

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

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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 IX

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CLERK OF THE COURT
Albert B. Linn

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

HELIX ELECTRIC OF NEVADA LLC,)
)
Plaintiff,)
)
vs.)
)
APCO CONSTRUCTION, et al.,)
)
)
Defendants.)

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

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

WEDNESDAY, JUNE 5, 2019

BENCH TRIAL - DAY 3

APPEARANCES:

FOR THE PLAINTIFF: CARY B. DOMINA, ESQ.
JEREMY D. HOLMES, ESQ.
RONALD J. COX, ESQ.

FOR THE DEFENDANTS: JOHN R. JEFFERIES, ESQ.

RECORDED BY: JILL HAWKINS, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

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WITNESSES FOR THE DEFENSE:

JOE PELAN

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1 **LAS VEGAS, CLARK COUNTY, NEVADA JUNE 5, 2019, 9:04 A.M.**

2 * * * * *

3 THE COURT: So you ready?

4 MR. JEFFERIES: Yes, Your Honor.

5 THE COURT: I was trying to remember last night,
6 Mr. Domina, how many times Mr. Pelan has been in front of me
7 because he's at settlement conferences and proceedings, and he
8 mentioned one of the cases yesterday, a project I had done the
9 settlement conference on, and I had forgotten that one.

10 **JOE PELAN**

11 [having been called as a witness and being first duly sworn,
12 testified as follows:]

13 THE COURT: It makes you feel old.

14 THE CLERK: Thank you. Please be seated. Please
15 state and spell your name for the record.

16 THE WITNESS: Joe Pelan. J-o-e, P-e-l-a-n.

17 THE COURT: And I don't even want to count how many
18 cases Helix has been involved in.

19 MR. JEFFERIES: May I approach, Your Honor?

20 THE COURT: You can.

21 MR. JEFFERIES: May I approach?

22 THE COURT: Yes, you can.

23 (Pause in the proceedings.)

24 THE COURT: Next in order.

25 So I am suffering from allergies pretty bad today.

1 Yesterday I was trying to do the hot tea in the afternoon. So
2 if I have to take a break to go blow my nose and get more hot
3 tea, I apologize, but it's hitting me bad today.

4 MR. JEFFERIES: May I approach the witness?

5 THE COURT: You may.

6 CONTINUED DIRECT EXAMINATION

7 BY MR. JEFFERIES:

8 Q Good morning, Mr. Pelan.

9 A Good morning.

10 Q Can you identify what's been marked as Defendant's
11 Proposed Exhibit 214.

12 A It's a summary that we did of Helix's accounting. I
13 think it's Exhibit 50 from the entire project. So we used
14 their categories and then colonized it so it was easier to read
15 and depict what went where.

16 Q Okay. And Exhibit 50 was the complete job cost
17 report that was just produced to us about two weeks ago --

18 A Yeah.

19 Q -- is that right?

20 A Yes.

21 Q Okay. And is Exhibit 214 similar -- Proposed 214
22 similar to Proposed 212 except you've added a reference to the
23 Bates labeling within Exhibit 50?

24 A That's correct.

25 MR. JEFFERIES: Your Honor, I'd move for the

1 admission of 214.

2 MR. DOMINA: No objection, Your Honor.

3 THE COURT: Be admitted.

4 (Defense Exhibit Number DX214 admitted)

5 MR. JEFFERIES: I want to make sure yesterday we had
6 marked Demonstrative 6. May I approach and show the witness
7 that?

8 THE COURT: You may.

9 THE CLERK: No. That's 5. If you wanted a copy --

10 MR. JEFFERIES: I've asked Mr. Domina --

11 THE COURT: And D6, you have D6 too?

12 THE CLERK: Yes.

13 BY MR. JEFFERIES:

14 Q And I want to make sure our record is clear. What
15 does Exhibit D6, your analysis, confirm to you?

16 A Well, this compares Helix's claimed amounts from May
17 2013 to October 2013 versus the accounting that they gave us
18 for those specific items.

19 Q Okay. And what is the -- based on your review and
20 what you could discern from Exhibit 50, what is the figure that
21 you determined in terms of costs for the compensable period
22 recognized by the city?

23 A \$26,015.87.

24 THE COURT: 2-6-0-1-5-8-7?

25 THE WITNESS: Yes.

1 THE COURT: Okay.

2 BY MR. JEFFERIES:

3 Q Yesterday, sir, you testified that you did not have
4 any agreement with Helix representatives regarding the
5 rescission of the release or the new release. Are you aware of
6 any -- strike that.

7 Was there any agreement between APCO and Helix that
8 Helix could reserve its claims for extended overhead and cash
9 the check?

10 A No.

11 MR. JEFFERIES: I think that's all I have, and this
12 is our last witness. If I could --

13 THE COURT: Will you check your exhibits, please.

14 MR. JEFFERIES: Yes.

15 THE COURT: Now, that you've got a new one you
16 admitted.

17 (Pause in the proceedings.)

18 MR. JEFFERIES: That's all I have with this witness.

19 THE COURT: Okay. Cross.

20 MR. DOMINA: Yes, Your Honor.

21 THE COURT: I'm not going to ask you to rest until
22 you do redirect.

23 CROSS-EXAMINATION

24 BY MR. DOMINA:

25 Q Good morning, Mr. Pelan.

1 A Good morning.

2 Q Am I pronouncing your last name correct?

3 A You are.

4 Q Okay. I think during the deposition I was doing it
5 incorrect and wanted to make sure I was doing it correctly now.

6 Sir, if you would, I'm going to have Chris pull up
7 the subcontract agreement.

8 MR. DOMINA: Chris, if you'll pull up Exhibit J11.

9 BY MR. DOMINA:

10 Q And for the most part, I mean, do what you prefer,
11 but for the most part I will have him put it on the screen. So
12 if you can see it better on the screen, do what your preference
13 is.

14 So I'm going to -- you recognize this as being the
15 subcontract between Helix and APCO?

16 A Yes.

17 Q Okay. I'm going to have you turn to page 36.

18 MR. DOMINA: Chris, can you pull that up.

19 BY MR. DOMINA:

20 Q Do you recognize this document?

21 He'll blow up once we get to a particular provision,
22 but just in general, while it's smaller, do you recognize the
23 document?

24 A Yes.

25 Q Okay. And what was this document?

1 A That's Helix addendum to our contract.

2 Q Okay. And if you would, let's go to the very last
3 paragraph. It's entitled Section 6, Paragraph 6.1. Add the
4 following new paragraph. Do you see that language?

5 A Yes.

6 Q Would you read that language for me.

7 A Contractor shall make available to subcontractor in
8 prompt fashion all information in its possession that affects
9 subcontractor's ability to meet obligations under the
10 subcontract.

11 Information that affects the subcontract shall
12 include, not limited to, information relating to such matters
13 as delays, modifications to the contract agreement and the --
14 with the owner or other subcontracts -- contractors that affect
15 the work of the something.

16 Q Subcontractor. You can stop there because the next
17 page goes on.

18 A Okay.

19 Q So I'm focused in on the language here that says that
20 the contractor agrees to provide information relating to
21 matters of delays and modifications to the contractor's
22 agreement with the owner. Now, those modifications would
23 include change orders; would they not?

24 A No.

25 Q They wouldn't include change orders? Why wouldn't a

1 modification to a contract include a change order?

2 A It would include the change orders to Helix, but it
3 wouldn't necessarily include the change orders to other
4 subcontractors or APCO because --

5 Q And I appreciate the clarification. What if I said
6 change orders that affected Helix's scope of work? Or Helix's
7 claims?

8 A You can say that. I don't know that this says that I
9 guess.

10 Q So your position is that this provision does not
11 require APCO to provide information to Helix regarding any
12 modifications, changes to its agreement with the owner that
13 might affect Helix's scope of work or a claim that's pending?

14 A I think we satisfied that obligation.

15 Q You let -- it's your testimony that you advised Helix
16 that you had settled a claim for your extended general
17 conditions with the owner?

18 A That's not what I said.

19 Q Okay. You said that you had satisfied that
20 condition. What about -- forget change orders. What about
21 settlement agreements? Is it your understanding, is it your
22 position that this provision requires APCO to notify Helix if
23 it entered into a settlement agreement with the owner that may
24 affect the rights of Helix to be able to go forward with the
25 claim?

1 A Yes.

2 Q Okay. And do you believe that APCO notified Helix
3 that it had settled a claim, its claim for extended general
4 conditions with the owner?

5 A Well, you're making a leap there, but --

6 Q I'm making a leap?

7 A Yes.

8 Q In what fashion? I'll let you talk. What do you
9 mean?

10 A Well, as I said before, I don't see that as part of
11 the obligation there.

12 Q Okay. So that's what you're saying. You don't think
13 that this provision is as encompassing or provides the
14 obligations that I'm describing now: That you would have to
15 provide notice to Helix that you settled a claim that could
16 potentially affect their claim?

17 A I guess I didn't understand that question.

18 Q Well, strike that. I think we've had enough
19 discussion on it. That's fine.

20 A Okay.

21 THE COURT: So let me ask the question different
22 because I had this one written down from yesterday. So when
23 you entered into the agreement with the City of North Las Vegas
24 to resolve your claim, and I think that was the October letter
25 that [indiscernible] into, why did you think that Helix had let

1 their claim go?

2 THE WITNESS: Well, it was rejected, and they hadn't
3 responded.

4 THE COURT: So when you say, "they hadn't responded,"
5 what do you mean?

6 THE WITNESS: They presented an invoice. It was
7 rejected by the city, and then two weeks later they gave us an
8 unconditional -- or a conditional final. So that led me to
9 believe that it wasn't going further.

10 THE COURT: And despite the communications you were
11 having with folks at Helix about the issue, you thought it
12 wasn't going to go any further?

13 THE WITNESS: To be honest I did not know, and I -- I
14 truly was looking for more backup so that I could process it
15 properly.

16 THE COURT: Did you think the City of North Las Vegas
17 would still talk about Helix's claim after you reached your
18 settlement on APCO's claim?

19 THE WITNESS: Yes.

20 THE COURT: Why?

21 THE WITNESS: Because that was APCO's portion of the
22 claim with the city. I could have had 10 subcontractors, and
23 each one had to be vetted separately for their merits and their
24 particular delays because typically on construction you have
25 guys that start at the beginning and they end before the

1 contract time is up. You have guys starting in the middle and
2 that kind of thing. So as I said yesterday, we keep everything
3 separate. There was nothing malice about me settling with them
4 and then processing Helix's. I was ready to process it, and I
5 took three stabs at the apple for them.

6 THE COURT: So here's why I'm asking the question.
7 You know that I deal with construction all the time, and some
8 of the developer owners that have appeared in front of me have
9 taken the position that once they resolve a claim with a
10 general contractor that all the claims with the subcontractors
11 have resolved as part of that process. Was that your
12 understanding with this, or did you think they were still going
13 to talk to the subs from the city?

14 A Well, we had eight more change orders approved after
15 the fact, and so it did not close the job. It did not close
16 anyone's rights in my opinion.

17 THE COURT: Okay. Thank you, sir.

18 All right. Sorry for the interruption, Mr. Domina,
19 but I was going to lose my Post-it note because it had already
20 fallen off my computer once.

21 MR. DOMINA: I'm glad you asked those questions. I
22 may ask more questions or expound upon that because that's the
23 way --

24 THE COURT: That's your job. I just -- my Post-it
25 note fell off the screen and went facedown, and so I would have

1 missed it in about a half-hour, and I would have forgotten my
2 questions.

3 MR. DOMINA: I understand that.

4 BY MR. DOMINA:

5 Q Sir, if you would, let's go to Joint Exhibit 19.
6 Chris will pull that up for you. It's just faster to do the
7 screen if you don't mind.

8 A Okay.

9 Q So can you see the email, or does he need to blow it
10 up right away so you can take a look at it?

11 A I can't read it.

12 Q Do you recognize this email from yesterday?

13 MR. DOMINA: Go ahead, Chris.

14 BY MR. DOMINA:

15 Q It's an email from Kurk Williams to you dated June
16 21st, 2013. This was on the screen yesterday.

17 A Yes.

18 Q Remember the discussion where -- this is where
19 initially Helix submitted its first claim or its first, I
20 shouldn't say claim, but its breakdown of the claim on or about
21 June 19th, and you received the letter and responded to Helix
22 saying is this it, is that all you're sending, just the letter.

23 And then you can see the email string here where Kurk
24 responds back to you and said, Do you need anything else? And
25 there's some discussion, and at the end Kurk ends the

1 conversation, at least what we see here and says, If needs be,
2 we have job cost detail reports that show costs the project is
3 absorbing to manage the project that is not overhead costs.

4 Did you ever tell or instruct Kurk that he needed to
5 provide the job cost report to help substantiate the claim?

6 A I didn't say those words, but I sent him a letter and
7 said you need more backup. It was either end of August or
8 September.

9 Q But you didn't specifically say the job cost report;
10 correct? And at this time it was a letter; right?

11 A Yes.

12 Q There was a letter with no backup?

13 A No, I sent the letter.

14 Q No. No. No. As of this date, Helix had provided
15 APCO with a letter, but no backup after that, just a letter and
16 a breakdown of what the daily cost was; correct? Remember the
17 letter? I can take you to the letter itself.

18 A That Helix sent?

19 Q Helix's June 19th letter, do you remember seeing
20 it?

21 A I do.

22 Q Okay. And it showed a daily cost of \$640 a day that
23 they were incurring at the time? Do you recall that?

24 A I do.

25 Q Okay. So when you responded to this email, you had

1 already given -- you had already received a breakdown, but you
2 did not ask for specifically a job cost report to substantiate
3 the \$640 a day cost that was being conveyed to you at the time;
4 is that correct?

5 A I'm not sure I understand the word breakdown as
6 you're using it because --

7 Q The \$640 a day wasn't just a flat -- it wasn't just a
8 flat amount; right. There was --

9 A No. There were components.

10 Q Components. A breakdown of what that consisted of;
11 correct?

12 A Sure.

13 Q Okay. And so your testimony is that you did not
14 specifically ask for the job cost report of Helix to support
15 the \$640 a day claim?

16 A I didn't use those words, no.

17 Q Okay. Let's go to JX70, please, page 6. Sir, do you
18 recognize this document?

19 A No.

20 Q Okay. It's a -- does this appear to be a change --
21 no, what is a change notice?

22 A Well, it's Helix Electric requesting funds for
23 additional work.

24 Q Okay. And I think you testified that even after the
25 city approved the general conditions or the change order that

1 APCO submitted for its own extended general conditions, the
2 settlement agreement that was entered into, that there were
3 change orders on the job after that. Is that your
4 understanding? There were approved change orders after the
5 date that the extended general conditions were approved?

6 A Yes.

7 Q Okay. And you also indicated that there were
8 multiple change orders. Yesterday you said there were multiple
9 change orders on the job during the time of the delay when
10 Helix was out there during the nine-month delay. Is that your
11 testimony?

12 A Yeah.

13 Q Okay.

14 A Yes. Sorry.

15 Q Does this appear to be one of those change orders
16 that Helix submitted? If you look at the date, it's June
17 28th, 2013. Do you see that? That would be within the delay
18 period; correct? Can you see that at the top right there?

19 A Yeah, I see it.

20 Q Okay. So you're agreeing with me, right, that this
21 is a change order notice that was submitted by Helix to APCO on
22 June 28, 2013?

23 A I can't tell you that from this one little snippet.

24 Q He's doing it just to help you so you can read it,
25 but please look at the whole document.

1 Can you see that?

2 A Okay. Christmas tree lights --

3 Q Do you recall there being a change order regarding
4 Christmas tree lights?

5 A I think so. I'd have to look at the log.

6 Q The city is on top of it, huh? This is in June, and
7 Christmas tree opening is not for another six months. They're
8 kind of on top of it, aren't they? No question there. Just a
9 comment.

10 So do you recall the specific scope of what was going
11 on with Christmas tree lights?

12 A No. Some of these later change orders, what happens
13 on public works property -- properties is people from various
14 departments start waddling through the job and then pointing
15 and shooting and asking project manager for their wants and
16 wishes, and you forgot this and that, and so that's what
17 prompts a lot of change orders at the end of a --

18 Q Okay. All right.

19 A -- project.

20 MR. DOMINA: So let's turn to the second page of that
21 document, Chris, page 7.

22 MR. JEFFERIES: What exhibit number?

23 MR. DOMINA: I am looking at Exhibit 70. We were on
24 6, and now we're going to go to 7.

25 MR. JEFFERIES: My screen is not working. So that's

1 why I bug you for --

2 THE COURT: Do you need help --

3 MR. DOMINA: I think you just need to turn it on.

4 THE COURT: -- getting your screen working?

5 MR. DOMINA: Ramsey knows how to do it.

6 THE COURT: Power.

7 MR. JEFFERIES: It was on.

8 There it is. Thank you.

9 THE COURT: Awesome job, Ramsey.

10 THE MARSHAL: Thank you.

11 MR. DOMINA: Good thing you're back.

12 BY MR. DOMINA:

13 Q Okay. So we're all on page 7 of Exhibit 70. This is
14 the second page of that document. How much is Helix seeking or
15 notifying APCO that it would be seeking by way of this change
16 order request?

17 A It appears to be \$10,460.

18 Q Okay. And is that how the process normally works?
19 Somebody from APCO notifies Helix that there may be a change,
20 or there's a request to price new scope of work, and Helix will
21 submit a change notice similar to this to price out that scope
22 of work?

23 A Yeah. Typically they're generated in the field at a
24 meeting and whatnot in the trailer, and whether it be prompted
25 by an RFI or city request --

1 Q Okay.

2 A -- we process it for them.

3 Q Helix did --

4 A I'm not --

5 Q In this case, Helix didn't want the Christmas tree
6 lights. It wasn't for their benefit; right? It was for the
7 city's benefit? Somebody was asking that Helix do this work
8 that wasn't within their contract; correct?

9 A Okay.

10 Q You don't agree with that?

11 A Well, you alluded to the fact that they don't want
12 the change order.

13 Q No, no. What I said was this isn't for Helix's
14 benefit. This is -- the lights aren't Helix who wants it.
15 Somebody else wants the work done and is directing Helix to do
16 it, and it's outside their contract?

17 A Yes. They didn't request the work.

18 Q Okay. They didn't think it was a great idea out of
19 their own. It was someone else that brought it to them?

20 A Yeah.

21 Q Right? Okay. That's how it works. And then, if we
22 turn to -- so the number there that was being requested was
23 10,460. If we turn to page 3 of the same exhibit, do you
24 recognize this document?

25 A Yes.

1 Q Okay. And is this APCO's change order request to the
2 city for the same scope of work?

3 A Yes.

4 Q Okay. And the dollar amount there is 10,983? Do you
5 see it? The dollar amount that you're seeking from the city
6 for that same scope of work that Helix is doing?

7 A Yes.

8 Q Why is it that you are asking for a higher amount
9 than what Helix was asking from APCO?

10 A Well, by contract, we are allowed to add 5 percent on
11 approved change orders.

12 Q Okay. So you've marked up -- you've marked up
13 Helix's --

14 And at this point this change order request hasn't
15 been approved. You don't know if it's going to be approved or
16 not; correct? It's a change order request?

17 A I think there's a page missing, but that's just me.

18 Q You think there's a page missing. I'm just saying,
19 at the time, think about it back at the time, the city doesn't
20 send you a change order -- issue you a change order until you
21 submit to the city a change order request; correct? You'd have
22 to submit something telling them that you are looking to be
23 paid money, a change order request?

24 A Yes.

25 Q Okay. And that's what we're looking at here. It's

1 your change order request which included Helix's amount, and
2 APCO has marked it up and submitted it to the city for
3 processing; correct?

4 A Yes.

5 Q Okay. Then -- and, in fact, if we look at the date
6 succession, this is dated -- you've dated this July 11th.

7 MR. DOMINA: Down at the bottom, Chris, his
8 signature.

9 BY MR. DOMINA:

10 Q It's dated July 11th, which is the same date of the
11 document, and if we go to the last page, which is page 2 of
12 Exhibit 70, the last page that I want to show you anyway, what
13 is this document?

14 A That's Brian Bohn's approval.

15 Q Okay. So this is --

16 A From the city's approval.

17 Q Okay. So this is the city's approval approving the
18 change order request that we saw previously, and if you notice
19 the -- it says cost of change in the middle of the page 10,983.
20 That was the same amount that APCO was seeking from the city
21 with the markup; correct?

22 A Yes.

23 Q It was APCO's expectation that this dollar amount
24 would be added to APCO's contract; correct?

25 A That's typical.

1 Q Right. It's typical, and the amount, the monies
2 wouldn't be paid from the city directly to Helix. It went
3 through APCO's contract; correct?

4 A Yes.

5 Q Okay. And then if you go to page 8, once you
6 received -- once APCO received confirmation from the city that
7 it had approved that change order request and was increasing
8 the price of APCO's contract, APCO then submitted on page 8 a
9 change order or issued a change order to Helix; correct?

10 A That's correct.

11 Q And that was for the amount that Helix was seeking,
12 the 10,460 without the markup that APCO had included?

13 A Right.

14 Q Right. And at the bottom of that document, we see
15 that there's a tracking of Helix's subcontract value and that
16 this would now be added to the original contract value;
17 correct?

18 A Yes.

19 Q Okay. So now let's go to JX15, page 2.

20 And before we do that, that is the normal process
21 that any general contractor undertakes when they're looking to
22 submit a change order on behalf of their subs so that their sub
23 could get paid as well as the general contractor; is that
24 correct?

25 A Yes.

1 Q Okay. Nothing unique about that process?

2 A No.

3 Q Okay. Now, let's go to JX15, page 2. Do you
4 recognize this document?

5 A Now I do.

6 Q You do. Okay. And is this the change order request
7 that APCO submitted to the city on May 9, 2013, seeking, among
8 other things, an extension of its general conditions on the
9 project?

10 A Yes.

11 Q All right. And, in fact, let's look at that specific
12 line item. It says, General conditions nine months, and then
13 you've got a unit price of 53,245. Is that a monthly price
14 that's being broken out there?

15 Do you see that? It says unit price, 53,245?

16 A [No audible response.]

17 Q Do you see where I'm at?

18 A Yes, I see it.

19 Q Okay. Is that a monthly breakdown?

20 A Yes.

21 Q And then if you take nine months and times it by
22 that, that's why you get the number over to the right, 479,
23 205?

24 A Yes.

25 Q And so APCO was seeking -- and this is -- had the

1 nine months actually --

2 This is May 9th, 2013. That's only five months
3 into the delay that ultimately resulted on the project;
4 correct?

5 A Yes.

6 Q Okay. So five months into it APCO is now seeking the
7 full nine months of delay damages or the extended overhead or
8 extended general conditions that it hadn't actually even
9 incurred; is that correct?

10 A Well, four and a half months of them hadn't occurred.

11 Q Four and a half. A part of them. Albeit --

12 A Yes.

13 Q -- part -- part of it had, but there were still some
14 that had not yet actually occurred; correct?

15 A Correct.

16 Q Okay. So when you submitted this document, did you
17 include -- first of all, did APCO reach out to its
18 subcontractors and notify them that it was submitting a change
19 order request to the city to be paid for the extended general
20 conditions that were occurring on the project since it went
21 nine months over?

22 A No.

23 Q Okay. And why didn't you do that?

24 A Because of my testimony yesterday where I had
25 conversations with the subcontractors due to the rebid, and I

1 wasn't anticipating any claims from the subcontractors.

2 Q Okay. So it's your testimony that the
3 subcontractors, before there was even a delay, because this
4 wasn't -- you would agree that the bid documents showed a 12
5 month schedule; correct?

6 A Yes.

7 Q And it's your testimony that the subcontractors bid
8 that project knowing that it was going to go nine months past
9 the 12 month schedule, that the bid documents that are public
10 documents said?

11 A I didn't said that.

12 Q Okay. What are you saying then? I don't understand.

13 A I said yesterday that the original job bid I believe
14 for 17 months, and when it rebid, the city changed alternates
15 which reduced a little bit of their price.

16 Q Took scope out?

17 A Alternates, whether they could use it or not. So the
18 time should have been in alternates, so to speak. The base
19 contract was supposed to be done in 12 months, but we all knew
20 that it could not be done.

21 Q Okay. And what documentation, what evidence do you
22 have besides the testimony that you're offering today that we
23 all knew, all of your subcontractors knew that this job was
24 going to go over the 12 month schedule that the city issued in
25 a public record?

1 A The only thing I can say to that is 38 other guys
2 didn't claim.

3 Q Now, you would agree that the electrician that's on a
4 project is -- has generally a substantial amount of scope on a
5 project as far as the cost of any given project, electrician,
6 or the electricity part of it is usually a large component of
7 any given project; correct?

8 A That depends, but --

9 Q That depends. On this project was it a pretty good
10 chunk of it?

11 A 4 million out of 28.

12 Q Okay. But you've got a lot of trades.

13 A I'm sorry?

14 Q There's a lot of trades that are involved on a
15 project of this size.

16 A Yes.

17 Q You said 34?

18 A I believe when I asked Mary Jo the question the other
19 day there was a total of 40 contractors on the job.

20 Q Okay. A total of 40. Now, did all of them have site
21 trailers on the job?

22 A No.

23 Q Did all of them have project managers that were on
24 the job?

25 A You're using the term "all"?

1 Q Well, I mean, do you know that -- you said none of --
2 only a few of them did submit claims for extended overhead
3 costs. How many of them had site trailers?

4 A Well, that's hard for me to sit here and answer
5 because of some of them were intermittent. They weren't there
6 that long, but they did bring in a trailer for the people to
7 work out of, and there was a few that didn't even hook up
8 power. Sitting here today, I'm going to say five.

9 Q Okay. Was the landscape company one of them?

10 A Yes.

11 Q Okay. So Helix was one of them; correct?

12 A Yes.

13 Q There was a trailer out there, and the landscape
14 company had one, and those were at least two of the claims that
15 we know of that -- or two of the subcontractors that notified
16 APCO early on that they were experiencing extended general
17 conditions; correct?

18 A Yes.

19 Q Okay. Extended overhead costs. All right. And it's
20 your testimony yesterday that that number that we're looking at
21 on Exhibit 15, page 2, \$479,205, that does not include any
22 claim of Helix or any other subcontractor; correct?

23 A It does not.

24 Q Okay. Now, let's go to Exhibit 25, page 3. This
25 document has been discussed during the trial. Do you recognize

1 this as being the first invoice that Helix submitted to you --
2 or not the first. I shouldn't say that. A revised invoice
3 that Helix submitted to APCO for its extended overhead costs?

4 A Yes.

5 Q All right. And turning to the first page of
6 Exhibit 25, is this the change order request that APCO
7 submitted to the city along with Helix's invoice?

8 A Yes.

9 Q All right. And the dollar amounts are exactly the
10 same; correct? There's no more -- APCO did not put a mark up,
11 did not attempt to put a mark up on the claim that Helix was
12 asserting?

13 A That's correct.

14 Q And this claim was asserted separate from a claim
15 that APCO was asserting against the city contemporaneous with
16 the claim that it had submitted on behalf of Helix to the
17 city -- that was -- that was wordy. I'll strike that.

18 A I was losing --

19 THE COURT: Are you going to try again?

20 THE WITNESS: I was getting lost.

21 BY MR. DOMINA:

22 Q The change order request that we're looking at on
23 Exhibit 25, that was submitted by APCO to the city at the same
24 time that the city was -- that APCO had submitted its own claim
25 to the city for its extended general conditions; correct?

1 A Well, within reason. I don't know how many days
2 apart, but, yes, same time frame.

3 Q Meaning both APCO and Helix were experiencing or were
4 submitting -- strike that. Strike that.

5 I think we got what we wanted out of that. Thank
6 you.

7 Let's go to Exhibit 22. Sir, do you recognize this
8 document?

9 A Yes.

10 Q Okay. This is the October 2nd, 2013, letter that
11 the Judge was asking you about earlier. The subject line says
12 Response to Time Impact Analysis Reports 1 and 2. This
13 document did not affect any other component -- or is it your
14 understanding that this document did not affect any other
15 component of the project other than APCO's claim for extended
16 overhead conditions as it's broken down in the table below?

17 A Yes.

18 Q -- is that correct?

19 Okay. So as we look at this document here, I want to
20 turn your attention to the first sentence -- second sentence in
21 the first paragraph. It says in our review, it was determined
22 that APCO was granted 119 noncompensatory calendar days
23 bringing the contract completion from January 11th, 2013, to
24 May 10th, 2013.

25 What's your understanding of what the city was

1 telling APCO with respect to those, that time frame, January
2 11th to May 10th?

3 A Are you asking me for what they told me?

4 Q What did they tell you? What's your understanding?

5 A There were some concurrent delays. So they didn't
6 want to pay for that.

7 Q Okay. And who was responsible for those concurrent
8 delays?

9 A Well, they didn't give me a list, but obviously there
10 were components of the job, and I believe Helix was one.

11 Q Okay. Have you seen evidence in this trial --

12 THE COURT: Let him finish.

13 MR. DOMINA: I'm sorry.

14 THE COURT: Helix was one. Keep going.

15 THE WITNESS: Yes. Landscaper was another.

16 THE COURT: And when you're finished, let us know.

17 THE WITNESS: All right. Concrete. We had issues
18 with getting playground equipment that was running way late.

19 So I'm trying to do this from memory. I want to say
20 five or six concurrent delays, but I didn't feel that they
21 were -- they had some -- they had some merit to their comments.
22 So that's why I agreed to this.

23 Q Okay. So, number one, and let's break that down a
24 little bit --

25 And you are done testifying, correct, on that

1 subject, on that question that I asked?

2 A Yeah.

3 Q Okay. Number one, you said that the city came back
4 and said, hey, there's some concurrent delays. Now, if there's
5 a concurrent delay, isn't it your understanding that the owner,
6 the city will not pay for any compensable delays during that
7 same time frame that APCO or its subs might have been
8 responsible for? Is that your understanding?

9 A Yes.

10 Q Okay. And so the city came back to you and said,
11 hey, there's 119 days here in this at the time -- well, in this
12 nine-month delay that you're claiming that we're not going to
13 pay you for because we've identified concurrent delays that
14 APCO is responsible for, and you said some of those were broken
15 down to identify Helix as the -- as one of the contractors that
16 was responsible for the delay?

17 A Broken down?

18 Q Was --

19 A You asked me for what they told me.

20 Q Okay. Told you --

21 A There's no paper trail on this.

22 Q Okay. This was all verbal. This was a verbal
23 discussion. And who did you talk to at the city? Was it
24 Joemel?

25 A Randy Duvall.

1 Q Randy Duvall. So above Joemel then?

2 A Yes.

3 Q And you're saying that Randy Dumel --

4 A Duvall.

5 Q That's a cross between Joemel and Duvall. Yeah. I'm
6 a little bit tired, but we're going to do this and hammer it.

7 So let's talk about that. Let's talk about that.

8 A Okay.

9 Q Randy Duvall told you, even though this letter is
10 written to you and identifies the 119 noncompensatory delays,
11 in a verbal discussion, he told you, oh, yeah, those delays, at
12 least one of them was Helix's fault. Did he tell you exactly
13 what the issue was with Helix's scope that made it a concurrent
14 delay?

15 A Well, first of all he called out the scopes, not the
16 subcontractors, that were concurrent.

17 Q Okay.

18 A Okay. Fair enough?

19 Q Fair point. Got it.

20 A So and one of them was the \$600,000 of light fixtures
21 that were not delivered until the end of January which is over
22 a month past the original completion date.

23 Q And whose responsibility was it to order the light
24 fixtures?

25 A Helix.

1 Q Okay. That wasn't taken out of Helix's subcontract?

2 A Well, that's another story if you'd like to hear
3 that.

4 Q Well, I just want to know. Is it your position that
5 light fixtures was included, the supply of light fixtures was
6 included in Helix's contract?

7 A Somewhat.

8 Q Okay. Somewhat.

9 A Yes.

10 Q Does that mean some of them were; some of them were
11 not? Or is it black and white? What do you mean by
12 "somewhat"? I'll let you expand.

13 A Okay. Graybar did the major components of the light
14 fixture package out there. It was \$2 million and change. When
15 we were bidding the project, I said Vic -- I was talking to
16 Victor on the phone.

17 I said, Victor, we're trying to get this job. You
18 need to help me out.

19 And he said, Okay. What are you thinking?

20 And I said, Well, if we buy the light fixtures, will
21 that help?

22 He goes, Absolutely.

23 I said, But you have the relationship with Graybar.

24 So they submitted -- Helix provided the submittals.
25 They provided the ordering. Obviously there was a -- an issue

1 for whatever reason for that's about 25 percent or so of those
2 fixtures. And why they weren't delivered, I do not know. They
3 were way late.

4 Q Okay. So that's what you meant --

5 THE COURT: The ones from Graybar were way late?

6 THE WITNESS: Yes.

7 BY MR. DOMINA:

8 Q Okay. And so that's what you meant by sort of?

9 A Yes, sir.

10 Q So they weren't going to pay for it. It wasn't in
11 their contract to pay for it, but you said that it was this
12 kind of side deal that Victor was going to, to help you out a
13 little bit, do the submittals and submit the purchase order to
14 Graybar?

15 A Yes. He had them send it to me directly.

16 Q Using APCO's money to pay for it?

17 A Yes, sir.

18 Q Okay. Did you at the time that you were told this
19 information from Mr. Duvall, did you reach out to Victor or
20 anyone else at Helix and, one, either tell them about this
21 issue, or two, give them an opportunity to present some sort of
22 defense or support to rebut what the city was saying here?

23 A No.

24 Q Okay. And why didn't you do that?

25 A Because I handle each situation one at a time.

1 Q Did you feel that you -- and, in fact, today you
2 testified, well, you thought there might have been some merit,
3 but, you know, you really didn't like that. Were there -- did
4 you want to rebut? Did you want to reject the city's position
5 that 119 days of that nine-month delay were compensable?

6 A You're asking me what I wanted to do?

7 Q Did you feel that you should have rejected those 119
8 days?

9 A Well, when there's this much money involved, I go see
10 the owners. And I said, look --

11 Q Just let me stop you there. Owners of APCO?

12 A Yes, sir.

13 Q Okay. Thank you. Keep going.

14 A Sorry. And I said we put in a million dollar change
15 order. I don't know if it's the timing of this. It's not the
16 timing of this document. They're offering 560. Do you want me
17 to take it and not file a claim, and they said, yes.

18 Q Okay. So APCO made a business decision to take what
19 was being offered, which admittedly was 119 days less than what
20 it was seeking by way of its initial change order request; is
21 that correct?

22 A That's correct.

23 Q Okay. And you made that business decision without
24 including any discussion with your subcontractors, including
25 Helix; correct?

1 A That's correct.

2 Q Let's take a look at the -- this table here. The
3 general conditions, the total of -- if you go to the far right,
4 it says daily price \$365 or 365 days. There's a
5 Number 1,107 --

6 THE COURT: What exhibit are you on?

7 MR. DOMINA: Oh. I thought I was still on
8 Exhibit 22. Sorry, Your Honor.

9 THE COURT: I was just checking.

10 BY MR. DOMINA:

11 Q Okay. So that table there, you look to the far
12 right, 1,750?

13 A There must be something in here. Sorry.

14 Q Allergies?

15 A Something.

16 THE COURT: So it's not just me?

17 THE WITNESS: No. It's something in here I think.

18 MR. DOMINA: Mine start in the spring for some --
19 Whatever it is in the spring I get.

20 THE COURT: Well, we got a lot of rain this year. So
21 a lot of things are blooming, and a lot of people are sick.

22 MR. DOMINA: Yeah.

23 THE COURT: Which means everybody at the courthouse
24 is sick because, boy do we get a lot of the public in here.

25 MR. DOMINA: A lot of the, yes, very diverse public

1 comes through here. Okay.

2 THE COURT: Sir, if you need Kleenex or tea, let us
3 know.

4 THE WITNESS: Think you.

5 THE COURT: Okay. Keep going.

6 BY MR. DOMINA:

7 Q All right. So, Mr. Pelan, this number that we're
8 looking at here, that's a daily cost that APCO is alleging it
9 was incurring on the project during that delay; correct?

10 A Yes, sir.

11 Q That cost was never supported by a job cost report
12 before the city decided to pay APCO for this money; correct?

13 A Every month.

14 Q Every month you provided them a job cost report?

15 A I brought you a copy if you'd like to see a cover
16 sheet.

17 Q Okay. And this wasn't provided as part of your
18 evidence at trial?

19 A I'm not going to provide the 3-inch file on something
20 I didn't think was important.

21 Q Okay. Well, you're challenging Helix's claim because
22 you claim they didn't have a job cost report to support their
23 daily cost; correct?

24 A I didn't say that. You said that.

25 Q No, no. You're not challenging --

1 A I asked for backup so that I could try to get their
2 change order paid. I never got it.

3 Q But as of today, I'm not talking about back then
4 during the project, I'm talking about today, you're
5 challenging, your attorney and you are challenging, APCO is
6 challenging Helix's claim of the daily rate that they were
7 charging based on the fact that it doesn't match up with what's
8 in their job cost report; is that true?

9 A Absolutely.

10 Q Okay. So you didn't think that perhaps Helix might
11 argue to want to see the same backup that APCO put to the --
12 the claims they put to the city to support its daily cost?

13 A I don't have time to babysit 40 contractors and/or --
14 Victor is a very seasoned manager, and he knows how to do these
15 things, and it appears to me now that the reason they didn't
16 give us the backup is because they didn't -- they didn't want
17 to provide a lower number.

18 Q Okay. But --

19 A That's what it appears now.

20 Q Okay.

21 A So we're mixing now and later. So I'm just making my
22 comment.

23 Q Well, it's easy to say that now when you're in trial
24 and on the stand before the Judge, but when you had the
25 opportunity, when the email was there, and he said I can give

1 this to you if you'd like it, you didn't ask for it, did you?
2 We've been through that. And you said no.

3 A I didn't ask for the word that you said.

4 Q The job cost report?

5 A That's correct.

6 Q That's what we're talking about.

7 A I asked for backup. Backup is the same thing to me.

8 Q Okay. All right. Let's go to page 2 of the
9 document. I want to turn your attention to the second to the
10 last paragraph. It says it is also understood that APCO will
11 forgo any claims for delays, disruptions, general conditions
12 and overtime costs associated with the weekend work previously
13 performed and presently ongoing to achieve the above dates and
14 for any other claim, present or future, that may occur on the
15 project. Now --

16 A It should have said from APCO.

17 Q From APCO, and it should have said only in relation
18 to the extended general conditions claim? Because this -- this
19 document doesn't -- you are right. This doesn't close out the
20 project; right?

21 A No.

22 Q It's still ongoing. It's October 2nd. There's
23 still people out there?

24 A That's correct.

25 Q But it does relate to the general condition claim

1 that APCO submitted to the city; does it not?

2 A It does.

3 Q And it closes that out; does it not?

4 A Only APCO's portion.

5 Q Okay. And that was APCO's belief?

6 A That's my belief.

7 Q That's your belief, and we learned yesterday that the
8 city, Joemel, had a different belief, did he not? Were you
9 here when Mr. Llamado testified?

10 A You know, I listened, but I don't know what he
11 believed.

12 Q Okay. Do you know what he said yesterday?

13 A Was that yesterday?

14 Q Or Monday. I'm sorry.

15 THE COURT: It was Monday.

16 BY MR. DOMINA:

17 Q See, it's blurring. Monday he was here, and he stood
18 on that stand, and he testified that the city absolutely
19 believed that by signing the settlement agreement it took care
20 of any and all claims with APCO as it relates to the claim for
21 extended general conditions, but it included any claims that
22 its subs may have. You were here; right?

23 A I was here.

24 Q Okay. Does that accurately reflect what he said?

25 A That accurately reflects what he said, but he also

1 said he was not the author of this document.

2 Q Well, what the document says, he's supporting what
3 the document says; correct?

4 A [No audible response.]

5 Q Okay. Do you have any reason to believe that
6 Mr. Joemel, who is an employee of the City of North Las Vegas,
7 who has no ties to Helix, has no ties to APCO, is a third-party
8 neutral would come into court and misrepresent facts under
9 testimony?

10 A I don't think he would misrepresent.

11 Q Okay. All right. Let's go to Exhibit 3 of that
12 same -- excuse me, Exhibit 22, page 3. And, sir, do you
13 recognize this as being the change order or the change order
14 conflict authorization that the city, basically the city's
15 approval accepting payment or willingness to make payment to
16 APCO in the amount of \$560,000 -- \$560,724 for the extended
17 general condition claim?

18 A Yes.

19 Q Okay. And it's your testimony that after signing all
20 of this that your subs, including Helix, still had an
21 opportunity to pursue a claim directly against the city for
22 their own claim?

23 A It kind of says that.

24 Q Okay. How does it kind of say that?

25 A Blow it up again.

1 The time impact analysis offer to APCO. I'm the only
2 one that presented one so far.

3 Q Okay. But your claim for extended general conditions
4 did not include any of your subcontractors' claims; right?

5 A That's correct.

6 Q Okay. And if you, as we heard from the city, they
7 had an issue with the way that you submitted the claims of
8 Helix, and we'll get to those in a minute. So let's reserve
9 discussion on that. We'll get to those. What I want to do is
10 move you to Exhibit --

11 MR. DOMINA: Oh. Actually, Your Honor, counsel and I
12 spoke. There's a document that we'd like to identify as
13 Proposed Exhibit JX --

14 Proposed Exhibit number what is it?

15 UNIDENTIFIED SPEAKER: 103.

16 MR. DOMINA: -- 103.

17 THE CLERK: JX or PX?

18 MR. DOMINA: PX.

19 What did we call it? It's the next one in line? PX?

20 THE COURT: PX next in order?

21 MR. DOMINA: Yeah.

22 THE COURT: Okay.

23 THE CLERK: 103.

24 MR. DOMINA: PX103.

25 THE COURT: And what do you want to do?

1 MR. DOMINA: I want to -- this is the pay
2 application.

3 (Pause in the proceedings.)

4 Okay. Your Honor, may I approach?

5 THE COURT: You can.

6 Any objection to PX103?

7 MR. JEFFERIES: No, Your Honor.

8 THE COURT: PX103 will be admitted.

9 (Plaintiff's Exhibit Number PX103 admitted)

10 MR. DOMINA: Thank you.

11 THE COURT: And it's a pay app?

12 MR. DOMINA: It's APCO's pay application to the city.

13 THE COURT: Date?

14 MR. DOMINA: Can I have that, please.

15 THE COURT: Come on.

16 MR. DOMINA: Sorry?

17 THE COURT: Date. What's the date of the pay
18 application?

19 MR. DOMINA: I gave her my copy. I'm getting it.

20 I believe the date is -- it's right around the end of
21 the project, October 1st, 2013.

22 THE COURT: October 2013.

23 Okay. Keep going.

24 MR. DOMINA: All right. And, Chris, are you able to
25 pull that up then for him? Because it's not going to be in the

1 book yet.

2 Your Honor, can I hand it to the witness?

3 THE COURT: Uh-huh.

4 MR. DOMINA: We may get it in the book as well but.

5 THE WITNESS: Thank you.

6 BY MR. DOMINA:

7 Q Okay. So are you -- do you recognize this as being
8 Pay Application Number 22 from APCO to the City of North Las
9 Vegas?

10 A No.

11 Q What is this document then?

12 A This document is a sheet done by the city after each
13 pay application is done. They memorialize on their document in
14 order to get it through financing. This is not our pay
15 application. This is their cover sheet to our pay application.

16 Q Okay. Is there -- can you scroll through the
17 documents at all and tell me are there -- is it just that's
18 their document, and now you have -- is your pay application at
19 all submitted to this, or is this entirely the document that
20 you're testifying to being a city document?

21 A It would have been attached.

22 Q Okay. But it's not in this case?

23 A Right.

24 Q Okay. Well, let's go -- let me take you to a couple
25 of things on this real quick.

1 A Okay.

2 Q So what -- describe for me what this document is
3 again. It's a document that the city maintains and captures
4 after they received pay applications from APCO?

5 A Once they approve our pay application and it has to
6 go to finance to get paid, someone at the city puts this
7 information on their document for their records and to fund
8 whatever the amount is, and it --

9 Q Okay.

10 A So it's -- it's their document.

11 Q Does it -- do you know if it reflects all of the
12 amounts that the city has agreed to pay APCO? And because you
13 don't work for the city, I'm asking you if you know. If you
14 don't, then that's fine.

15 A I don't know if that's the final number, 27, 540 --
16 27,540,000. I do not know if that's the final number.

17 Q Okay. Well, to be candid, we kind of misconstrued
18 what it was. Understanding it was something different, it was
19 labeled differently in your production, and so we assumed it
20 was one of the pay applications that were submitted. So I'm
21 going to go ahead and leave it in the record. That's fine, but
22 I'm not going to ask you any further questions on it.

23 A Okay.

24 Q All right. Let's go to JX24, page 5, please. Okay.
25 Do you recognize this document, Mr. Pelan?

1 A Yes. It's been talked about.

2 Q Okay. Is this the conditional waiver and release
3 that APCO claims forms the basis of Helix's waiver, APCO's
4 argument that Helix waived its claim for extended overhead
5 costs?

6 A Yes.

7 Q Okay. And you'd agree that this is dated October 18,
8 2013; correct?

9 A Yes.

10 Q All right. Now, when you received this document and
11 it said zero in disputed claims, you believed that Helix no
12 longer had or was walking away from its claim for extended
13 general conditions. That's your position? Extended overhead
14 costs.

15 A I didn't see this until after the fact, later, but we
16 were getting retention requests from a lot of subcontractors.
17 That's handled by our accounting department.

18 Q When did you see this document for the first time?

19 A Well, that's a good question.

20 Q Okay.

21 A I truly don't know.

22 Q Okay. So it's not your position today that as of
23 October 18, 2013, APCO knew, because it -- or you knew, you
24 were taking the position because you had received this document
25 that day that Helix was waiving its claim for extended overhead

1 costs?

2 A Say that again. I'm sorry.

3 Q You said that you didn't even get it. You didn't get
4 it the day that it's dated. You didn't think you had seen it
5 until you said subsequently; correct?

6 A Yeah. I don't know if it was a week or two or
7 whatever.

8 Q Okay. All right. And I was asking you, well,
9 because it's important because if you're looking at this
10 document as the date that APCO understood that Helix was no
11 longer pursuing its claim, that's an important date to know for
12 the Court. So can you tell us when you might have seen this
13 document for the first time.

14 A I would say within a week. I just couldn't tell you
15 the day.

16 Q Okay. So within a week of the date that's there.
17 All right. Now, and were there any other discussions --

18 Is it your belief that you formed at that time in
19 receiving this document that you formed the position that Helix
20 was walking away from its claim based on this document only, or
21 was there a discussion about that?

22 A There was no discussion.

23 Q Okay. So it's based on this document entirely?

24 A Discussion with who though?

25 Q With Helix?

1 A No, there was no discussion.

2 Q Okay. Helix didn't come and say we're going to put
3 this at zero. We're not going to pursue our claim. You know,
4 you tried everything, you know, Kumbaya. We'll, next time,
5 we'll get them next time?

6 A We're still working on the job.

7 Q Okay. All right. So your position is just based on
8 this document is why you believe Helix had, quote, unquote,
9 waived its claim?

10 A Yes.

11 Q Okay. Let's turn to JX25, page 2. 25, page 2.

12 Okay. Do you recognize this document? A little bit
13 blurry, I know.

14 A Yes, it is.

15 Q Sometimes it gets better when you blow it up.
16 Sometimes it doesn't.

17 THE COURT: Sometimes it gets worse.

18 MR. DOMINA: Yeah.

19 THE WITNESS: Yes.

20 BY MR. DOMINA:

21 Q Okay. Do you recall sending a letter in early
22 October 2 to Helix letting them know for the first time that
23 their claim to the city had been rejected, and in there you
24 said there's -- you need to give me more backup if you want me
25 to take this to the city again. Do you remember that?

1 A Yes.

2 Q And that happened before this letter came; right?

3 A That's correct.

4 Q Okay. So this is -- is it your understanding this
5 October 31st letter was being done by Helix in response to
6 your request to provide additional backup to their claim?

7 A I believe so.

8 Q Okay. Now, they do that; right? I mean, if you read
9 the letter, you've read it; I'm not going to waste the Court's
10 time, but we've read the letter, and we know that there were --
11 there was the -- there was an invoice, and there was a
12 breakdown of what that daily cost of \$640 a day was, and it
13 actually included additional amounts; correct? It was revised
14 from the first invoice?

15 A It was revised, yes.

16 Q Okay. And instead of being 640, there were new line
17 items that were included in that list of general extended
18 overhead costs that were being incurred; correct?

19 A Yes. There was an undocumented menu.

20 Q Okay. A menu, that's fine. So --

21 THE COURT: Undocumented menu?

22 THE WITNESS: Yeah. That's --

23 THE COURT: Okay.

24 MR. DOMINA: I haven't heard that one, but --

25 THE COURT: That's a new term for me.

1 MR. DOMINA: Yeah.

2 THE WITNESS: Well --

3 BY MR. DOMINA:

4 Q Well, let's get back to this letter here. This is
5 dated October 31st, 2013?

6 A Right.

7 Q And Helix is now giving you the backup you requested
8 for, and in addition, the last sentence, they say, in addition,
9 we will be submitting a separate invoice for extended overhead
10 for the dates of September 2nd through October 25th. So they
11 give you the backup that you asked for, and now they're telling
12 we're going to be doing some more -- giving you some more
13 because two more months have now transpired on the project
14 since it was delayed, and they're telling you that they're
15 asserting their claim; right? You didn't read this and think
16 that APCO or that Helix had now waived its claim?

17 A Well, that was a long-winded question.

18 Q Well, I was just putting it out there. But the
19 question is when you got this, after all of that, did you
20 believe that Helix had still waived its claim based on that
21 conditional you saw?

22 A They didn't have -- yes. As far as I'm concerned,
23 they didn't have a claim, and this is not a claim. They did
24 not provide the backup. They provided a menu.

25 Q Okay.

1 A If you'd like to know what kind of backup that you're
2 supposed to do for extended general conditions, I -- obviously
3 you counsel people on this, that one-liners don't get it. You
4 have to provide proof of your cost.

5 Q And I don't mean to cut you off because I like to
6 hear you talk, but --

7 THE COURT: I'd rather hear his answer.

8 MR. DOMINA: Yeah.

9 THE COURT: So, sir, if you could finish, please.

10 MR. DOMINA: Okay.

11 THE WITNESS: So the way we do it on every project
12 that has some kind of extended general condition, which is not
13 many, three or four maybe in the past 10 years, you provide
14 notice. You put them on notice, and then you give them your
15 monthly costs. We provide a cover sheet that shows the people
16 that we're charging for. We even copy their paycheck stubs.
17 We put the menu of all the components that we're experiencing
18 extra costs on. We provide invoices for those costs, and you
19 total them up at the bottom, and that's the way you do a claim.
20 BY MR. DOMINA:

21 Q How come we're not --

22 A You don't do a two liner or three liner and then --
23 and then just say I'm charging you four hours a day with no
24 substantiation. We don't know today, as we sit here where
25 Helix was truly impacted. If they're still doing their own

1 contract work in February, when was the cutoff point? They --
2 if Victor wants to throw stuff against the wall, I'll send it
3 through the pipe for him, but if I ask for information that he
4 knows that he needs to give me, he should give it to me.
5 That's my answer.

6 Q Okay. All right. Thank you. But what you did there
7 was actually addressed two different components. I asked you,
8 when you received this letter, did you still believe that they
9 had waived it, not that they -- that you were rejecting it or
10 you wanted more backup, but I wanted to know, when you got this
11 letter on October 31st, 2013, did you believe that Helix had
12 waived its claim based on that general -- or the conditional
13 waiver that you saw --

14 A And I believe my answer was --

15 THE COURT: Wait. You've got to let Mr. Domina
16 finish.

17 THE WITNESS: I'm sorry.

18 MR. DOMINA: Yeah.

19 THE COURT: It's okay.

20 BY MR. DOMINA:

21 Q -- that you saw perhaps a week earlier according to
22 your testimony?

23 THE COURT: All right. Now, you.

24 THE WITNESS: Okay. I did not consider this a claim.

25 / / /

1 BY MR. DOMINA:

2 Q I'm not saying it's a claim, but --

3 A Yes, you did.

4 Q Did they -- did they convey to you that they were
5 still pursuing a claim, not that this was the claim, but they
6 were still pursuing a claim against APCO for their extended
7 overhead costs?

8 A No.

9 Q You did not recognize this as -- you said no. Okay.
10 Clarify. What are you answering?

11 A What are you asking?

12 Q Okay. I asked, did you recognize -- that's a good
13 exchange.

14 MR. JEFFERIES: There should be an objection in there
15 somewhere.

16 THE COURT: It's all right.

17 BY MR. DOMINA:

18 Q Did you --

19 THE COURT: Can we start over?

20 MR. DOMINA: Yeah.

21 THE COURT: Okay.

22 MR. DOMINA: Let's start over.

23 BY MR. DOMINA:

24 Q When you received this letter October 31st from
25 Helix, did you understand that they had waived their claim, or

1 were they still going to pursue their claim?

2 A I didn't understand it either.

3 Q Okay. You didn't understand either?

4 A That's correct.

5 Q You didn't believe that this letter where they said
6 they're going to be submitting two more months of invoices, and
7 they gave you backup that they thought supported their claim,
8 that this would be sufficient to let you know that they were
9 going to go forward with the claim?

10 A No, it was not sufficient.

11 Q Okay. All right. It wasn't sufficient notice that
12 they were going to pursue their claim, not the backup. It
13 wasn't sufficient notice to tell you that they had rescinded
14 that conditional waiver if it was ever operative in the first
15 place?

16 Do you know what the term rescinded means?

17 A Yes, sir.

18 Q Okay. What you understand it to mean?

19 A When you take something back.

20 Q Okay. You didn't recognize the October 31st letter
21 as Helix's way of taking back the conditional waiver that said
22 zero?

23 A No. Because first of all the contract language that
24 we spoke about before, where my opinion was Victor -- I don't
25 even know if he knew about -- well, yes, he did. He was

1 copied, wasn't he? No. Was he? No.

2 Q Okay.

3 A So anyway, they were asking me to collect some
4 extended general conditions, and I could do that if I had the
5 information. I felt that I was indemnified by my contract
6 language, but I would do my best to get him his money.

7 Q Okay. So you felt you were indemnified by your
8 contract language, but you were going to go and kind of run the
9 course for Victor anyway?

10 A I would.

11 Q Okay. Did you tell Victor that at this time again
12 that, hey, I don't know why you're sending me these notices
13 that you've got a claim because you don't, but I'll do it
14 anyway?

15 A I can't remember when. We'd have to look at
16 communication, but I don't even remember when Victor got
17 involved in this.

18 Q Okay. All right. Let's go to Exhibit 25, page 5.
19 So again, after receiving the conditional waiver, APCO
20 understands that Helix has waived its claim. Yet this is an
21 email from November 12th, 2013, where the city is forwarding
22 Helix's claim for extended overhead costs and the revised
23 claim; right? The 111,001?

24 A Yes.

25 Q That's --

1 A I believe so. I can't see the whole thing, but I
2 think it is.

3 Q Right. I'll take you to the page, but the attachment
4 says 68.1.

5 A Right.

6 MR. DOMINA: And if we go to the first page of
7 Exhibit 25, Chris.

8 BY MR. DOMINA:

9 Q Do you understand that to be 68.1, the change order
10 request 68.1?

11 A Yes.

12 Q Okay.

13 MR. JEFFERIES: What exhibit?

14 MR. DOMINA: We're in 25.

15 MR. JEFFERIES: Thank you.

16 MR. DOMINA: Page 1 of 25.

17 All right. Okay. Let's go to 25, page 11.

18 BY MR. DOMINA:

19 Q Do you remember seeing this email chain yesterday?

20 A Yes.

21 Q Okay. So that October 31st letter, Helix told APCO
22 that it would be submitting invoices for September and October,
23 and now on November 13th, the bottom email, that's exactly
24 what's happening; right? You'd agree that Helix submitted
25 September and October's billings or its claim for extended

1 overhead costs to APCO; correct? By way of this email. You
2 understand that to be true?

3 A You lost me. Did you mean that we sent it to the
4 city?

5 Q No. I wanted to say Helix submitted to you its
6 claims for September and October by way of this email; correct?

7 A Well --

8 Q Do you see where it says -- and we can look at the
9 last email. It says, hello, attached is an invoice for
10 extended overhead for September 13 through October 13.

11 I know I was more cursory in reviewing it, but that's
12 just because you're the last guy, and we've seen this a lot.

13 A Right.

14 Q So I thought we'd go quicker, but I'll slow down to
15 make sure you don't feel like I'm showing you documents that
16 don't say what I'm representing them to say?

17 A Isn't your half-hour about up?

18 Q Who says I'm up to a half-hour?

19 A That's what you said yesterday.

20 Q Oh. Yeah, well he wanted a break, and so --

21 THE COURT: Guys. Guys. Guys.

22 THE WITNESS: Sorry.

23 THE COURT: Let's just finish up.

24 MR. DOMINA: Okay.

25 / / /

1 BY MR. DOMINA:

2 Q So in this instance, Helix submitted it to APCO, and
3 then your response says, the city has your change order
4 request. I cannot approve without their approval. So you're
5 acknowledging to Helix that you did, in fact, submit the change
6 order request to the city; correct?

7 A Yes.

8 Q All right. And you didn't say, I thought this was
9 waived back in October of 20 -- or excuse me, October 13th --
10 18th, when you submitted the conditional waiver. You didn't
11 tell them why are you even sending this? You waived that
12 claim; right? That's not in the email chain here? Do you
13 understand my question?

14 A It's not in the email chain.

15 Q Okay. And did you tell them? Did you call them up
16 and say, hey, I'm going to write something that completely
17 contradicts what I'm going to tell you on the phone, but I
18 think you waived your claim? Did you have any conversations
19 with them at all?

20 A No. We had no conversations until after the fact.

21 Q Okay. And, in fact, Kurk's response to you is,
22 thanks for passing this on, Joe; right? They thought you
23 passed it on. They don't know that you've got this secret
24 position that they've waived their claim and that they're not
25 going to get their claim? Because you're going to take the

1 position that it's waived; is that right?

2 A I didn't think in those terms. I told you I felt
3 indemnified from Victor's language in my conversations with him
4 that I would do my best to collect his money.

5 Q Okay.

6 THE COURT: And when you say you think you were
7 indemnified, that's the language in the revision to the
8 addendum that says you don't pay him unless you get paid by the
9 city?

10 THE WITNESS: Yes.

11 THE COURT: Okay.

12 BY MR. DOMINA:

13 Q And by the way, do you know what that clause is
14 called?

15 THE COURT: A pay if paid clause.

16 BY MR. DOMINA:

17 Q Do you know what we call that clause? Pay if paid,
18 do you consider that a pay if paid clause?

19 A I consider that a Victor understanding the situation
20 clause.

21 Q Okay. That's fine, but anyway.

22 A Because I heard pay if paid for months on Manhattan
23 West.

24 Q Okay. Well, then you're probably pretty well-versed
25 on how the Courts in Nevada treat that, but let's move on.

1 Let's go to Exhibit 27.

2 Do you remember this email from yesterday and prior
3 days?

4 A Yes.

5 Q This is your email January 28th, 2014, and you're
6 talking to Victor and Bob about this meeting with Randy Duvall,
7 and you said that you're going to discuss the remaining change
8 order issues on February 14th. As of this time, January
9 28th, 2014, there were no pending change order issues between
10 APCO and Helix other than the pending claim for extended
11 general conditions; correct?

12 A That's correct.

13 Q Okay. Is that what you were referring to when you
14 wrote this email?

15 A There were other change orders as well.

16 Q Other change orders involving Helix?

17 A Well, I misunderstood what your statement was.

18 Q Yeah. I said at the time that this -- at the time of
19 this date, January 28th, 2014, you're talking to them about
20 pending change order issues, the remaining change order issues?

21 A No, that wasn't exclusively for Helix.

22 Q Okay. But you didn't bring it to their attention
23 other than there was at least one change order that was pending
24 for Helix that you had talked to Mr. Duvall about at this
25 meeting; correct?

1 A Yes.

2 Q And that only -- that change order could have only
3 been the pending claim for extended conditions?

4 A Correct.

5 Q Okay. Again, no email saying you waived it. I'm not
6 going to waste Mr. Duvall's time going to a meeting discussing
7 a claim that you've already waived, Victor, because you waived
8 it back on October 18th. You didn't tell him that? It was
9 the opposite. You told him that you would go and talk to him
10 about it; right?

11 A The email speaks for itself.

12 Q Okay. All right. I'm okay with that. Let's go to
13 April 16, 2000 -- oh, sorry. That's not just the date. Let's
14 give you the exhibit number.

15 Exhibit 29. Top of the page. This is your email.
16 You'll recall we've seen this email string, Kurk, because we're
17 now April 16, 2014, in Kurk Williams's response to you and
18 says, Hey, where's our retention? We need to get retention.
19 We've been off the job for six months. There's no reason why
20 we shouldn't have retention by now.

21 And your response is, Kurk, Helix is the only firm
22 holding up the release of retention, just so you know. I can't
23 sign the final release with a pending claim. I'll talk to
24 Victor tomorrow.

25 It's your position today, as you sit here today that

1 on April 16, 2014, the pending claim that you're referring to
2 is Helix's claim for extended conditions; correct?

3 A Yes.

4 Q Okay. Let's go to Exhibit 32. Okay. This is a
5 letter. You remember this letter; do you not? September 26,
6 2014, letter from Victor to you?

7 A Yes.

8 Q Okay. And in this letter, he asks for payment, final
9 payment in the amount, and he says it right here, please accept
10 this letter as formal demand for a final payment, including
11 claim for general conditions in the amount of \$243,828, and
12 he's basically saying that's what you owe us. Do you have an
13 understanding of how that dollar amount is broken down?

14 A Yes.

15 Q And what's your understanding? How is that broken
16 down?

17 A Well, as it's been stated, he was requesting 138,000
18 on top of his 105- retention.

19 Q Okay. Did you respond to this letter?

20 A I don't recall.

21 Q Okay. You don't recall he --

22 A You'll have to show it to me.

23 I think I did, but I --

24 Q Is that a document that you would've thought would be
25 important to produce at trial where the subcontractor is

1 claiming that you owe them \$138,000, and you want to be able to
2 produce your response to that?

3 A I can't remember what --

4 Q Okay.

5 A -- what the response would have been.

6 Q Well, what would the response have been?

7 A No, what I'm saying is I can't remember if I wrote a
8 letter or whatever. If it's in our documents, fine.

9 Q Okay. I haven't seen it. I've seen a lot of other
10 correspondence after that that doesn't say what -- what your
11 position is today, but, okay.

12 Let's move on to --

13 MR. DOMINA: And, Your Honor, I probably -- I did, I
14 went home and did some work, and so my half-hour, is not going
15 to be a half-hour, but I probably --

16 THE COURT: Mr. Domina, have I tried to stop you?

17 MR. DOMINA: No, I know, but I don't want to -- I
18 know the Court [indiscernible] if we want to take a break, I'm
19 okay with that, or I can keep going.

20 THE COURT: So how much longer, at the pace you're
21 currently going --

22 MR. DOMINA: Yeah.

23 THE COURT: -- how much longer do you anticipate?

24 MR. DOMINA: I do think it's about a half-hour.

25 THE COURT: Okay. So let's take a short break. It's

1 10:20 now. If we could come back at 10:30.

2 MR. DOMINA: Okay.

3 THE COURT: This is not a requested break.

4 (Proceedings recessed at 10:19 a.m., until 10:32 a.m.)

5 THE COURT: Okay. You're still under oath.

6 THE WITNESS: Yes.

7 THE COURT: Someday we're going to get done.

8 MR. DOMINA: Thank you, Your Honor. We'll try to
9 move a little faster here.

10 Okay. Let's go to Exhibit 36, Chris. I'd like to go
11 to page 3 of Exhibit 36.

12 BY MR. DOMINA:

13 Q Mr. Pelan, do you recall seeing this email string
14 from yesterday where Mary Jo from your office initially sent a
15 conditional waiver and a copy of the check for Helix to sign on
16 October 29th, 2014? To the bottom half of that -- the bottom
17 portion of the email.

18 A Yes.

19 Q Okay. And you recall we looked at the conditional
20 waiver, and it had a -- it still said none in the disputed
21 amount, but it was a document that APCO was providing to Helix
22 to sign; correct?

23 A Yes.

24 Q Okay.

25 A Well --

1 Q Do you remember seeing that from yesterday?

2 A Maybe.

3 Q I'm just trying to speed it up but --

4 A I apologize. I may have been making notes.

5 Q Okay. Well, I can show you --

6 THE COURT: Sir, if you need to look at a document,
7 you let us know. We're here to get your best recollection, and
8 if you need it refreshed, please let us know.

9 THE WITNESS: Okay.

10 MR. DOMINA: I don't know if I have it handy. Chris,
11 go to -- I know it's in there somewhere.

12 Will one of you guys find it, please, the conditional
13 waiver, and I'll move on, but we'll get to it in a minute to
14 refresh --

15 BY MR. DOMINA:

16 Q I can move on, and we'll bring it back so that you
17 can confirm.

18 A Sure.

19 Q That I wasn't showing you something I misrepresented.

20 And then you recall that this email string, after
21 Eddie from Helix received the email from Mary Jo, your office,
22 she forwarded it then internally and asked Kurk Williams what
23 happened to the claim because the conditional waiver showed
24 zero in there. Do you remember that discussion from yesterday?

25 A Yeah. Kurk asked the question.

1 Q Well, I think Eddie did first to --

2 A Oh, yeah, you're right.

3 Q -- to Kurk; right?

4 A Right.

5 Q And then if you turn the page. Kurk then sends the
6 email to Victor and says did we settle the claim for extended
7 overhead, and then that's when Victor received the response and
8 forwarded it to you, and then in capital letters, with several
9 exclamation points, says, This isn't going to work. Do you
10 remember that?

11 A Yes.

12 Q Do you see that?

13 A I do.

14 Q And then your response is what? What is your
15 response?

16 MR. DOMINA: If you could let him see his response.

17 THE WITNESS: Make some changes for me to approve.

18 BY MR. DOMINA:

19 Q Yeah. Victor, make change for me to approve. Now,
20 do you recall ever receiving on October 29th a proposed
21 change to that conditional waiver?

22 A I think so.

23 Q Yeah. Let's go to page 4 of Exhibit 36. Do you
24 remember seeing this document where the payment -- now, it went
25 from a conditional waiver to an unconditional waiver and

1 release upon final payment, and the disputed amount was none,
2 but the payment amount was now increased to include both
3 retention and the claim for \$138,000. Do you recall seeing
4 that yesterday?

5 A Yes.

6 Q Okay. Now, at the time that you received this change
7 that you had elicited or solicited from Victor, APCO had not
8 yet paid Helix the check; correct?

9 A That's correct.

10 Q All right. And isn't it true that additional
11 conversation and discussions occurred between you and Victor as
12 to what the unconditional waiver and release would look like
13 because you didn't -- you weren't going to pay the 238 --
14 243,000 that he was seeking by way of this unconditional;
15 correct?

16 A Absolutely not.

17 Q Okay. You weren't going to pay that. So you
18 rejected that, but then there were continued discussions on
19 what that unconditional waiver and release would look like,
20 and, in fact, you went to Jim Barker, general counsel for APCO,
21 and you asked his advice, or you asked him what you should do,
22 and he gave you authority to go ahead and exchange the payment
23 or the retention payment for an unconditional waiver and
24 release upon final payment with the noted changes --

25 A No.

1 Q -- that.

2 No?

3 A No.

4 Q That wasn't your testimony?

5 A No.

6 Q Did you talk to Mr. Barker at all about it?

7 A Yes. Made a phone call.

8 Q Okay. And what did he say?

9 A Just give him the check.

10 Q Just give him the check, not in exchange for his,
11 whatever he wants, whatever the release he wants?

12 A No.

13 MR. DOMINA: Okay. Your Honor, I'm going to ask that
14 we publish the witness's deposition, please.

15 THE COURT: Hold on a moment. We have to get out the
16 sealed version of the original transcript of the deposition so
17 that we can open it and publish it.

18 MR. DOMINA: This is a stall tactic, bleep, bleep,
19 bleep.

20 THE COURT: Yeah. She's a -- she's in the box. You
21 know, when I tell other Judges that we have this process, they
22 just look at me like I'm crazy. In other states they don't --

23 MR. DOMINA: We can wait patiently.

24 THE COURT: They don't do it that way.

25 How do they do it in Arizona?

1 MR. JEFFERIES: You don't -- we don't go through that
2 process.

3 THE COURT: You don't go through this process. Yeah,
4 nobody I've ever talked to in other States does this process.
5 I don't know why we use this process still, but we do.

6 MR. DOMINA: It's actually kind of fun.

7 THE COURT: Trying to explain to a jury what a
8 deposition is as the envelope is being opened, but, you know,
9 there is no jury here.

10 Sir, as I told I think Mr. Johnson yesterday, if you
11 need to look in different places of the transcript to give
12 yourself context when you're asked a question, please feel free
13 to do so.

14 THE WITNESS: Okay.

15 BY MR. DOMINA:

16 Q Okay. Mr. Pelan, I'd like you to turn to page 163 of
17 your deposition transcript.

18 A Hello. Yeah.

19 Q You're there. Okay. I want you to go to line 10.
20 Do you see -- you know how to read the lining, the numbering on
21 it?

22 A Yeah.

23 Q Okay. Line 10 -- or actually, it's 11 -- no, I'm
24 right. It's 10. And it says, this is me, I showed you this
25 particular email that we're looking at now, and I said, Your

1 email says, this is on October 28th -- 29th, excuse me,
2 Victor, make change for me to approve. Thanks.

3 And I said, Can you tell me what you're talking about
4 there.

5 And your answer was, Yeah. Now, it makes sense with
6 the email that I sent prior with -- mentioning Jay Smith
7 because I went to Jay, and we got our in-house counsel Jim
8 Barker involved, and he said, tell him to make -- he can make
9 the change, and you'll give him his check and have a nice day.

10 Do you remember that testimony?

11 A Yes.

12 Q When you said make the change, make the change of
13 what? You were talking about the change to the conditional
14 waiver; correct?

15 A Let me -- let me -- give me a minute.

16 Q Yeah. I don't want to surprise you.

17 A Yes. Okay.

18 Q Okay. So you're confirming that you did, in fact,
19 receive instructions from Jim Barker to let him make the
20 change, and then you would exchange the retention check for
21 that -- the revised unconditional waiver?

22 A I did. But I didn't -- I didn't accept it.

23 Q Okay. You didn't accept it. All right. Okay.
24 Let's go to -- now, let me ask you. Yesterday you testified
25 that you thought you -- APCO had received the retention check

1 in July of 2014. Do you recall that?

2 A I think so.

3 Q Do you know if it was specifically June 10th, 2014?

4 A I think there were -- you have the -- there might be
5 a document in our production.

6 Q Okay. I've never seen the retention check or
7 anything. The only thing I have is your counsel filed a
8 motion, a motion in limine back on July 20th, 2018, and in
9 there there's a representation that on June 10th, 2014, APCO
10 received final retention from the city. Do you have any reason
11 to dispute the statement in the motion that retention was
12 received on June 10th, 2014?

13 A No.

14 Q Okay. And then if we go to Exhibit 37.

15 And this will just pull up on the screen. It will be
16 easier because it's fast. I'm not going to ask you much --

17 Do you understand this to be a copy of the retention
18 check that was paid to Helix?

19 A Yes.

20 Q Okay. And it's your position, APCO's position that
21 Helix received this on October 29th, 2014?

22 A Yes.

23 Q Okay. So APCO received it on -- retention from June
24 10th from the city, and then on October 29th, it paid that
25 105 to Helix; correct?

1 A Yes.

2 Q Okay. All right. I'd like to take a look at some of
3 the documents, the summary sheets that you and your counsel put
4 together and that we've marked as -- some of them have been
5 admitted into evidence. Some were demonstrative. The one I
6 want to look at is DX204. And Chris can pull that.

7 Do you have that in front of you then?

8 A Yeah.

9 Q It might be easiest if you look at the screen. If
10 you can see it.

11 A Okay.

12 Q Okay. Can you tell me first of all what this
13 document is again.

14 A This is the, just the combination of looking at the
15 daily sign-in sheets versus the certified payroll.

16 Q Okay.

17 A For Rainer and Clements.

18 Q Rick Clement; right?

19 A Yes.

20 Q And I think you made the comment yesterday on direct
21 that Rick Clement didn't even sign in or on a few occasions
22 signed into the project sign-in sheet. Do you recall that
23 testimony from yesterday?

24 A Yes.

25 Q Okay. Now, if we look, and you put this together;

1 right? So we can rely on this as being an accurate
2 representation of what the documents actually say; correct?

3 A Well, I hope so, but --

4 Q Okay.

5 A But you might find an error.

6 Q No, I get that. I'm not saying -- I'm not using it
7 for -- I just want to be able to rely on this. If we look at
8 the column that says Rick Clement's hours from certified
9 payroll, to get those eight hours or to get that column filled,
10 you were looking at the certified payroll record that we've
11 introduced into evidence as I think it's Exhibit 50, somewhere
12 in there?

13 A Yes.

14 Q Is that right?

15 A I think so.

16 Q Okay. So the column that's immediately left to that,
17 to the left of the certified payroll is the sign-in sheet;
18 correct? That column represents whether or not he signed in or
19 not?

20 A Yes.

21 Q Okay. And so I assume, because as I look at this,
22 there's an X under Prietzel almost every single time. I assume
23 that if he signed in there would have been an X next to his
24 name; correct?

25 A Yes.

1 Q Okay. So we have instances here where, like if you
2 look at the very first January 23rd through the 27th where
3 it's clear that Rick Clement is on the job. He's billing the
4 job under the certified payroll, but he didn't happen to sign
5 the ticket or the sign-in sheet; correct?

6 A Correct.

7 Q All right. So are you questioning whether he was
8 there at that time, or maybe he just failed to sign the sign-in
9 sheet?

10 A To be honest with you, this is not meant for that.

11 Q Okay.

12 A We were just correlating. What we do on every job,
13 even the school that we're building now, Wes sits in there. He
14 takes the certified payroll, the sign-in sheets, he does the
15 exact same thing, and then if guys aren't signing in -- because
16 labor claims are pain in the butt --

17 Q I understand.

18 A -- in Nevada, and so, you know, that's where we're
19 picking pepper out of fly shit kind of thing. We're -- sorry.

20 THE COURT: I haven't heard that in a long time.

21 MR. JEFFERIES: Move to strike the witness.

22 THE COURT: Denied.

23 THE WITNESS: So anyway we're just trying to figure
24 out, okay, here's a certified payroll, and Wes puts these
25 columns on there. We do this with all of our subs on the other

1 project as well. So.

2 BY MR. DOMINA:

3 Q Okay. But if Rick Clement's name showed up on a
4 sign-in sheet for that first, you know, the first week there,
5 January 23rd, all the way through the 27th, you would've put
6 an X in this box; correct? You would have -- you would have
7 accurately captured the information that the sign-in sheet
8 shows? To the best of your ability.

9 A Yeah, we try to.

10 Q I'm not trying to lock you into that.

11 A I'll try to help you here if I could.

12 Q Sure. And I know I need help.

13 A We were more concerned about when they sign in and
14 there's no hours.

15 Q Okay.

16 A And that didn't occur here.

17 Q Okay.

18 A So that's but one of the exercises for this.

19 Q Got it. Yesterday it seemed to be used for the
20 position that he wasn't -- he was never on the job. He didn't
21 even sign in, but a few times, and that's not true; right? He
22 did -- he didn't sign in, but he was still on the job based on
23 his payroll records? Would you agree with that?

24 A Yeah. There could be question whether he was there
25 an hour, two hours, three hours or not at all or who knows.

1 Q Okay. All right. And that's based on the fact that
2 he didn't sign in every single time when he was on the job?

3 A Well, and, you know, to that effect, we had a
4 security guard there after about three months. So, you know,
5 with a gate. So --

6 Q Okay.

7 A But we didn't have those -- we don't have those
8 records. So --

9 Q Oh, I see. Okay. So, okay. So let's look at JX4.
10 Mr. Pelan, did you -- I don't know if I got your testimony on
11 this. Did you ever go out to the job site yourself?

12 A Yes.

13 Q Okay. How many times approximately?

14 A Oh.

15 Q Sorry?

16 A Probably a hundred.

17 Q Hundred times. Okay. Marc Yocum, he was your
18 project superintendent; correct?

19 A Yes.

20 Q Was he out at the job?

21 A He was.

22 Q Okay. Constantly? More or less than you?

23 A Every day.

24 Q Every day. Okay. What about Brian Bohn who was your
25 on-site project manager? Was he on the job a lot?

1 A He would be -- he wasn't there all the time.

2 Q Okay.

3 A What I mean by that is in the beginning we had
4 another project manager, and then at the end we had another
5 project manager.

6 Q Well, the times that he was hired or he was assigned
7 to this job, would he have been on the job every day?

8 A He should have been, yes.

9 Q Should have been. Okay. So if you go to Exhibit 4,
10 this is the sign-in sheet; right? In fact, I think it's going
11 to be easiest for you to grab the binder.

12 A Okay.

13 Q And you know what, I don't want to belabor the point.
14 Would it surprise you to learn that if you go through
15 Exhibit 4, all of the sign-in sheets, that your name, Joe
16 Pelan, Marc Yocum and Brian Bohn never show up as being signed
17 into the job?

18 A It would not surprise me.

19 Q It wouldn't surprise you. And why is that?

20 A The guards would just wave us on.

21 Q Okay. And I think there was testimony that Kurk
22 Williams, Helix's project manager, even though he testified he
23 went to the job regularly, I think there was testimony from you
24 that he didn't sign, never once did he sign this sign-in sheet.
25 Do you remember that?

1 A Yes.

2 Q Okay. So the fact that Kurk Williams didn't sign the
3 sign-in sheet every time he showed up doesn't really mean a
4 whole lot, does it?

5 A The subs are supposed to, but --

6 Q It's possible --

7 A It's possible.

8 Q It's possible he showed up, and he just didn't sign
9 in?

10 A Very. Very.

11 Q It's possible he had a relationship with the security
12 guards that may have waved him in, just like they did you?

13 A Well, unfortunately we had a good-looking one out
14 there for a while, and we couldn't get the guys -- they stopped
15 all the time. So we had to get rid of her.

16 Q Okay. All right. Okay. The other thing I want to
17 look at now is DX202. This is another summary that you put
18 together; correct?

19 A Yes.

20 Q And this is to show labor costs in relation to
21 certified payroll records; right?

22 A Correct.

23 Q Okay. Now, I think there was some discussion about
24 this in regards to Mr. Prietzel, whether or not he was a
25 superintendent, and in addition why his rate might have been

1 different at varying times on the project, and so,
2 specifically, I remember you testifying that in 2012 you were
3 shown entries where Mr. Prietzel, his rate was at \$49 an hour,
4 and the comment was made well, you're claiming that he's a
5 superintendent in 2013, yet he was in 2012 being paid at times
6 \$49 an hour. Do you remember that? That testimony?

7 A I thought we were talking about \$60.81, but maybe I'm
8 mistaken.

9 Q Well, that's the -- that's if you add in the fringe
10 benefits; right?

11 A Okay.

12 Q Okay. Well, let's just say a difference -- there
13 were two different rates that you would see with Prietzel;
14 correct?

15 A That's correct.

16 Q Okay. So let's look at Exhibit 202, and I want to
17 specifically go to page -- let's go to page 201.

18 Sorry. This is not -- what on earth happened here?
19 Exhibit 202.

20 (Pause in the proceedings.)

21 MR. DOMINA: Court's indulgence for a second, please.

22 THE COURT: Sure.

23 MR. DOMINA: Okay. I apologize to the Court as well
24 as to the witness. I was looking at DX202. The document I
25 want to be looking at is DX201.

1 THE COURT: Okay.

2 BY MR. DOMINA:

3 Q And let's go to page 2. Okay. So let's go down to
4 the very last entry on page 2 there. Do you see where it says
5 Rai Prietzel, Nathan Dawber [phonetic], Jeffrey Satterfield?

6 A Yes.

7 Q Okay. This is a little bit -- I apologize.

8 MR. DOMINA: Let's ignore that, Chris. Go to page 3.
9 Page 3 starting at the block that starts June 17th, 2012.

10 BY MR. DOMINA:

11 Q All right. Do you see there Rai Prietzel's name?

12 A I do.

13 Q Okay. This is 2012 still; right?

14 A Yes.

15 Q And the testimony was that Clement, Rick Clement was
16 the project superintendent during 2012. Is that your
17 understanding?

18 A Well, that was Helix's comment.

19 Q Okay. The testimony was --

20 A That I repeated, yes.

21 Q Okay. Do you see Rick Clement on that week of June
22 17th, the week ending, do you see Rick Clement at all in that
23 entry?

24 A No.

25 Q Okay. And so do you know whether or not the weeks

1 when Rick Clement wasn't there as the superintendent that Rai
2 Prietzel became the superintendent for that week, and his pay
3 was adjusted accordingly?

4 A I do not know.

5 Q Okay. So the fact that he's getting the \$49 an hour
6 or the \$60 an hour in 2012 on weeks when Rick Clement may not
7 have been there doesn't -- doesn't have a whole lot of
8 significance to you, does it?

9 A Well, not only -- my only observation?

10 Q Yeah. Sure.

11 A Was that during 2012, when Rick Clement wasn't there,
12 there were times where he was paid the \$2200 a week instead of
13 the 24, and then obviously Mr. Clement, as Bob Johnson
14 explained had \$1.35 added to his paycheck for fringes or
15 something that Rainer Prietzel never achieved. So at all
16 times, as we, just reviewing the documents, that Mr. Clements
17 was always paid \$1.35 more, even higher than the highest rate
18 that Rainer Prietzel was paid.

19 Q Okay. And that's not that uncommon based on
20 experience and skill set and other things that a company may
21 look at within their employee -- at their employee; correct?

22 A Right.

23 Q All your superintendents aren't paid the same rate,
24 are they?

25 A No.

1 Q Okay. All right. Let's look at -- I want to look at
2 Exhibit 3, Chris -- excuse me, 51, 51, page 3, and it's going
3 to bleed on to page 4, but let's start with page 3. Do you
4 recognize this to be a -- what Helix submitted as its claim at
5 the end of August of 2013 -- '14 -- '13? Excuse me.

6 A '13.

7 Q Yeah.

8 A Yes.

9 Q You recognize. Okay. And then the page after that,
10 page 4 -- is it coming up?

11 Okay. Yeah. Page 4 is the last two months; right,
12 September and October of their claim?

13 A Yes.

14 Q Okay.

15 MR. DOMINA: So, Chris, keep that one handy in your
16 head because we're going to go back to it.

17 BY MR. DOMINA:

18 Q I want to now turn to some daily reports that
19 identifies some key information, page --

20 MR. DOMINA: Let's go to Exhibit 6, page 3, Chris,
21 July 31st, 2013.

22 BY MR. DOMINA:

23 Q Do you remember when Mr. Prietzel was on the stand.
24 He was taken through a lot of these daily reports.

25 A Yes.

1 Q Okay. And in particular, I'm going to show you three
2 that are key to the claim that Helix is submitting by way of
3 its extended overhead. This is a daily report dated July
4 31st, 2013, and again, it's one of those that is not super
5 clear, but the last sentence that's written there in the
6 description on that table, it says, Conex Number 4452 picked up
7 from job site or off job site. Do you see that?

8 A Yes.

9 Q Do you understand or did you have an understanding
10 that Helix had a Conex box out on the project up until July
11 31st, 2013?

12 A I wouldn't dispute that.

13 Q You wouldn't dispute it?

14 A No. Because that would be the last thing for most
15 subs to remove.

16 Q In your -- are you allowing -- in your analysis of
17 Helix's claim, are you acknowledging that that should be
18 something included in their claim? Or paid for?

19 A I don't know about that. I do believe we were
20 looking for it in the job cost.

21 Q Okay. So --

22 A That's --

23 Q So the analysis that we're going to look at a little
24 later, the demonstrative exhibit, that is just if it wasn't in
25 the job cost, you're not -- you didn't put it in the

1 calculation?

2 A No, that's --

3 Q It's not whether or not you give it merit or not?

4 A That's correct.

5 Q Okay. Well, let's just, for fun, let's look at -- so
6 that's the Conex box, and it's off the job we know based on
7 this daily report, July 31st, and if we go back to -- which
8 means it shouldn't be billed in August; right? It should not
9 show up as a billing in August, September or October? If it's
10 off July 31st?

11 A Sure.

12 Q So if we go back to page 3 of Exhibit 51, you can see
13 that Helix, while it did bill for that Conex box in its claim,
14 it did not in August, and then if you go over to September and
15 October, there's no charge there as well.

16 MR. DOMINA: Chris, you can go to page 4.

17 BY MR. DOMINA:

18 Q So it appears that Helix's property accounted for the
19 removal of the Conex box from its claim; correct?

20 A Yes.

21 Q All right. Let's go to Exhibit 6, page 26. This is
22 a daily report dated September 3rd, 2013. And the sentence
23 right above the last one that says, Site trailer picked up,
24 moved to shop, can you read that?

25 A Wow.

1 Q Page 626. It's not easy to read, but it does say,
2 and then there was testimony yesterday on it. Site trailer
3 picked up, moved to shop.

4 A Yeah. I can see that.

5 Q Okay.

6 THE COURT: What's the date of that, Mr. Domina?

7 MR. DOMINA: The date is September 3rd, 2013.

8 THE COURT: Thank you.

9 BY MR. DOMINA:

10 Q And if we go to the claim now, back to the claim,
11 which would be JX51, page 3, we see that the trailer remains on
12 there through August. The charge for the trailer is on there
13 through August. Do you see that?

14 A Yes.

15 Q And then if we go to the next page, which takes into
16 account September and October, the trailer no longer appears on
17 the charge to APCO; correct?

18 A Correct.

19 Q So it appears that Helix again is accurately
20 reporting the time frame when the trailer was on the site and
21 when it was not; correct?

22 A Yes.

23 Q All right. Let's go to Exhibit 6, page 54.

24 This is another daily report dated October 10th,
25 2013, and if we look at the last sentence there in that same

1 little description, it says, Received golf cart and returned
2 site truck Number 66 to the shop.

3 So it appears, and we heard testimony yesterday from
4 Mr. Prietzel that on October 10th, 2013, he let the truck go
5 back, and he was running around in a shop -- or in a golf cart
6 because there were some minor things still to take care of.

7 You agree with that?

8 A Yes.

9 Q Okay. And then if we go to the job cost report
10 again, so this is October. If we go to JX51, page 3, the truck
11 that is being charged is charged the entire time, January
12 through August --

13 MR. DOMINA: And then the next page, Chris, 51
14 through, okay, 4.

15 BY MR. DOMINA:

16 Q -- you'll see the truck was still charged in
17 September, but in October you guys actually got 10 free days;
18 right? They didn't bill those 10 days in October, did they,
19 for the truck? But they could have. It was there. It was
20 there until October 10th, and they could have included it,
21 but they didn't; right?

22 A Okay.

23 Q Okay. That appears to be accurate reporting to you,
24 at least on those items that we've looked at?

25 A Well, you'd represented this was a job cost, but it

1 doesn't reflect that in the job cost I don't --

2 Q No. No. No. This is the claim, not the job cost.
3 What I'm showing you is the claim, the breakdown of their
4 claim, the charges.

5 A But you said that term in your narrative to me.
6 So --

7 Q Oh, I did. Then I did that inadvertently, but the
8 entire time I've called this a job cost? I don't think so.

9 A Well, just when you referred back to it.

10 Q Okay. And we know that this is the daily breakdown
11 of the charges that they're seeking in their claim to APCO?

12 A True.

13 Q Okay. And those items that we just looked at, those
14 three items, the fuel truck, the site trailer and the Conex
15 boxes, they don't appear in Helix's job cost report, do they?

16 A I didn't see them.

17 Q Okay. And so -- but there's no question that they
18 were there because we have evidence of it, and we know that
19 they were on the site, and Helix should be paid for those
20 items; would you agree with that?

21 A No.

22 Q Okay. But you're not refuting that they don't --
23 they didn't exist on the project up through the times that we
24 saw on the daily report?

25 A I'm not refuting that.

1 Q Okay. I think we're down to one last question here
2 or exhibit anyway. I want to take you to the demonstrative
3 Exhibit 6.

4 MR. DOMINA: And, Chris, you won't have that.

5 BY MR. DOMINA:

6 Q So this will just be something that you'll have to
7 have in front. I don't know if it's in front of you now.

8 A D6?

9 Q Well, that D6 doesn't look like my D6.

10 THE COURT: My D6 looks like this.

11 MR. DOMINA: Oh, you know why, because there's a D6,
12 and it's D5. I'm sorry.

13 Do you have a D5 in front of you?

14 THE COURT: D5 looks like this.

15 MR. DOMINA: That's the one -- that's the one I'm
16 looking at.

17 THE WITNESS: I don't have that one.

18 THE COURT: Those they would love to hand you the
19 actual one.

20 Here you go, sir. Please don't write on it.

21 THE WITNESS: Okay.

22 BY MR. DOMINA:

23 Q Okay. And, Mr. Pelan, I want to take you through
24 the --

25 Now, you created this as a demonstrative exhibit

1 only; correct?

2 A Yes.

3 Q And if we look at the last column on the bottom
4 chart, it says actual total cost from Helix's job cost report.
5 Do you see that?

6 A Correct.

7 Q So you went through the job cost report, and if you
8 found items that were coded correctly or coded in there, you
9 would have tried to capture that on this spreadsheet and then
10 identify the total cost reflected in the job cost report; is
11 that -- was that your purpose?

12 A Yes.

13 Q Okay. So let's, first of all, let's go to -- and we
14 already talked about the site truck and the site trailer and
15 the Conex. Those appear on the column to the left, which shows
16 what was billed, but they don't appear on the column to the
17 right because they weren't in the job cost report; correct?

18 A That's correct.

19 Q All right. The one I want to look at right now is
20 the superintendent. You've got \$57,400 billed as being billed
21 by Helix for a job site superintendent, but then there's no
22 total -- there's no column, there's no carryover into the other
23 column for the cost. Why did you not include the
24 superintendent in that column?

25 A Because there's virtually no difference in pay for

1 him doing his duties and completing the contract work. Some of
2 the things that he described yesterday were normal duties of
3 anyone that would be out there, not just a superintendent.
4 Case in point would be he said he had -- he had to call
5 numerous inspections by the City of North Las Vegas. Well,
6 Dwight Bodine [phonetic] was on the project every day, and
7 Dwight Bodine was up everybody's rear end daily. You didn't
8 have to call for inspection. That kind of thing. So I get
9 that and, you know, Nevada Energy, we took a lot of that work
10 away from Helix, and our guys handled it. So he had a few
11 instances where he had to deal with Nevada Energy. I'll give
12 him that.

13 Paperwork that Helix requires, that's not required by
14 our contract. So if he has to do two hours of paperwork for
15 Helix, that's -- it shouldn't be on us.

16 Q Okay.

17 A So that -- that's -- and we saw that, you know, I
18 mentioned that \$1.35; he never did achieve that. And then
19 again in 2013, while he was there by himself, he was paid the
20 lower rate and the higher rate and the lower rate and the
21 higher rate. So we didn't understand that either.

22 Q But you understand it now having heard him testify
23 that he was the designated project superintendent for Helix
24 after Rick Clement left sometime in late January of 2013;
25 correct?

1 A I heard him say that.

2 Q Okay. So the only reason why APCO has not allocated
3 that money, the 57,400 to the right side of the column is not
4 because it's not reflected in the job cost report but because
5 APCO doesn't believe that Mr. Prietzel was the job
6 superintendent on the project; is that a correct statement?

7 A That is correct.

8 Q Okay. And the job -- and then going to the project
9 manager time. It shows Helix billed 53,300, but APCO
10 apparently found only \$23,923 in the job cost report allocated
11 to the project manager. Is that a correct statement?

12 A That's correct.

13 Q Okay. So -- and if Mr. Williams had worked four
14 hours a day on the project approximately on average and did not
15 capture all of his time in the job cost report, that number to
16 the right would not accurately reflect the direct costs that
17 Helix incurred on the project because of the nine-month
18 extended duration, would it?

19 A I didn't understand that.

20 Q Okay. I'll rephrase it. If Mr. Williams was not
21 able to capture, did not capture all of his time that he spent
22 on the project in the job cost report, the Number 23,923 would
23 not necessarily accurately reflect the amount of time that he
24 spent and the direct cost that Helix incurred on the project,
25 would it?

1 A Well, it's hard to determine without seeing his
2 timecards obviously. He testified that he averaged it. So he
3 didn't even look at any documents, obviously. So I don't know
4 the right answer to your question.

5 Q Okay. Fair enough.

6 MR. DOMINA: Your Honor, I don't have any further
7 questions.

8 THE COURT: Redirect?

9 MR. JEFFERIES: Yes, Your Honor.

10 (Pause in the proceedings.)

11 MR. JEFFERIES: Chris, could you pull up Exhibit 22
12 please.

13 REDIRECT EXAMINATION

14 BY MR. JEFFERIES:

15 Q Mr. Pelan, you've talked about various levels of
16 discussion of CORs hours with various city people, and did
17 anybody at the city ever deny any COR by citing Exhibit 22?
18 The October 2 letter?

19 A No.

20 Q Okay. And, in fact, if you go to the last page of
21 the exhibit, this actually just shows compensation of 560,000.
22 It does not even effectuate the additional time that you were
23 given in the letter, does it?

24 A It does not.

25 Q Okay. Has Helix ever supplied any backup or support

1 to you that would indicate that Helix's costs actually
2 increased because of the delay?

3 A No.

4 Q Would you look at Exhibit 15.

5 MR. JEFFERIES: Page 3 if you would, Chris.

6 BY MR. JEFFERIES:

7 Q For the record, this is your submission of TIA
8 Number 2.

9 MR. JEFFERIES: Page 3 would be the --

10 UNIDENTIFIED SPEAKER: 15?

11 MR. JEFFERIES: Yes.

12 UNIDENTIFIED SPEAKER: 3?

13 MR. JEFFERIES: It's the change order request 39.1.
14 Maybe it's the page above that.

15 Okay. Go to the next page. There. Thank you.

16 If you could blow up the part --

17 BY MR. JEFFERIES:

18 Q This is your change order request 39.1 to the city;
19 correct?

20 A Yes.

21 Q Okay. And this is where you're pricing out the
22 1,090,000. Did you mark up these APCO delay costs?

23 A No.

24 Q Okay. So there was prior questioning why you didn't
25 mark up the Helix delay costs as somehow being an aberration.

1 You didn't do it for yours either at the COR stage; correct?

2 A That's correct.

3 Q Okay. The TIAs are forward-looking projections of
4 delay. Is that a fair statement?

5 A Yes.

6 Q Okay. To the extent those delays were impacting the
7 schedule, was APCO supplying the subcontractors with updated
8 schedules?

9 A All the time.

10 Q In your cross-examination, you were -- you talked
11 about Graybar, and what I'd like for you to do is look at
12 Exhibit 10. Now, this one, for your sanity and mine, I'd like
13 to do this on a hard copy. I would, for the Court's benefit, I
14 will have Chris put it on the screen.

15 Can you go to page 1 of Exhibit 10.

16 Thank you. Tell me what Exhibit 10 is.

17 A That's the light fixture package for the project that
18 Graybar supplied.

19 Q Okay. And did APCO pay the 2.2 million reflected in
20 this document?

21 A We did.

22 Q Okay. And this was the result of your discussions
23 with Mr. Fuchs to take the materials out of their pricing?

24 A Yes.

25 Q Okay. And if you would go to page 2 of Exhibit 10,

1 this is actually a purchase order. It's from Graybar to Helix.
2 Do you see that?

3 A Yes.

4 Q Okay. Was it Helix that had the business
5 relationship with Graybar?

6 A They did.

7 Q Okay. And then, sir, you mentioned that the city
8 referenced some scope, electrical delays. Would you go to the
9 last page of Exhibit 10.

10 A All right.

11 Q And tell me what this is.

12 A This is an invoice from Graybar, that obviously the
13 invoices went from Graybar to Kurk Williams first for him to
14 approve because Helix was the ordering firm, and then the
15 square box in the middle is where I initialed it so that they
16 could get paid.

17 Q Okay. So Helix was administering the purchase of the
18 materials for the project?

19 A Yes.

20 MR. JEFFERIES: Okay. And, Chris, if you can blow up
21 that last clause right above Mr. Williams's signature even
22 below the boxes, just that I, Kurk Williams. Could you pull up
23 that paragraph.

24 UNIDENTIFIED SPEAKER: Right here? Do you want it
25 bigger than that?

1 MR. JEFFERIES: Yes, please, just the, I, Kurk,
2 Williams. Okay. Thank you.

3 BY MR. JEFFERIES:

4 Q At the bottom of the last page of Exhibit 10,
5 Mr. Williams signs off, and I won't read it, but confirming the
6 delivery of \$554,000 of material on January 30, 2013; is that
7 correct?

8 A 599,000, is that what --

9 Q 599, yes.

10 A Okay. Yes.

11 Q Okay. Was that the material -- electrical material
12 issue as far as scheduling that you were referencing in your
13 response to Mr. Domina's questions?

14 A Yes.

15 Q I'm not sure the record's clear. In response to
16 Mr. Domina's questions, you were trying to explain what type of
17 backup APCO submitted for its extended time-driven costs. Can
18 you describe for the Court specifically what you provided to
19 the city to support your costs.

20 A For the employees involved in our claim, we provided
21 their rate of pay. If they had pickup trucks, we provided that
22 information, gas receipts. We provided everything that was
23 being expensed to run the job on a monthly basis, the trailer,
24 the water, the computers, the copying machines that were on
25 lease, all the things that our five people out there needed to

1 manage the project, and we listed them, and then we gave the
2 receipts and the documentation for each month.

3 Q To the city?

4 A To the city.

5 Q Different topic. Mr. Domina was asking you questions
6 about the conditional release, which is the last page of
7 Exhibit 24, if you'll recall that, the zero claim release?

8 A Yes.

9 Q Okay. And from and after Helix's execution of that,
10 Mr. Domina was asking you questions about, you know, how could
11 you be presenting this to the city if that release was
12 effective. Well, my question to you is, when did that release
13 as a conditional release become effective?

14 A Only upon cashing the check.

15 Q And although you testified admittedly about what
16 Mr. Barker may have suggested to you, did I understand your
17 answer to be you did not act upon that and convey to Helix that
18 it could -- strike that.

19 Despite Mr. Barker's and Mr. Smith's direction to
20 you, did you ever accept and communicate to Helix that you were
21 accepting any revisions to the conditional release?

22 A No.

23 Q In fact, the releases that were being discussed in
24 October were unconditional releases; correct?

25 A Yes.

1 MR. JEFFERIES: Okay. I've got nothing further.

2 THE COURT: Anything further, Mr. Domina?

3 MR. DOMINA: No, Your Honor. Thank you.

4 THE COURT: Thank you, sir. You can step down.

5 Have you confirmed that all of the exhibits you want
6 in evidence are in evidence?

7 MR. JEFFERIES: Yes, Your Honor.

8 THE COURT: Do you rest?

9 MR. JEFFERIES: I rest.

10 THE COURT: Okay. Does the plaintiff have any
11 additional evidence to present at this time?

12 MR. DOMINA: No, Your Honor, no evidence.

13 THE COURT: All right. So the evidence is closed.
14 Would you like a short break before we do arguments?

15 MR. DOMINA: We would, please, but at the same
16 time --

17 THE COURT: It's 11:20. How long are your arguments?

18 MR. JEFFERIES: I should be done at noon.

19 MR. DOMINA: Yeah, I can -- I can be done.

20 MR. JEFFERIES: Between us I think we'll be done by
21 noon.

22 THE COURT: Okay. Go for it.

23 You want five minutes? What do you want?

24 MR. DOMINA: Five minutes maybe.

25 THE COURT: You can leave everything there. Dulce

1 will take care of it.

2 MR. DOMINA: Five minutes.

3 THE COURT: Five minutes.

4 MR. DOMINA: That would be great.

5 MR. JEFFERIES: Yes, Your Honor.

6 THE COURT: And you guys will be done by noon?

7 MR. DOMINA: Yes.

8 THE COURT: Because I have a conference call at noon.

9 MR. JEFFERIES: Yes.

10 THE CLERK: No, 1:00 o'clock.

11 THE COURT: No. I have another conference call at
12 noon, which is why the one that Dani said at noon had to be
13 moved because I have a faculty conference call at noon for
14 Friday's presentation.

15 Five minutes.

16 See I do other things besides just cases.

17 (Proceedings recessed at 11:20 a.m., until 11:27 a.m.)

18 **CLOSING ARGUMENT FOR THE PLAINTIFF**

19 MR. DOMINA: First, Your Honor, I wanted to say thank
20 you to your and your staff for putting up with us for the last
21 three days and accommodating us as much as you have. So thank
22 you.

23 Your Honor has heard the testimony of six witnesses
24 and received into evidence hundreds of pages of documents over
25 the course of the three days. And when I stood up here Monday

1 and gave Helix's opening statement, I told the Court that the
2 Court would hear testimony and evidence supporting Helix's
3 claim, and I believe that Helix has established exactly what I
4 told the Court I would do. So let's do a quick recap of what
5 the witnesses testified to.

6 Our first witness Kurk Williams, he was Helix's
7 project manager and the one who was instrumental in putting
8 together Helix's claim. Now, he testified admittedly that the
9 job cost report did not accurately reflect all of the time that
10 he spent on the project between January 2013 and October 2013
11 performing project management duties on the project.

12 He also testified that when a project starts -- is
13 delayed and starts incurring costs that exceed the budget that
14 that's worrisome to him and that he tries to minimize the
15 impact of his project because that's how he gets graded, and so
16 sometimes he won't enter time into a project even though he
17 absolutely was working on a project. He testified that at a
18 minimum he was spending approximately four hours a day on this
19 project in conjunction with the other project that he had going
20 on.

21 He testified that Joe Pelan had told him that Helix's
22 claim had been rejected by the City of North Las Vegas because
23 of lack of documentation, and we've seen documents that show
24 that that's exactly what Mr. Pelan was telling Helix and that
25 Mr. Pelan never told Helix that the city had actually rejected

1 the claim because APCO failed to submit Helix's claim through
2 the proper channels.

3 Now, Mr. Williams also testified that he was directly
4 involved in putting the claim together and that he went and
5 verified each and every charge and breakdown and confirmed that
6 they were accurate and that they were a true portrayal of the
7 direct costs that Helix had incurred on the project during the
8 nine-month delay. So that's Mr. Williams.

9 Now, we have Rai Prietzel, who I think personally was
10 the star of the show. I think he was a very credible witness.
11 He spoke directly. He knew -- Your Honor asked many questions
12 of him, and I believe he was very credible in his responses.

13 Now, Mr. Prietzel was the project superintendent of
14 Helix during the time of the delay, and he testified that Rick
15 Clement had left in January 2013 and that he became the
16 official superintendent for the project, and we know that
17 because we looked at the payroll certified records, and in 2013
18 his designation went from a wireman to a foreman, and his pay
19 went from approximately 45 bucks an hour to 49 bucks an hour.
20 So he was being designated as the superintendent.

21 He testified that he was providing superintendent
22 duties on average between -- or he was supervising, I should
23 say, his three- to four-man crew through at least the beginning
24 of May 2013, and during that time was providing superintendent
25 activities.

1 And then he testified when those gentlemen were
2 assigned to another case -- or excuse me, another project, that
3 he was the only employee on the project at the time, but that
4 he was still required to do superintendent activities, and he
5 was contemporaneously performing project work that had not yet
6 been completed but that could not be done in a -- any faster
7 fashion because it hadn't been released.

8 So it didn't matter how many guys you had on the job.
9 There was still work that needed to be done under the contract,
10 but it was being extended out because it was not released to
11 him at the time, and so he was incurring superintendent costs
12 doing all of the things that he would have to do if there was a
13 crew of 10, and he was also doing some direct costs or some
14 actual contract work.

15 Now, we have Joe Llamado. Now, to me, Joe Llamado,
16 who was the city project manager at the time of the project is
17 the -- one of the most important witnesses that the Court heard
18 in this case, and the reason being, and I alluded to this
19 during cross-examination, he is a neutral third-party who works
20 for the city, still works for the city and has no dog in the
21 fight. He has no incentive to lie for Helix. He has no
22 incentive to lie for APCO.

23 He also testified exactly the way he did in the
24 deposition, and he testified exactly the way his -- or in
25 unison with his comments on those rejection notices, and his

1 testimony was this. He said that the city rejected Helix's
2 claim simply because it was not put through the proper channel.
3 He said that it should have gone in to APCO's claim and not a
4 standalone claim -- claim as it was being submitted.

5 He also testified that he never told Mr. Pelan that
6 it was being rejected because of backup, lack of backup
7 support, and, in fact, they tried to get him on cross to say
8 that it had no merit, and on redirect I asked him what he meant
9 by no merit, and he said, well, simply the fact that it went
10 through the wrong channels. So they couldn't even force him to
11 vary his story to muddy the water. His testimony was
12 consistent and is important for this Court.

13 Now, he also testified, the biggest piece of
14 information he testified about was that the city took the
15 position that when APCO signed the October 2nd settlement
16 agreement with the city and the city agreed to pay APCO for its
17 extended general conditions, that it completely resolved any
18 and all further claims regarding the extended general
19 conditions for APCO and any of its subcontractors. He was very
20 clear on that in the depo and on the stand.

21 So that's an important thing because that barred,
22 effectively barred the opportunity for Helix to submit any type
23 of pass-through claim through the city because APCO had already
24 resolved that claim. There was nothing for the city to review
25 at that point.

1 Then we had Victor Fuchs who came in, and he
2 testified that he had many conversations with Joe Pelan during
3 the course of the project and after the project and that he --
4 he wanted to get this resolved. He wanted to work with Joe,
5 but Joe was having financial difficulties and told him that,
6 that he wasn't able to pay the claim.

7 And so Mr. Fuchs was trying to work with him and do
8 what he could to get this worked out, but Joe would continually
9 ignore his emails, put him off, and finally, Mr. Fuchs
10 testified that Joe had continuously represented, I say Joe,
11 Mr. Pelan had represented to Mr. Fuchs that APCO never got paid
12 for its extended general conditions. And that was a big thing
13 as well because it was misleading, and Victor continued to kind
14 of hold out there thinking that, well, he didn't get paid. I'm
15 going to give him a little bit of latitude, but, in fact, he
16 did get paid. APCO did get paid.

17 And then he testified about the situation where
18 Mr. Pelan proposed that APCO pay the debt over an extended
19 period of time and proposed that a promissory note be drafted,
20 and, of course, Mr. Fuchs testified that they did in fact draft
21 a promissory note, but it was never signed because Mr. Pelan
22 could not get permission of his -- of the principles of APCO to
23 agree to it.

24 If you look at all of the emails between Mr. Pelan
25 and Mr. Fuchs, it's very clear that those emails correlate with

1 the testimony that Mr. Fuchs presented.

2 Mr. Johnson, Bob Johnson testified. He is the Vice
3 President of Helix. He testified as well that he did not
4 intend to waive Helix's claim when he signed the conditional
5 waiver that was given on October 18th, 2013, and the evidence
6 shows, and they admit that Helix was not even paid its
7 retention until the full year after that event took place.

8 So during that year, I showed, we saw many
9 correspondence back and forth where Helix clearly established
10 that it was going to maintain its claim for the extended
11 overhead costs and had not waived them. There's no way that
12 APCO could believe that it had been waived at that time based
13 on the fact that they were receiving these notices and
14 forwarding them on to the city for being processed. APCO's own
15 conduct and admissions during that year are completely
16 inconsistent with the position that they're taking today that
17 they believed Helix waived the claim to extended overhead.

18 Now, Bob Johnson also testified that APCO failed to
19 properly take into consideration some of the job cost report
20 data and didn't account for several direct costs, and some of
21 those were the project engineer, and, in fact, APCO had to
22 revise its analysis during the trial and go and add about
23 \$26,000 to the ledger that they created, the analysis. It went
24 from 40 to 66 because they had misidentified certain cost
25 codes. And after taking Mr. Johnson's testimony, they realized

1 that there was a mistake there.

2 And then finally Mr. Johnson testified that APCO
3 agreed to accept a modified unconditional waiver and release
4 reserving the disputed claim in exchange for the retention
5 check.

6 Now, that takes us to one last witness, and that's
7 Mr. Pelan, who is the manager of APCO. Now, he testified that
8 it's APCO's internal policy to keep a subcontractor's claim
9 separate from its own claims because it gets messy, and he
10 said, And APCO doesn't want to be responsible for paying those
11 costs. That's what he said on direct.

12 Now, it's ironic that he said that because this is
13 messy, and, in fact, the very actions that APCO took by paying
14 or submitting Helix's claim separate from its own claim has
15 created this mess, and more importantly, it's also legally
16 bound his company to be responsible for paying Helix's claim.

17 Now, Mr. Pelan also testified that if there was a
18 charge that was not in the job cost report, that he didn't
19 include it in his analysis, and he testified that -- he even
20 acknowledges that Rai Prietzel's time is in the job cost
21 report, but he doesn't believe that Rai Prietzel was a
22 superintendent, and therefore, he does not get to be charged
23 the 57,000 that Helix is charging by way of its extended
24 overhead costs.

25 He also testified about Jim Barker. On

1 cross-examination, he testified that, yes, in fact, Jim Barker
2 gave the instruction that he would allow for the change that
3 Mr. Fuchs was proposing to the unconditional waiver and to pay
4 and to exchange the check for that. He goes on to say that he
5 didn't do that. He ignored advice of counsel apparently, but
6 in any event, we have the, you know, we have our testimony, and
7 we think we rebut that strongly.

8 And finally he testified that he, that APCO was paid
9 its retention on June 10th, 2014, but did not pay Helix its
10 retention on October 29th, 2014, more than four months later.

11 Now, what that means, all of those facts that we went
12 through, Your Honor, means that this Court, after weighing the
13 evidence, must come to the following legal conclusions:

14 Number one, by entering into the settlement agreement
15 with the city on October 2nd, 2013, APCO cut off any rights
16 that Helix had to assert a possible pass-through claim to the
17 city, and in doing so, APCO became legally responsible to
18 insure that Helix was paid its entire claim.

19 Number two, the pay if paid clauses in the
20 subcontract are against public policy.

21 THE COURT: So let me stop you. Let's go to
22 Exhibit 11, and we have a special portion of Exhibit 11 that is
23 called Helix Electric exhibit to the subcontract between APCO
24 Construction and Helix Electric of Nevada, which is drafted on
25 Helix letterhead and has specific language that apparently was

1 recommended by Helix as part of that.

2 Given that language and the manner by which it was
3 proposed, do you think that the analysis that is typically made
4 in a pay if paid clause is appropriate? And why?

5 MR. DOMINA: You mean the analysis being that it's
6 void and unenforceable? The supreme --

7 THE COURT: Well, there are times it is void and
8 unenforceable. This is a specifically negotiated provision by
9 Helix on Helix letterhead.

10 MR. DOMINA: Okay. So --

11 THE COURT: So that's why I'm trying to have you give
12 me a little bit more analysis just that we previously had the
13 Supreme Court say you can't do this.

14 MR. DOMINA: Yeah. Okay. And the analysis is this.
15 It doesn't matter if it said that they agreed to -- Helix
16 agreed to steal 100 light fixtures for APCO. You cannot,
17 parties cannot agree to contract for a, or do something that is
18 void and unenforceable. That is against the law. That's a
19 black letter law that you cannot -- the parties cannot
20 stipulate around something. So if the Court has said it is
21 void and unenforceable and the statute -- and they're only
22 interpreting the statute the way that it's written, then the
23 parties --

24 THE COURT: Well, aren't I supposed to enforce
25 parties' agreements when parties are sophisticated and

1 negotiate them?

2 MR. DOMINA: You can, Your Honor, but there's ample
3 case law that says irrespective of whether --

4 THE COURT: Okay.

5 MR. DOMINA: -- one party is the one who brings it
6 that it is void and unenforceable.

7 The other thing I would argue, there's two parts to
8 this. Number one, they did get paid. So they can't say pay if
9 paid because they got paid for the general conditions, and by
10 doing that, by accepting payment, they then barred the
11 opportunity for them to get paid for Helix's, an additional
12 amount. So the condition precedent that is any pay if paid
13 clause became an illusory clause. It's an illusory. It could
14 never have happened. They took the money that they were owed
15 by the city, and because they did that, they bound their --
16 between the city they locked that in, and therefore pay if paid
17 cannot ever come to fruition, and so they can't rely on it and
18 say well, we didn't get paid. They took an action that barred
19 it. So that's --

20 THE COURT: All right.

21 MR. DOMINA: So that's our argument on that, Your
22 Honor. And I'll wrap it up here.

23 The no damages for delay clause, I know that that's
24 something that they argued previously. It was in their
25 briefing. I didn't hear about it at all in the testimony. So

1 I'm just going to just briefly say if there is a no damages for
2 delay clause, and it was talked about, NRS 338.485 clearly says
3 that on public works projects it's void and unenforceable if
4 the delay was either so unreasonable as to amount to an
5 abandonment of the project, which nine months was, or if it's
6 caused by the city's decision to significantly add to the
7 duration of the project.

8 And that's why I asked Mr. Pelan who made the
9 decision. He said, We did. Because now we fall under the
10 fourth prong of that section and clearly show that no damages
11 for delay is void and unenforceable under this situation.

12 The other argument that they say is we didn't follow
13 our -- the claim procedure that's in the prime contract and/or
14 the subcontract. That goes again to this concept that they
15 were telling us that the city rejected our claim based on the
16 lack of backup.

17 So that was a misrepresentation based on what
18 Mr. Pelan -- or what Mr. Llamado was saying from the city. How
19 could we have gone through any appeals process, any appeal that
20 we tried to effectuate would have been a -- a futile effort
21 because it wasn't being appealed under the right assumption.
22 If we had gone and tried to do an appeal as they're saying, the
23 appeal process would have been a hoax because it wasn't being
24 rejected for backup. It was being rejected because they didn't
25 put it into their own claim. So again, they're trying to use

1 these contract provisions, the pay if paid, this appeal process
2 as barring us when their actions are what kept us from even
3 taking any course of action under those two clauses. So that's
4 what I would say there.

5 I think we completely have convinced everyone in the
6 courtroom that there was no waiver of the claim. They cannot
7 point back to that October 13th conditional waiver and argue
8 in good faith that they thought that that was us waiving our
9 claim. Clearly there were so many correspondence afterwards
10 established during that year that if there was a waiver at that
11 time it was rescinded, and so it doesn't matter that the check
12 was cashed on the 29th because the check, they're trying to tie
13 the check to that conditional waiver. Conditional waiver was
14 no longer operative. We had entered into new discussions and
15 made it very clear that it had been rescinded, and it was not
16 binding on us.

17 And I just think that that is a clear analysis of the
18 facts as we've presented them.

19 So what we get down to is APCO's failure to pay Helix
20 for its claim constitutes a breach of the subcontract, and at
21 the very least, Your Honor, if not a breach of the actual terms
22 of the subcontract, the way that APCO engaged in its activity
23 by misrepresenting the basis for the rejection by telling Helix
24 that it never got paid for the payments, by cutting off its
25 rights, entering into a subcontract -- or excuse me, a

1 settlement agreement with the owner, with the city, those were
2 all bad-faith actions that also constitute a breach of the
3 covenant of good faith and fair dealing and are -- entitle
4 Helix to damages.

5 And finally, by waiting four months to pay Helix the
6 retention, under the statute NRS 338.550, they have an
7 obligation to now pay interest for those four months of the
8 \$105,000 retention. It's not much, \$2,000, but it's certainly
9 something that should be awarded as damages. It's in our
10 findings of fact.

11 So, Your Honor, we are here asking the Court to enter
12 judgment in Helix's favor against both APCO and Safeco, the
13 insurance company where we've shown we have a perfected claim
14 against the bond in the amount of \$138,151 and some cents,
15 whatever that is, with the interest that should apply and award
16 of fees, costs at a later date based on future motion practice.

17 Thank you, Your Honor.

18 THE COURT: Thank you.

19 Mr. Jeffries, it is 11:46. Can you do it in 10
20 minutes or less?

21 MR. JEFFERIES: Yes, ma'am.

22 THE COURT: All right.

23 **CLOSING ARGUMENT FOR THE DEFENDANTS**

24 MR. JEFFERIES: And the reason I can is because of
25 your practice of requiring the findings of fact. So I wish

1 everybody would do that. I do this in five states, and that
2 is -- has made I think our jobs collectively easier at this
3 point.

4 I want to talk about some things that Your Honor did
5 not see. Mr. Williams confirmed he filled out timecards
6 allocating his time. Those timecards were used to go into and
7 confirm costs in the job cost report. You did not see those.
8 I'll represent to the Court they weren't produced to us in
9 discovery.

10 You heard reference to equipment sheets. I respect
11 Mr. Prietzel's diary entries for some of the items, but we have
12 larger pieces of equipment, and the equipment sheets were not
13 produced to us in the litigation, nor marked as exhibits.

14 Probably most importantly is you heard repeated
15 analysis to budgets, and Mr. Domina mentioned it in his closing
16 that there was -- and the testimony was there was ongoing
17 budget analyses performed as to where the job stood for Helix
18 profitwise, and you did not see any of that documentation, and
19 nor was it produced to us in discovery. I would request that
20 the Court draw an adverse inference from the failure to produce
21 that information to the extent you feel it appropriate.

22 I started this trial with noting that there are
23 several legal issues, and I still think that's where we come
24 down. There are very clear contract provisions that control.
25 The subcontract was hotly negotiated, and operative terms were

1 drafted by Helix, as you have pointed out and noted.

2 The no damage for delay clause found in 6.5 I would
3 submit to you on the evidence presented that Helix has not met
4 its burden of proving that those conditions were met to render
5 it unenforceable.

6 Notably, it was not deleted, and that is
7 paragraph 6.5 was not deleted by the Helix addendum. 6.4 was,
8 and you can see from the meticulous cross-referencing to
9 deleting clause that that was left in place.

10 In a couple of provisions, 6.7 of the subcontract and
11 the Helix addendum, I would submit to you I think everybody
12 very shorthandedly, and I think inappropriately states pay if
13 paid is unenforceable. I've done some significant briefing on
14 that issue for Judge Denton. It is now up on appeal. I would
15 submit to you under the statutes the parties can't agree to
16 payment schedules, and that's how we view what Helix and APCO
17 agreed to was a claim payment schedule. As such, those are
18 enforceable under the statute.

19 Similarly, there's a very important clause. 7.1
20 talks about actual costs incurred. We have -- APCO has spent
21 more time presenting Helix's actual costs than Helix did in the
22 trial and ever did as part of this entire project. Helix has
23 tried to gloss over its costs, and I would submit to Your Honor
24 that it has absolutely not met its burden of proof as to what
25 its costs were to support a delay claim.

1 Admittedly, through APCO's efforts in reviewing the
2 job cost, the complete job costs that was just produced to us
3 approximately two weeks ago at the Court's order, we have tried
4 to make some sense of it, but we have established what some of
5 the cost components were in total, and this is important.
6 Nobody from Helix has explained to this Court how its actual
7 costs incurred increased because of the delay, and that's very,
8 very important because the case law that we cited in our
9 proposed findings require them to link up the delay and how it
10 caused an increase in their cost of performance, and to this
11 day, nobody has presented the Court with that evidence.

12 As far as the claim process with the city, you did
13 not see a document, you did not hear anybody testify that Helix
14 wanted to appeal, prosecute its claim against the city through
15 APCO as is contemplated by 7.4 of the subcontract. That did
16 not happen.

17 As far as the release, that despite all the bluster,
18 that's probably one of the cleaner issues.

19 And I don't say that facetiously because what
20 happened at the very end was APCO communicated to Helix what
21 its intent was with that conditional release, and you heard
22 Mr. Johnson go on and on. There was an agreement this. There
23 was an agreement that, but when I cross-examined him, he
24 confirmed he didn't discuss that with Mr. Pelan or anybody else
25 at APCO.

1 He was the one who signed those documents. The fact
2 is Mr. Pelan proposed to Mr. Fuchs let's see if we can work
3 this out, and you know what, Helix cashed the check. They
4 cashed the check knowing full well what APCO's intention was,
5 and that was that that conditional release was going to be
6 triggered and effective. So they knew it.

7 And under the law they can't reap the benefits of
8 that payment and ignore the burdens of the release. So from
9 our perspective, when you look at the receipt of funds on the
10 29th, on the 30th, they try and resurrect the release and
11 claim. It's our clear point and position that that was
12 ineffective.

13 So unless you have questions of me, I think I have
14 met my time.

15 THE COURT: No. You did good.

16 Mr. Domina, you have five minutes or less.

17 MR. DOMINA: I don't have any rebuttal, Your Honor.

18 THE COURT: Thank you. The matter will stand
19 submitted if we can put it on my chambers calendar for two
20 weeks from Friday for me to hopefully have a decision out.

21 ATTORNEYS: Thank you, Your Honor.

22 THE COURT: Thank you again, Counsel, and I really
23 appreciate the thorough findings of fact and conclusions of law
24 that you submitted prior to trial. They help me focus on what
25 I'm thinking about when I'm asking witnesses questions.

1 ATTORNEYS: Thank you, Your Honor.

2 THE COURT: Even though they disagree on several
3 points.

4 THE CLERK: June 21st for the status check.

5 THE COURT: Ramsey.

6 THE MARSHAL: Yes, ma'am.

7 THE COURT: If you would, I have one book that I've
8 made notes in.

9 THE MARSHAL: Okay.

10 THE COURT: I have it. But would you put these
11 others in a box and not let them touch the money source box
12 because although I've done the draft of my decision, it's not
13 out of the office yet.

14 So all right, guys. See you later.

15 (Proceedings concluded at 11:55 a.m.)

16 -oOo-

17 ATTEST: I do hereby certify that I have truly and correctly
18 transcribed the audio/video proceedings in the above-entitled
19 case.

20 
21

22 Dana L. Williams
23 Transcriber
24
25

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				JA1638

EXHIBIT

JX001

CRAIG RANCH REGIONAL PARK - PHASE II

COR#	Amount	APPROVED AMOUNT Amount Paid	Title	CCD	Status	Subcontractor	Sub C/P#	Amount	SENT	REI	APP	CCA #	NOTES
1	\$ 118,640.00	\$ 118,640.00	Removal Tract & Dirt on NW Prop.		APP	Bushle			2/23/2012		3/5/2012	1	
2	\$ 13,650.00	\$ 13,650.00	Removal of Tree Mutch @ North P.L.T.		APP	Bushle			4/9/2012		4/9/2012	2	
3	\$ 21,510.15	\$ 21,510.15	RFH4 - Additional Tree Removal		APP	APCO			4/18/2012		5/15/2012	3	
4	\$ 10,479.63	\$ 10,479.63	Add Alt #3 - 8" Power Line Conflict		APP	APCO			5/17/2012		5/17/2012	4	
5	\$ 10,998.75	\$ 10,998.75	Overcurrent Protective Device Study		APP	Hille			4/18/2012		5/17/2012	5	
6	\$ 4,530.51	\$ 4,530.51	Alt #4 - Isolation Valves		APP	Valley Creek			4/18/2012		5/22/2012	6	
7	\$ 115,747.17		Placement of Topsoil		RECON				4/30/2012				RECONC'D - NOT SENT TO CIVIL
8	\$ 740.25	\$ 740.25	6" Sewer Reusable Add/Dat #2		APP	Patton			6/8/2012		7/11/2012	8	
9	\$ 8,111.25	\$ 8,111.25	Steel Change Bending RIGEST RFI #58		APP	Richardson			6/8/2012		7/11/2012	9	
10	\$ 6,755.54	\$ 6,755.54	Warning Track Mx - RFI #64		APP	Valley Creek			6/8/2012		3/20/2013	35	City approved the UPGRADE for Warning Track Mark on 3/20/13
11	\$ 85,885.24		Casing for Exit 10' & 12" Wasteline		REI	APCO			6/8/2012				Casings are not existing and are required to be installed per plan
12	\$ 54,726.94		State Park Bench @ Edge Wall RFI #43		APP	APCO			6/8/2012				Revised Resubmitt
12.1	\$ 45,005.26	\$ 45,005.26	State Park Bench @ Edge Wall RFI #43		APP	APCO			7/21/2012			10	
13	\$ 185,145.90		State Park - RFI #56 (S-2)		REI	APCO			6/8/2012		7/25/2012		Interior Retaining wall not required
14	\$ -		Increase 4" Sidewalk to 6"		APP	APCO			7/23/2012				No Cost Change
15	\$ 17,969.16		RFI #71.1 - 6" State Park Drain Ext.		R&R	APCO			7/27/2012		11/27/2012	17	Revised per Modified Drainage System
16	\$ 332.64	\$ 23,544.20	RFI #71.1 - 6" State Park Drain Ext.		APP	APCO			10/9/2012				City Reopened
17	\$ 389.48		Plant Replacement on Phase 1		REI	SRT			7/27/2012				City Reopened
18	\$ 17,157.89		State Park Valve & Wire Repair		REI	SRT			7/27/2012				Revised to reflect credits for work that was shown per plan
18.1	\$ 15,084.77	\$ 15,084.77	RFI # 93 - Realign 2" Water East Exp.		APP	APCO			8/7/2012		11/27/2012	18	
19	\$ 955.86	\$ 955.86	RFI # 93 - Realign 2" Water East Exp.		APP	APCO			8/7/2012		9/19/2012	13	
20	\$ 8,843.58	\$ 8,843.58	Addd Macadamion Pipe Sleeve		APP	Valley Creek			8/7/2012		9/19/2012	14	
21	\$ 95,992.05	\$ 95,992.05	Repipe Cracked 8" Cross		APP	Valley Creek			8/25/12				
22	\$ 4,614.75	\$ 4,614.75	Additional Grading		APP	APCO			9/5/2012		9/19/2012	12	
23	\$ 61,267.59		Abutment Cement Pipe Removal		APP	LV Services			9/5/2012		9/19/2012	15	
24	\$ 230,558.11	\$ 230,558.11	Additional Survey		REI	APCO			9/5/2012				
25	\$ 17,157.89		RFI # 93 - Realign 2" Water East Exp.		APP	APCO			9/12/2012		11/27/2012	16	
26	\$ 24,579.00		Craig Rd. NINE Work		REI	APCO			9/12/2012				DUPLOCATE SEE COR #18
27	\$ 20,243.55	\$ 19,813.35	State Park Planters		APP	APCO			11/8/2012		12/11/2013	26	Need to Reuse w/ Valley Crest Credit
28	\$ 35,851.54	\$ 25,851.54	Precast Lid Replacement		APP	APCO			9/12/2012		9/19/2012	11	
29	\$ 7,350.00	\$ 7,350.00	Hydro IV System		APP	Frederick Landscap			10/12/2012		11/27/2012	19	
30	\$ 37,823.50	\$ 37,823.50	Additional Tree Removal		APP	Affordable Tree			10/16/2012		11/27/2012	20	SFE CCA #67
31	\$ 50,000.00	\$ 61,581.63	Raise Manholes 3 & 4		APP	APCO			10/17/2012		11/27/2012	21	
32	\$ 59,644.75	\$ 58,292.50	Irrigation & Construction Water		APP	APCO			11/7/2012		12/12/2012	23	
33	\$ 55,243.00		Caliche Removal		APP	APCO			1/24/2013		2/11/2013	25	
33.1	\$ 61,045.00		Parking Lots - 3 Thematics Bust		REI	Bushle, APCO			11/7/2012				Revised Resubmitt
33.2	\$ 32,695.00	\$ 32,695.00	Parking Lots - 3 Thematics Bust		APP	APCO, Bushle, SG			12/20/2012				Revised Resubmitt
34	\$ 17,306.10	\$ 17,306.10	Parking Lots - 4" APPA		APP	APCO			1/11/2013		1/15/2013	24	
35	\$ 8,208.90		Flow Lines of State Park - RFI #1.2		REI	Harris Shaber, E.G.			1/17/2012		2/11/2013	30	
35.1	\$ 26,549.03	\$ 26,549.03	State Park Retaining Walls - RFI #8.1		APP	Redig, APCO			11/7/2012		11/27/2012	22	Revised Resubmitt
36	\$ 51,200.40		E' Side Walk in Existing Dog Park		REI	Wendelk & APCO			11/20/2012				PER NDAH - CITY OPTED NOT TO DO THIS WORK

CRAIG RANCH REGIONAL PARK - PHASE II

37	\$	17,999.70		Soil Amendment for Planters	REI	APCO, SRT		12/11/2012		2/11/2013	27	Reverse Resubmit
37.1	\$	12,999.20	\$	12,477.80				1/21/2013				
38	\$	52,502.25			RFI #125	REI	West Coast, APCO	12/11/2012		2/11/2013	28	Reverse Resubmit
38.1	\$	78,689.15	\$	58,134.15	RFI #125	APC	West Coast, APCO	1/24/2013		2/11/2013		
39	\$	560,724.16	\$	586,724.16	TIA #1	APC	APCO	1/9/2013		10/10/2013	50	SEE CCR 30.1
39.1	\$	1,090,066.50			TIA #2 COMPLETION DATE OF 7/17/13	REI	APCO	5/9/2013				
40	\$	26,615.66			TIA #2 COMPLETION DATE OF 10/22/13	REI	APCO	1/24/2013		6/17/2013		Already included in CCR 26.1 per CIVIL (Mark said the CIVIL does not want to do Colored Concrete at Planters)
40.1	\$	23,555.66			Colored Stamped Concrete in planters	REI	APCO	6/21/2013		6/29/2013		
41	\$	31,916.80			Trash & Tree Stump Removal	REI	APCO	1/24/2013		6/17/2013	29	Removal of trash & stumps a result of construction in the ball park on West Side. City's existing debris to be removed at no additional cost. (See email dated 6-18-13 from S Bohm)
42	\$	43,963.19	\$	21,126.19	Valley Ball Parking Lot	RFI #126	SRT, APCO	1/24/2013		2/11/2013	31	
43	\$	9,348.53	\$	9,348.53	Added Sidewalk At the S/W Exp	APC	APCO	1/24/2013		2/11/2013	32	
44	\$	9,446.25	\$	9,446.25	General Site Weed Control	APC	SRT	6/4/2013		5/15/2013		
45	\$	17,249.40			Add Leaf Stumps to Walkways	REI	West Deck	5/7/2013		5/14/2013		Per Joernell - NOT Required tickets/Documentation from NVE Inspector & Resubmit
46	\$	40,816.81			Shurry & Sidewalk R&R @ NVE Conduit	REI	APCO	5/14/2013		5/29/2013		30% Damaged Curb, Gutter & Sidewalk is a direct result of construction activities by APCO. AC Pavement Thickness - Per Contract Doc's 4" minimum or match existing whichever is greater at no additional cost to the City
47	\$	70,519.43			NVE Additional R&R Scope on Craig	REI	APCO, LVP & Westbeck	5/14/2013		5/29/2013		Per Email 6/18/13 (CM458) Contractor to Modify proposed sidewalk alignment to provide adequate clearance and slope from the existing trans pad - Evaluate charges to determine if there are any associated cost impacts. See Email from Noah dated 5/13/13 - sidewalk alignment work. CHARGED NO COST ASSOCIATED.
48	\$	12,865.94			NVE Existing Trans Pad - Add Asphalt	CLOSE	APCO	5/14/2013		6/18/2013	34	
49	\$	13,513.78	\$	13,513.78	Reduce Box Trees from 35" to 24"	APC	Valleycrest	5/14/2013		6/13/2013		
50	\$	8,296.05	\$	8,296.05	Enlarged Lake Splash Pads	APC	Pacific Aquascape	5/28/2013		6/13/2013	35	
51	\$	7,015.04			Maintenance Pkt - Watering Trees	EVAL	SRT	6/14/2013		6/18/2013		Please provide more information regarding this CCR. Per email 6/18/13 (CM451)
52	\$	22,842.97			Pk #1 - Various Repairs & Misc. Maint.	REI	SRT			7/16/2013		City rejects due to insufficient and unknown (after the fact) information. (CM 452) City rejects due to the fact the plans provided centerline sidewalk grades only. All other interpretations & survey is contractor generated (CM 453)
53	\$	31,467.19			Additional Survey	REI	E.G. Radig	6/21/2013		7/16/2013		SEE CCA #52
53.1	\$	19,716.31			Additional Survey			1/15/2014				R&R to CITY
54	\$	55,650.00			Windmill - Sheets S02.23 & S02.24	RESCIND	Richardson	5/21/2013				
54.1	\$	54,692.72			Windmill - Sheets S02.23 & S02.24	REI	Richardson	7/17/2013		10/26/2013		
54.2	\$	45,112.20			Windmill - Sheets S02.23 & S02.24	REI	Richardson	9/26/2013		10/26/2013		
54.3	\$	45,112.20			Windmill - Sheets S02.23 & S02.24	REI	Richardson	12/6/2013				Changes not Made
55	\$	16,573.26	\$	16,573.26	Per RFI #136 - Add (4) F3 Fixtures	APC	Graybar	6/21/2013		7/12/2013	36	City Request
56	\$	245,689.90			Excav. & Placement of Curbside Material	APC	APCO	7/10/2013		3/17/14		SEE CCA #62
57	\$	16,542.06	\$	16,542.06	F3 Fixtures @ Trail Re-Alignment	APC	Heik	7/14/2013		7/16/2013	37	City Request
58	\$	4,974.90	\$	4,974.90	Entry Monument Sign Light Fixture	APC	Heik	7/14/2013		7/16/2013	38	City Request
59	\$	10,883.00	\$	10,883.00	Power Source for Holiday Tree Light	APC	Heik	7/14/2013		7/16/2013	39	

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60	\$	15,118.00		Charge-Out Contractors Installed PHL	RFP	CLOSE	Helix		7/11/2013		7/16/2013	40	7/16/13 - City has opted to NOT install new
61	\$	3,148.95	\$	3,148.95	Substitute Lithonia Fixture	APP	Helix		7/11/2013		7/16/2013	41	Contractors
62	\$	14,597.62			Repair 4" Mainline	REI	SRT		7/12/2013	7/16/2013			City rejected due to the fact the mainline is shown on
63	\$	23,169.13			Per RFP#156 - Add (4) 3" Features	CLOSE	Helix		7/23/2013				contract drawings & Claims APCO was provided the
64	\$	1,699.05	\$	1,699.05	Per RFP#156 - Pole Bases	APP	APCO, Rockway		10/7/2013		3/17/14		As-Built (CA#52)
65	\$	664.65	\$	664.65	Panel Lock Covers	APP	Helix		8/6/2013		9/10/2013	42	ALREADY APP SEE COR #55
66	\$				Swamp Cooler Controls	APP	Helix		8/6/2013		9/10/2013	43	SEE CCA #62
67	\$	13,112.50	\$	13,112.50	Additional Tree Trimming & Removal	CLOSE			8/6/2013		9/10/2013	44	Duplicate See COR #72 (Not Submitted to City)
68	\$	102,400.00			Add Pvc Seed to Student	APP	ValleyCrest		9/3/2013	9/16/2013			
69	\$	29,925.00	\$	29,925.00	Helix Electric Expenses Overhead	REI	Helix		11/12/2013	11/13/2013			
70	\$	4,464.50	\$	4,464.50	Overhead w/ Rye (15.5 Acres)	APP	APCO, ValleyCrest		9/16/2013		9/10/2013	45	
71	\$	438.90	\$	438.90	Electrical @ State Park Life Station	APP	Helix		9/16/2013		9/10/2013	46	
72	\$	25,269.30	\$	25,269.30	Comm/Conduit @ Irrigation Pump House	APP	Helix		9/16/2013		10/10/2013	47	
73	\$	35,199.30			Additional Tree & Debris Removal	APP	AT3, APCO		9/23/2013		10/10/2013	49	
74	\$	3,957.50	\$	3,957.50	Guardrail Relocation	REI	AT3		10/24/2013				Not to talk to Bret Miller about Additional (10) Tree
75	\$	588.00	\$	588.00	Windmill Deck Security Gate	APP	Richardson		9/23/2013		10/10/2013	51	Locations - City did themselves
76	\$	3,265.55	\$	3,265.55	Fiber Optic Cables @ Kick	APP	Helix		9/23/2013		10/10/2013	52	
77	\$	5,262.32	\$	5,262.32	Fertile Turf Areas	APP	APCO		9/23/2013		10/10/2013	48	
78	\$	15,870.75	\$	15,870.75	Per RFP #157 - Power to Pedestest	REI	Helix		9/23/2013		10/10/2013	54	
79	\$	3,292.80			PER RFP#160 - Elect. @ Life Station	CLOSE			NOT SUB				Duplicate of COR #70 (Not Submitted to City)
80	\$	2,667.00			Engineering Windmill & Turbine	REI	Richardson		9/28/2013	10/28/2013			
81	\$	5,035.43	\$	5,035.43	Windmill Tower Closure	REI	Richardson		10/2/2013	11/2/2013			
82	\$	89,251.78			Re-Strip the Existing Parking Lot	APP	Highway Striping		10/7/2013		11/7/2013	55	
83	\$	11,613.00			ValleyCrest - Extended GC's	REI	ValleyCrest		10/24/2013	11/7/2013			SEE CCA#82 Comments
84	\$	1,094.27	\$	1,094.27	Remove Existing Temp Fence	APP	Thibert		11/5/2013				City Sub - Paid for City
85	\$	1,499.40			Add Sidewalk @ Mainhole (North)	REI	WestDeck		10/24/2013	11/7/2013	12/4/2013	58	
86	\$	2,525.00			Sidewalk Re-Design - Tree	REI	WestDeck		10/24/2013	11/7/2013			
87	\$	4,556.12	\$	4,556.12	Install 5.5 Underdrain Drain	APP	WestDeck		10/24/2013	11/7/2013			
88	\$	138,855.67			Grade Difference Around Pond	APP	WestDeck		10/24/2013	11/7/2013	11/21/2013	55	
89	\$	7,770.00	\$	7,770.00	Phase 1 - R & R Concrete Panels (Bull	REI	Bull Concrete		11/12/2013				SEE CCA #62
90	\$	7,050.75	\$	7,050.75	Additional Tree Removal	APP	Affordable T		11/18/2013		12/4/13	57	
91	\$	22,776.97			Phase 1 - Additional Striping	APP	Highway Striping		11/18/2013		12/4/13	59	
92	\$				Alt 5 - Irrigation Repair & Misc. Landscape	EX/AL	ValleyCrest / John		11/18/2013				
93	\$	26,304.00			Helix Electric Extended Overhead	REI	Helix		11/18/2013	12/4/13			APCO Paid - SEE CCA #62
94	\$	3,404.89	\$	3,404.89	Extra Gates & Noise Temp Fence	APP	Fencing Specialists		11/18/2013		12/4/13	60	Submitted After Substantial Completion issued
95	\$	10,600.00			10 Month Est. Period	REI	APCO		3/5/13				
96	\$	14,780.48			5 Months of Trolley Items for Restrooms	REI	APCO		3/5/13				City Request
97	\$	22,699.71	\$	22,699.71	NVE Additional R&R Scope on Craig	APP	APCO, LVP &		12/28/13		3/5/2013	61	
98	\$				Craig Ranch - APCO Maintenance	APP	APCO		1/2/14		3/17/14		SEE CCA #62
99	\$	41,670.72			Alt. 1 & 5 Out of Contract Maintenance		APCO		1/13/14		3/17/14		APCO Paid
100	\$	2,855.80			Restroom - vandalism Repairs		Compton Systems		1/13/14		3/17/14		City Request - SEE CCA #62
101	\$	2,395.74			Utilities Add to Revere Entrance		APCO		1/15/14		3/17/14		SEE CCA #62
102	\$	36,609.30			February 2014 - Maintenance		APCO		3/13/14		3/17/14	62	
103	\$	207,309.74	\$	207,309.74	Additional Phase 1 - Remove & Replace	APP	APCO		3/13/14		3/17/14		
Total APPROVED		\$	2,000,000.00										