fourth Street, Suite 950  
10 Las Vegas, NV 89101  
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*Attorneys for Apco Construction, Inc.*

12 **NOTICE OF MOTION**

13  
14 PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion in  
15 Limine No. 1-2 for hearing on the 29 of August 2018, in Department XVII of  
16 the above-entitled Court at the hour of 8:30am, or as soon thereafter as counsel may be  
17 heard.

18 DATED: July 20, 2018.

19 **SPENCER FANE LLP**

20  
21 By: /s/ Mary Bacon  
22 John Randall Jefferies, Esq. (Bar No.  
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**DECLARATION OF MARY BACON, ESQ. IN SUPPORT OF  
APCO’S OMNIBUS MOTIONS IN LIMINE**

**I, MARY BACON, ESQ.,** do hereby declare:

1. I am an attorney duly licensed to practice law in the State of Nevada.

2. I am an attorney at the law firm of Spencer Fane LLP, and am an attorney of record for APCO in the above-captioned action.

3. If called upon to testify, I could and would testify competently to the following facts that are true within my personal knowledge.

4. On July 20, 2018, I had a meet and confer telephone conference with counsel for Helix Electric of Nevada, LLC (“Helix”), during which the parties attempted to resolve the issues presented in this motion.

5. The parties were unable to resolve these issues. I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 20th day of July 2018.

/s/ Mary Bacon  
MARY BACON, ESQ.

1     **I. RELEVANT FACTS**

2           This case involves APCO's construction of the Craig Ranch Regional Park Phase II  
3 ("Project") under contract with the City of North Las Vegas ("City"). As the prime  
4 contractor for the Project, APCO awarded a subcontract to Helix Electric of Nevada, LLC  
5 ("Helix") to complete the electrical work

6           Per the City's notice to proceed, APCO started work in January 2012, with an  
7 original completion date of January 9, 2013.<sup>1</sup> After work started, APCO was delayed  
8 because of differing site conditions. Those conditions and delays did not impact all  
9 subcontractors. On January 28, 2013, Helix notified APCO that it may be submitting a  
10 claim for delay related costs, if any.<sup>2</sup> The next day, APCO sent a letter advising Helix how  
11 to submit a claim with backup if Helix had actual damages.<sup>3</sup>

12           On May 8, 2013, APCO submitted a \$1.1 million claim to the City for its direct  
13 extended general conditions.<sup>4</sup> APCO's claim did not include any subcontractor costs  
14 because the subcontractors, including Helix, had not submitted a proper claim for  
15 additional compensation that could be certified and submitted by APCO.<sup>5</sup>

16           On June 19, 2013, Helix sent APCO a second letter requesting general extended  
17 conditions.<sup>6</sup> APCO requested Helix provide backup documentation for its claim.<sup>7</sup> It was  
18 not until August 27, 2013, that Helix gave APCO an invoice for \$102,400 for extended  
19 general conditions through August 2013.<sup>8</sup> But Helix still did not provide suitable backup  
20 nor did it comply with the City's claim procedures for submission of claimed costs every  
21 30 days.<sup>9</sup> As requested by Helix, on September 8, 2013 APCO submitted Helix's extended  
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24     <sup>1</sup> Exhibit 1, Notice to Proceed.

25     <sup>2</sup> Exhibit 2, Helix's January 28, 2013 Letter to APCO.

26     <sup>3</sup> Exhibit 3, APCO's January 29, 2013 Letter to Helix.

27     <sup>4</sup> Exhibit 4, APCO's TIA Claim.

28     <sup>5</sup> Exhibit 5, Declaration of Joe Pelan, and Exhibit 4, APCO's TIA Claim.

<sup>6</sup> Exhibit 7, Helix's June 19, 2013 Letter to APCO.

<sup>7</sup> Exhibit 8, APCO's Response to Helix's June 19, 2013 letter.

<sup>8</sup> Exhibit 9, August 27, 2013 Invoice for extended general conditions.

<sup>9</sup> Exhibit 5, Declaration of Joe Pelan.

1 general conditions to the City as Change Order 68.<sup>10</sup> Eight days later, the City rejected  
2 Change Order 68.<sup>11</sup>

3 On October 3, 2013, the City approved APCO's extended general conditions claim  
4 for approximately \$560,000.<sup>12</sup> That same day, APCO sent Helix another letter requesting  
5 additional support for its purported claimed costs.<sup>13</sup>

6 Then, on October 18, 2013, Helix signed a conditional waiver and release upon  
7 final payment ("Release").<sup>14</sup> Once final payment of \$105,679.01 was received, that  
8 document released Helix's claims for the entire Project, as follows:

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1 Notably, the Release covers all costs incurred up through October 31, 2013 and Helix  
2 inserted the word “zero” given the opportunity to reserve “Disputed Claims.”<sup>16</sup>

3 APCO substantially completed the Project on October 25, 2013.<sup>17</sup> On November 13,  
4 2013, Helix submitted an invoice to APCO for \$26,000 for September/October 2013  
5 general conditions.<sup>18</sup>

6 On November 18, 2013, APCO submitted Helix’s \$26,000 invoice to the City as  
7 change order 93.<sup>19</sup> On December 4, 2013, the City rejected that request.<sup>20</sup> Helix took no  
8 steps to further pursue any claim.

9 On June 10, 2014, APCO received final retention from the City.

10 On October 21, 2014, APCO paid Helix its \$105,677.01 in retention due under the  
11 Release.<sup>21</sup> The Release condition was satisfied when Helix cashed the check and received  
12 that amount without rescinding the Release.<sup>22</sup>

13 On October 30, 2014, Helix sent a letter seeking to reserve a claim for \$138,151  
14 claim as a “disputed amount.”<sup>23</sup> That purported reservation was too late and the Release  
15 became effective.

16 APCO has not been paid for any extended general conditions allegedly suffered by  
17 Helix.<sup>24</sup>

18 Helix initiated this litigation in January 2016, fifteen months after receiving  
19 APCO’s final payment.<sup>25</sup>

20 During Helix’s deposition of APCO’s Joe Pelan, Mr. Pelan referenced and  
21 confirmed the Release’s effectiveness:

22 \_\_\_\_\_  
23 <sup>16</sup> Exhibit 15, Release APCO000069.

24 <sup>17</sup> Exhibit 1, Notice of Substantial Completion.

25 <sup>18</sup> Exhibit 17, Helix’s November 13, 2013 invoices requesting general extended conditions for September and October 2013.

26 <sup>19</sup> Exhibit 18, APCO’s November 18, 2013 Submission of Helix’s Claim.

27 <sup>20</sup> Exhibit 19, the City’s December 4, 2013 Rejection of Change Order 93.

28 <sup>21</sup> Exhibit 20, APCO Check for \$105,677.01.

<sup>22</sup> See *ISSC, Inc. v. Baugh Skanska Inc.*, 160 Fed.Appx. 628 (Wash.), 2005 (Release is only conditional until payment is made).

<sup>23</sup> Exhibit 21, Helix’s September 25, 2014 request attaching a conditional waiver and release upon final payment.

<sup>24</sup> Exhibit 5, Declaration of Joe Pelan and Exhibit 4, APCO’s TIA.

<sup>25</sup> See Complaint, on file herein.

1 Q. So you believe that this was -- this document was actually  
2 filled out by Helix and provided to -- APCO provided it to  
3 Helix based on a prior version that Helix had filled out or  
4 what?

5 A. No, we have it with -- that was dated October something  
6 of 2013, and I believe it was from Helix.

7 Q. And it's an Unconditional Waiver and Release Upon Final  
8 Payment, or is it a conditional release?

9 A. It's [a] conditional [waiver and release upon final  
10 payment].

11 Q. And do you understand the difference between the two  
12 documents?

13 A. Yes. The conditional is waiting on the check, and then  
14 once the check clears, then you get the unconditional.

15 Q. Right.

16 A. Once you present the check.

17 Q. And the unconditional when it's signed, it's --

18 A. It's over.

19 Q. Yeah. You've released any and all claims?

20 A. That's correct.

21 Q. So if you have -- if you know there's a document that  
22 **exists dated in October of 2013, I think it probably should**  
23 **be produced to your attorney. You might win the case. I**  
24 **don't think it exists, but that's okay.**

25 A. Okay.

26 Q. Victor is not an idiot. He wouldn't sign that but...

27 A. Yeah.<sup>26</sup>

28 APCO is entitled to the Court's recognition and enforcement of the Release.

## 29 **II. LEGAL STANDARD**

30 A motion in limine may be used to admit or exclude evidence of any kind.<sup>27</sup>  
31 Motions in limine serve multiple useful purposes, including precluding inadmissible and  
32 prejudicial evidence, permitting more careful consideration of evidentiary issues than  
33

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35 <sup>26</sup> Exhibit 22, APCO's deposition at 161-162.

36 <sup>27</sup> See *Luce v. United States*, 469 U.S. 38, 40, n. 2, 105 S.Ct. 460 (1984) (providing that a motion in limine is "any  
37 motion, whether made before or during trial, to exclude anticipated prejudicial evidence before the evidence is  
38 actually offered"); *Black's Law Dictionary* (2014) (defining a motion in limine as "[a] pretrial request that certain  
inadmissible evidence not be referred to or offered at trial"); *Clemens v. Am. Warranty Corp.*, 193 Cal. App. 3d 444,  
451, 238 Cal. Rptr. 339, 342 (Ct. App. 1987) (explaining that a motion in limine may be used to exclude "any kind of  
evidence which could be objected to at trial, either as irrelevant or subject to discretionary exclusion as unduly  
prejudicial").

1 would occur during trial, and minimizing sidebars and disruption during trial.<sup>28</sup> The  
2 district court has broad discretion in admitting or excluding evidence.<sup>29</sup>

3 **1. Motion to prohibit evidence of costs prior to the Release date.**

4 In Nevada, “[c]onstruction of a contractual term is a question of law.”<sup>30</sup> It has long  
5 been the policy in Nevada that “contracts will be construed from the written language and  
6 enforced as written.”<sup>31</sup> “A waiver is an intentional relinquishment of a known right . . . To  
7 be effective, a waiver must occur with full knowledge of all material facts.”<sup>32</sup>

8 In *Power Co. v. Henry*,<sup>33</sup> the Nevada Supreme Court found that settlement  
9 agreements, such as releases, resolve the legal rights between the parties, eliminating the  
10 need to try any issues resolved by the agreement:

11 While a settlement agreement will not necessarily involve a  
12 judicial determination, it does resolve the relative legal rights  
13 and liabilities of the parties, eliminating the need to try any  
14 issues resolved by the agreement. Accordingly, we conclude  
15 that, when the parties have entered into a binding settlement  
16 agreement that resolves all of the issues pending in the action,  
17 eliminating the need for a trial...Thus, when a contract's  
18 language is unambiguous, this court will construe and enforce  
19 it according to that language.<sup>34</sup>

20 It is undisputed that Helix, by and through its Vice President, Robert Johnson,  
21 signed a clear and unambiguous Release that waived any claims it may have had for  
22 supplying labor or materials to the Project through October 31, 2013.<sup>35</sup> Helix never  
23 rescinded that Release and affirmatively accepted the payment that triggered the final  
24

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25 <sup>28</sup> *R & B Auto Ctr., Inc. v. Farmers Grp., Inc.*, 140 Cal. App. 4<sup>th</sup> 327, 371-72, 44 Cal. Rptr. 3d 426 (Ct. App. 2006).

26 <sup>29</sup> *FGA, Inc. v. Giglio*, 128 Nev., Ad. Op. 26 278 P.3d 490, 497 (2012).

27 <sup>30</sup> *NGA#2 Ltd. Liab. Co. v. Rains*, 113 Nev. 1151, 1158, 946 P.2d 163, 167 (1997).

28 <sup>31</sup> *Ellison v. California State Auto Ass’n*, 106 Nev. 601, 603, 797 P.2d 975, 977 (1990).

29 <sup>32</sup> *State v. Sutton*, 120 Nev. 972, 987, 103 P.3d 8, 18, 2004 Nev. LEXIS 129, 27, 120 Nev. Adv. Rep. 99 (Nev. 2004).

30 <sup>33</sup> 321 P.3d 858, 863, 2014 Nev. LEXIS 24, 13, 130 Nev. Adv. Rep. 21, 2014 WL 1258802 (Nev. 2014).

31 <sup>34</sup> 321 P.3d 858, 863, 2014 Nev. LEXIS 24, 13, 130 Nev. Adv. Rep. 21, 2014 WL 1258802 (Nev. 2014).

32 <sup>35</sup> Exhibit 15, Release (APCO000069).

1 condition. It is further undisputed that all the material terms necessary for a settlement are  
2 contained within the Release.<sup>36</sup>

3 Helix's subsequent efforts to submit a release with reservations are ineffective.  
4 Because the Release waives all claims for materials supplied through October 31, 2013,<sup>37</sup>  
5 APCO is entitled to an order excluding evidence of any claimed costs incurred *before*  
6 October 31, 2013.<sup>38</sup>

7 **2. Motion to exclude evidence of unjust enrichment damages since there was a**  
8 **contract.**

9 Helix asserted a breach of contract *and* unjust enrichment damages against APCO.<sup>39</sup>  
10 APCO has a contract with Helix.<sup>40</sup> An action based upon a theory of unjust enrichment is  
11 not available when there is an express, written contract because no agreement can be  
12 implied when there is an express agreement.<sup>41</sup> As such, APCO respectfully requests that  
13 the Court exclude evidence or argument of any unjust enrichment damages against APCO.

14 DATED: July 20, 2018

15 **SPENCER FANE LLP**

17 By: /s/ Mary Bacon  
18 John Randall Jefferies, Esq. (Bar No.  
19 3512)  
20 Mary E. Bacon, Esq. (Bar No. 12686)  
21 300 S. Fourth Street, Suite 950  
22 Las Vegas, NV 89101  
23 Telephone: (702) 408-3400  
24 Facsimile: (702) 408-3401  
25 *Attorneys for Apco Construction, Inc.*

26 <sup>36</sup> Exhibit 15, Release (APCO0000069).

27 <sup>37</sup> Exhibit 15, Release (APCO0000069).

28 <sup>38</sup> See Helix's Change Orders 68, 68.1 and Change Order 93 (all requesting general conditions for October 31, 2013 and before).

<sup>39</sup> Exhibit 23, Helix's Complaints against APCO.

<sup>40</sup> Exhibit 24, APCO's contract with Helix.

<sup>41</sup> *Leasepartner's Corp. v. Robert L. Brooks Trust*, 113 Nev. 747, 942 P.2d 182 (1997).

# EXHIBIT 1

Mayor  
Shari L. Buck

Council Members  
Robert L. Eliason  
Anita G. Wood  
Pamela A. Goynes-Brown  
Wade W. Wagner



City Manager  
Timothy R. Hacker

**Public Works Department- Dr. Qiong Liu, P.E., PTOE, Director**  
Engineering Services Division  
2250 Las Vegas Boulevard North • North Las Vegas, Nevada 89030  
Telephone: (702) 633-2036 • Fax: (702) 642-0390 • TDD: (800) 326-6868  
[www.cityofnorthlasvegas.com](http://www.cityofnorthlasvegas.com)

December 8, 2011

Randy Nickerl  
APCO Construction  
3432 N. 5<sup>th</sup> Street  
North Las Vegas, Nevada 89032

Via Fax: 702-734-0396

**RE: Craig Ranch Regional Park - Phase 2 Project, CIP No. 10294**  
**Conditional Notice-to-Proceed**

Dear Mr. Nickerl:

At the December 7, 2011 meeting, the North Las Vegas City Council approved the subject construction contract in the amount of \$28,512,054. A Notice of Award letter stating required contract bonds and insurance requirements will be sent to you directly from the City Clerk's Office.

In an effort to expedite this project, this letter authorizes APCO Construction to proceed with the process of preparing submittals, including construction schedule, purchasing and ordering materials upon receipt of approved shop drawings, and applying for and/or obtaining permits described in the Contract Documents. No physical construction activities at the project site will be allowed, including potholing, until the formal Notice-to-Proceed is issued.

A Notice-to-Proceed for actual construction activities will be prepared upon execution of the construction contract. This conditional Notice-to-Proceed does not affect duration of the project.

I will serve as your primary contact during construction. The City of North Las Vegas looks forward to working with you. If you have any questions, feel free to contact me at (702) 449-3149.

Sincerely,

  
Joemel D. Llamado, P.E.  
Construction Manager

cc: Karen Storms, CMC, City Clerk  
James Kostecki, Financial Analyst  
Dale Daffern, P.E., Manager, Construction Services  
Roselle Hernandez, Fiscal Technician

File: 10295/CM-8

APCO000091

JA331

# EXHIBIT 2



## Helix Electric

CONSTRUCTORS • ENGINEERS

January 28, 2013

**Brian Bohn**  
**Apco Construction**  
3432 N. 5<sup>th</sup> Street  
North Las Vegas, Nevada 89032

Regarding: **Schedule delay/Extended overhead**  
**Craig Ranch Park Phase II**

Dear Brian:

The original scheduled final completion date was January 9, 2013 for the above referenced project. The current scheduled completion date that Apco Construction has transmitted shows a current schedule completion date of August 3, 2013. Please accept this notice that Helix Electric reserves all rights to any and all additional cost incurred due to scheduled delays for this project.

Should you disagree with any of the above information, please notify Helix Electric in writing within the next 48 hours.

Please do not hesitate to call me if you have any questions.

Sincerely,

Kurk 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

HEL000456



# EXHIBIT 3



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 28<sup>th</sup> 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 4

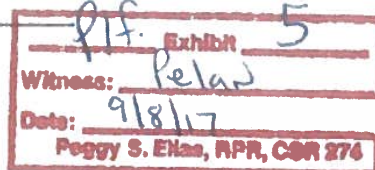
**APCO Construction**44 W. Mayflower  
North Las Vegas, NEVADA 89030Phone: 702-734-0198  
Fax: 702-734-0396**CHANGE ORDER REQUEST**  
**No. 00039****TITLE:** TIA #1 - COMPLETION DATE OF 7/17/13**DATE:** 1/9/2013**PROJECT:** Craig Ranch Regional Park - Phase 2**JOB:** 0193**TO:** Attn: Joemel Llamado  
City of North Las Vegas  
Phone: 702-633-1230**CONTRACT NO:** 1

**RE:** **To:** **From:** **Number:**  
**DESCRIPTION OF PROPOSAL**  
TIA #1 WITH COMPLETION DATE OF JULY 17, 2013 FROM DECEMBER 21, 2012.

Item	Description	Stock#	Quantity	Units	Unit Price	Tax Rate	Tax Amount	Net Amount
00001	SCHEDULING - JANUARY, FEBRUARY, MARCH, APRIL & MAY (5 MONTHS @ \$1,200.00)		1.000		\$6,000.00	0.00%	\$0.00	\$6,000.00
00002	DUST CONTROL & TRACK OUT (4,583 X 5)		1.000		\$22,916.00	0.00%	\$0.00	\$22,916.00
00003	SWPP (833 X 5)		1.000		\$4,166.00	0.00%	\$0.00	\$4,166.00
00004	SITE SECURITY (12,491.50 X 5)		1.000		\$62,457.00	0.00%	\$0.00	\$62,457.00
00005	GENERAL CONDITIONS (53,245 X 5)		1.000		\$266,229.00	0.00%	\$0.00	\$266,229.00
00006	HOME OFFICE OVERHEAD (30,366 X 5)		1.000		\$151,830.00	0.00%	\$0.00	\$151,830.00
00007	MAINTENANCE (9,600 PER MONTH X 5)		1.000		\$48,000.00	0.00%	\$0.00	\$48,000.00
00008	IRRIGATION & CONSTRUCTION WATER		1.000		\$100,000.00	0.00%	\$0.00	\$100,000.00

**Unit Cost:** \$661,598.00**Unit Tax:** \$0.00**Total:** \$694,677.90**APPROVAL:****By:** \_\_\_\_\_  
Joemel Llamado**By:** \_\_\_\_\_  
Joe Pelan**Date:** \_\_\_\_\_**Date:** \_\_\_\_\_

Exceeding 10



APCO000004

# EXHIBIT 5

**DECLARATION OF JOE PELAN IN SUPPORT OF  
APCO CONSTRUCTION, INC.'S OMNIBUS MOTION IN LIMINE**

I, Joe Pelan, declare as follows:

1. I am over 21 years old and have personal knowledge of the facts stated herein.

2. I am the Contracts Manager of APCO Construction, Inc. ("APCO").

3. I was also the Contract Manager for the Craig Ranch Regional Park Phase II ("Project").

4. I considered the City of North Las Vegas' ("City") timing on this Project to be optimistic because of the Project being rebid and reducing the Project time from 16 months to 12 months. I discussed the same with Victor Fuchs, of Helix Electric of Nevada LLC. Ultimately, Mr. Fuch's apportioned his general conditions to last through September 2013.

5. The time impact analysis and accompanying \$1.1 million request for extended general conditions that APCO submitted to the City only contained costs related to APCO's extended general conditions—not any alleged time or impacts of its subcontractors.

6. A true and correct copy of the General Conditions- Craig Ranch Regional Park – Phase II, Bid No. 1398, Section GC 6.3 "Resolution of Disputes" is attached to this affidavit as **Exhibit A**. Helix did not submit any claim in accordance with these procedures.

7. On October 21, 2014, APCO paid Helix its \$105,677.01 in retention due under the Release, the full amount due as noted in the October 18, 2013 Release. That check cleared APCO's account on October 29, 2014. **See Exhibit B.**

8. I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

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DATED the 20th day of July, 2018.

/S/ JOE PELAN  
JOE PELAN

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# EXHIBIT A



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

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# EXHIBIT B

**W BANK OF NEVADA**

P.O. BOX 26237  
LAS VEGAS, NEVADA 89126-0237  
(702) 248-4200

ACCOUNT:  
DOCUMENTS:

PAGE: 1  
10/31/2014

Member FDIC

26

APCO CONSTRUCTION  
CONTRACT PAYABLE ACCT  
4420 S DECATUR BLVD  
LAS VEGAS NV 89103-5803

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HUALAPAI  
1115 S HUALAPAI WAY  
LAS VEGAS NV 89117

TELEPHONE: 702-856-7100

BUSINESS ANALYSIS ACCOUNT 7502394257

MINIMUM BALANCE

LAST STATEMENT 09/30/14  
CREDITS  
28 DEBITS  
THIS STATEMENT 10/31/14



CHECK #..DATE.....AMOUNT	CHECK #..DATE.....AMOUNT	CHECK #..DATE.....AMOUNT
1435 10/09 13,318.01	1457 10/08 11,680.00	1466 10/14 15,389.79
1436 10/16 11,352.75	1458 10/06 45,000.00	1467 10/10 36,069.81
1437 10/15 5,400.00	1459 10/06 17,100.00	1468 10/22 2,726.75
1438 10/14 7,231.89	1460 10/16 13,168.33	1469 10/23 5,310.50
1439 10/09 159,906.85	1461 10/17 5,053.00	1470 10/17 784.00
1440 10/15 1,770.00	1462 10/16 23,560.00	1471 10/15 2,206.00
1441*10/10 3,239.63	1463 10/21 10,461.10	1472 10/29 10,000.00
1451*10/01 5,070.00	1464 10/20 9,931.45	1473 10/29 105,679.00
1453*10/01 32,703.75	1465 10/16 68,211.48	

(\*) INDICATES A GAP IN CHECK NUMBER SEQUENCE

DESCRIPTION	DATE	AMOUNT
700045865 Online Transfer to 7502489452 on 10/01/14 at 9:06	10/01	150,000.00
700107268 Online Transfer to 7502489452 on 10/08/14 at 16:35	10/08	80,000.00

\* \* \* C O N T I N U E D \* \* \*

1473 - \$105,679.00 - 10/29/2014

		1473	
APCO CONSTRUCTION 2000 S. RAYMOND AVE. #100 LAS VEGAS, NV 89103		MOBILE SERVICE STATE OF NV 10-070000	
10/29/2014		\$	105,679.00
EXACTLY ONE HUNDRED FIVE THOUSAND SIX HUNDRED SEVENTYNINE DOLLARS		AMOUNT	
PAY TO THE ORDER OF Heller Electric of Nevada, LLC 3070 E. Sunset Road, Ste. 9 Las Vegas NV 89120			
			
⑆001473⑆ 41224019784 7802394257⑆			

# EXHIBIT 7



## Helix Electric

CONSTRUCTORS • ENGINEERS

June 19, 2013

**Brian Bohn**  
**Apco Construction**  
3432 N. 5<sup>th</sup> 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>\$260</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,

  
Kurk 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

HEL000461

# EXHIBIT 8



**Bob Johnson**

---

**From:** Kurk Williams  
**Sent:** Wednesday, October 15, 2014 11:04 AM  
**To:** Eddie Bennett  
**Cc:** Kurk Williams  
**Subject:** FW: Craig Ranch Delay Notice (Helix)

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](mailto:kwilliams@helixelectric.com)

---

**From:** Joe Pelan [<mailto:jpelan@apcoconstruction.com>]  
**Sent:** Friday, June 21, 2013 2:25 PM  
**To:** Brian Bohn; Kurk Williams  
**Cc:** Mark Yoakum; Kim Stevenson  
**Subject:** RE: Craig Ranch Delay Notice (Helix)

Is there any documentation other than a letter??

---

**From:** Brian Bohn  
**Sent:** Friday, June 21, 2013 1:37 PM  
**To:** Kurk Williams  
**Cc:** Mark Yoakum; Kim Stevenson; Joe Pelan  
**Subject:** RE: Craig Ranch Delay Notice (Helix)

Kurk,

Your letter has been forwarded to the City for their review.

Thank you,

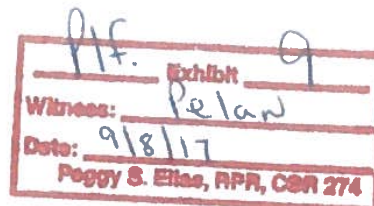
*Brian Bohn*

Project Manager  
APCO Construction  
(702) 286-1798

---

**From:** Kurk Williams [<mailto:kwilliams@helixelectric.com>]  
**Sent:** Wednesday, June 19, 2013 5:20 PM  
**To:** Brian Bohn  
**Cc:** Mark Yoakum; Kim Stevenson; Joe Pelan; Kurk Williams  
**Subject:** RE: Craig Ranch Delay Notice (Helix)

Brian,



Please see attached letter in regard letter for in regards to our extended overhead cost.

I know per our previous conversations that you will be submitting this to the City of North Las Vegas.

Please note that based on the current date of today these cost are at about \$72,960.00.

Helix will be pursuing to get paid for these additional cost that we are incurring on a daily bases due to the fact that the project is behind schedule.

Please do not hesitate to contact me should 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](mailto:kwilliams@helixelectric.com)

---

**From:** Brian Bohn [<mailto:BBohn@apcoconstruction.com>]  
**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)

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](mailto: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](mailto:kwilliams@helixelectric.com)



**Helix Electric**  
CONSTRUCTORS • ENGINEERS



## Helix Electric

CONSTRUCTORS • ENGINEERS

June 19, 2013

Brian Bohn  
Apco Construction  
3432 N. 6<sup>th</sup> 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.

Project Manager	\$280
Superintendent	\$280
Site Trailer	\$25
Generator	\$5
Forklift	\$25
Truck	\$45

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,

  
Kurk 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

# EXHIBIT 9



**Helix Electric**  
ELECTRIC - MECHANICAL

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 NRS code section 7108.5 a penalty of 1% 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 proper payment 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

AF. Exhibit 10  
Witness: Pelan  
Date: 9/8/17  
Peggy S. Elias, APR, CSR 274

JA355

**APCO Construction****CHANGE ORDER REQUEST**

No. 00068

44 W. Mayflower  
North Las Vegas, NEVADA 89030Phone: 702-734-0198  
Fax: 702-734-0396**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	WIRKS	\$1,200.00	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:** \_\_\_\_\_

Signature

**By:** \_\_\_\_\_  
Joe Polan**Date:** 9/5/13

# EXHIBIT 11



**City of North Las Vegas**Engineering Services Division  
2250 N Las Vegas Boulevard, Ste 610  
North Las Vegas, NV 89030Phone: 633-1230  
Fax: 642-0390**CHANGE MANAGEMENT**

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	0		
Values:	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		

**Commitments:****Remarks:**

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

  
9-16-13Joel Llamado  
CITY OF NORTH LAS VEGAS  
CONSTRUCTION MGR.

Expedition

PLF.	Exhibit	11
Witness:	Pelaw	
Date:	9/18/17	
Peggy S. Elias, APR, COR 274		

APCO 0040

**APCO Construction**44 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	WUNKS	\$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:** \_\_\_\_\_  
Española 0**By:** \_\_\_\_\_  
Ibc Polan**Date:** 9/3/13

APCO 0041



**Helix Electric**  
CONTRACTORS - ENGINEERS

MISCELLANEOUS INVOICE # 161113M-001

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

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 NRS code section 7102.5 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

JA360

# EXHIBIT 12

**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**

**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:**

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

**Commitments:****Remarks:**

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

# **EXHIBIT 13**

Mayor  
John J. Lee

Council Members  
Anita G. Wood  
Patricia A. Gagnon-Brown  
Wanda W. Wagner  
Isaac E. Barron



*"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](http://www.cityofnorthlasvegas.com)

October 2, 2013

Interim City Manager  
Jeffrey L. Buchanan

Mr. Joe Pelan  
APCO Construction  
3432 N. 5<sup>th</sup> Street  
North Las Vegas, NV 89032

PLF	Exhibit 12
Witness:	Pelan
Date:	9/18/17
Peggy S. Elias, RPR, CSR 274	

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 \$1,090,066.60, 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 26, 2013, for a total amount of \$560,724.16, based on the following evaluation:

Bid Item	Description	Contr Days	Qty	Units	Unit Price (\$)	Daily Price (\$) (365 Days)
200.06	Dust Control & Track-Out	365	1.0	LS	\$ 56,000.00	\$ 150.68
200.06	SWPP Control	365	1.0	LS	\$ 10,000.00	\$ 27.40
200.08	General Conditions	365	1.0	LS	\$ 638,960.00	\$ 1,760.55
200.09	Site Security	365	1.0	LS	\$ 149,808.00	\$ 410.60
200.10	Home Office Overhead	365	1.0	LS	\$ 304,392.00	\$ 988.33
	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

APCO000006

JA364

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 25, 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

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## 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) 326-6868

E-Mail: [llamado@cityofnorthlasvegas.com](mailto:llamado@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 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:

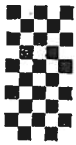
Page 1 of 1

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APCO000005

JA366

# EXHIBIT 14



Oct. 8. 2013 10:29AM

APCO Construction

No. 2030 P. 1



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,

Joe Pelan  
Contract Manager  
APCO CONSTRUCTION

**City of North Las Vegas****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:**

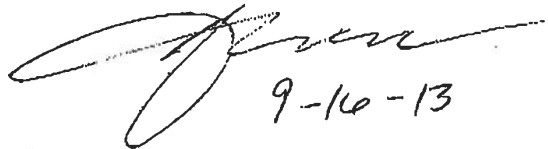
	Estimated	Quoted	Negotiated	Final
Budgeted:	\$0.00	\$0.00	\$0.00	\$0.00
Committed:				

**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:**

<b>Contract/PO Type :</b> CON	<b>No:</b> 1	<b>To:</b> APCO	<b>BE</b>	<b>From:</b> CNLV	<b>JDL</b>
	<b>Estimated</b>	<b>Quoted</b>	<b>Negotiated</b>	<b>Final</b>	
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.



9-16-13

Joemel Llanado  
City of North Las Vegas  
Construction MGR.

# EXHIBIT 15



CONDITIONAL WAIVER AND RELEASE  
UPON FINAL PAYMENT

Property Name:	Craig Ranch Regional Park Phase 2
Property Location:	628 W. Craig Road, North Las Vegas, NV 8902
Undersigned's Customer:	APCO Construction
Inv./Pmt Application No:	161113-022
Payment Amount:	\$105,677.01
Payment Period:	Thru 10/31/13
Amount of Disputed Claims:	Zero

Upon receipt by the undersigned of a check in the above referenced Payment Amount payable to the undersigned, and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release and the undersigned shall be deemed to waive any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above described Property to the following extent:

This release covers the final payment to the undersigned for all work, materials or equipment furnished by the undersigned to the Property or to the Undersigned's Customer and does not cover payment for Disputed Claims, if any. Before any recipient of the document relies on it, he should verify evidence of payment to the undersigned. The undersigned warrants that he either has already paid or will use the money received from the final payment promptly to pay in full all laborers, subcontractors, material men and suppliers for all work, materials or equipment that are the subject of the waiver and release.

Dated: 10/18/2013

Helix Electric

By:

A handwritten signature in dark ink, appearing to read "Robert D. Johnson", written over a horizontal line.

Its:

Robert D Johnson, Senior Vice President

3840 N. Commerce Street • North Las Vegas, Nevada 89032 • Phone: (702)734-0198 • Fax: (702)734-0396  
E-Mail: apcoconstruction.com • Nevada Contractor's License: 0014563

APCO000069

JA371

# EXHIBIT 17

**APCO Construction****CHANGE ORDER REQUEST**

No. 00093

44 W. Mayflower  
North Las Vegas, NEVADA 89030Phone: 702-734-0198  
Fax: 702-734-0396

TITLE: HBLIX 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	HBLIX 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 LlamadoBy: \_\_\_\_\_  
Joe Pelan

Date: \_\_\_\_\_

Date: 11/18/13

Exposition 0

PIF	Exhibit	18
Witness:	Pelan	
Date:	9/8/17	
Peggy S. Elias, RPA, COR 274		

APCO 0056

JA373





**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

JA374

	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	\$ 289.44								
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	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

\$ 26,304.00

Grand total for extended overhead for months September 2013 - October 2013

Project Manager Based on 4 Hours a Day @ \$65/Hr.

Superintendent @ 4 Hours a Day \$70/Hr.

# EXHIBIT 16



**NORTH LAS VEGAS**

CITY OF NORTH LAS VEGAS  
BMD C1-2012-11

1

**PAY ESTIMATE NO. 22**  
**PERIOD:**  
From: 10/01/13  
To: 12/31/13

NORTH LAS VEGAS			CONTRACT AMOUNTS				THIS ESTIMATE		PREVIOUS ESTIMATES		TOTAL TO DATE		
Bid Item	Description	Contr Days	Qty	Units	Unit Price (\$)	Total Price (\$)	Units Earned	\$ Earned	Units Earned	Previous \$ Earned	Total Units	Total \$ Earned	% Complete
484													
100.01	Construction Conditions	1.0	LS	\$	2,000,000.00	\$ 2,000,000.00	0.13	\$ 255,911.81	0.07	\$ 1,741,088.19	1.00	\$ 2,000,000.00	100.0%
200.01	Medication	1.0	LS	\$	30,000.00	\$ 30,000.00	0.00		1.00	\$ 30,000.00	1.00	\$ 30,000.00	100.0%
200.02	Demolition	1.0	LS	\$	10,000.00	\$ 10,000.00	0.00		1.00	\$ 10,000.00	1.00	\$ 10,000.00	100.0%
200.03	Bonds & Insurance	1.0	LS	\$	160,670.00	\$ 160,670.00	0.00		1.00	\$ 160,670.00	1.00	\$ 160,670.00	100.0%
200.04	Scheduling	1.0	LS	\$	25,000.00	\$ 25,000.00	0.00		1.00	\$ 25,000.00	1.00	\$ 25,000.00	100.0%
200.05	Dual Control & Tread-Out	1.0	LS	\$	55,000.00	\$ 55,000.00	0.00		1.00	\$ 55,000.00	1.00	\$ 55,000.00	100.0%
200.06	SWP Control	1.0	LS	\$	10,000.00	\$ 10,000.00	0.00		1.00	\$ 10,000.00	1.00	\$ 10,000.00	100.0%
200.07	Survey	1.0	LS	\$	55,000.00	\$ 55,000.00	0.00		1.00	\$ 55,000.00	1.00	\$ 55,000.00	100.0%
200.08	Stakeout	1.0	LS	\$	638,950.00	\$ 638,950.00	0.00		1.00	\$ 638,950.00	1.00	\$ 638,950.00	100.0%
200.09	Site Grading	1.0	LS	\$	144,686.00	\$ 144,686.00	0.00		1.00	\$ 144,686.00	1.00	\$ 144,686.00	100.0%
200.10	Drainage	1.0	LS	\$	32,000.00	\$ 32,000.00	0.00		1.00	\$ 32,000.00	1.00	\$ 32,000.00	100.0%
300.01	Demolition	1.0	LS	\$	373,083.00	\$ 373,083.00	0.00		1.00	\$ 373,083.00	1.00	\$ 373,083.00	100.0%
300.02	Clear & Grub	1.0	LS	\$	47,130.00	\$ 47,130.00	0.00		1.00	\$ 47,130.00	1.00	\$ 47,130.00	100.0%
300.03	Earthwork	1.0	LS	\$	463,944.00	\$ 463,944.00	0.00		1.00	\$ 463,944.00	1.00	\$ 463,944.00	100.0%
300.04	Steel Walls	1.0	LS	\$	244,118.00	\$ 244,118.00	0.00		1.00	\$ 244,118.00	1.00	\$ 244,118.00	100.0%
300.05	Concrete Walls	1.0	LS	\$	728,638.00	\$ 728,638.00	0.00		1.00	\$ 728,638.00	1.00	\$ 728,638.00	100.0%
300.06	Pavers	1.0	LS	\$	169,363.00	\$ 169,363.00	0.00		1.00	\$ 169,363.00	1.00	\$ 169,363.00	100.0%
300.07	Paving Lot Paving	1.0	LS	\$	236,884.00	\$ 236,884.00	0.00		1.00	\$ 236,884.00	1.00	\$ 236,884.00	100.0%
300.08	Water	1.0	LS	\$	234,000.00	\$ 234,000.00	0.00		1.00	\$ 234,000.00	1.00	\$ 234,000.00	100.0%
300.09	Sewer	1.0	LS	\$	66,061.00	\$ 66,061.00	0.00		1.00	\$ 66,061.00	1.00	\$ 66,061.00	100.0%
300.10	Storm Drain	1.0	LS	\$	35,770.00	\$ 35,770.00	0.00		1.00	\$ 35,770.00	1.00	\$ 35,770.00	100.0%
300.11	Integration Pump Work	1.0	LS	\$	548,981.00	\$ 548,981.00	0.00		1.00	\$ 548,981.00	1.00	\$ 548,981.00	100.0%
300.12	Integration Pump Station	1.0	LS	\$	464,880.00	\$ 464,880.00	0.00		1.00	\$ 464,880.00	1.00	\$ 464,880.00	100.0%
300.13	Site Electrical	1.0	LS	\$	4,175,043.00	\$ 4,175,043.00	0.00		1.00	\$ 4,175,043.00	1.00	\$ 4,175,043.00	100.0%
300.14	Basement Cavity	1.0	LS	\$	332,765.00	\$ 332,765.00	0.00		1.00	\$ 332,765.00	1.00	\$ 332,765.00	100.0%
300.15	Basement Cavity	1.0	LS	\$	81,887.00	\$ 81,887.00	0.00		1.00	\$ 81,887.00	1.00	\$ 81,887.00	100.0%
300.16	Basement Cavity	1.0	LS	\$	141,827.00	\$ 141,827.00	0.00		1.00	\$ 141,827.00	1.00	\$ 141,827.00	100.0%
300.17	Basement Cavity	1.0	LS	\$	2,368,226.00	\$ 2,368,226.00	0.00		1.00	\$ 2,368,226.00	1.00	\$ 2,368,226.00	100.0%
300.18	Basement Cavity	1.0	LS	\$	706,112.00	\$ 706,112.00	0.00		1.00	\$ 706,112.00	1.00	\$ 706,112.00	100.0%
300.19	Basement Cavity	1.0	LS	\$	283,782.00	\$ 283,782.00	0.00		1.00	\$ 283,782.00	1.00	\$ 283,782.00	100.0%
300.20	Basement Cavity	1.0	LS	\$	236,750.00	\$ 236,750.00	0.00		1.00	\$ 236,750.00	1.00	\$ 236,750.00	100.0%
300.21	Basement Cavity	1.0	LS	\$	659,352.00	\$ 659,352.00	0.00		1.00	\$ 659,352.00	1.00	\$ 659,352.00	100.0%
300.22	Large Group Plant Structures (2)	1.0	LS	\$	272,434.00	\$ 272,434.00	0.00		1.00	\$ 272,434.00	1.00	\$ 272,434.00	100.0%
300.23	Landscaping	1.0	LS	\$	4,103,383.00	\$ 4,103,383.00	0.00		1.00	\$ 4,103,383.00	1.00	\$ 4,103,383.00	100.0%
300.24	Signs & Shipping	1.0	LS	\$	29,450.00	\$ 29,450.00	0.00		1.00	\$ 29,450.00	1.00	\$ 29,450.00	100.0%
300.25	Signs & Shipping	1.0	LS	\$	61,816.00	\$ 61,816.00	0.00		1.00	\$ 61,816.00	1.00	\$ 61,816.00	100.0%
300.26	Signs & Shipping	1.0	LS	\$	602,464.00	\$ 602,464.00	0.00		1.00	\$ 602,464.00	1.00	\$ 602,464.00	100.0%
300.27	Signs & Shipping	1.0	LS	\$	1,710,382.00	\$ 1,710,382.00	0.00		1.00	\$ 1,710,382.00	1.00	\$ 1,710,382.00	100.0%
300.28	Signs & Shipping	1.0	LS	\$	100,000.00	\$ 100,000.00	0.00		1.00	\$ 100,000.00	1.00	\$ 100,000.00	100.0%
300.29	Signs & Shipping	1.0	LS	\$	64,712.00	\$ 64,712.00	0.00		1.00	\$ 64,712.00	1.00	\$ 64,712.00	100.0%
300.30	Signs & Shipping	1.0	LS	\$	23,218,633.00	\$ 23,218,633.00	0.00		1.00	\$ 23,218,633.00	1.00	\$ 23,218,633.00	100.0%
Alternates #2													
1.00	Contract Central Plaza	1.0	LS	\$	1,173,887.00	\$ 1,173,887.00	0.00		1.00	\$ 1,173,887.00	1.00	\$ 1,173,887.00	100.0%
2.00	10-Month Establishment Period	1.0	LS	\$	2,789.00	\$ 2,789.00	0.00		1.00	\$ 2,789.00	1.00	\$ 2,789.00	100.0%
Total Alternates #2													
1,176,676.00													
Alternates #3													
1.00	Contract East Parking Lot, Tot Lot	1.0	LS	\$	1,720,834.00	\$ 1,720,834.00	0.00		1.00	\$ 1,720,834.00	1.00	\$ 1,720,834.00	100.0%
2.00	10-Month Establishment Period	1.0	LS	\$	2,789.00	\$ 2,789.00	0.00		1.00	\$ 2,789.00	1.00	\$ 2,789.00	100.0%
Total Alternates #3													
1,723,623.00													
Alternates #4													
1.00	Contract Garden Area	1.0	LS	\$	2,183,606.00	\$ 2,183,606.00	0.00		1.00	\$ 2,183,606.00	1.00	\$ 2,183,606.00	100.0%
2.00	10-Month Establishment Period	1.0	LS	\$	6,390.00	\$ 6,390.00	0.00		1.00	\$ 6,390.00	1.00	\$ 6,390.00	100.0%



CITY OF  
NORTH LAS VEGAS

CIP10294 & CIP10300 - CRAG RANCH REGIONAL PARK, PHASE II  
CITY OF NORTH LAS VEGAS  
PWP CL-2012-31  
BID #1338

PAY ESTIMATE NO. 22  
PERIOD: 10/01/13  
TO: 12/31/13

Bld Item	Description	Cont Days	Qty	Units	CONTRACT AMOUNTS		THIS ESTIMATE		PREVIOUS ESTIMATES		TOTAL TO DATE		% Complete
					Unit Price (\$)	Total Price (\$)	Units Earned	\$ Earned	Units Earned	Previous \$ Earned	Total Units	Total \$ Earned	
CCAK20 (PE-17)	Volleyball Pkg Lot Re-Grade (18)				\$	21,126.19		\$	21,126.19				
CCAK20 (PE-17)	4" PPFA				\$	17,306.10		\$	17,306.10				
CCAK20 (PE-17)	Added Sidewalk @ SW Expanded				\$	9,346.83		\$	9,346.83				
CCAK20 (PE-17)	General Site Weed Control				\$	9,446.25		\$	9,446.25				
CCAK20 (PE-17)	Warning Track Mix				\$	6,755.54		\$	6,755.54				
CCAK20 (PE-17)	Reduce Box Trees from 36" to 24"				\$	(3,313.76)		\$	(3,313.76)				
CCAK20 (PE-17)	Enlarge Lake Splash Pads				\$	8,298.05		\$	8,298.05				
CCAK20 (PE-17)	Add 4 FP Fixtures				\$	16,673.26		\$	16,673.26				
CCAK20 (PE-17)	F3 Fixtures @ Trail Re-Align				\$	16,542.06		\$	16,542.06				
CCAK20 (PE-17)	Entry Monument Sign Light Field				\$	4,974.90		\$	4,974.90				
CCAK20 (PE-17)	Power Source for Holiday Tree L				\$	10,863.00		\$	10,863.00				
CCAK20 (PE-17)	Change Out Connectors from PP				\$	-		\$	-				
CCAK20 (PE-17)	Substitute Lithonia Fixtures				\$	3,146.95		\$	3,146.95				
CCAK20 (PE-17)	Panel Deck Covers				\$	1,059.05		\$	1,059.05				
CCAK20 (PE-17)	Remove Existing Concrete				\$	18,112.50		\$	18,112.50				
CCAK20 (PE-17)	Add Rye Seed to Stadium 20 Acre				\$	29,925.00		\$	29,925.00				
CCAK20 (PE-17)	Overseed w/ Rye 16.5 Acres				\$	4,464.80		\$	4,464.80				
CCAK20 (PE-17)	Electrical for State Park Ltr Stall				\$	439.90		\$	439.90				
CCAK20 (PE-17)	Fiber Optic Charge @ 10c/ft				\$	3,296.55		\$	3,296.55				
CCAK20 (PE-17)	Add Trees & Debris Removal				\$	590,724.16		\$	590,724.16				
CCAK20 (PE-17)	TIA #1 Thru 10/23/13				\$	28,299.30		\$	28,299.30				
CCAK20 (PE-17)	Guardrail Relocation				\$	598.00		\$	598.00				
CCAK20 (PE-17)	Windmill Deck Security Gate				\$	3,937.50		\$	3,937.50				
CCAK20 (PE-17)	Fertilize Turf Areas				\$	5,262.32		\$	5,262.32				
CCAK20 (PE-17)	Power to Pedestal				\$	16,670.75		\$	16,670.75				
CCAK20 (PE-17)	Re-Slope Existing Parking Lot				\$	4,556.12		\$	4,556.12				
CCAK20 (PE-17)	Grade Difference Around Pond				\$	7,770.00		\$	7,770.00				
CCAK20 (PE-17)	Add Trees & Debris Removal				\$	1,064.27		\$	1,064.27				
CCAK20 (PE-17)	Add Sidewalk at Mt 14 of Spiller				\$	7,050.75		\$	7,050.75				
CCAK20 (PE-17)	PPFA Addition to Shipping				\$	3,850.75		\$	3,850.75				
CCAK20 (PE-17)	Entry Gate & Access Trip Fence				\$	22,899.71		\$	22,899.71				
CCAK20 (PE-17)	MOVE Add RRP on Crail				\$	207,309.74		\$	207,309.74				
CCAK20 (PE-17)	Add Pk 1 Removal & Replacem				\$	4,025,758.42		\$	4,025,758.42				
Total GC's						\$ (2,025,758.42)						\$ 2,000,980.90	
Construction Conflict Balance						\$							



CITY OF  
NORTH LAS VEGAS

CP10294 & CP10300 - CRAIG RAIN... REGIONAL PARK, PHASE II

CITY OF NORTH LAS VEGAS

PWP CL 2012-31

Bid #1598

PAY ESTIMATE NO. 22

PERIOD:

From: 10/01/13

To: 12/31/13

Bid Item	Description	Contr Days	Qty	Unit	Unit Price (\$)	Total Price (\$)	Units Earned	Previous \$ Earned	Total \$ Earned	% Complete
	Total Alternates #4				\$ 2,200,155.00			\$ 2,200,155.00		100.0%

Alternates #6	Remove Existing Concrete & Install Utility Conduits in Crane Rd (NVE)	1.00		LS	\$ 181,833.00	\$ 181,833.00	0.00	\$ -	\$ 181,833.00	100.0%
	Total Alternates #6				\$ 181,833.00			\$ 181,833.00		100.0%
	Adjusted Contract Days	484						\$ 28,253,142.39	\$ 28,535,142.39	100.0%

Pay Estimate Through: 12/31/13


Contract Start Date: 01/11/12

Adjusted Contract Days: 484

Number of Days Worked: 720

Contract Completion Date: 05/08/13

Percent Contract Time: 148.6%

Submitted By:   
Joseph Lam  
APCO Construction  
3432 N. 5th Street  
North Las Vegas, Nevada 89002

Approved By:	
Journal Limited, P.E.	
City of North Las Vegas	
Construction Services, Construction Manager	
Approved By:	
Date:	
Date:	
Construction Services, Manager	

CONTRACT AMOUNTS		THIS ESTIMATE		PREVIOUS ESTIMATES		TOTAL TO DATE	
	Units	\$ Earned	Units Earned	Previous \$ Earned	Total \$ Earned	Units	% Complete
TOTALS	\$ 28,535,142.39	\$ 28,535,142.39	\$ 28,535,142.39	\$ 28,535,142.39	\$ 28,535,142.39	\$ 28,535,142.39	100.0%

Total Earned	\$ 28,535,142.39	100.0%
Retention Release	\$ -	0.0%
Total Due	\$ 28,535,142.39	100.0%
Previous Payments	\$ 27,540,340.74	96.6%
Due this estimate	\$ 871,732.38	3.4%

CP10294 BLM	0048-70637-40524-00000	\$ 28,535,142.39
CP10300 BLM	0048-70637-40524-00000	\$ 712,841.35
Retention	0048-70637-40524-00000	\$ 712,841.35
Net Payment		\$ 871,732.38

Construction Activities	Amount	Field
CC447 (PE-02)	\$ 118,440.00	\$ 118,440.00
CC447 (PE-02)	\$ 13,650.00	\$ 13,650.00
CC447 (PE-02)	\$ 21,510.15	\$ 21,510.15
CC447 (PE-02)	\$ 10,478.63	\$ 10,478.63
CC447 (PE-02)	\$ 10,898.75	\$ 10,898.75
CC447 (PE-02)	\$ 4,530.51	\$ 4,530.51
CC447 (PE-02)	\$ -	\$ -
CC447 (PE-02)	\$ 740.25	\$ 740.25
CC447 (PE-02)	\$ 8,111.25	\$ 8,111.25
CC447 (PE-02)	\$ 48,005.28	\$ 48,005.28
CC447 (PE-02)	\$ 25,851.54	\$ 25,851.54
CC447 (PE-02)	\$ 85,892.05	\$ 85,892.05
CC447 (PE-02)	\$ 3,843.58	\$ 3,843.58
CC447 (PE-02)	\$ 4,614.75	\$ 4,614.75
CC447 (PE-02)	\$ 230,558.11	\$ 230,558.11
CC447 (PE-02)	\$ 23,544.20	\$ 23,544.20
CC447 (PE-02)	\$ 15,084.77	\$ 15,084.77
CC447 (PE-02)	\$ 37,350.05	\$ 37,350.05
CC447 (PE-02)	\$ 7,350.00	\$ 7,350.00
CC447 (PE-02)	\$ 37,823.50	\$ 37,823.50
CC447 (PE-02)	\$ 26,348.03	\$ 26,348.03
CC447 (PE-02)	\$ 61,581.63	\$ 61,581.63
CC447 (PE-02)	\$ 32,695.00	\$ 32,695.00
CC447 (PE-02)	\$ 58,292.50	\$ 58,292.50
CC447 (PE-02)	\$ 18,813.35	\$ 18,813.35
CC447 (PE-02)	\$ 12,477.80	\$ 12,477.80
CC447 (PE-02)	\$ 58,134.15	\$ 58,134.15

Previous Payment Summary	Pay Estimate #1	Pay Estimate #2	Pay Estimate #3	Pay Estimate #4	Pay Estimate #5	Pay Estimate #6	Pay Estimate #7	Pay Estimate #8	Pay Estimate #9	Pay Estimate #10	Pay Estimate #11	Pay Estimate #12	Pay Estimate #13	Pay Estimate #14	Pay Estimate #15	Pay Estimate #16	Pay Estimate #17	Pay Estimate #18	Pay Estimate #19	Pay Estimate #20	Pay Estimate #21	TOTAL
	\$ 340,006.75	\$ 708,387.80	\$ 462,414.22	\$ 414,108.84	\$ 735,483.35	\$ 2,020,830.87	\$ 2,363,682.90	\$ 1,065,049.45	\$ 1,385,485.22	\$ 1,191,788.42	\$ 2,130,446.12	\$ 1,148,381.17	\$ 2,107,475.38	\$ 2,017,705.65	\$ 1,337,388.48	\$ 1,782,728.08	\$ 1,375,884.61	\$ 1,208,627.39	\$ 1,345,680.59	\$ 1,350,334.11		\$ 27,540,340.74

# EXHIBIT 18

**City of North Las Vegas**Engineering Services Division  
2250 N Las Vegas Boulevard, Ste 610  
North Las Vegas, NV 89030Phone: 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:** RBJ**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

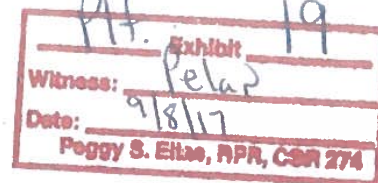
Contract Sum if Approved at this Value: \$28,512,054.00

**Budget:**

Contract/PO Type	CON	No:	1	To: APCO	BB	From: CNLV	IDL
Time Change:	0		0			0	
Values:	\$0.00		\$0.00			\$0.00	

**Commitments:****Remarks:**

This COR in the amount of \$26,304.00 for Helix Electric Extended GC's was NOTED on 12/4/13



Expedition®

APCO 0059

JA381



**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:** \_\_\_\_\_

Expedita ©

**By:** \_\_\_\_\_  
Joe Pelan**Date:** 11/18/13

APCO 0060

JA382



**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

JA383

	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									
Fortify/s									
Small Tools	\$ 174.77	\$ 218.52							
Consumables									
Total	\$ 11,945.33	\$ 14,358.67	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

\$ 26,304.00

Grand total for extended overhead for months September 2013 - October 2013

Project Manager Based on 4 Hours a Day @ \$65/Hr.

Superintendent @ 4 Hours a Day \$70/Hr.

# EXHIBIT 19

**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	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 COR in the amount of \$26,304.00 for Helix Electric Extended GC's is REJECTED on 12/4/13.

# EXHIBIT 20

APCO CONSTRUCTION General Contractor

1473

Check#: 1473 Date: 10/21/2014 Vendor#: 21274 Helix Electric of Nevada, LLC

Invoice#	Description	Balance	Discount	This Check
PP#2 03/12	193 Progress Bill #2 03/12	3,125.00		3,125.00
PP#1 02/12	193 Progress Bill #1 02/12	2,813.00		2,813.00
PP#3 04/12	193 Progress Bill #3 04/12	4,689.00		4,689.00
PP#4 05/12	193 Progress Bill #4 05/12	9,588.00		9,588.00
PP#5 06/12	193 Progress Bill #5 06/12	18,866.00		18,866.00
PP#6 07/12	193 Progress Bill #6 07/12	10,875.00		10,875.00
PP#7 08/12	193 Progress Bill #7 08/12	13,038.00		13,038.00
PP#8 09/12	193 Progress Bill #8 09/12	7,375.00		7,375.00
PP#9 10/12	193 Progress Bill #9 10/12	7,750.00		7,750.00
PP#10 11/12	193 Progress Bill #10 11/12	11,325.00		11,325.00

Note: Other invoices included in this check

ORIGINAL DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER WITH MICROPRINTED BORDER

**APCO CONSTRUCTION**  
44 W. Main Street • North Las Vegas, NV 89002  
Phone: (702) 734-0188 • Fax: (702) 734-0388  
N.L. 14583

**BANK OF NEVADA**  
HUALAPAI REGIONAL OFFICE  
1115 S. HUALAPAI WAY  
LAS VEGAS, NV 89117  
94-177/1224

10/21/2014 \$ \*105,679.00

EXACTLY ONE HUNDRED FIVE THOUSAND SIX HUNDRED SEVENTY NINE DOLLARS AMOUNT

Helix Electric of Nevada, LLC  
3078 E. Sunset Road, Ste. 9  
Las Vegas NV 89120

DOCUMENT INCLUDES A HIDDEN WORD. DO NOT CASH IF THE WORD VOID IS VISIBLE. DOCUMENT ALSO CONTAINS HEAT SENSITIVE INK. TOUCH HERE - RED IMAGE DISAPPEARS WITH HEAT

1100147311 1224017781 750239425711

APCO CONSTRUCTION General Contractor

1473

Check#: 1473 Date: 10/21/2014 Amount: 105,679.00 Vendor: 21274 Helix Electric of Nevada, LLC

Invoice#	Description	Balance	Discount	This Check
PP#2 03/12	193 Progress Bill #2 03/12	3,125.00		3,125.00
PP#1 02/12	193 Progress Bill #1 02/12	2,813.00		2,813.00
PP#3 04/12	193 Progress Bill #3 04/12	4,689.00		4,689.00
PP#4 05/12	193 Progress Bill #4 05/12	9,588.00		9,588.00
PP#5 06/12	193 Progress Bill #5 06/12	18,866.00		18,866.00
PP#6 07/12	193 Progress Bill #6 07/12	10,875.00		10,875.00
PP#7 08/12	193 Progress Bill #7 08/12	13,038.00		13,038.00
PP#8 09/12	193 Progress Bill #8 09/12	7,375.00		7,375.00
PP#9 10/12	193 Progress Bill #9 10/12	7,750.00		7,750.00
PP#10 11/12	193 Progress Bill #10 11/12	11,325.00		11,325.00

Note: Other Invoices included in this check



REORDER FROM YOUR LOCAL SAFEGUARD DISTRIBUTOR. IF UNKNOWN, CALL 800-523-2422

Y139F006108M 9/13

APCO000072

JA388

# EXHIBIT 21



---

**Mary Jo Allen**

---

**From:** Eddie Bennett <ebennett@helixelectric.com>  
**Sent:** Thursday, October 30, 2014 12:32 PM  
**To:** Mary Jo Allen; Javier Pereda de la Fuente (jpereda@grupocobra.com); Joe Pelan  
**Cc:** Kurk Williams; Bob Johnson; Victor Fuchs  
**Subject:** Craig Ranch Park - Release  
**Attachments:** 161113 rels\_20141030140922.pdf

Hello,

Please see attached release.

Happy Halloween,

Eddie Bennett  
Project Assistant

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

Direct 702-697-8227  
Fax 702-732-4386



UNCONDITIONAL WAIVER AND RELEASE  
UPON FINAL PAYMENT

Property Name:	Craig Ranch Regional Park Phase 2
Property Location:	628 W. Craig Road, North Las Vegas, NV 89032
Undersigned's Customer:	APCO Construction
Inv./Pmt Application No:	FINAL PAYMENT
Payment Amount:	\$105,679.00
Amount of Disputed Claims:	\$138,151.00 (attached pages are made a part of this release)

The undersigned has been paid in full for all work, materials and equipment furnished to his Customer for the above described Property and does hereby waive and release any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above described Property, except for the payment of Disputed Claims, if any, noted above. The undersigned warrants that he either has already paid or will use the money received from the final payment promptly to pay in full all laborers, subcontractors, material men and suppliers for all work, materials or equipment that are the subject of the waiver and release.

Dated: 10/29/2014

Helix Electric of Nevada, LLC

By:

Robert D Johnson, Senior Vice President

**Notice: This document waives rights unconditionally and states that you have been paid for giving up those rights. This document is enforceable against you if you sign it, even if you have not been paid. If you have not been paid, use a Conditional Release form.**

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

APCO000081



**Helix Electric**  
CONSTRUCTORS • ENGINEERS

October 30, 2014

**Joe Pelan**  
**APCO Construction**  
44 W Mayflower Avenue  
North Las Vegas, NV 89030

Regarding: **Craig Ranch Regional Park Phase 2**

Regarding: **10/29/2014 Unconditional Waiver and Release Upon Final Payment**

Dear Joe:

We are providing this letter to reserve our rights for payment related to \$138,151.00 in costs for extended general conditions on the Craig Ranch Regional Park Phase 2 project.

This letter and the \$138,151.00 in costs has been incorporated into the "Amount of Disputed Claims" on our 10/29/2014 Unconditional Waiver and Release Upon final payment for this project.

Sincerely,

Robert D. Johnson  
SR VP Major Projects

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

APCO000082



**Helix Electric**  
CONSTRUCTORS • ENGINEERS

MISCELLANEOUS INVOICE # 161113M-001R2

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	\$ 138,151.00
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<b>Total Amount Due</b>	<b>\$ 138,151.00</b>
-------------------------	----------------------

This invoice supersedes the previous invoices.

  
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

APCO000083

JA393

# EXHIBIT 22

1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA  
3  
4 HELIX ELECTRIC OF NEVADA, )  
5 LLC, a Nevada limited )  
6 liability company, )  
7 Plaintiff, )  
8 vs. ) CASE NO. A-16-730091-C  
9 APCO CONSTRUCTION, a Nevada ) DEPT. NO.: XVII  
10 corporation; SAFECO INSURANCE )  
11 COMPANY OF AMERICA; DOES I )  
12 through X; and BOE BONDING )  
13 COMPANIES I through X, )  
14 Defendants. )  
15  
16  
17 DEPOSITION OF JOSEPH PELAN  
18 Las Vegas, Nevada  
19 Friday, September 8, 2017  
20  
21  
22  
23  
24 REPORTED BY: PEGGY S. ELIAS, RPR  
25 Nevada CCR No. 274 - California CSR No. 8671  
JOB NO.: 414596

<p>1 Deposition of JOSEPH PELAN taken at 2 Peel Brimley, LLP, 3333 East Serene Avenue, Suite 200, 3 Las Vegas, Nevada, on Friday, September 8, 2017, at 4 10:00 a.m., before Peggy S. Elias, Certified Court 5 Reporter in and for the State of Nevada.</p> <p>6 7 APPEARANCES OF COUNSEL 8</p> <p>9 For Plaintiff:</p> <p>10 CARY B. DOMINA, ESQ. 11 Peel Brimley LLP 12 3333 East Serene Avenue, Suite 200 13 Henderson, Nevada 89074 14 702.990.7272 15 702.990.7273 Fax 16 cdomina@peelbrimley.com</p> <p>17 For Defendants:</p> <p>18 CODY S. MOUNTEER, ESQ. 19 Marquis Aurbach Coffing 20 10001 Park Run Drive 21 Las Vegas, Nevada 89145 22 702.382.0711 23 702.382.5816 Fax 24 cmounteer@maclaw.com</p> <p>25 Also Present:</p> <p>LISA LYNN</p>	<p>Page 2</p> <p>1 INDEX TO EXHIBITS (Cont'd.) 2 EXHIBIT DESCRIPTION PAGE 3 Exhibit 16 Change Management No. 00068.1 114 4 Exhibit 17 Miscellaneous Invoice No. 117 5 16113M-002, 11/13/13 6 Exhibit 18 Change Order Request No. 00093, 119 7 11/18/13 8 Exhibit 19 Change Management No. 00093 119 9 Exhibit 20 Emails 124 10 Exhibit 21 Letter, Fuchs to Pelan, 9/26/14 150 11 Exhibit 22 Letter, Johnson to Pelan, 165 12 10/30/14 13 Exhibit 23 Email Chain 167 14 Exhibit 24 Email Chain 172 15 Exhibit 25 Document Details, Clark County 176 16 Recorder's Office 17 18 19 20 21 22 23 24 25</p> <p>Page 4</p>
<p>1 INDEX OF EXAMINATION 2 WITNESS: JOSEPH PELAN 3 EXAMINATION PAGE 4 By Mr. Domina 5</p> <p>6 INDEX TO EXHIBITS 7 EXHIBIT DESCRIPTION PAGE 8 Exhibit 1 Subcontract Agreement, 10/26/11 17 9 Exhibit 2 Excerpt, General Conditions, 23 10 pages GC-44 and GC-45 11 Exhibit 3 Labor and Material Payment Bond 30 12 Exhibit 4 Chart, APCO000001 - APCO000002 33 13 Exhibit 5 Change Order Request No.1 00039, 42 14 1/9/13 15 Exhibit 6 Letter, Williams to Bohn, 1/28/13 55 16 Exhibit 7 Email Chain 58 17 Exhibit 8 Letter, Pelan to Llamado, 5/9/13 63 18 Exhibit 9 Email Chain 76 19 Exhibit 10 Miscellaneous Invoice No. 85 20 161113M-001, 8/27/13 21 Exhibit 11 Change Management Order No. 00068 90 22 Exhibit 12 Letter, Buchanan to Pelan, 10/2/13 93 23 Exhibit 13 Letter, Pelan to Johnson, 10/3/13 101 24 Exhibit 14 Letter, Williams to Pelan, 106 25 10/31/13 26 Exhibit 15 Change Order Request No. 00068.1, 109 27 11/5/13</p> <p>Page 3</p>	<p>1 DEPOSITION OF JOSEPH PELAN 2 Friday, September 8, 2017, 10:00 a.m. 3 -oOo- 4 (Prior to the commencement of the deposition, 5 all of the parties present agreed to waive statements 6 by the court reporter pursuant to Rule 30(b) (4) of the 7 NRCPC.) 8 -oOo- 9 Whereupon, 10 JOSEPH PELAN, 11 having been first duly sworn to testify to the truth, 12 the whole truth, and nothing but the truth, was 13 examined and testified as follows: 14 EXAMINATION 15 BY MR. DOMINA: 16 Q. Good morning, sir. My name is Cary Domina. 17 I'm an attorney with the law firm of Peel Brimley, and 18 we are attorneys for Helix Electric of Nevada, LLC. 19 Helix has retained us to pursue a lawsuit against APCO 20 Construction and Safeco Insurance Company. I'm sure 21 you're aware of the litigation. 22 A. Yes, sir. 23 Q. Now, the litigation involves the project 24 known as the Craig Ranch Regional Park Phase II 25 project.</p> <p>Page 5</p>

<p style="text-align: right;">Page 158</p> <p>1 one wasn't making sense to me.</p> <p>2 Q. And still -- so this last sentence, we will</p> <p>3 know what direction to go on Monday, is about whether</p> <p>4 APCO is going to pay Helix's retention?</p> <p>5 A. Yes.</p> <p>6 Q. All right. So I want to get back to the</p> <p>7 email -- well, it's not the email but the attachments.</p> <p>8 So that Unconditional Waiver and Release Upon Final</p> <p>9 Payment, did -- was it you that would have instructed</p> <p>10 Mary Jo to send this email to Helix with the attached</p> <p>11 check and the invoice and the -- it's not an invoice,</p> <p>12 the -- I guess it is, payment invoice details and the</p> <p>13 Unconditional Waiver and Release?</p> <p>14 A. This check document?</p> <p>15 Q. Yeah. These three documents, the email and</p> <p>16 all of these three documents.</p> <p>17 Who would have instructed Mary Jo to send</p> <p>18 that to Helix?</p> <p>19 A. I would have.</p> <p>20 Q. You would have. Okay.</p> <p>21 Did you instruct -- well, if you look at the</p> <p>22 release, it says payment amount 105,679.</p> <p>23 That's the retention that APCO was</p> <p>24 withholding from Helix, correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 160</p> <p>1 Q. Where is it?</p> <p>2 A. It was given to us in October of 2013.</p> <p>3 Q. Do you have a copy of it somewhere?</p> <p>4 Because I've seen reference -- I know you've</p> <p>5 made reference to it a couple of times even in this</p> <p>6 depo, and I think I saw one of your declarations that</p> <p>7 said something to that effect, but --</p> <p>8 A. This did not get changed until Victor wanted</p> <p>9 to pick up his retention check, and then they typed in</p> <p>10 a little thing saying they were owed 138,000 a year</p> <p>11 later.</p> <p>12 Q. So all of these emails that we just looked at</p> <p>13 for a full year where Helix is saying what are we</p> <p>14 doing, I've got to know one way or another, you don't</p> <p>15 think that has anything to do with them pursuing their</p> <p>16 claim against APCO for extended general conditions?</p> <p>17 A. I think there's bits and pieces in there, but</p> <p>18 there's the other where, you know -- I don't know if I</p> <p>19 should offer my opinion without a question pending, but</p> <p>20 Victor went on to get hooked up with some other</p> <p>21 contractors, and we were not bidding at the time.</p> <p>22 So I thought -- I thought -- then he started</p> <p>23 putting the pressure on to get paid after the fact</p> <p>24 because we weren't offering him any bids at the time.</p> <p>25 So that's -- that's my opinion of why he all of a</p>
<p style="text-align: right;">Page 159</p> <p>1 Q. And then if you look at the next line, it</p> <p>2 says amount of disputed claim, and it says none. Do</p> <p>3 you see that? In the release, like look in the release</p> <p>4 there.</p> <p>5 A. Yes.</p> <p>6 Q. Do you have an understanding of what it means</p> <p>7 when a contractor signs an Unconditional Waiver and</p> <p>8 Release Upon Final Payment and puts a zero dollar value</p> <p>9 in the amount of disputed claims line?</p> <p>10 A. Yes.</p> <p>11 Q. What does that mean?</p> <p>12 A. That means that he doesn't have anything</p> <p>13 pending.</p> <p>14 Q. So at this time did you believe that Helix</p> <p>15 had no claims pending against APCO?</p> <p>16 A. Yes.</p> <p>17 Q. That was your understanding?</p> <p>18 A. Yes. Because this is a mirror image of the</p> <p>19 previous one that they had given us.</p> <p>20 Q. You're saying that APCO received from Helix a</p> <p>21 signed Unconditional Waiver and Release Upon Final</p> <p>22 Payment with a zero dollar amount?</p> <p>23 A. Yes.</p> <p>24 Q. Why are we going forward with this case?</p> <p>25 A. Well, that's what we've been asking.</p>	<p style="text-align: right;">Page 161</p> <p>1 sudden got very aggressive instead of during the</p> <p>2 contract period.</p> <p>3 Q. Okay.</p> <p>4 A. So --</p> <p>5 Q. So you believe that this was -- this document</p> <p>6 was actually filled out by Helix and provided to --</p> <p>7 APCO provided it to Helix based on a prior version that</p> <p>8 Helix had filled out or what?</p> <p>9 A. No, we have it with -- that was dated</p> <p>10 October something of 2013, and I believe it was from</p> <p>11 Helix.</p> <p>12 Q. And it's an Unconditional Waiver and Release</p> <p>13 Upon Final Payment, or is it a conditional release?</p> <p>14 A. It's conditional.</p> <p>15 Q. And do you understand the difference between</p> <p>16 the two documents?</p> <p>17 A. Yes. The conditional is waiting on the</p> <p>18 check, and then once the check clears, then you get the</p> <p>19 unconditional.</p> <p>20 Q. Right.</p> <p>21 A. Once you present the check.</p> <p>22 Q. And the unconditional when it's signed,</p> <p>23 it's --</p> <p>24 A. It's over.</p> <p>25 Q. Yeah. You've released any and all claims?</p>



<p style="text-align: right;">Page 162</p> <p>1 A. That's correct.</p> <p>2 Q. So if you have -- if you know there's a</p> <p>3 document that exists dated in October of 2013, I think</p> <p>4 it probably should be produced to your attorney. You</p> <p>5 might win the case. I don't think it exists, but</p> <p>6 that's okay.</p> <p>7 A. Okay.</p> <p>8 Q. Victor is not an idiot. He wouldn't sign</p> <p>9 that but...</p> <p>10 A. Yeah.</p> <p>11 Q. Anyway, okay. So that was all I had on that</p> <p>12 particular email. Don't change the -- so go -- stay on</p> <p>13 page 2. Above it, Eddie Bennett, you can see she sends</p> <p>14 an email to Kurk Williams. These are internal emails</p> <p>15 to Helix. And she says what happened to the claim.</p> <p>16 Because, presumably, she received the APCO</p> <p>17 Unconditional Waiver and Release Upon Final Payment and</p> <p>18 sees that it says "none" for the disputed claim, and</p> <p>19 then if you turn to page 1, Kurk Williams sends an</p> <p>20 email to Victor, and he says please see below.</p> <p>21 Did we settle on the extended overhead claim,</p> <p>22 and Victor, now, after receiving that email from Kurk,</p> <p>23 emails you on October 29th and says, in capital</p> <p>24 letters, this isn't going to work, and you've got five</p> <p>25 exclamation points after that.</p>	<p style="text-align: right;">Page 164</p> <p>1 Q. Right.</p> <p>2 A. We did not, again, want to get into the</p> <p>3 scenario where we were seen as being leveraging Victor,</p> <p>4 even though we didn't feel we owed them anything, but</p> <p>5 we didn't want to keep continuing to hold his</p> <p>6 retention.</p> <p>7 Q. Okay.</p> <p>8 A. Because...</p> <p>9 Q. And so page 1 -- we're almost done with the</p> <p>10 emails, and then we'll take a break. Page 1, this is</p> <p>11 your email dated November 10th, 2014, to Victor. You</p> <p>12 say, Victor, I did not make it over to LVP today.</p> <p>13 Since tomorrow is a holiday, I am rescheduled for</p> <p>14 Wednesday AM. Can you and I then meet at 3:30</p> <p>15 Wednesday? I want to get this resolved before I go on</p> <p>16 vacation next week. Thanks.</p> <p>17 What did you want to get resolved?</p> <p>18 A. I wanted to get a final release or have him</p> <p>19 knock it off.</p> <p>20 Q. You wanted him to get his retention and sign</p> <p>21 the final release?</p> <p>22 A. Yes.</p> <p>23 MR. DOMINA: That's it for the emails. We</p> <p>24 can go off the record for a little bit.</p> <p>25 (Recess taken from 2:55 p.m. to 3:00 p.m.)</p>
<p style="text-align: right;">Page 163</p> <p>1 Did you have an understanding of what he</p> <p>2 meant by "this isn't going to work"?</p> <p>3 A. I can only assume that he was looking at the</p> <p>4 unconditional release.</p> <p>5 Q. Turn to page 98. This is one of those</p> <p>6 instances where there's a little duplication in the</p> <p>7 email string because it's repetitive here. It says</p> <p>8 this isn't going to work, but it's the only way I could</p> <p>9 attach yours -- your email without having a bunch of</p> <p>10 cluttered emails in there. So your email says this on</p> <p>11 October 29th: Victor, made change for me to approve.</p> <p>12 Thanks.</p> <p>13 Can you tell me what you're talking about</p> <p>14 there?</p> <p>15 A. Yeah, now it makes sense with the email that</p> <p>16 I sent prior with -- mentioning Jay Smith because I</p> <p>17 went to Jay, and we got our in-house counsel Jim Barker</p> <p>18 involved, and he said tell him to make the -- he can</p> <p>19 make the change, and you'll give him his check and have</p> <p>20 a nice day.</p> <p>21 Q. Make the changes and go back to identify that</p> <p>22 the claim was still outstanding? Make the changes and</p> <p>23 then the amount of disputed claims should now be what</p> <p>24 his claim was, the 138,000?</p> <p>25 A. According to Victor.</p>	<p style="text-align: right;">Page 165</p> <p>1 MR. DOMINA: Exhibit 22, please.</p> <p>2 (Plaintiff's Exhibit No. 22 was marked for</p> <p>3 identification.)</p> <p>4 BY MR. DOMINA:</p> <p>5 Q. Mr. Pelan, you've been handed Exhibit 22 to</p> <p>6 your deposition. Previously, we looked at Exhibit 21,</p> <p>7 which was a -- or excuse me. Exhibit 20 we were</p> <p>8 looking at which contained an email where you told</p> <p>9 Victor to go ahead and make modifications to the</p> <p>10 Unconditional Waiver and Release for your review.</p> <p>11 Do you remember that email?</p> <p>12 A. Yes.</p> <p>13 Q. So do you recall receiving this letter dated</p> <p>14 October 30th, 2014, from Helix?</p> <p>15 A. Yes.</p> <p>16 Q. And what do you understand this letter to do?</p> <p>17 A. That now after the job is closed, that he</p> <p>18 wants to attempt to collect his extension general</p> <p>19 conditions from APCO.</p> <p>20 Q. So is it your position, APCO's position, that</p> <p>21 the first time APCO believed that Helix was going to</p> <p>22 pursue claims directly against APCO was on</p> <p>23 October 30th, 2014?</p> <p>24 A. Say that one more time.</p> <p>25 Q. Is it your belief that the first time Helix</p>

# EXHIBIT 23

Served 9:37 A.M.  
1/13/2016  
JMB

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7 Attorneys for Plaintiff Helix Electric of Nevada, LLC

8 EIGHTH JUDICIAL DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 HELIX ELECTRIC OF NEVADA, LLC, a CASE NO.: A-16-730091-C  
Nevada limited liability company, DEPT. NO.: XVII

11 Plaintiff,

12 vs.

SUMMONS

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

15 Defendants.  
16

17 NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST  
18 YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.  
19 READ THE INFORMATION BELOW.  
20 TO THE DEFENDANT(S):

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

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

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

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

  
CLERK OF THE COURT

1 RICHARD L. PEEL ESQ.  
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3 CARY B. DOMINA, ESQ.  
4 Nevada Bar No. 10567  
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12 Attorneys for Plaintiff Helix Electric of Nevada, LLC

8 EIGHTH JUDICIAL DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 HELIX ELECTRIC OF NEVADA, LLC, a CASE NO.: A- 16- 730091- C  
11 Nevada limited liability company, DEPT. NO.:

12 Plaintiff,

XVI I

13 vs.

COMPLAINT

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

18 Defendants.

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

23 THE PARTIES

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

27 2. Helix is informed and believes and therefore alleges that Defendant APCO  
28 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.

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, BOE 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

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."<sup>1</sup>

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 <sup>1</sup> See Exhibit "1" attached hereto, a true and correct copy of the Payment Bond.

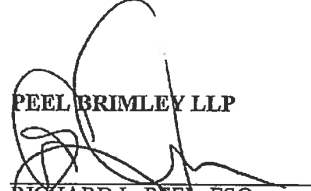
PEEL BRIMLEY LLP  
3333 E. SERENE AVENUE, STE. 200  
HENDERSON, NEVADA 89074  
(702) 990-7272 • FAX (702) 990-7273

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.

7  
8           PEEL BRIMLEY LLP

9  
10             
11           RICHARD L. PEEL, ESQ.  
12           Nevada Bar No. 4339  
13           CARY B. DOMINA, ESQ.  
14           Nevada Bar No. 10567  
15           3333 E. Serene Avenue, Suite 200  
16           Henderson, Nevada 89074-6571  
17           Attorneys for Helix Electric of Nevada, LLC  
18  
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28

# EXHIBIT “1”

APCO000100

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 29, 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 Twenty Eight Million, Five Hundred Twelve Thousand, Fifty-Four and No/100 Dollars (\$28,512,054.00) 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.

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: Tiffany Coronado  
(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.

CA-4

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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 surely 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 surely 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 surely 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 ss  
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.



Notary Seal  
Teresa Pastella, Notary Public  
Plymouth Twp., Montgomery County  
My Commission Expires Mar. 28, 2013  
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, 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.

APCO000102

JA410

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  
Henderson, Nevada 89074-6571  
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,

CASE NO.:  
DEPT. NO.:

Plaintiff,

vs.

**INITIAL APPEARANCE FEE  
DISCLOSURE**

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

**(NRS CHAPTER 19)**

Defendants.

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  
TOTAL REMITTED:

☒ \$270.00    ☐ \$223.00  
\$270.00

DATED this 12<sup>th</sup> 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*

## DISTRICT COURT CIVIL COVER SHEET

A- 16- 730091- C

County, Nevada

XVI I

Case No.

(Assigned by Clerk's Office)

<b>I. Party Information</b> (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**

<b>Real Property</b> <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Negligence</b> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Torts</b> <b>Other Torts</b> <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
<b>Probate</b> <i>(select case type and estate value)</i> <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 <b>Estate Value</b> <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	<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <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	<b>Judicial Review/Appeal</b> <b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b> <b>Civil Writ</b> <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		<b>Other Civil Filing</b> <b>Other Civil Filing</b> <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.

APCO000104

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# EXHIBIT 24



## 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  
3078 E. Sunset Rd., Ste. 9  
Las Vegas, NV 89120  
P - (702) 732-1188 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").

Subcontractor 

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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.

Subcontractor 

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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

Subcontractor 

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APCO000454

JA416

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.

Subcontractor



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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) sepia & 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.

- 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.



- 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.

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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 entities 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 "Indemnities") 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 Indemnities with respect to damages which are ultimately determined to be due the sole negligence or willful misconduct of the Indemnities.
- b) **Indemnity Not Limited:** In any and all claims against the Indemnities 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)

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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.

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**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 

Page 14 of 18

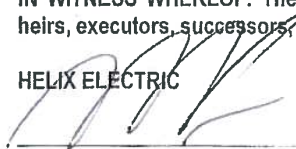
APCO000465

JA427

- 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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APCO000466

JA428

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

This Agreement includes the supply of all labor, materials, tools, equipment, lodging, travel, supervision, management, permits and taxes necessary to complete all of the scope work listed below inclusive of but not limited to Month 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 Addendum Number(s) 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. The 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'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. 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 inspectors, QAA will be present on the job site during the installation of the scope of work listed below. The subcontractor will maintain and cooperate with the Owner Representative's 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 clarifications / 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 alternate price during the course of construction. Schedule of Values is for payment purposes and does not reflect entire scope of work.

HELIX ELECTRIC

APCO CONSTRUCTION

Victor Fuchs, President

NAME / TITLE

Jos Pelan - Contract Manager  
NAME / TITLE

DATED: APR 04 2012

DATED: 4/19/12

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

Subcontractor

UR

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APCO000467

JA429



## **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 U.R.

Page 17 of 18

APCO000468

JA430

### 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.: 36-4485672

By: \_\_\_\_\_  
Signature Victor Fuchs

Date: **APR 04 2012**

\_\_\_\_\_  
Date President  
Title

Subcontractor 

Page 18 of 18

APCO000469

JA431



OCT. 26. 2011 11:49AM

NO. 5119 P. 1



**Helix Electric**  
CONSTRUCTORS • ENGINEERS

## ***Bid Proposal***

October 26, 2011

VIA FAX (702) 734-0396

APCO  
Attn: Max Holm  
3432 N. 5<sup>th</sup> 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 10/5/11. Electrical drawings by TJK and MSA dated 10/5/11 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
- 079005- 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
- 260503- equip wiring connects
- 260519- low voltage electrical power conductors and cables
- 260526- grounding and bonding
- 260529- 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
- 262813- fuses
- 262816- enclosed switches
- 262816- 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 #053310 • #0073392 • #0073455 • Arizona License #ROC231191 IC-11 • Idaho License # 005986 • Montana License # 2412  
New Mexico License #367103 • South Dakota License # EC 2703 • Utah License #7314771-5501 • Wyoming License #C-24040

APCO000470

JA432

OCT. 26. 2011 11:49AM

NO. 5119 P. 2

Helix Electric  
Craig Ranch Park  
October 26, 2011  
Page 2

Base Bid:	\$ 1,830,000
Light Fixtures	ADD \$ 1,675,000
Alternate 1:	<del>\$ 1,000,000</del>
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, underslab 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. Exits 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. Crashcapes.
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 580 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

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Nevada License #0053310 • #0073392 • #0073455 • Arizona License #ROC232191 K-11 • Idaho License # 005986 • Montana License # 2412  
New Mexico License #367103 • South Dakota License # EC 1703 • Utah License #7314771-SS01 • Wyoming License #C-34040

APCO000471

JA433



## Nevada State Contractors Board

2370 Corporate Circle, Suite 200 Henderson NV 89074 (702) 466-1100 Fax: (702) 466-1100 Investigations: (702) 466-1110  
3670 Gateway Drive, Suite 100 Reno NV 89521 (775) 688-1141 Fax: (775) 688-1271 Investigations: (775) 688-1150  
www.nvscb.state.nv.us

### License Search Details

Press "Previous Record" to view the previous record in the list.

Press "Next Record" to view the next record in the list.

Press "Search Results" to return to the search results list screen.

Press "New Search Criteria" to revise your existing search criteria or enter new search criteria.

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/nvscbSearchDetails.do?anchor=e064222.0...> 12/20/2011

APCO000472

JA434

**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**

The information contained on these pages are provided as a courtesy and may not reflect recent changes or updates. Neither the completeness nor accuracy is guaranteed. The Nevada State Contractors Board shall have no liability or responsibility for loss and damages arising from the information provided or retrieved from these pages.

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

2011-12-20 4:30:14 PM



# DAILY TIME & MATERIAL REPORT

Page \_\_\_\_ of \_\_\_\_

Contract Name: Craig Ranch Regional Park - Phase II  
 Contract No.: 0193  
 Description of Work: \_\_\_\_\_

Sub Contractor: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Supervisor Name: \_\_\_\_\_

LABOR/EMPLOYEE NAME	OCCUPATION CLASS	STRAIGHT TIME HRS RATE	OVERTIME RATE	HRS	LABOR COST

Subtotal

Add \_\_\_\_ % Labor Markup

TOTAL LABOR COST

EQUIPMENT DESCRIPTION	WORKING QTY UNIT RATE	STAND-BY QTY UNIT RATE	EQUIPMENT COST

Subtotal

Add \_\_\_\_ % Equip. Markup

TOTAL EQUIP. COST

MATERIALS/ RENTALS	QTY	UNIT	RATE	MATERIAL COST

Subtotal

Add \_\_\_\_ % Material Markup

TOTAL MATERIAL COST

SUBCONTRACTOR	DESCRIPTION	QTY	UNIT	PRICE	SUB COST

Subtotal

Add \_\_\_\_ % Material Markup

TOTAL MATERIAL COST

Sub Contractor's Representative \_\_\_\_\_ Date \_\_\_\_\_

APCO Representative \_\_\_\_\_ Date \_\_\_\_\_

TOTAL LABOR	
TOTAL EQUIPMENT	
TOTAL MATERIALS/RENTALS	
TOTAL COST	

APCO000474





### IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

### DISCLAIMER

*This Certificate of Insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.*

ACORD 25 (2008/01)  
IKR025 (200801).01

APCO000476

JA438

ADDITIONAL COVERAGES							
Ref #	Description Employee Benefits				Coverage Code EBLIA	Form No.	Edition Date
Limit 1 1,000,000	Limit 2	Limit 3	Deductible Amount 1,000	Deductible Type	Premium		
Ref #	Description Medical payments				Coverage Code MEDPM	Form No.	Edition Date
Limit 1 5,000	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium		
Ref #	Description Underinsured motorist combined single limit				Coverage Code UNOBL	Form No.	Edition Date
Limit 1 1,000,000	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium		
Ref #	Description Uninsured motorist combined single limit				Coverage Code UMOBL	Form No.	Edition Date
Limit 1 1,000,000	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium		
Ref #	Description				Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium		
Ref #	Description				Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium		
Ref #	Description				Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium		
Ref #	Description				Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium		
Ref #	Description				Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium		
Ref #	Description				Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium		
OFADTLCV							

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APCO000477

JA439

**CERTIFICATE AND CERTIFICATE FOR PAYMENT**

GENERAL CONTRACTOR:

PROJECT:

APPLICATION NO:

PAGE 1 OF 1

SUBCONTRACTOR:

VIA ARCHITECT:

PERIOD:

PROJECT NOS:

CONTRACT DATE:

Distribution for:

☐ OWNER

☐ ARCHITECT

☐ CONTRACTOR

NOT FOR:

**CONTRACTOR'S APPLICATION FOR PAYMENT**

is made for payment, as shown below, in connection with the Contract. Item sheet is attached.

NET CONTRACT SUM

Change by Change Orders

FACTORY TO DATE (Line 1 + 2)

1. COMPLETED & STORED TO DATE

on G on schedule of values)

IMAGE

% of completed work

minus D + E on G703)

% of Stored Material

minus F on G703)

Retainage (line 2a 2b or

it in column I on G703)

EARNED LESS RETAINAGE

(less Line 3 Total)

PREVIOUS CERTIFICATES FOR PAYMENT

from prior Certificate)

NET PAYMENT DUE

NET TO FINISH, INCLUDING RETAINAGE

(less Line 6)

ORDER SUMMARY	ADDITIONS	DEDUCTIONS
CHARGES APPROVED IN		
30 MONTHS BY OWNER	0	-
revised this Month	0	0
TOTALS	0	-
ADDED by change order		-

The undersigned contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR

By

Date:

State of: Nevada

County of: Clark

Subscribed and sworn to before me this

day of

2007

Notary Public:

My Commission Expires:

**ARCHITECT'S CERTIFICATE FOR PAYMENT**

In accordance with the Contract Documents, based on on-site observation and data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED

(Attach explanation if amount certified differs from the amount applied for, listing all figures on this application and on the Contractor's sheet that are changed to conform to the amount certified)

ARCHITECT:

By

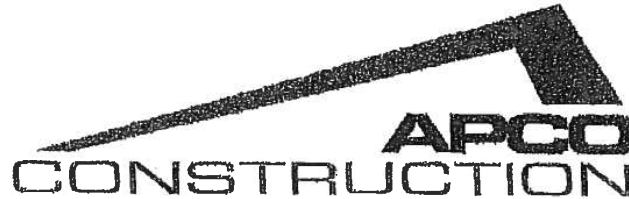
Date:

This Certificate is not negotiable. The amount certified is payable to the contractor named herein. Insurance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

APCO000478

JA440





**LABOR PAYMENT AFFIDAVIT**  
**MANO DE OBRA DE DECLARACION JURADA DE PAGO**

Property Name \_\_\_\_\_  
Nombre de la Propiedad \_\_\_\_\_  
Property Location \_\_\_\_\_  
Locacion de la Propiedad \_\_\_\_\_  
Undersigned's Customer \_\_\_\_\_  
Firma del Cliente \_\_\_\_\_  
Payment Period Through \_\_\_\_\_  
Período de pago a través de \_\_\_\_\_

The undersigned subcontractor declares under penalty of perjury that the signatures appearing herein below constitute a complete list of all persons who have performed labor on behalf of the subcontractor for the project designated above during the specified period and whom the undersigned has paid for their labor performed on behalf of the subcontractor for said specified period, and provides the indemnity set forth below.

*El subcontratista de abajo firmante declara bajo pena de perjurio que las firmas que aparecen en este documento a continuación constituyen una lista completa de todas las personas que han realizado trabajo en nombre del subcontratista para el proyecto designado anteriormente durante el período especificado y a quien el abajo firmante ha pagado por su trabajo realizado en nombre del subcontratista para dicho período especificado y proporciona la indemnización establecida a continuación.*

SUBCONTRACTOR: \_\_\_\_\_  
(Type or Print Name of Subcontractor)

SUBCONTRATISTA: \_\_\_\_\_  
(Imprima o escriba el nombre del subcontratista)

BY: \_\_\_\_\_  
(Signature of Person Authorized to Sign for Subcontractor)

POR: \_\_\_\_\_  
(Firma de la persona autorizada para firmar por el Subcontratista)

(Page 1 of 2)

3840 N. Commerce Street • North Las Vegas, Nevada 89032 • Phone: (702)734-0198 • Fax: (702)734-0396  
E-Mail: apcoconstruction.com • Nevada Contractor's License: 0014563

APCO000480

JA442

The undersigned persons performing labor for the subcontractor represent, warrant and affirm by signing this affidavit that each person has been paid in full for all labor supplied to the above designated project through the Payment Period. Each of the undersigned further represents warrants and affirms that there are no checks or other conditional instruments of payment that have not cleared the bank and payment has actually been received by each of the undersigned. **IF YOU HAVE NOT BEEN PAID, DO NOT SIGN THIS AFFIDAVIT.**

Las personas abajo firmantes que realizaron trabajo para el subcontratista, garantizan y afirman, mediante la firma de esta declaracion jurada que cada persona ha sido pagada en pleno por el trabajo suministrado a lo anterior, designado el proyecto a traves del periodo de pago. Cada uno de los firmantes ademas representa, garantiza y afirma que no hay cheques u otros instrumentos condicionales de pago que no se han desactivado por el Banco y que realmente han recibido pago cada uno de los firmantes. **NO FIRME ESTA DECLARACION JURADA, SI NO LE HAN PAGADO.**

The subcontractors and each of the undersigned indemnifies and agrees to defend for all costs, losses, fees and expenses incurred by Nevada Construction Services in the event that any representation or warranty or affirmation in this Labor Payment Affidavit is untrue.

Los subcontratistas y cada uno de los firmantes asegura y se compromete a defender todos los gastos, perdidas, honorarios y gastos por servicios de construccion de Nevada, en caso de que cualquier representacion, garantia o afirmacion de pago de trabajo sea falso

**NOTICE: THIS DOCUMENT IS A REPRESENTATION AND WARRANTY BY YOU THAT YOU HAVE BEEN PAID. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT.**

**AVISO: ESTE DOCUMENTO ES UNA REPRESENTACION Y GARANTIA EN LA QUE USTED HA SIDO PAGADO. ESTE DOCUMENTO SERA ENFORZADO CONTRA USTED AL FIRMARLO.**

LABORER'S NAME	DATE	LABORER'S SIGNATURE
NOMBRE DEL TRABAJADOR	FECHA	FIRMA DEL TRABAJADOR

(Page 2 of 2)

3840 N. Commerce Street • North Las Vegas, Nevada 89032 • Phone: (702)734-0198 • Fax: (702)734-0396  
E-Mail: apcoconstruction.com • Nevada Contractor's License: 0014563

APCO000481

JA443



UNCONDITIONAL WAIVER AND RELEASE  
UPON PROGRESS PAYMENT

Property Name: \_\_\_\_\_  
Property Location: \_\_\_\_\_  
Undersigned's Customer: \_\_\_\_\_  
Inv./Pmt Application No: \_\_\_\_\_  
Payment Amount: \_\_\_\_\_

The undersigned has been paid and has received a progress payment in the above referenced Payment Amount for all work, materials and equipment the undersigned furnished to his Customer for the above described Property and does hereby waive any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above described Property to the following extent:

This release covers a progress payment for the work, materials or equipment furnished by the undersigned to the Property or to the Undersigned's Customer which are the subject of the Invoice or Payment Application, but only to the extent of the Payment Amount or such portion of the Payment Amount as the undersigned is actually paid, and does not cover any retention withheld, any items, modifications or changes pending approval, disputed items and claims, or items furnished that are not paid. The undersigned warrants that he either has already paid or will use the money he receives from this progress payment promptly to pay in full all laborers, subcontractors, material men and suppliers for all work, materials or equipment that are the subject of the waiver and release.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Notice:** This document waives rights unconditionally and states that you have been paid for giving up those rights. This document is enforceable against you if you sign it to the extent of the Payment Amount or the amount received. If you have not been paid, use a Conditional Release form.

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APCO000482

JA444



UNCONDITIONAL WAIVER AND RELEASE  
UPON FINAL PAYMENT

Property Name: \_\_\_\_\_  
Property Location: \_\_\_\_\_  
Undersigned's Customer: \_\_\_\_\_  
Inv./Pmt Application No: \_\_\_\_\_  
Payment Amount: \_\_\_\_\_  
Amount of Disputed Claims: \_\_\_\_\_

The undersigned has been paid in full for all work, materials and equipment furnished to his Customer for the above described Property and does hereby waive and release any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above described Property, except for the payment of Disputed Claims, if any, noted above. The undersigned warrants that he either has already paid or will use the money received from the final payment promptly to pay in full all laborers, subcontractors, materialmen and suppliers for all work, materials or equipment that are the subject of the waiver and release.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Notice: This document waives rights unconditionally and states that you have been paid for giving up those rights. This document is enforceable against you if you sign it, even if you have not been paid. If you have not been paid, use a Conditional Release form.**

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CONDITIONAL WAIVER AND RELEASE  
UPON PROGRESS PAYMENT

Property Name: \_\_\_\_\_  
Property Location: \_\_\_\_\_  
Undersigned's Customer: \_\_\_\_\_  
Inv./Pmt Application No: \_\_\_\_\_  
Payment Amount: \_\_\_\_\_

Upon receipt by the undersigned of a check in the above referenced Payment Amount payable to the undersigned, and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release and the undersigned shall be deemed to waive any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above described Property to the following extent:

This release covers a progress payment for the work, materials or equipment furnished by the undersigned to the Property or to the Undersigned's Customer which are the subject of the Invoice or Payment Application, but only to the extent of the Payment Amount or such portion of the Payment Amount as the undersigned is actually paid, and does not cover any retention withheld, any items, modifications or changes pending approval, disputed items and claims, or items furnished that are not paid. Before any recipient of the document relies on it, he should verify evidence of payment to the undersigned. The undersigned warrants that he either has already paid or will use the money he receives from this progress payment promptly to pay in full all laborers, subcontractors, material men and suppliers for all work, materials or equipment that are the subject of the waiver and release.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

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CONDITIONAL WAIVER AND RELEASE  
UPON FINAL PAYMENT

Property Name: \_\_\_\_\_  
Property Location: \_\_\_\_\_  
Undersigned's Customer: \_\_\_\_\_  
Inv./Pmt Application No: \_\_\_\_\_  
Payment Amount: \_\_\_\_\_  
Payment Period: \_\_\_\_\_  
Amount of Disputed Claims: \_\_\_\_\_

Upon receipt by the undersigned of a check in the above referenced Payment Amount payable to the undersigned, and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release and the undersigned shall be deemed to waive any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above described Property to the following extent:

This release covers the final payment to the undersigned for all work, materials or equipment furnished by the undersigned to the Property or to the Undersigned's Customer and does not cover payment for Disputed Claims, if any. Before any recipient of the document relies on it, he should verify evidence of payment to the undersigned. The undersigned warrants that he either has already paid or will use the money received from the final payment promptly to pay in full all laborers, subcontractors, material men and suppliers for all work, materials or equipment that are the subject of the waiver and release.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

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**Request for Taxpayer  
Identification Number and Certification**

Give Form to the  
requester. Do not  
send to the IRS.

Name (as shown on your income tax return)  
**Helix Electric of Nevada, LLC**

Business name/disregarded entity name, if different from above  
**Helix Electric**

Check appropriate box for federal tax classification (required): ☐ Individual/sole proprietor ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate ☐ Exempt payee

☒ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ **S**

☐ Other (see instructions) ▶

Address (number, street, and apt. or suite no.)  
**3078 E. Sunset Road, Suite 9**

City, state, and ZIP code  
**Las Vegas, NV 89120**

List account number(s) here (optional)

Requester's name and address (optional)

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number								
				-				

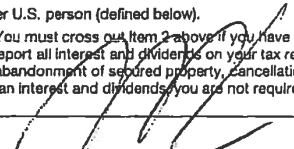
Employer identification number								
3	6	-	4	4	8	5	6	7 2

**Part II Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here  Date ▶ **APR 04 2012**

Signature of U.S. person ▶

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Purpose of Form**

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.



**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	<b>CONTRACT Amount: Delete: \$4,628,025.00 and Replace with: \$2,356,520.00</b>
Contract Documents Page 2 of 18	<b>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.</b>
Contract Price and Payments Page 3 of 18	<b>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."</b>
Contract Price and Payments Page 3 of 18	<b>Section 4, Paragraph 4.4: Delete (15), Replace with (10 Calendar Days).</b>
Contract Price and Payments Page 4 of 18	<b>Section 4, Paragraph 4.4: Add the following to the end of this section: "Per NRS Statutes."</b>
Contract Price and Payments Page 4 of 18	<b>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."</b>
Prosecution of Work Page 5 of 18	<b>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."</b>
Prosecution of Work Page 5 of 18	<b>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</b>

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

Default and Termination Page 9 of 18	<b>Section 10, Add the following new paragraph:</b> "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	<b>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 . . ."</b> from the 11th line of subparagraph 13.2(a), and <b>replace it with the following phrase:</b> "but only to the extent such claims, etc. arise from the negligence or wrongful acts of Subcontractor, and . . ." <b>delete the word "sole" after the words "due the . . ."</b> in the last line of subparagraph 13.2(a), and <b>add the words "or any third party" at the end of the last sentence in this subparagraph.</b>
Indemnity and Insurance Page 12 of 18	<b>Section 13, Add the following new paragraph:</b> "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	<b>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 . . ."</b> from the third line; <b>delete the words "all work, and . . ."</b> from the fourth line; and <b>add the following to the end of Paragraph 17.1:</b> "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	<b>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:</b> "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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APCO000489





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HELIX ELECTRIC OF NEVADA, LLC DBA HELIX ELECTRIC  
FOR CRAIG RANCH REGIONAL PARK – PHASE II  
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	<b>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."</b>
Miscellaneous Page 14 of 18	<b>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.</b>
Miscellaneous Page 15 of 18	<b>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.</b>
Exhibit A Page 16 of 18	<b>Subcontractor Scope of work, 2<sup>nd</sup> and 3<sup>rd</sup> Lines Delete the following: "...including work reasonably anticipated..."</b>
Exhibit A Page 16 of 18	<b>Subcontractor Scope of Work, 5<sup>th</sup> and 6<sup>th</sup> Lines Delete the following: "...including any unforeseen or unseen items, or as described therein..."</b>
Exhibit A Page 16 of 18	<b>Subcontractor Scope of Work, 6<sup>th</sup> and 7<sup>th</sup> 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.</b>
Exhibit A Page 16 of 18	<b>Subcontractor Scope of Work, COMPLETE ELECTRICAL PACKAGE: Delete "4,605,000.00" and Replace with "\$2,356,520.00"</b>
Exhibit A Page 16 of 18	<b>Subcontractor Scope of Work, BONDING: Delete "(.50%)" and Replace with "(1%)"</b>

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APCO000490



**Helix Electric**  
CONSTRUCTORS • ENGINEERS

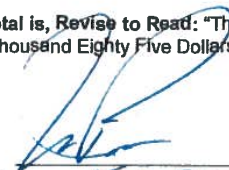
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HE JOB #161113**

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

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