

Case No. _____

In the
Supreme Court
of the
State of Nevada

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Jul 15 2020 10:50 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

DEKKER/PERICH/SABATINI LTD.,
NEVADA BY DESIGN, LLC d/b/a NEVADA BY DESIGN,
MELROY ENGINEERING, INC. d/b/a MSA ENGINEERING CONSULTANTS,
JW ZUNINO & ASSOCIATES, LLC, and
NINYO & MOORE, GEOTECHNICAL CONSULTANTS,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT,
STATE OF NEVADA,
CLARK COUNTY, and
THE HONORABLE TREVOR ATKIN,

Respondents,

CITY OF NORTH LAS VEGAS,

Real Party in Interest.

FROM DECISIONS OF THE EIGHTH JUDICIAL DISTRICT COURT,
CLARK COUNTY, NEVADA
CASE NO. A-19-798346-C
HONORABLE TREVOR ATKIN · DEPARTMENT 8 · PHONE: (702) 671-4338

PETITIONERS' APPENDIX TO
PETITION FOR WRIT OF MANDAMUS OR,
ALTERNATIVELY, PROHIBITION

VOLUME 5

JOHN T. WENDLAND, ESQ. (Nevada Bar No. 7207)

ANTHONY D. PLATT, ESQ. (Nevada Bar No. 9652)

WEIL & DRAGE, APC

861 Coronado Center Drive, Suite 231

Henderson, NV 89052

(702) 314-1905 • Fax (702) 314-1909

jwendland@weildrage.com

aplatt@weildrage.com

*Attorneys for Petitioners, DEKKER/PERICH/SABATINI LTD. and
NEVADA BY DESIGN, LLC d/b/a NEVADA BY DESIGN*

Jeremy R. Kilber, Esq. (Nevada Bar No. 10643)

WEIL & DRAGE, APC

861 Coronado Center Drive, Suite 231

Henderson, NV 89052

(702) 314-1905 • Fax (702) 314-1909

jkilber@weildrage.com

Attorney for Petitioner, MSA ENGINEERING CONSULTANTS

Dylan P. Todd, Esq. (Nevada Bar No. 10456)

Lee H. Gorlin, Esq. (Nevada Bar No. 13879)

FORAN GLENNON PALANDECH PONZI & RUDLOFF PC

2200 Paseo Verde Parkway, Suite 280

Henderson, NV 89052

(702) 827-1510 • Fax (312) 863-5099

dtodd@fgppr.com

lgorlin@fgppr.com

Attorneys for Petitioner, JW ZUNINO & ASSOCIATES, LLC

Jorge A. Ramirez, Esq. (Nevada Bar No. 6787)

Harry Peetris, Esq. (Nevada Bar No. 6448)

Jonathan C. Pattillo, Esq. (Nevada Bar No. 13929)

WILSON ELSEER MOSKOWITZ EDELMAN & DICKER, LLP

6689 Las Vegas Blvd. South, Suite 200

Las Vegas, NV 89119

(702) 727-1400 • Fax (702) 727-1401

jorge.ramirez@wilsonelser.com

harry.peetris@wilsonelser.com

jonathan.pattillo@wilsonelser.com

Attorneys for Petitioner, NINYO & MOORE GEOTECHNICAL CONSULTANTS

CHRONOLOGICAL INDEX - APPENDIX OF EXHIBITS

Exhibit:	Volume:	Bates: PET.APP.	Date:	Description:
2	5	000648 – 000663	08/05/2019 4:15 PM	Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, in the Alternative, Motion for Summary Judgment
	5	000664 – 000681	07/11/2019	<u>Exhibit A</u> – City of North Las Vegas’ Complaint
	5	000682 – 000684	07/13/2009	<u>Exhibit B</u> – City of North Las Vegas’ Complaint Exhibit 4 Notice of Completion
	5	000685 – 000690	03/25/2019	<u>Exhibit C</u> - Nevada Legislature Website (80 th Session) Concerning the “Effective Date” of the AB 421
	5	000691 – 000693	07/11/2019	<u>Exhibit D</u> – Aleem A. Dhalla, Esq.’s Affidavit of Merit Attached to City of North Las Vegas’ Complaint
	5	000694 – 000707	12/11/2017	<u>Exhibit E</u> - American Geotechnical, Inc’s Geotechnical Investigation
	5	000708 – 000709	07/03/2019	<u>Exhibit F</u> – Declaration of Edred T. Marsh, P.E.
	5	000710 – 000717	03/23/2007	<u>Exhibit G</u> – Excerpts from Legislative History of N.R.S. 11.258
	5	000718 – 000720	08/06/2019 2:44 PM	Dekker/Perich/Sabatini, Ltd.’s Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, In the Alternative, Motion for Summary Judgment

ALPHABETICAL INDEX - APPENDIX OF EXHIBITS

Exhibit:	Vol.:	Bates: PET.APP.	Date:	Description:
10	11	001560 – 001562	08/20/2019 1:34 PM	City of North Las Vegas’ Appendix of Exhibits to Opposition to Dekker/Perich/Sabatini, Ltd.’s Motion to Dismiss
	11	001563 – 001580	07/11/2019	<u>Exhibit 1</u> – City of North Las Vegas’ Complaint
	11	001581 – 001614	02/07/2007	<u>Exhibit 1</u> – Professional Architectural Services Agreement
	11	001615 – 001680	08/29/2007	<u>Exhibit 2</u> – Ninyo & Moore’s Geotechnical Evaluation
	11	001681 – 001694	01/30/2008	<u>Exhibit 3</u> – City of North Las Vegas’ Letter to Richardson Construction Inc re Construction Contract
	11	001695 – 001696	07/13/2009	<u>Exhibit 4</u> – Notice of Completion
	12	001697 – 001832	12/11/2017	<u>Exhibit 5</u> – American Geotechnical Inc’s Geotechnical Investigation
	12	001833 – 001836	1988 - Present	<u>Exhibit 6</u> – American Geotechnical Inc. Resume of Edred T. Marsh, Principal Geotechnical Engineer
	12	001837 – 001838	07/03/2019	<u>Exhibit 7</u> – Declaration of Edred T. Marsh, P.E.
	12	001839 – 001840	10/17/2007	<u>Exhibit 8</u> – Ninyo & Moore Letter to Dekker/Perich/Sabatini re Review of 95 Percent Bid Set Construction Documents
	13	001841 – 002053	11/02/2007	<u>Exhibit 9</u> - Dekker/Perich/Sabatini’s Structural Calculations
	14	002054 – 002131	11/02/2007	<u>Exhibit 9</u> - Dekker/Perich/Sabatini’s Structural Calculations
	14	002132 – 002210	11/10/2007	<u>Exhibit 10</u> - Plans / Record Drawings
8	7	000847 – 000849	08/20/2019 1:24 PM	City of North Las Vegas’ Appendix of Exhibits to Opposition to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultant's Motion to Dismiss or in the Alternative, Motion for Summary Judgment
	7	000850 – 000867	07/11/2019	<u>Exhibit 1</u> – City of North Las Vegas’ Complaint

	7	000868 – 000901	02/07/2007	<u>Exhibit 1</u> – Professional Architectural Services Agreement
	7	000902 – 000967	08/29/2007	<u>Exhibit 2</u> – Ninyo & Moore’s Geotechnical Evaluation
	7	000968 – 000981	01/30/2008	<u>Exhibit 3</u> – City of North Las Vegas’ Letter to Richardson Construction Inc re Construction Contract
	7	000982 – 000983	07/13/2009	<u>Exhibit 4</u> – Notice of Completion
	8	000984 – 001119	12/11/2017	<u>Exhibit 5</u> – American Geotechnical Inc’s Geotechnical Investigation
	8	001120 – 001123	1988 - Present	<u>Exhibit 6</u> – American Geotechnical Inc’s Resume of Edred T. Marsh, Principal Geotechnical Engineer
	8	001124 – 001125	07/03/2019	<u>Exhibit 7</u> – Declaration of Edred T. Marsh, P.E.
	8	001126 – 001127	10/17/2007	<u>Exhibit 8</u> – Ninyo & Moore Letter to Dekker/Perich/Sabatini re Review of 95 Percent Bid Set Construction Documents
	9	001128 – 001340	11/02/2007	<u>Exhibit 9</u> - Dekker/Perich/Sabatini’s Structural Calculations
	10	001341 – 001418	11/02/2007	<u>Exhibit 9</u> - Dekker/Perich/Sabatini’s Structural Calculations
	10	001419 – 001497	11/10/2007	<u>Exhibit 10</u> - Plans / Record Drawings
	10	001498 – 001513	2019	<u>Exhibit 2</u> – Assembly Bill 421 – 80 th Session 2019
	10	001514 – 001546	05/15/2019	<u>Exhibit 3</u> - Minutes of the Senate Committee on Judiciary, 80th Legislature
1	1	000001 – 000017	07/11/2019 4:35 PM	City of North Las Vegas’ Complaint Against Defendants – Exempt from Arbitration Under N.A.R. 3(A): Seeks Damages in Excess of \$50,000
	1	000018 – 000051	02/07/2007	<u>Exhibit 1</u> – Professional Architectural Services Agreement
	1	000052 – 000117	08/29/2007	<u>Exhibit 2</u> – Ninyo & Moore’s Geotechnical Evaluation
	1	000118 – 000131	01/30/2008	<u>Exhibit 3</u> – City of North Las Vegas’ Letter to Richardson Construction Inc re Construction Contract
	1	000132 – 000133	07/13/2009	<u>Exhibit 4</u> – Notice of Completion

	2	000134 – 000269	12/11/2017	<u>Exhibit 5</u> – American Geotechnical Inc’s Geotechnical Investigation
	2	000270 – 000273	1988 - Present	<u>Exhibit 6</u> – American Geotechnical Inc. Resume of Edred T. Marsh, Principal Geotechnical Engineer
	2	000274 – 000275	07/03/2019	<u>Exhibit 7</u> – Declaration of Edred T. Marsh, P.E.
	2	000276 – 000277	10/17/2007	<u>Exhibit 8</u> – Ninyo & Moore Letter to Dekker/Perich/Sabatini re Review of 95 Percent Bid Set Construction Documents
	3	000278 – 000491	11/02/2007	<u>Exhibit 9</u> - Dekker/Perich/Sabatini’s Structural Calculations
	4	000492 – 000568	11/02/2007	<u>Exhibit 9</u> - Dekker/Perich/Sabatini’s Structural Calculations
	4	000569 – 000647	11/10/2007	<u>Exhibit 10</u> - Plans / Record Drawings
18	15	002307 – 002312	09/26/2019	City of North Las Vegas’ Limited Opposition to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Change Date of Hearing on Motion to Dismiss or, in the Alternative, Motion for Summary Judgment on Order Shortening Time
	15	002313 – 002318	09/26/2019	<u>Exhibit 1</u> – Register of Actions Case A-19-798346-C
	15	002319 – 002320	09/20/2019	<u>Exhibit 2</u> – Weil & Drage, APC’s Letter to All Counsel re Hearing of Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ on Motion to Dismiss or, in the Alternative, Motion for Summary Judgment on September 27, 2019
25	15	002407 – 002421	11/13/2019 11:58 AM	City of North Las Vegas’ Motion to Alter Judgment
	15	002422 – 002430	10/17/2019	<u>Exhibit 1</u> - Notice of Entry of Order Granting Nevada by Design, LLC d/b/a Nevada By Design Engineering Consultants' Motion to Dismiss or, in the alternative, Motion for Summary Judgment and All Joinders to the Same
	15	002431 – 002448	07/11/2019	<u>Exhibit 2</u> – City of North Las Vegas’ Complaint

	15	002449 – 002455	09/30/2019	<u>Exhibit 3</u> - Order Granting Nevada by Design, LLC d/b/a Nevada By Design Engineering Consultants' Motion to Change Date
	15	002456 – 002471	2019	<u>Exhibit 4</u> - Assembly Bill 421 – 80 th Session 2019
	16	002472 – 002504	05/15/2019	<u>Exhibit 5</u> - Minutes of the Senate Committee on Judiciary – Eightieth Session
	16	002505 – 002510	09/30/2019	<u>Exhibit 6</u> - Richardson Construction, Inc. and The Guarantee Company of North America USA's Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment
	16	002511 – 002514	09/30/2019	<u>Exhibit 7</u> - JW Zunino & Associates LLC's Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment
6	6	000821 – 000826	08/15/2019 5:02 PM	City of North Las Vegas' Motion to Strike and Opposition to Jackson Family Partnership LLC d/b/a Stargate Plumbing's Motion to Dismiss
	6	000827 – 000828	08/06/2019	<u>Exhibit 1</u> – Affidavit/Declaration of Service to Jackson Family Partnership LLC d/b/a Stargate Plumbing
62	20	003467 – 003470	04/02/2020 4:21 PM	City of North Las Vegas' Notice of Entry of Decision and Order Denying Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Motion to Dismiss
	20	003471 – 003480	04/02/2020	<u>Exhibit 1</u> - Order Denying Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Motion to Dismiss
66	21	003589 – 003592	05/05/2020 3:48 PM	City of North Las Vegas' Notice of Entry of Decision and Order Denying Richardson Construction, Inc. and The Guarantee Company of North America USA's Motion to Dismiss / Motion for Summary Judgment Based on Laches and All Joinders
	21	003593 – 003597	05/05/2020	<u>Exhibit 1</u> – Court's Decision and Order Denying Richardson Construction, Inc. and The Guarantee Company of North America USA's Motion to Dismiss / Motion for Summary Judgment Based on Laches and All Joinders

46	18	003064 – 003067	01/24/2020 3:55 PM	City of North Las Vegas’ Notice of Entry of Decision and Order Granting Its Motion to Alter Judgment
	18	003068 – 003073	01/23/2020	<u>Exhibit 1</u> – Court’s Decision and Order
9	11	001547 – 001559	08/20/2019 1:34 PM	City of North Las Vegas’ Opposition to Dekker/Perich/Sabatini, Ltd.’s Motion to Dismiss
52	19	003255 – 003274	02/17/2020 4:39 PM	City of North Las Vegas’ Opposition to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants’ and Joinders Motion to Dismiss on Order Shortening Time
60	20	003409 – 003413	03/16/2020 4:57 PM	City of North Las Vegas’ Opposition to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants’ Motion for Clarification Regarding Court’s Minute Order Denying Melroy Engineering, Inc. d/b/a MSA Engineering Consultants’ Motion to Dismiss Brought Pursuant to NRS 11.258, on Order Shortening Time
	20	003414 – 003415	03/13/2020	<u>Exhibit 1</u> – Email re Proposed Order Denying MSA’s Motion to Dismiss on NRS 11.258
	20	003416 – 003425	Undated	<u>Exhibit 2</u> – Order Denying Melroy Engineering, Inc. d/b/a MSA Engineering Consultants’ Motion to Dismiss
	20	003426 – 003428	03/16/2020	<u>Exhibit 3</u> – Email re Request to Withdraw Motion for Clarification on Order Shortening Time Without Prejudice
7	6	000829 – 000846	08/20/2019 1:24 PM	City of North Las Vegas’ Opposition to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultant’s Motion to Dismiss or, in the Alternative, Motion for Summary Judgement
45	18	003047 – 003063	12/19/2019 4:59 PM	City of North Las Vegas’ Reply in Support of Its Motion to Alter Judgment

20	15	002326 – 002330	09/27/2019 4:18 PM	City of North Las Vegas’ Surreply to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Change Date of Hearing on Motion to Dismiss or, in the Alternative, Motion for Summary Judgment on Order Shortening Time
61	20	003429 – 003466	03/30/2020 3:09 PM	Court Recorder’s Transcript of Hearing re All Pending Motions, March 10, 2020
63	20	003481 – 003491	04/10/2020 3:04 PM	Court Recorder’s Transcript of Hearing re All Pending Motions, March 17, 2020
23	15	002339 – 002398	10/10/2019 1:20 PM	Recorder’s Transcript of Hearing Re: All Pending Motions, September 30, 2019
65	21	003541 – 003588	04/21/2020 8:19 AM	Court Recorder’s Transcript of Proceedings re All Pending Motions, February 20, 2020
64	21	003492 – 003540	04/21/2020 8:19 AM	Court Recorder’s Transcript of Proceedings re City of North Las Vegas’ Motion to Alter Judgment, January 21, 2020
29	16	002678 – 002681	11/26/2019 12:35 PM	Dekker/Perich/Sabatini, Ltd.’s Joinder to JW Zunino & Associates LLC’s Opposition to City of North Las Vegas’ Motion to Alter
49	19	003147 – 003154	02/04/2020 3:11 PM	Dekker/Perich/Sabatini, Ltd.’s Joinder to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants’ Motion to Dismiss on Order Shortening Time
3	5	000718 – 000720	08/06/2019 2:44 PM	Dekker/Perich/Sabatini, Ltd.’s Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, In the Alternative, Motion for Summary Judgment

28	16	002651 – 002660	11/26/2019 12:28 PM	Dekker/Perich/Sabatini, Ltd.’s Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Opposition to Motion to Alter Judgment; Opposition by Incorporation and Request to Reset Prior Motion to Dismiss
	16	002659 – 002664	10/15/2019	<u>Exhibit 1</u> – Order Granting Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, in the Alternative, Motion for Summary Judgment and all Joinders to Same
	16	002665 – 002677	08/06/2019	<u>Exhibit 2</u> – Dekker/Perich/Sabatini, Ltd.’s Motion to Dismiss
4	6	000721 – 000735	08/06/2019 2:44 PM	Dekker/Perich/Sabatini, Ltd.’s Motion to Dismiss
	6	000734 – 000751	07/11/2019	<u>Exhibit A</u> – City of North Las Vegas’ Complaint
	6	000752 – 000786	02/07/2007	<u>Exhibit B</u> – City of North Las Vegas’ Complaint <u>Exhibit 1</u> – Professional Architectural Services Agreement
	6	000787 – 000789	07/11/2019	<u>Exhibit C</u> – Affidavit of Aleema A. Dhalla, Esq.
	6	000790 – 000793	1988 – Present	<u>Exhibit D</u> – American Geotechnical, Inc.’s Resume of Edred T. Marsh, Principal Geotechnical Engineer
	6	000794 – 000801	03/23/2007	<u>Exhibit E</u> - Excerpts from Legislative History of N.R.S. 11.258
	6	000802 – 000803	07/03/2019	<u>Exhibit F</u> – Declaration of Edred T. Marsh, P.E.
	6	000804 – 000817	12/11/2017	<u>Exhibit G</u> - American Geotechnical, Inc.’s Geotechnical Investigation
13	14	002219 – 002232	08/28/2019 8:48 AM	Dekker/Perich/Sabatini, Ltd.’s Reply to City of North Las Vegas’ Opposition to Its Motion to Dismiss
53	19	003275 – 003285	02/18/2020 3:00 PM	Dekker/Perich/Sabatini, Ltd.’s Reply to City of North Las Vegas’ Opposition to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants’ and Joinders to Motion to Dismiss on Order Shortening Time
	19	003286 – 003287	07/03/2019	<u>Exhibit A</u> – Declaration of Edred T. Marsh, P.E.

	19	003288 – 003294	07/11/2019	<u>Exhibit B</u> – City of North Las Vegas’ Complaint
12	14	002214 – 002218	08/26/2019 4:15 PM	Jackson Family Partnership LLC d/b/a Stargate Plumbing’s Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, In the Alternative, Motion for Summary Judgment
36	18	002894 – 002900	12/02/2019 2:22 PM	Jackson Family Partnership LLC d/b/a Stargate Plumbing’s Joinder to JW Zunino & Associates LLC’s Opposition to Motion to Alter Judgment with Supplemental Points and Authorities
7	18	002901 – 002907	12/02/2019 2:22 PM	Jackson Family Partnership LLC d/b/a Stargate Plumbing’s Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Opposition to City of North Las Vegas’ Motion to Alter Judgment with Supplemental Points and Authorities
2	18	003037 – 003039	12/03/2019 10:01 AM	JW Zunino & Associates LLC’s Joinder to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants’ Opposition to Motion to Alter Judgment
50	19	003155 – 003166	02/07/2020 3:04 PM	JW Zunino & Associates LLC’s Joinder to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants’ Motion to Dismiss on Order Shortening Time
22	15	002336 – 002338	09/30/2019 4:35 PM	JW Zunino & Associates LLC’s Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, in the Alternative, Motion for Summary Judgment
31	17	002686 – 002688	11/27/2019 10:43 AM	JW Zunino & Associates LLC’s Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Opposition to Motion to Alter Judgment
38	18	002908 – 002910	12/02/2019 2:34 PM	JW Zunino & Associates LLC’s Joinder to Richardson Construction, Inc. and The Guarantee Company of North America USA’s Opposition to Motion to Alter Judgment

26	16	002515 – 002527	11/25/2019 5:02 PM	JW Zunino & Associates LLC's Opposition to City of North Las Vegas' Motion to Alter Judgment
	16	002528 – 002530	10/09/2019	<u>Exhibit A</u> – Affidavit of Rita Tuttle
57	20	003385 – 003391	02/19/2020 11:29 AM	JW Zunino & Associates LLC's Reply to City of North Las Vegas' Opposition to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Motion to Dismiss on Order Shortening Time
5	6	000818 – 000820	08/08/2019 1:32 PM	Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Joinder to Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants' Motion to Dismiss or, In the Alternative, Motion for Summary Judgment
40	18	003029 – 003032	12/02/2019 3:19 PM	Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Joinder to JW Zunino & Associates, LLC's Opposition to City of North Las Vegas' Motion to Alter Judgment
41	18	003033 – 003036	12/02/2019 3:19 PM	Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Joinder to Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants' Opposition to City of North Las Vegas' Motion to Alter Judgment
39	18	002911 – 002936	12/02/2019 3:19 PM	Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Opposition to Motion to Alter Judgment
	18	002937 – 002941	10/15/2019	<u>Exhibit 1</u> – Order Granting Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment and all Joinders to Same
	18	002942 – 002960	08/20/2019	<u>Exhibit 2</u> – City of North Las Vegas' Opposition to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment
	18	002961 – 003021	10/10/2019	<u>Exhibit 3</u> – Court Recorder's Transcript of Hearing: All Pending Motions

	18	003022 – 003024	10/15/2019	<u>Exhibit 4</u> – Order Granting Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Change Date of Haring on Motion to Dismiss or, in the Alternative, Motion for Summary Judgment on Order Shortening Time
	18	003025 – 003028	08/05/2019	<u>Exhibit 5</u> – Cover Sheet Filings of: Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment; Dekker/Perich/Sabatini, Ltd.'s Motion to Dismiss; and Melroy Engineering, Inc. d/b/a MSA Engineering Consultants Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment
7	18	003074 – 003090	02/04/2020 12:14 PM	Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Motion to Dismiss on Order Shortening Time
	19	003091 – 003108	07/11/2019	<u>Exhibit A</u> – City of North Las Vegas' Complaint
	19	003110 – 003111	07/11/019	<u>Exhibit B</u> – Affidavit of Aleema A. Dhalla, Esq.
	19	003112 – 003115	1988 - Present	<u>Exhibit C</u> – American Geotechnical Inc's Resume of Edred T. Marsh, Principal Geotechnical Engineer
	19	003116 – 003123	03/23/2007	<u>Exhibit D</u> – Legislative History of 11.258 Senate Bill 243
	19	003124 – 003137	12/11/2017	<u>Exhibit E</u> – American Geotechnical Inc's Geotechnical Investigation
	19	003138 – 003139	07/03/2019	<u>Exhibit F</u> – Declaration of Edred T. Marsh, P.E.
59	20	003399 – 003408	03/16/2020 8:58 AM	Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Motion for Clarification Regarding Court's Minute Order Denying Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Motion to Dismiss Brought Pursuant to NRS 11.258, on Order Shortening Time

55	20	003308 – 003318	02/18/2020 5:02 PM	Melroy Engineering, Inc. d/b/a MSA Engineering Consultants’ Reply to City of North Las Vegas’ Opposition to Its Motion to Dismiss
	20	003319 – 003325	02/12/2020	<u>Exhibit 1</u> – Notice of Entry of Order Granting Kittrell Garlock and Associates, Architects, AIA, Ltd.’s Motion to Dismiss; Kittrell Garlock and Associates, Architects, AIA, Ltd.’s Motion to Dismiss City of North Las Vegas’ Complaint
	20	003326 – 003340	11/22/2019	Kittrell Garlock and Associates, Architects, AIA, Ltd.’s Motion to Dismiss City of Las Vegas’ Complaint
	20	003341 - 003347	11/06/2019	<u>Exhibit A</u> – City of North Las Vegas’ Complaint
	20	003348 – 003353	N/A	<u>Exhibit B</u> – Michael Panish Expert Witness & Consultants Construction Systems Curriculum Vitae
	20	003354 – 003361	03/23/2007	<u>Exhibit C</u> - Legislative History of 11.258 Senate Bill 243
	20	003362 – 003366	12/09/2019	A-19-804979-C Kelli Nash’ Opposition to Defendant’s Motion to Dismiss its Complaint
	20	003367 – 003373	12/26/2019	A-19-804979 Kittrell Garlock and Associates, Architects, AIA, Ltd.’s Reply to Kelly Nash’s Opposition to its Motion to Dismiss Kelly Nash’s Complaint
	20	003374 – 003378	10/15/2019	<u>Exhibit 1</u> – Stipulation and Order to Dismiss Kittrell Garlock and Associates, AIA, Ltd.
30	16	002682 – 002685	11/26/2019 12:43 PM	Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Joinder to JW Zunino & Associates LLC’s Opposition to City of North Las Vegas’ Motion to Alter
48	19	003140 – 003146	02/04/2020 3:09 PM	Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Joinder to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants’ Motion to Dismiss on Order Shortening Time

17	15	002282 – 002292	09/18/2019 3:07 PM	Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Change Date of Hearing on Motion to Dismiss or, in the Alternative, Motion for Summary Judgment on Order Shortening Time
	15	002293 – 002294	08/06/2019	<u>Exhibit A</u> – Clerk of the Court’s Notice of Hearing
	15	002295 – 002296	09/06/2019	<u>Exhibit B</u> – Court’s Notice of Rescheduling Motions to Dismiss and Joinders
	15	002297 – 002202	09/09/2019	<u>Exhibit C</u> – Emails re Rescheduling of Hearing
	15	002203 – 002304	09/10/2019	<u>Exhibit D</u> – Emails re Rescheduling of Hearing
	15	002305 – 002306	N/A	<u>Exhibit E</u> – Las Vegas Law Offices of Snell & Wilmer
2	5	000648 – 000663	08/05/2019 4:15 PM	Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, in the Alternative, Motion for Summary Judgment
	5	000664 – 000681	07/11/2019	<u>Exhibit A</u> – City of North Las Vegas’ Complaint
	5	000682 – 000684	07/13/2009	<u>Exhibit B</u> – City of North Las Vegas’ Complaint Exhibit 4 Notice of Completion
	5	000685 – 000690	03/25/2019	<u>Exhibit C</u> - Nevada Legislature Website (80 th Session) Concerning the “Effective Date” of the AB 421
	5	000691 – 000693	07/11/2019	<u>Exhibit D</u> – Aleem A. Dhalla, Esq.’s Affidavit of Merit Attached to City of North Las Vegas’ Complaint
	5	000694 – 000707	12/11/2017	<u>Exhibit E</u> - American Geotechnical, Inc’s Geotechnical Investigation
	5	000708 – 000709	07/03/2019	<u>Exhibit F</u> – Declaration of Edred T. Marsh, P.E.
	5	000710 – 000717	03/23/2007	<u>Exhibit G</u> – Excerpts from Legislative History of N.R.S. 11.258
24	15	002399 – 002406	10/17/2019 10:08 AM	Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Notice of Entry of Order Granting Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, in the Alternative, Motion for Summary Judgment and All Joinders to Same

27	16	002531 – 002558	11/26/2019 11:17 PM	Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Opposition to Motion to Alter Judgment
	16	002559 – 002563	10/15/2019	<u>Exhibit 1</u> – Order Granting Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, in the Alternative, Motion for Summary Judgment and all Joinders to Same
	16	002564 – 002582	08/20/2019	<u>Exhibit 2</u> – City of North Las Vegas’ Opposition to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, in the Alternative, Motion for Summary Judgment
	16	002583 – 002643	10/10/2019	<u>Exhibit 3</u> – Court Recorder’s Transcript of Hearing: All Pending Motions
	16	002644 – 002646	10/15/2019	<u>Exhibit 4</u> – Order Granting Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Change Date of Hearing on Motion to Dismiss or, in the Alternative, Motion for Summary Judgment on Order Shortening Time
	16	002647 – 002650	08/05/2019	<u>Exhibit 5</u> - Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, in the Alternative, Motion for Summary Judgment
			08/06/2019	Dekker/Perich/Sabatini, Ltd.’s Motion to Dismiss
			08/08/2019	Melroy Engineering, Inc. d/b/a MSA Engineering Consultants Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, in the Alternative, Motion for Summary Judgment
19	15	002321 – 002325	09/26/2019 5:16 PM	Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Reply to City of North Las Vegas’ Limited Opposition to Motion to Change Date of Hearing
54	20	003295 – 003307	02/18/2020 3:57 PM	Nevada by Design, LLC d/b/a Nevada By Design Engineering Consultants’ Reply to City of North Las Vegas’ Opposition to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants’ and Joinders to Motion to Dismiss on Order Shortening Time

14	14	002233 – 002249	8/28/2019 9:02 AM	Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Rely to City of North Las Vegas’ Opposition to Motion to Dismiss or, in the Alternative, Motion for Summary Judgement
	14	002250 – 002255	07/01/019	<u>Exhibit A</u> – Assembly Bill No. 221 – Committee on Judiciary 80 th Session (2019)
	14	002256 – 002257	2019	<u>Exhibit B</u> – 80 th Session (2019)
	15	002258 – 002271	12/11/2017	<u>Exhibit C</u> – American Geotechnical Inc’s Geotechnical Investigation
35	17	002891 – 002893	12/02/2019 1:54PM	Ninyo & Moore, Geotechnical Consultants’ Joinder to JW Zunino & Associates LLC’s Opposition to City of North Las Vegas’ Motion to Alter Judgment
44	18	003044 – 003046	12/06/2019 10:08 AM	Ninyo & Moore, Geotechnical Consultants’ Joinder to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants’ Opposition to Motion to Alter Judgment With Respect to Statute of Repose Arguments
51	19	003167 – 003174	02/07/2020 3:36 PM	Ninyo & Moore, Geotechnical Consultants’ Joinder to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants’ Motion to Dismiss on Order Shortening Time
	19	003175 – 003240	08/29/2007	<u>Exhibit A</u> – Ninyo & Moore’s Geotechnical Evaluation
	19	003241 – 003254	12/11/2017	<u>Exhibit B</u> – American Geotechnical Inc’s Geotechnical Investigation
11	14	002211 – 002213	08/23/2019 10:02 AM	Ninyo & Moore, Geotechnical Consultants’ Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, In the Alternative, Motion for Summary Judgment
15	15	002272 – 002274	09/06/2019 12:14 PM	Ninyo & Moore, Geotechnical Consultants’ Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, In the Alternative, Motion for Summary Judgment

34	17	002888 – 002890	12/02/2019 1:54 PM	Ninyo & Moore, Geotechnical Consultants’ Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Opposition to City of North Las Vegas’ Motion to Alter Judgment
58	20	003392 – 003398	02/19/2020 2:56 PM	Ninyo & Moore, Geotechnical Consultants’ Reply to City of North Las Vegas Opposition to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants’ and Joinders to Motion to Dismiss on Order Shortening Time
32	17	002689 – 002693	11/27/2019 1:15 PM	Paffenbarger & Walden, LLC and P & W Bonds, LLC’s Joinder in (1) Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Opposition to Motion to Alter Judgment; and (2) JW Zunino & Associates LLC Opposition to Motion to Alter Judgment
43	18	003040 – 003043	12/04/2019 8:35 AM	Paffenbarger & Walden, LLC and P & W Bonds, LLC’s Joinder in (1) Richardson Construction, Inc. and The Guarantee Company of North America USA’s Opposition to Motion to Alter Judgment; and (2) Melroy Engineering, Inc. d/b/a MSA Engineering Consultants’ Opposition to Motion to Alter Judgment
16	15	002275 – 002281	09/13/2019 4:22 PM	Paffenbarger & Walden, LLC and P & W Bonds, LLC’s Limited Joinder in Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, in the Alternative, Motion for Summary Judgment
21	15	002331 – 002335	09/30/2019 11:29 AM	Richardson Construction, Inc. and The Guarantee Company of North America USA’s Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, in the Alternative, Motion for Summary Judgment

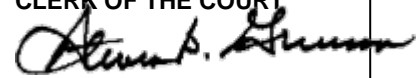
56	20	003379 – 003384	02/18/2020 5:06 PM	Richardson Construction, Inc. and The Guarantee Company of North America USA's Limited Response to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Motion to Dismiss on Order Shortening Times and All Joinder Thereto
33	17	002694 – 002887	11/27/2019 4:51 PM	Richardson Construction, Inc. and The Guarantee Company of North America USA's Opposition to Motion to Alter Judgment and Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Opposition to Motion to Alter Judgment
	17	002706 – 002723	07/11/2019	<u>Exhibit A</u> – City of North Las Vegas' Complaint
	17	002724 – 002740	08/05/2019	<u>Exhibit B</u> - Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment
	17	002741 – 002758	07/11/2019	<u>Exhibit A</u> – City of North Las Vegas' Complaint
	17	002759 – 002761	07/13/2009	<u>Exhibit B</u> – City of North Las Vegas' Complaint Exhibit 4 Notice of Completion
	17	002762 – 002767	03/25/2019	<u>Exhibit C</u> – AB421
	17	002768 – 002770	07/11/2019	<u>Exhibit D</u> – Affidavit of Aleema A. Dhalla, Esq.
	17	002771 – 002784	12/11/2017	<u>Exhibit E</u> – American Geotechnical Inc's Geotechnical Investigation
	17	002785 – 002786	07/03/2019	<u>Exhibit F</u> – Declaration of Edred T. Marsh, P.E.
	17	002787 – 002794	03/23/2007	<u>Exhibit G</u> – Senate Bill 243 - 11.258
	17	002795 – 002796	08/06/2019	<u>Exhibit C</u> – Clerk of the Court's Notice of Hearing
	17	002797 – 002815	08/20/2019	<u>Exhibit D</u> – City of North Las Vegas' Opposition to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment
	17	002816 – 002822	09/04/2019	<u>Exhibit E</u> – Richardson Construction, Inc.'s and The Guarantee Company of North America USA's Motion to Dismiss

17	002823 – 002824	09/06/2019	<u>Exhibit F</u> – Clerk of the Court’s Notice of Hearing
17	002825 – 002831	11/27/2019	<u>Exhibit G</u> – Register of Actions
17	002832 – 002833	09/10/2019	<u>Exhibit H</u> – Emails re Rescheduling of Hearing
17	002834 – 002846	09/18/2019	<u>Exhibit I</u> - Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Change Date of Hearing of Motion to Dismiss or, in the Alternative, Motion for Summary Judgment
17	002847 – 002848	08/06/2019	<u>Exhibit A</u> – Clerk of the Court’s Notice of Hearing
17	002849 – 002850	09/06/2019	<u>Exhibit B</u> – Court’s Notice of Rescheduling Motions to Dismiss and Joinders
17	002851 – 002856	09/09/019	<u>Exhibit C</u> – Emails re Rescheduling of Hearing
17	002857 – 002858	09/10/2019	<u>Exhibit D</u> – Emails re Rescheduling of Hearing
17	002859 – 002860	N/A	<u>Exhibit E</u> – Las Vegas Law Offices of Snell & Wilmer
17	002861 – 002862	09/20/2019	<u>Exhibit J</u> – Weil & Drage, APC Letter to All Counsel re Hearing of Nevada By Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment on September 27, 2019
17	002863 – 002868	09/26/2019	<u>Exhibit K</u> - Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Reply to City of North Las Vegas’ Limited Opposition to Motion to Change Date of Hearing
17	002869 – 002871	11/27/2019	<u>Exhibit L</u> – Register of Actions A-19-798346-C
17	002872 – 002874	11/27/2019	<u>Exhibit M</u> – Register of Actions A-19-798346-C
17	002875 – 002880	09/30/3019	<u>Exhibit N</u> – Richardson Construction, Inc. and The Guarantee Company of North America USA’s Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment

	17	002281 – 002887	10/17/2019	<u>Exhibit O</u> – Notice of Entry of Order Granting Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Change Date of Haring on Motion to Dismiss or, in the Alternative, Motion for Summary Judgment on Order Shortening Time
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EXHIBIT 2
PETITIONERS' APPENDIX

EXHIBIT 2
PETITIONERS' APPENDIX



1 **MSJD**

2 JOHN T. WENDLAND, ESQ.

3 (Nevada Bar No. 7207)

4 ANTHONY D. PLATT, ESQ.

5 (Nevada Bar No. 9652)

6 WEIL & DRAGE, APC

7 2500 Anthem Village Drive

8 Henderson, NV 89052

9 (702) 314-1905 • Fax (702) 314-1909

10 jwendland@weildrage.com

11 aplatt@weildrage.com

12 Attorneys for Defendant,

13 NEVADA BY DESIGN, LLC d/b/a

14 NEVADA BY DESIGN ENGINEERING CONSULTANTS

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 CITY OF NORTH LAS VEGAS,

18 Plaintiff,

19 vs.

20 DEKKER/PERICH/SABATINI LTD.;

21 RICHARDSON CONSTRUCTION, INC.;

22 NEVADA BY DESIGN, LLC D/B/A NEVADA BY

23 DESIGN ENGINEERING CONSULTANTS; JW

24 ZUNINO & ASSOCIATES, LLC; MELROY

25 ENGINEERING, INC. D/B/A MSA

26 ENGINEERING CONSULTANTS; O'CONNOR

27 CONSTRUCTION MANAGEMENT INC.; NINYO

28 & MOORE, GEOTECHNICAL CONSULTANTS;

JACKSON FAMILY PARTNERSHIP LLC D/B/A

STARGATE PLUMBING; AVERY ATLANTIC,

LLC; BIG C LLC; RON HANLON MASONRY,

LLC; THE GUARANTEE COMPANY OF NORTH

AMERICA USA; P & W BONDS, LLC;

PAFFENBARGER & WALDEN, LLC; DOES I

through X, inclusive; and ROE CORPORATIONS I

through X, inclusive,

Defendants.

) CASE NO.: A-19-798346-C

) DEPT. NO.: VIII

) **[HEARING REQUESTED]**

) **NEVADA BY DESIGN, LLC d/b/a**

) **NEVADA BY DESIGN ENGINEERING**

) **CONSULTANTS' MOTION TO**

) **DISMISS OR, IN THE**

) **ALTERNATIVE, MOTION FOR**

) **SUMMARY JUDGMENT**

) Hearing Date: _____

) Hearing Time: _____

{01599963;1}

1 **NEVADA BY DESIGN, LLC d/b/a NEVADA BY DESIGN ENGINEERING**
2 **CONSULTANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR**
3 **SUMMARY JUDGMENT**

4 COMES NOW Defendant NEVADA BY DESIGN, LLC d/b/a NEVADA BY DESIGN
5 ENGINEERING CONSULTANTS (hereinafter, "NBD"), by and through its attorneys of record,
6 the law firm of WEIL & DRAGE, APC, and pursuant to N.R.C.P. 12(b)(5), 12(f) and 56, hereby
7 files its Motion to Dismiss (or, in the alternative, Motion for Summary Judgment) against Plaintiff
8 CITY OF NORTH LAS VEGAS' (the "Plaintiff") Complaint.

9 This Motion is based on the Memorandum of Points and Authorities submitted herein, all
10 pleadings, papers, and files herein, the evidence adduced at hearing, and any oral argument this
11 Honorable Court will entertain.

12 DATED this 5th day of August, 2019.

13 WEIL & DRAGE, APC

14 */s/ John T. Wendland*

15 By: _____

16 JOHN T. WENDLAND, ESQ.

17 (Nevada Bar No. 7207)

18 ANTHONY D. PLATT, ESQ.

19 (Nevada Bar No. 9652)

20 2500 Anthem Village Drive

21 Henderson, NV 89052

22 Attorneys for Defendant,

23 NEVADA BY DESIGN, LLC D/B/A NEVADA

24 BY DESIGN ENGINEERING CONSULTANTS

DECLARATION OF JOHN T. WENDLAND, ESQ. IN SUPPORT OF THE MOTION

I, John T. Wendland, subject to the penalties of perjury under the laws of State of Nevada, hereby declare that the following statements are true and correct to the best of my knowledge and belief:

1. I am counsel of record for Defendant Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants;

2. That attached to this Motion as **Exhibit A** is a true and correct copy of Plaintiff the City of North Las Vegas' Complaint excluding any attachments (pleading only).

3. That attached to this Motion as **Exhibit B** is a true and correct copy of "Exhibit 4" to Plaintiff's Complaint, which contains the first page of the Notice of Completion.

4. That attached to this Motion as **Exhibit C** are copies of pages taken from the Nevada Legislature website (80th Session) concerning the "Effective Date" of the AB 421. The first attachment is a copy of the Bill History of AB 421 while the second attachment is a summary sheet of the Bills signed by Governor Sisolak from the 80th Session (all identified Bills save for AB 421 were removed). Both attachments are taken directly from the website and can be easily verified going to the cited https address in this Motion.

5. That attached to this Motion as **Exhibit D** is a true and correct copy of Mr. Dhalla's Affidavit of Merit attached to Plaintiff's Complaint (affidavit only).

6. That attached to this Motion as **Exhibit E** is a true and correct copy of Plaintiff's expert report from American Geotechnical, Inc. titled "Geotechnical Investigation" (report only with no appendices due to size).

7. That attached to this Motion as **Exhibit F** is a true and correct copy of the Declaration of Mr. Marsh dated July 3rd, 2019.

8. That attached to this Motion as **Exhibit G** are true and correct copies of excerpts from the legislative history of N.R.S. 11.258.

DATED this 5th day of August, 2019.

/s/ John T. Wendland
By: _____
John T. Wendland

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **PROCEDURAL AND FACTUAL HISTORY / INTRODUCTION**

4 This action arises from a complaint filed by the City of North Las Vegas (the “Plaintiff”)
5 on July 11, 2019 against various design professionals and construction entities concerning alleged
6 settlement and expansive soil issues at Fire Station 53. Per the Complaint, Plaintiff admits that the
7 certificate of occupancy for Fire Station 53 was issued on February 25, 2009. *See*, Complaint at
8 Para. 44 (pleading only) attached hereto as **Ex. A**. Plaintiff further admits that the Notice of
9 Completion was recorded on July 13, 2009. *Id.* at Para. 45; *see also*, “Exhibit 4” to the Complaint
10 attached hereto as **Ex. B**.

11 Following the completion of Fire Station 53 (“[l]ong after construction”), Plaintiff claimed
12 that it began noticing distress in the building including wall cracks, separation and interior slab
13 cracking. *Id.* at Para. 46. Plaintiff hired American Geotechnical, Inc. (“AGI”), a well used-
14 Plaintiff oriented geotechnical firm, to perform a “geotechnical investigation” of Fire Station 53.
15 *Id.* at Para. 47. AGI investigated the site and concluded in December 2017 that the distress at Fire
16 Station 53 and surrounding appurtenances arose due to a combination of excessive differential
17 settlement and expansive soil. *Id.* at Para. 48. Thereafter, the Plaintiff implemented repairs to Fire
18 Station 53 and thereafter, brought this instant lawsuit against any entity involved in the project.

19 In reviewing the Complaint, NBD immediately noticed two major defects with Plaintiff’s
20 action. First, the action, filed on July 11, 2019, is four (4) years too late as the Complaint and the
21 claims therein are time-barred pursuant to the statute of repose in N.R.S. 11.202. Second, the
22 Plaintiff’s affidavit of merit, including the expert report, raises issues with the geotechnical
23 services provided by other entities and fails to identify any relevant opinions, conclusions or
24 claims as to the services provided by NBD. Accordingly, for the reasons stated herein, the
25 Affidavit fails to comply with the requirements of N.R.S. 11.258, warranting dismissal.

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1 II.

2 **LEGAL STANDARD**

3 NRCP 12(b) authorizes the dismissal of lawsuits when they fail to state a claim upon which
4 relief may be granted. When, after construing the pleading liberally and drawing every fair
5 intendment in favor of the plaintiff, no claim has been stated, dismissal is proper. *Brown v.*
6 *Kellar*, 97 Nev. 582, 583, 636 P.2d 874, 874 (1981).

7 Rule 12(b)(5) of the Nevada Rules of Civil Procedure authorizes dismissal of a Complaint
8 when the Complaint fails to state a claim upon which relief can be granted. A Motion to Dismiss
9 is properly granted where the allegations in the challenged pleading, taken at “face value” and
10 construed favorably in the Plaintiff’s behalf, fail to state a cognizable claim for relief. *Morris v.*
11 *Bank of America Nevada*, 110 Nev. 1274, 886 P.2d 454, 456 (1994). While a court will presume
12 the truth of the plaintiff’s factual allegations, the presumption does not “necessarily assume the
13 truth of legal conclusion merely because they are cast in the form of factual allegations in [the]
14 complaint.” *McMillan v. Dept. of Interior*, 907 F.Supp. 322, 327 (D. Nev. 1995). In fact,
15 conclusory allegations and unwarranted inferences are insufficient to defeat a motion to dismiss.
16 *Comm. For Reasonable Regulation of Lake Tahoe v. Tahoe Reg’l Planning Agency*, 311 F.
17 Supp.2d 972, 984 (D. Nev. 2004). Dismissal is proper where the allegations are insufficient to
18 establish the elements of a claim for relief. *Stockmeier v. Nevada Dept. of Corrections Psych. Rev.*
19 *Panel*, 124 Nev. Adv. Op. 30, 183 P.3d 133, 135 (2008).

20 N.R.C.P. 12(f) further states: “Upon motion made by a party before responding to a
21 pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party
22 within 20 days after the service of the pleading upon the party or upon the court’s own initiative at
23 any time, the court may order stricken from any pleading any insufficient defense or any
24 redundant, immaterial, impertinent, or scandalous matter.”

25 Moreover, N.R.C.P. Rule 56(c) states that summary judgment is in order when:

26 [T]he pleadings, depositions, answers to interrogatories, and admissions on file,
27 together with the affidavits, if any, show that there is no genuine issue as to any
28 material fact and that the moving party is entitled to a judgment as a matter of
law.

1 A genuine issue of material fact exists only when the evidence is adequate to where a
2 “reasonable jury” would return a verdict for the non-moving party. *Dermody v. Reno*, 113 Nev.
3 207, 210 (1997). The Court will accept as true, only properly supported factual allegations and
4 reasonable inferences of the party opposing summary judgment. *Wayment v. Holmes*, 112 Nev.
5 232, 237 (1996) (emphasis added). “Conclusory allegations and general statements unsupported
6 by evidence creating an issue of fact will not be accepted as true.” *Id.*

7 The non-moving party¹ must show the existence of genuine issues of material (i.e.,
8 relevant) facts² through affidavits or other hard evidence. *Collins v. Union Fed. Savings & Loan*,
9 99 Nev. 284, 294, 662 P.2d 610, 618-19 (1983), *see also, Bulbman, Inc. v. Nevada Bell*, 108 Nev.
10 105, 110 825 P.2d 588, 591 (1992). The non-moving party’s documentation must be **admissible**
11 **evidence**, and he or she “is not entitled to build a case on the gossamer threads of whimsy,
12 speculation or conjecture.” *Id.* at 302, 662 P.2d at 621 (quoting *Hahn v. Sargent*, 523 F.2d 461,
13 467 (1st Cir. 1975), *cert. denied*, 425 U.S. 904, 47 L. Ed. 2d 754, 96 S. Ct. 1495 (1976)) (emphasis
14 added). Uncorroborated and self-serving testimony, without more, will not create a genuine issue
15 of material fact, necessary to preclude summary judgment. *Villiarimo v. Aloha Island Air Inc.*, 281
16 F.3d 1054, 1061 (9th Cir. 2002). Additionally, factual disputes which are irrelevant or unnecessary
17 will not defeat a motion for summary judgment. *Great West Cas. Co. v. See*, 185 F. Supp.2d 1164,
18 1167 (D. Nev. 2002).

19 If the non-moving party is unable to present any genuine issues of material fact, under
20 NRCP 56(c), the Court is to grant summary judgment to the moving party as a matter of law. *See*,
21 *Wiltsie v. Baby Grand Corp.*, 105 Nev. 291, 292, 774 P.2d 432, 433 (1989). It is important to note
22 that summary judgment is not a disfavored procedural shortcut, but is an integral part of the rules
23 of procedure as a whole. *Id.*

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26
27 ¹ The opposing party is not entitled to denial of a motion for summary judgment on mere hope that at trial he
will be able to discredit movant’s evidence. *Hickman v. Meadow Wood Reno*, 96 Nev. 782, 617 P.2d 871 (1980).

28 ² A material issue of fact is one that affects the outcome of the litigation and requires a trial to resolve the
differing versions of the truth. *See, Valley Bank v. Marble*, 105 Nev. 366, 367, 775 P.2d 1278, 1282 (1989).

In *Wood v. Safeway*, The Nevada Supreme Court provided additional clarity on the standards governing summary judgment motions. *See, Wood v. Safeway, Inc.*, 121 P.3d 1026 (Nev. 2005). Specifically, the Court “put to rest any questions regarding the continued viability of the ‘slightest doubt’ standard,” when it held that the “substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant.” *Id.* The Court continued, holding that the non-moving party “bears the burden to ‘do more than simply show that there is some metaphysical doubt’ as to the operative facts in order to avoid summary judgment being entered in the moving party’s favor.” *Id.* (citing, *Matsushita Electric Industrial Co v. Zenith Radio*, 475 U.S. 574, 586 (1986)). Summary judgment is particularly appropriate where issues of law are controlling and dispositive of the case. *American Fence, Inc. v. Wham*, 95 Nev. 788, 792, 603 P.2d 274 (1979).

Here, Plaintiff is not entitled to the relief sought in its Complaint against NBD because (1) the Complaint is time barred by N.R.S. 11.202; and (2) the pleading failed to comply with the condition precedent mandated by N.R.S. 11.258.

III.

UNDISPUTED MATERIAL FACTS

FACT #	UNDISPUTED MATERIAL FACT	EVIDENCE
1	Plaintiff recorded its Notice of Completion on July 13, 2009.	<u>Ex. A. Para. 45; Ex. B.</u>
2	Plaintiff’s Complaint is filed July 11, 2009.	<u>Id., Pg. 1 of Ex. A.</u>
3	AB 421’s Effective Date is October 1, 2019.	<u>Ex. C.</u>

IV.

LEGAL ARGUMENT

A. PLAINTIFFS’ CLAIMS ARE BARRED BY THE STATUTE OF REPOSE

NRS 11.202 in pertinent part states:

No action may be commenced against the owner, occupier or any person performing or furnishing the design, planning, supervision or observation of

1 construction, or the construction of an improvement to real property *more than 6*
2 *years after the substantial completion* of such an improvement, for the recovery of
damages for:

3 (a) *Any deficiency in the design, planning, supervision or observation of*
4 *construction or the construction of such an improvement;*

5 In determining the terms “substantial completion” as contemplated in N.R.S. 11.202,
6 N.R.S. 11.2055 in pertinent part states:

7 1. *[F]or the purposes of this section and NRS 11.202, the date of substantial completion*
8 *of an improvement to real property shall be deemed to be the date on which:*

9 (a) The final building inspection of the improvement *is conducted*;

10 (b) A notice of completion *is issued* for the improvement; or

11 (c) A certificate of occupancy *is issued* for the improvement,

12 → whichever occurs later.

13 2. *If none of the events described in subsection 1 occurs, the date of substantial*
14 *completion of an improvement to real property must be determined by the rules of*
15 *the common law.* (Emphasis added).

16 **Here**, based on Plaintiff’s Complaint, the following facts are not in dispute:

17 1. Fire Station 53’s certificate of occupancy was issued on February 25, 2009. *See, Ex. A*
18 at Para. 44 (Emphasis added); and

19 2. The Notice of Completion was recorded on July 13, 2009. *Id.* at Para. 45.

20 Accepting the allegations in the Complaint as true, the Plaintiff recorded the Notice of
21 Completion on July 13, 2009. Pursuant to the six (6) year statute of repose, the Plaintiff was
22 required to file its Complaint **on or before July 13, 2015**. *See*, N.R.S. 11.202. However,
23 Plaintiff’s Complaint against NBD was filed on July 11, 2019, *nearly four (4) years after* the
24 expiration of the statute of repose. *See, Ex. A.* Therefore, Plaintiff’s claims against NBD are time
25 barred by the statute of repose³ and NBD respectfully requests that the Court grant its Motion to
26 Dismiss, with prejudice.

27 ³ “Statutes of repose set an outside time limit, generally running from the date of substantial completion of the
28 project and with no regard to the date of the injury, after which causes of action for personal injury or property damage
allegedly caused by deficiencies in the improvements to real property may not be brought. *G&H Associates v. Earnest*
{01599963;1}

1 Given that the statute of repose has passed, NBD is uncertain as to how Plaintiff believed it
2 had the legal justification to proceed with filing its Complaint on July 11, 2019. NBD assumes
3 that the Plaintiff is relying on AB 421 which (when effective) will increase the statute of repose to
4 ten (10) years versus the current statute of repose of six (years). Assuming this is the justification,
5 it is important to note that AB 421 and its statute of repose of ten (10) years goes into effect on
6 October 1, 2019 (the Effective Date). This is from the Nevada Legislature website detailing the
7 history and Effective Date of AB 421. See, true and correct copies of language copied from the
8 Nevada Legislature website concerning AB 421,
9 <https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6799/Overview> and
10 <https://www.leg.state.nv.us/Session/80th2019/Reports/BillsSignedByGovernor.cfm> attached
11 hereto as **Ex. C⁴**. Therefore, Plaintiff has mistakenly assumed the statute of repose is ten (10)
12 years when the current statute of repose, until October 1, 2019, remains at six (6) years per N.R.S.
13 11.202.

14 **B. THE PLAINTIFF FAILED TO COMPLY WITH N.R.S. 11.258 AS AGAINST NBD**
15 **AND THEREFORE, PLAINTIFF'S CLAIMS AND COMPLAINT AGAINST NBD**
16 **MUST BE DISMISSED PURSUANT TO N.R.S. 11.259**

17 **1. The Plaintiff's Expert Report and Mr. Marsh's Affidavit Fail to Comply**
18 **with NRS 11.258**

19 The Plaintiff failed to comply with N.R.S. 11.258 when it commenced its action against
20 NBD. As required by Nevada law, Plaintiff is required to file its N.R.S. 11.258 Affidavit and
21 expert report *concurrently with the service of the first pleading in the action*. N.R.S. 11.258. The
22 Affidavit, from Plaintiff's attorney, must contain very specific statements that comply with the

23 *W. Hahn, Inc.*, 113 Nev. 265, 271, 934 P.2d 229, 233 (1997) (citing, *Lamb v. Wedgewood S. Corp.*, 308 N.C. 419,
24 302 S.E. 2d 868, 873 (1983)). "The legislature enacted the statutes of repose to protect persons engaged in the
25 planning, design and construction of improvements to real property who otherwise would endure unending liability,
26 even after they had lost control over the use and maintenance of the improvement." *Alsenz v. Twin Lakes Village, Inc.*,
108 Nev. 1117, 1120, 843 P.2d 834, 836 (1992).

27 ⁴ The Court may take judicial notice of these legislative summaries which are taken from the Nevada
28 Legislature website and are easily verifiable from Nevada's Legislature. *Mack v. Estate of Mack*, 125 Nev. 80, 91,
206 P.3d 98,106 (2009) (citing, N.R.S. 47.130(2)(b) & 150(1)). Courts may also take judicial notice of legislative
histories which are public records. *Fierle v. Perez*, 125 Nev. 728, 737 n.6, 219 P.3d 906, 912 n. 6 (2009) *overruled on*
other grounds by, Egan v. Chambers, 129 Nev. ___, ___, 299 P.3d 364, 367 (2013).

{01599963;1}

1 obligations under N.R.S. 11.258(1)(a)-(d) and also attach a report (and all supporting documents)
2 that complies with all requirements in (3)(a)-(e). If there is any failure, the “court shall dismiss an
3 action governed by NRS 11.258” when an action is “commenced against a design professional ...if
4 the attorney for the complainant fails to: (a) File an affidavit required pursuant to NRS 11.258;
5 [or] (b) File a report required pursuant to subsection 3 of NRS 11.258.” N.R.S. 11.259(1)(a)-(c).
6 Here, NBD is a “design professional” specializing in civil engineering and therefore Plaintiff is
7 required to file an Affidavit of Merit. N.R.S. 11.2565(2)(b). Secondly, the project involves a fire
8 station and therefore the claims involve design related matters of a nonresidential building or
9 structure. These two facts require the Plaintiff to fully comply with N.R.S. 11.258.

10 **i. Plaintiff’s N.R.S. 11.258 Affidavit of Merit and Expert Report fail to Comply**
11 **with the required statutory obligations:**

12 Plaintiff’s Complaint includes an Affidavit of Merit along with various attached
13 documents, including a report prepared by AGI, a geotechnical engineering firm. *See*, Affidavit of
14 Merit attached hereto as **Ex. D**. Pursuant to N.R.S. 11.258(3)(d), Plaintiff’s Affidavit of Merit
15 must attest there is a “reasonable basis in law and fact” to commence the action against NBD, a
16 civil engineering design firm. *See*, N.R.S. 11.58(1)(d). The Affidavit must also include a report
17 that contains the “[t]he⁵ conclusions of the expert and the basis for the conclusions...” *Id.* at
18 3(d)&(e).

19 In reviewing Plaintiff’s Affidavit of Merit, NBD notes that Mr. Dhalla’s representations are
20 based on AGI’s findings/conclusions in its report. However, in reviewing AGI’s report on which
21 the Affidavit is based, NBD notes that none of the opinions expressed by AGI pertain to NBD.
22 Rather, those opinions exclusively focus on subsoil/geotechnical issues prepared by other design
23 professionals. *See*, AGI’s report (due to size, appendices not attached) attached hereto as **Ex. E**.
24 ***Nowhere*** in the report does AGI present ***any*** opinions critical of NBD. *Id.* In fact, there is

25
26
27 ⁵ The use of the word “the” means: “[i]n construing statute, definite article ‘the’ particularizes the subject
28 which it precedes and is word of limitation as opposed to indefinite or generalizing force ‘a’ or ‘an.’” *Black’s Law Dictionary*, 1477 (5th Ed. 1990) (*citing, Brooks v. Zabka*, 450 P.2d 653, 655 (Colo. 1969)). Thus, the report must contain “the” opinions of AGI that is particular to each defendant party and not just a generic summary of opinions.

1 absolutely *nothing* in AGI's report discussing NBD services and design. *Id.* Stated differently, a
2 reading of AGI's report indicates there are *no* opinions from Plaintiff's expert against NBD
3 despite the clear obligation in 11.258(3)(d) for Plaintiff to include a report with "the conclusions"
4 of its expert and "the basis" for same. If there are no opinions and conclusions against NBD, then
5 Plaintiff's Affidavit and Report are irrelevant as to NBD and constitute a failure to comply with
6 the letter and intent of N.R.S. 11.258.

7 Hand in hand with the above, Plaintiff attaches a very generic declaration from Mr. Marsh.
8 Mr. Marsh, under penalty of perjury, attests that his March 11, 2017 contains his "conclusions"
9 and the "basis for the conclusions." *See*, Declaration of Marsh attached hereto as **Ex. F.** Mr.
10 Marsh concludes that "[b]ased on [his] conclusions, there is a reasonable basis for filing this
11 action." *Id.* at Item 4 ([] added for clarity).

12 While presenting a blanket statement, Mr. Marsh's Declaration fails to identify as to which
13 party or parties he is concluding there is a reasonable basis for filing this action given that Plaintiff
14 has named the entire design team including architects, M/P/E engineers, structural, the estimator,
15 civil and the geotechnical engineer. By his own Declaration, Mr. Marsh is not an "expert" in all
16 design professional fields and using his Declaration for the entire design team is wholly improper.
17 *Id.*

18 In *Otak Nevada, LLC v. Eighth Judicial District Court*, the Nevada Supreme Court held
19 that each party was required to file a separate expert report and attorney affidavit that are
20 particularized as to each party's claims. 127 Nev. 593, 599, 260 P.3d 408, 412 (2011). The *Otak*
21 Court went on to argue that requiring an expert report and affidavit particularized to each party is
22 not unreasonable as each party "must justify its claims of nonresidential construction malpractice
23 based on that party's relationship with the defendant." *Id.*

24 Taking the above holding and the statutory language in N.R.S. 11.258, it is critical that
25 both the Plaintiff's attorney (Mr. Dhalla) and Mr. Marsh, in providing their respective N.R.S.
26 11.258(1)(d) & 3(e) statements, identify if these statements pertain to each named design
27 defendant given the different scopes of work and especially given that the AGI report contains no
28 opinions or conclusions relevant to NBD. The affirmations of reasonable intent by Mr. Dhalla and

{01599963;1}

1 Mr. Marsh are further confusing given the multitude of design professionals named in the action
2 and reference parties that AGI has proffered no opinions in its report (e.g. NBD) or entities for
3 which Mr. Marsh is not qualified to opine upon (e.g. M/P/E engineering).

4 For said reasons, Plaintiff's Affidavit of Merit and Mr. Marsh's Declaration fail to comply
5 with the N.R.S. 11.258(1)(d)&(3)(d)&(e) in that the report fails to include any opinions critical of
6 NBD and by extension, there is no reasonable basis for filing an action against NBD.

7 **ii. Legislative History Supports the Argument that Plaintiff's Affidavit and**
8 **Declaration Fail to Comply with N.R.S. 11.258 Requirements**

9 The Nevada Legislature, in discussing affidavit of merit statutes intended these statutes to
10 govern all claims against design professionals and to provide assurances that the claims raised
11 were not frivolous. When N.R.S. 11.258 was debated, the various statements concerning the
12 enactment of said statute support the above statement:

- 13 1. A construction defect claim against a design professional, unlike claims against a
14 contractor or subcontractor, is a professional negligence claim. To prove a professional
15 negligence claim, you have to show the design professional failed to meet the standard
16 of care. There is only one way to prove that. You have to bring an expert to the
17 hearing to show the standard of care and that the design professional fell below the
18 standard of care. Attorneys have to find an expert to prove their case. The certificate
19 of merit requires the expert earlier in the proceedings. They review the case **to show**
20 **merit to a claim and a reasonable basis to proceed with a suit.** See, Legislative
21 History of N.R.S. 11.258 attached hereto as **Ex. G** (handwritten brackets and asterisks).
- 22 2. The public policy behind this legislation is to limit meritless lawsuits against design
23 professionals but keep access to the courts...It does not bar access to the courts, but it
24 **does ensure cases have merit.** *Id.* (Emphasis added).
- 25 3. Having expert testimony ahead of time or an affidavit **helps clarify** a legitimate claim
26 and lead to settlements. *Id.* (Emphasis added).
- 27 4. In general terms, the bill requires an attorney to file an affidavit with its initial pleading.
28 The affidavit would state that the attorney has consulted with an independent design
professional **in the appropriate field** and upon such consultation and review has
concluded that the complaint **against the design professional** has a reasonable basis in
law and fact. The **affidavit must also contain a report submitted by the**
independent design professional setting forth the basis for that professional's
opinion that there is a reasonable basis for commencing the action against the
design professional. *Id.* (Emphasis added).

- 1 5. NRS 11.258 was enacted to ensure that suit filed against a design professional have a
2 reasonable basis in law and fact that merit the expenditure of judicial time and effort.
3 The standard of proof for professional negligence requires a finding that the design
4 professional has failed to employ the standard of care and skill exercised by reputable
5 members of the same professional. This law ensures that actions brought against that
6 design professional **have a reasonable likelihood of meeting that burden of proof at**
7 **the time of trial.** *Id.* (Emphasis added).
8
9 6. It is also good litigation practice to ensure that professional negligence cases include
10 analysis generally done before the complaint is filed **so that the complaint can be**
11 **specific as to the errors alleged.** *Id.* (Emphasis added).
12
13 7. It is not a bar to bringing the suit; it accelerates something that is going to happen
14 anyway in the lawsuit. You cannot typically get to the jury or to the end of one of these
15 lawsuits **without having an expert opine on the propriety of the conduct of the**
16 **design professional.** *Id.* (Emphasis added).

17 As shown above, the Court has multiple excerpts from the legislative history of N.R.S.
18 11.258. These excerpts establish that N.R.S. 11.258 was enacted to prevent frivolous suits against
19 design professionals and required a good faith effort by a claimant to investigate their claims
20 before pursuing a design professional. The Nevada Legislature was keen on the claimant to retain
21 independent experts, qualified in the applicable fields of discipline, to provide opinions as to the
22 standard of care and any failures in same. The stated purpose of N.R.S. 11.258 was to establish
23 opinions early in the action to ensure that the claims against a design professional have merit and a
24 reasonable basis in law and fact. *Id.* These opinions were required to be supported by an expert
25 report detailing the basis for said opinions.

26 Here, AGI's report lacks any opinions as to NBD and offers no basis for criticisms against
27 NBD. These are basic requirements under Section 3(d). If there are no opinions/conclusions and
28 no basis for said opinions as to NBD, then by extension, neither the Plaintiff's counsel's nor Mr.
Marsh's statements of compliance comply with the language and intent behind N.R.S.
11.258(1)(d)&(3)(e). Stated differently, how can Mr. Marsh and Mr. Dhalla conclude there is a
reasonable basis (in law and fact) to proceed against NBD if there are no opinions concerning
NBD's services?

iii. Plaintiff's Failures Require Dismissal under N.R.S. 11.259

As shown herein, the Plaintiff's Affidavit and the AGI expert report/Declaration of Mr.

{01599963;1}

1 Marsh fail to comply with N.R.S. 11.258(1)(d)&(3)(d)&(e) given the absence of opinions directed
2 at NBD. Accordingly, any such failure is subject to N.R.S. 11.259 which specifically states:

3 1. ***The court shall dismiss*** an action involving nonresidential construction ***if the attorney***
4 ***for the complainant fails to:***

5 (a) File an affidavit required pursuant to NRS 11.258;

6 (b) File a report required pursuant to subsection 3 of NRS 11.258; or

7 (c) Name the expert consulted in the affidavit required pursuant to subsection 1 of NRS
8 11.258. NRS 11.259. (Emphasis added).

9 In line with the statutory provisions of N.R.S. 11.259, the Nevada Supreme Court, in *Otak*
10 announced that per N.R.S. 11.259, the District Court lacks discretion if the Plaintiff fails to
11 comply with any of the requirements stated in N.R.S. 11.259 and dismissal is mandatory. Indeed,
12 the *Otak* Court specifically stated, “shall dismiss” is clear and unambiguous, we must give effect to
13 that meaning and will not consider outside sources beyond that statute.” *Otak*, 127 Nev. at 598,
14 260 P.3d at 411 (citing, *City of Reno v. Citizens for Cold Springs*, 126 Nev. —, —, 236 P.3d
15 10, 16 (2010) (quoting, *NAIW v. Nevada Self-Insurers Association*, 126 Nev. —, —, 225
16 P.3d 1265, 1271 (2010)); see also, N.R.S. 0.025(1)(d) and *SNEA v. Daines*, 108 Nev. 15, 19, 824
17 P.2d 276, 278 (1992). The *Otak* Court further held that any failure to comply cannot be cured by
18 amendment because the pleading is void ab initio⁶ (void) and therefore, does not legally exist. *Id.*
19 at 127 Nev. at 599, 260 P.3d at 411.

20 Therefore, dismissal of the Complaint is not discretionary, it is mandated by NRS 11.259 –
21 based both on the clear language of NRS 11.258 and NRS 11.259 – as well as the Nevada
22 Supreme Court’s interpretation of same.

23 V.

24 CONCLUSION

25 Plaintiffs’ claims are untimely and barred by the statute of repose. Given a statute of
26 repose of six (6) years, claims arising from the roadway expired in 2015. Plaintiff’s Complaint
27 filed in 2019 is, therefore, four years too late and barred by the statute of repose. While Plaintiff

28 ⁶ “Void Ab Initio” means “from the beginning.” *Washoe Med. Ctr.*, 122 Nev. 1298 at fn. 23, 148 P.3d 790
(2006) (citing, *Black’s Law Dictionary* 5 (8th Ed. 2004)).

1 may argue that the statute of repose was changed by AB 421, said change goes into effect on
2 October 1, 2019. Until such time, the current statute remains at six (6) years.

3 Additionally, Plaintiff failed to submit a proper Affidavit of Merit and AGI's expert report
4 is devoid of any conclusions and opinions relevant to NBD. Therefore, failure to comply with
5 N.R.S. 11.258 mandates dismissal under N.R.S. 11.259.

6 For said reasons, NBD requests that the Court dismiss the Complaint under N.R.C.P.
7 12(b)(5) Failure to State a Claim; N.R.C.P. 12(f) or alternatively, N.R.C.P. 56.

8 DATED this 5th day of August, 2019.

9 WEIL & DRAGE, APC

10 */s/ John T. Wendland*

11 By: _____
12 JOHN T. WENDLAND, ESQ.
13 (Nevada Bar No. 7207)
14 ANTHONY D. PLATT, ESQ.
15 (Nevada Bar No. 9652)
16 2500 Anthem Village Drive
17 Henderson, NV 89052
18 Attorneys for Defendant,
19 NEVADA BY DESIGN, LLC D/B/A NEVADA
20 BY DESIGN ENGINEERING CONSULTANTS
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of August, 2019, service of the foregoing
NEVADA BY DESIGN, LLC d/b/a NEVADA BY DESIGN ENGINEERING
CONSULTANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR
SUMMARY JUDGMENT was made this date by electronically serving a true and correct copy of
the same, through Clark County Odyssey eFileNV, to the following parties:

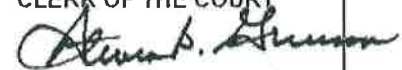
Justin L. Carley, Esq.
Aleem A. Dhalla, Esq.
SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169
Attorneys for Plaintiff,
CITY OF NORTH LAS VEGAS

/s/ Joanna Medina

Joanna Medina, an Employee of
WEIL & DRAGE, APC

Exhibit A

Exhibit A



CASE NO: A-19-798346-C
Department 8

Justin L. Carley, Esq.
Nevada Bar No. 9994
Aleem A. Dhalla, Esq.
Nevada Bar No. 14188
SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169
Tel. (702) 784-5200
Fax. (702) 784-5252
jcarley@swlaw.com
adhalla@swlaw.com

Attorneys for the City of North Las Vegas

**DISTRICT COURT
CLARK COUNTY, NEVADA**

City of North Las Vegas,

Plaintiff,

vs.

Dekker/Perich/Sabatini Ltd.; Richardson
Construction, Inc.; Nevada By Design,
LLC d/b/a Nevada By Design Engineering
Consultants; JW Zunino & Associates,
LLC; Melroy Engineering, Inc. d/b/a MSA
Engineering Consultants; O'Connor
Construction Management Inc.; Ninyo &
Moore, Geotechnical Consultants; Jackson
Family Partnership LLC d/b/a Stargate
Plumbing; Avery Atlantic, LLC; Big C
LLC; Ron Hanlon Masonry, LLC; The
Guarantee Company of North America
USA; P & W Bonds, LLC; Paffenbarger &
Walden, LLC; DOES I through X,
inclusive; and ROE CORPORATIONS I
through X, inclusive,

Defendants.

CASE NO.:

DEPT. NO.:

COMPLAINT

**EXEMPT FROM ARBITRATION UNDER
N.A.R. 3(A): SEEKS DAMAGES IN EXCESS
OF \$50,000**

The City of North Las Vegas files its Complaint against Dekker/Perich/Sabatini Ltd., Richardson Construction, Inc., Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants, JW Zunino & Associates, LLC, Melroy Engineering, Inc. d/b/a MSA Engineering Consultants, O'Connor Construction Management Inc., Ninyo & Moore, Geotechnical Consultants, Jackson Family Partnership LLC d/b/a Stargate Plumbing, Avery Atlantic, LLC, Big C LLC, Ron Hanlon Masonry, LLC, The Guarantee Company of North America USA, P & W

Bonds LLC, Paffenbarger & Walden, LLC, DOES I through X, and ROE CORPORATIONS I through X (all collectively, "Defendants"), and alleges as follows:

I. PARTIES, JURISDICTION, AND VENUE

1. The City of North Las Vegas ("City") is a political subdivision of the State of Nevada.

2. Dekker/Perich/Sabatini Ltd. ("DPS") is a Nevada professional corporation conducting business in Clark County, Nevada.

3. Richardson Construction, Inc. ("Richardson Construction") is a Nevada corporation conducting business in Clark County, Nevada.

4. Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants ("Nevada By Design") is a Nevada limited liability company conducting business in Clark County, Nevada.

5. JW Zunino & Associates, LLC ("JW Zunino") is a Nevada limited liability company conducting business in Clark County, Nevada.

6. Melroy Engineering, Inc. d/b/a MSA Engineering Consultants ("MSA") is a Nevada professional corporation conducting business in Clark County, Nevada.

7. O'Connor Construction Management Inc. ("O'Connor") is a California corporation conducting business in Clark County, Nevada.

8. Ninyo & Moore, Geotechnical Consultants ("Ninyo & Moore") is a California corporation conducting business in Clark County, Nevada.

9. Jackson Family Partnership LLC d/b/a Stargate Plumbing ("Stargate Plumbing") is a Nevada limited liability company conducting business in Clark County, Nevada.

10. Avery Atlantic, LLC ("Avery Atlantic") is a Nevada limited liability company conducting business in Clark County, Nevada.

11. Big C LLC is a Nevada limited liability company conducting business in Clark County, Nevada.

12. Ron Hanlon Masonry, LLC is a Nevada limited liability company conducting business in Clark County, Nevada.

13. The Guarantee Company of North America USA ("Guarantee Company") is a Michigan property and casualty insurer registered with the Nevada Division of Insurance, license number 1747, conducting business in Clark County, Nevada.

14. P & W Bonds LLC is a is a Nevada limited liability company conducting business in Clark County, Nevada.

15. Upon information and belief, P & W Bond also does business as Paffenbarger & Walden, LLC, an Arizona Limited Liability Company conducting business in Clark County, Nevada (collectively with P & W Bonds LLC, "P & W").

16. DOES I through X, inclusive, and ROE CORPORATIONS I through X, inclusive, are individuals, contractors, subcontractors, architects, and/or designers that were involved in the construction project at issue in this case and caused or otherwise, through their acts and/or omissions, gave rise to the claims for relief in this action. The City is ignorant of the true names and capacities of the defendants sued as DOES I through X, inclusive, and ROE CORPORATIONS I through X, inclusive, and therefore sues said defendants by fictitious names. The City will amend the Complaint to allege said defendants' true names and capacities when ascertained.

17. The events at issue occurred in Clark County, Nevada.

18. The construction, validity, performance, terms, and provisions of the contracts at issue in are governed by Nevada law.

19. The contracts were carried out in Clark County, Nevada and provide that jurisdiction and venue are appropriate in the Eighth Judicial District Court, State of Nevada.

20. The amount in controversy is in excess of \$15,000.

21. This Court has personal jurisdiction over Defendants pursuant to NRS 14.065, subject matter jurisdiction over this dispute, and the Eighth Judicial District Court is the appropriate venue.

II. GENERAL ALLEGATIONS

22. On or about February 7, 2007, the City and DPS entered into a Professional Architectural Services Agreement ("Design Agreement") for the design of fire station 53 ("Fire Station 53") and prototype fire station designs. *See* Ex. 1.

1 23. The Design Agreement specified that the City intended to construct Fire Station 53
2 to generally consist of a new 15,000 square foot building and associated onsite and offsite
3 improvements on a City-owned parcel on the northeast corner of Simmons Street and Gowan Road
4 (“Project”) and future Fire Stations 50, 58, 59, 150 through 161, and 163 (“Future Fire Stations”).

5 24. Under the Design Agreement, DPS agreed to provide the City with the following:

- 6 a. Final design services, including services related to preparation of
7 construction Contract Documents and construction cost estimates for the
8 Project;
9 b. Bidding phase support services, including services intended to support the
10 City during public bidding of the Project;
11 c. Construction management support services, including services intended to
12 support the City during construction activities associated with the Project;
13 and
14 d. Prototype design services, including services intended to provide prototype
15 designs for both 10,000 and 15,000 square foot Future Fire Stations.

16 25. As part of the Design Agreement, DPS was responsible for the professional quality,
17 technical accuracy, timely completion, and coordination of all services furnished by DPS and its
18 subconsultants.

19 26. DPS also agreed to promptly correct and revise any errors or deficiencies in its
20 design, drawings, specifications, reports and other services.

21 27. DPS contracted with several subconsultants on the Project, including Nevada By
22 Design, JW Zunino, MSA, O’Connor, and Ninyo & Moore (all collectively with DPS, “Design
23 Defendants”).

24 28. DPS retained Ninyo & Moore to perform the preliminary geotechnical evaluation
25 of the proposed site for Fire Station 53. *See* Ex. 2.

26 29. Specifically, the purpose of the Ninyo & Moore study was to evaluate the sub-
27 surface soil conditions at the site and to provide design and construction recommendations
28 regarding geotechnical aspects of the Project.

1 30. Ninyo & Moore provided its report to DPS on or about August 29, 2008.

2 31. According to the Ninyo & Moore report, the site was underlain by about 1.5 feet of
3 fill over native alluvial soil. Ninyo & Moore recommended that the fill as well as surficial loose
4 native soils be removed and replaced with a structural fill for the building pad. The recommended
5 thickness of the structural fill was 36 inches below building foundations or 48 inches below existing
6 grades.

7 32. As required by the Design Agreement, DPS created the bid set construction
8 documents, including the submittal plans and specifications for construction of Fire Station 53
9 (“Plans and Specs”).

10 33. On or about October 17, 2007, Ninyo & Moore completed its review of the Plans
11 and Specs created by DPS.

12 34. Ninyo & Moore concluded that the Plans and Specs generally conformed with its
13 geotechnical evaluation report.

14 35. On or about November 2, 2007 DPS submitted structural calculations for Fire
15 Station 53 to the City.

16 36. The City held a public open bid for the Project on December 18, 2007.

17 37. Richardson Construction submitted the lowest responsive bid and was awarded the
18 Project.

19 38. On or about January 16, 2008, the City and Richardson Construction entered into a
20 construction contract (“Construction Contract”) for the Project. *See* Ex. 3.

21 39. The Construction Contract outlined Richardson Construction’s scope of work to
22 include site clearing, earthwork, masonry, structural steel roofing, interior finishes, plumbing, fire
23 protection, heating, ventilating and air conditioning systems, electrical systems, lighting, power,
24 telephone, data-communications, landscaping, utilities, asphalt/concrete drives, concrete sidewalk
25 and patios, furnishing equipment, and other work included in the Construction Documents.

26
27
28

40. Richardson Construction subcontracted several companies to perform portions of its scope of work, including Jackson Family Partnership LLC d/b/a Stargate Plumbing, Avery Atlantic, LLC, Big C LLC, and Ron Hanlon Masonry, LLC (all collectively with Richardson Construction, “Construction Defendants”).

41. With the Construction Contract, Richardson Construction provided three bonds for the full value of the Construction Contract, dated January 22, 2018 and issued by the Guarantee Company and P & W. *See* Ex. 3.

42. These three bonds were the performance bond, bond number 70045090, (“Performance Bond”), the labor and materials payment bond, bond number 70045090, (“Payment Bond”), and the guarantee bond, bond number 70045090, (“Guarantee Bond”). *See* Ex. 3.

43. On or about March 5, 2008, the City gave Richardson Construction notice to proceed with construction of Fire Station 53.

44. A certificate of occupancy was issued for Fire Station 53 on or about February 25, 2009.

45. The notice of completion was recorded on July 13, 2009. *See* Ex. 4.

46. Long after construction of Fire Station 53 was completed, the City noticed distress to the building including wall cracks and separations, and interior slab cracking.

47. The City retained American Geotechnical, Inc. (“American Geotechnical”) to perform a geotechnical investigation of the site. The purpose of this investigation was to evaluate the site geotechnical conditions and to determine the probable cause of the distress to the building and surrounding appurtenances. The City also asked American Geotechnical to provide remedial recommendations. *See* Ex. 5.

48. On or about December 13, 2017, American Geotechnical delivered its report to the City.

49. American Geotechnical concluded that the distress to Fire Station 53 and surrounding appurtenant structures was due to a combination of excessive differential settlement and expansive soil activity.

1 50. Laboratory testing found that the soil underlying the site has high expansion
2 characteristics.

3 51. The distress to the building, as well as separations in the exterior flatwork, was
4 partly related to expansive soil influences.

5 52. Settlement of the building occurred as a result of stresses from the weight of the
6 structure and self-weight of the earth materials. Settlement was aggravated by introduction of water
7 to the subsoil.

8 53. American Geotechnical concluded that Fire Station 53 likely to be impacted by
9 continuing settlement and expansive soil influences.

10 54. In order to reduce future problems, American Geotechnical recommend, in short,
11 that the eastern portion of Fire Station 53 be underpinned by using a pile-grade beam system.

12 55. The City retained Horrocks Engineers ("Horrocks") to provide structural
13 calculations and provide a solution to the settlement effecting Fire Station 53 while preserving the
14 existing footings.

15 56. On or about April 9, 2018, Horrocks provided the City with structural calculations
16 for structural remediation of Fire Station 53.

17 57. On or about April 22, 2019, Horrocks created, and the City approved, plans for
18 structural remediation of Fire Station 53.

19 58. The City held a public open bid for the Fire Station 53 structural remediation project
20 on May 22, 2019.

21 59. The Fire Station 53 structural remediation project generally consisted of excavation,
22 demolition, leveling, and underpinning of parts of Fire Station 53.

23 60. On June 10, 2019, the City announced that CMMCM LLC d/b/a Muller
24 Construction was being recommended for award of the Fire Station 53 structural remediation
25 project.

26 61. Following the Fire Station 53 structural remediation project, additional work will
27 need to be done to the cosmetic condition of Fire Station 53 to repair damage from settling of the
28 building.

III. CLAIMS FOR RELIEF

First Claim for Relief

Breach of Contract (The Design Agreement)

Against Design Defendants, DOES I through X, and ROE CORPORATIONS I through X

62. The City repeats and incorporates every allegation contained in the preceding paragraphs.

63. The Design Agreement is a valid, existing, and enforceable contract.

64. Section VI of the Design Agreement required DPS to incorporate into all of its agreements with subconsultants that all subconsultants be bound by the terms, conditions, and obligations of the Design Agreement.

65. The City performed its obligations under the Design Agreement.

66. The Design Defendants materially breach the Design Agreement by failing to fulfill their obligations including, among other things, failing to complete their work in a good and workmanlike manner as detailed above.

67. As a direct and proximate result of the Design Defendants' breaches of the Design Agreement, the City has been damaged in excess of fifteen thousand dollars (\$15,000).

68. As a further direct and proximate result of Design Defendants' breaches of the Design Agreement, the City has been compelled to retain counsel and has incurred attorneys' fees and costs to enforce its rights and is entitled to recover same from the Design Defendants, with interest.

Second Claim for Relief

Breach of Contract (The Construction Contract)

Against Construction Defendants, DOES I through X, and ROE CORPORATIONS I through X

69. The City repeats and incorporates every allegation contained in the preceding paragraphs.

70. The Construction Contract is a valid, existing, and enforceable contract.

71. The City performed its obligations under the Construction Contract.

74. As a further direct and proximate result of Richardson Construction's breaches of the Construction Contract, the City has been compelled to retain counsel and has incurred attorneys' fees and costs to enforce its rights and is entitled to recover same from the Richardson Construction, with interest.

CORPORATIONS I through X

81. As direct and proximate result of Defendants' actions, the City has been damaged in excess of fifteen thousand dollars (\$15,000).

82. As a further direct and proximate result of Defendants' breaches of the Design Agreement and the Construction Contract, the City has been compelled to retain counsel and has incurred attorneys' fees and costs to enforce its rights and is entitled to recover same from the Defendants, with interest.

Fourth Claim for Relief

Negligence

Against Design Defendants, Construction Defendants, DOES I through X, and ROE

CORPORATIONS I through X

The City repeats and incorporates every allegation contained in the preceding paragraphs.

83. During all time periods relevant to this complaint, Defendants and each of them, owed a duty to the City to use due and reasonable care and caution in performing their work on the Project.

84. Defendants and each of them breached their duty to use due and reasonable care and caution in performing their work on the Project.

85. As direct and proximate result of Defendants' actions, the City has been damaged in excess of fifteen thousand dollars (\$15,000).

86. As a further direct and proximate result of Defendants' actions, the City has been compelled to retain counsel and has incurred attorneys' fees and costs to enforce its rights and is entitled to recover same from the Defendants, with interest.

Fifth Claim for Relief

Breach of Implied Warranty

Against Design Defendants, Construction Defendants, DOES I through X, and ROE

CORPORATIONS I through X

The City repeats and incorporates every allegation contained in the preceding paragraphs.

87. Defendants are in the business of designing, constructing, and/or supervising the construction of buildings and appearances such as the one in called for in this Project.

88. Defendants impliedly warranted that their work on the Project would be performed with care, skill, reasonable expediency, and faithfulness in a workmanlike manner.

1 89. Fire Station 53 was being used in a normal and reasonably foreseeable manner.

2 90. Defendants failed to perform the work on the Project with care, skill, reasonable
3 expediency, and faithfulness, and in a workmanlike manner as would be expected for this type of
4 work.

5 91. As a direct and proximate result of Defendants' breaches of implied warranty, the
6 City has been damaged in excess of fifteen thousand dollars (\$15,000).

7 92. As a further direct and proximate result of Defendants' breaches of implied
8 warranty, the City has been compelled to retain counsel and has incurred attorneys' fees and costs
9 to enforce its rights and is entitled to recover same from the Defendants, with interest.

10 **Sixth Claim for Relief**

11 ***Claim on Performance Bond***

12 ***Against the Guarantee Company and P & W***

13 93. The City repeats and incorporates every allegation contained in the preceding
14 paragraphs.

15 94. Pursuant to the requirements of NRS 339.025 and the Construction Contract,
16 Richardson Construction provided the Performance Bond for 100% of the Construction Contract
17 amount concurrent with execution of the Construction Contract.

18 95. The Guarantee Company issued the Performance Bond in the amount of
19 \$4,704,000.00 naming the City as the owner/obligee, and the Guarantee Company as surety, with
20 P & W as resident agent.

21 96. Through the Performance Bond, the Guarantee Company agreed that upon the
22 failure of Richardson Construction to adequately perform and/or complete the Project as stated in
23 the Construction Contract, the Guarantee Company would pay the City up to an amount equal to
24 the full penal sum of the Performance Bond.

25 97. The City has fully performed its obligations under the Construction Contract.

26 98. Defendants have materially breached the Construction Contract, and work on the
27 Project has not been fulfilled and completed to the satisfaction of the City.
28

101. As a further direct and proximate result of the Guarantee Company's and P&W's actions, the City has been compelled to retain counsel and has incurred attorneys' fees and costs to enforce its rights, and is entitled to recover same from the Guarantee Company and P&W actions, together with interest.

Against the Guarantee Company and P & W

107. Defendants have materially breached the Construction Contract, and work on the Project has not been fulfilled and completed to the satisfaction of the City, with payments outstanding to adequately complete the work performed.

108. Defendants' breaches triggered the Guarantee Company's obligation under the Payment Bond and is now liable to the City for all damages flowing from Defendants' breaches of the Construction Contract.

109. As direct and proximate result of the Guarantee Company's and P&W's actions, the City has been damaged in excess of fifteen thousand dollars (\$15,000).

110. As a further direct and proximate result of the Guarantee Company's and P&W's actions, the City has been compelled to retain counsel and has incurred attorneys' fees and costs to enforce its rights, and is entitled to recover same from the Guarantee Company and P&W actions, together with interest.

Eighth Claim for Relief

Claim on Guarantee Bond

Against the Guarantee Company and P & W

111. The City repeats and incorporates every allegation contained in the preceding paragraphs.

112. Pursuant to the requirements of NRS 339.025 and the Construction Contract, Richardson Construction provided the Guarantee Bond for 100% of the Construction Contract amount concurrent with execution of the Construction Contract.

113. The Guarantee Company issued the Guarantee Bond naming the City as the owner/obligee, and the Guarantee Company as surety, with P & W as resident agent.

114. Through the Guarantee Bond, the Guarantee Company agreed to repair or replace any or all of the work performed under the Construction Contract, or pay the costs of repair.

115. The City has fully performed its obligations under the Construction Contract.

116. Defendants have materially breached the Construction Contract, and work on the Project has not been fulfilled and completed to the satisfaction of the City.

117. Defendants' breaches triggered the Guarantee Company's obligation under the Performance Bond and is now liable to the City for all damages flowing from Defendants' breaches of the Construction Contract.

1 118. As direct and proximate result of the Guarantee Company's and P&W's actions, the
2 City has been damaged in excess of fifteen thousand dollars (\$15,000).

3 119. As a further direct and proximate result of the Guarantee Company's and P&W's
4 actions, the City has been compelled to retain counsel and has incurred attorneys' fees and costs to
5 enforce its rights, and is entitled to recover same from the Guarantee Company and P&W actions,
6 together with interest.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, the City prays for relief as follows:

9 **ON THE FIRST, SECOND, THIRD, FOURTH, AND FIFTH CLAIMS FOR RELIEF**

10 1. For judgment against named Defendants and in favor of the City in an amount to be
11 proven at trial in excess of fifteen thousand dollars (\$15,000);

12 **ON THE SIXTH CLAIM FOR RELIEF**

13 1. For judgment against the Guarantee Company and P & W in the full penal sum of
14 the Performance Bond;

15 **ON THE SEVENTH CLAIM FOR RELIEF**

16 2. For judgment against the Guarantee Company and P & W in the full penal sum of
17 the Payment Bond;

18 **ON THE EIGHTH CLAIM FOR RELIEF**

19 3. For judgment against the Guarantee Company and P & W for the full cost of repairs
20 to Fire Station 53;

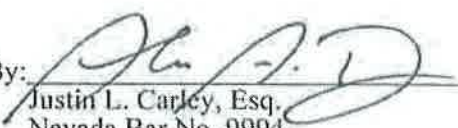
ON ALL CLAIMS FOR RELIEF

1. For attorneys' fees;
2. For costs of the suit; and
3. For such other relief that this Court deems appropriate at the conclusion of this action.

Dated: July 11, 2019

SNELL & WILMER L.L.P.

By:


Justin L. Carley, Esq.
Nevada Bar No. 9994
Aleem A. Dhalla, Esq.
Nevada Bar No. 14188
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169

Attorneys for the City of North Las Vegas

AFFIDAVIT OF ALEEM A. DHALLA, ESQ.

STATE OF NEVADA)
COUNTY OF CLARK) ss.

I, Aleem A. Dhalla, Esq., being first duly sworn, depose and say as follows:

1. I am an attorney with the law firm of SNELL & WILMER L.L.P., counsel for the City of North Las Vegas in this lawsuit.

2. I have personal knowledge of all matters stated below and would competently be able to testify to them if required to do so.

3. I make this affidavit pursuant to NRS 11.258.

4. In compliance with the requirements of NRS 11.258 (1), I:

- a. Have reviewed the facts of this case;
- b. Have consulted with an expert, American Geotechnical, Inc., regarding this case;
- c. Reasonably believe the expert who was consulted is knowledgeable in the relevant discipline involved in the action; and
- d. Have concluded, based on my review and consultation with the expert, that the action has a reasonable basis in law and fact.

5. Additionally, in compliance with the requirements of NRS 11.258 (3), I have attached:


- a. A resume of the expert consulted in this matter, Edred T. Marsh, P.E. of American Geotechnical Inc (Ex. 6);
- b. A statement that the expert is experienced in each discipline which is the subject of the report, specifically in the fields of geotechnical, civil, and forensic engineering (Ex. 7);
- c. A copy of each nonprivileged document reviewed by the expert in preparing the report (Exs. 2, 8, 9, 10);
- d. The conclusions of the expert and the basis for the conclusions (Ex. 5); and

1 e. A statement that the expert has concluded that there is a reasonable basis for filing
2 the action (Ex. 7).
3

4
5 
Aleem A. Dhallia, Esq.

6 STATE OF NEVADA
7 COUNTY OF CLARK

8 Subscribed and sworn to (or affirmed) before me on this
9 11th day of July, 2019.

10 
11 Notary Public

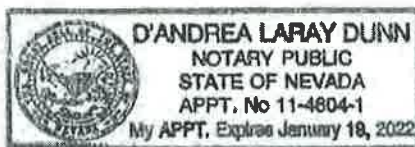


Exhibit B

Exhibit B

EXHIBIT 4

2

20090713-0000778

Fee: \$15.00

N/C Fee: \$0.00

07/13/2009

08:13:23

T20090716

Requestor:

NORTH LAS VEGAS CITY

Debbie Conway

JRV

Clark County Recorder Pgs: 2

NOTICE OF COMPLETION
Parcel # 139-08-601-010

NOTICE is hereby given that:

1. The undersigned is OWNER of the interest stated below in the property hereinafter described.
2. The NAME (including that of the undersigned), and ADDRESS of every person owning any interest in such property is as follows:

CITY OF NORTH LAS VEGAS
2200 CIVIC CENTER DRIVE
NO. LAS VEGAS, NV 89030

3. The names and addresses of the transferors of the undersigned owner: (to be shown if the under-signed is a successor in interest of the owner who caused the improvement to be constructed, etc.)
4. A work of improvement on the property hereinafter described was completed on

March 17, 2009

5. The name of the CONTRACTOR, if any, for such work of improvement was

Richardson Construction, Inc.

6. The property on which said work of improvement was completed is in the City of North Las Vegas, County of Clark, State of Nevada, and is described as:

The Fire Station #53 Project includes construction of a 16,000 square foot building with 4 apparatus bays, 14 dorms, kitchen, training, exercise and locker rooms, emergency generator, paved parking lot, landscaping, and associated onsite and offsite improvements. The station is located on a City-owned parcel at 2800 West Gowan Road, east of Simmons Street.

Exhibit C

Exhibit C

AB421

- Overview
- Text
- Amendments (3)
- Votes (2)
- Fiscal Notes (1)
- Meetings (5)
- Exhibits (28)

Summary:

Revises provisions relating to construction. (BDR 3-841)

Title:

AN ACT relating to construction; revising provisions relating to the information required to be included in a notice of a constructional defect; removing provisions requiring the presence of an expert during an inspection of an alleged constructional defect; establishing provisions relating to a claimant pursuing a claim under a builder's warranty; removing certain provisions governing the tolling of statutes of limitation and repose regarding actions for constructional defects; revising provisions relating to the recovery of damages proximately caused by a constructional defect; increasing the period during which an action for the recovery of certain damages may be commenced; revising the prohibition against a unit-owners' association pursuing an action for a constructional defect unless the action pertains exclusively to the common elements of the association; and providing other matters properly relating thereto.

Introduction Date:

Monday, March 25, 2019

Fiscal Notes:

Effect on Local Government: No.

Effect on the State: No.

Digest:

⊕ Existing law provides that before a claimant commences an action or amends a complaint to add a cause of action for a constructional defect against a contractor, subcontractor, supplier or design professional, the claimant: (1) is required to give written notice to the contractor; and (2) if the contractor is no longer licensed or acting as a contractor in this State, is authorized to give notice to any subcontractor, supplier or design professional known to the claimant who may be responsible for the constructional defect. Existing law also requires that such a notice identify in specific detail each defect, damage and injury to each residence or appurtenance that is the subject of the claim. (NRS 40.645) Section 2 of this bill instead requires that such a notice specify in reasonable detail the defects or any damages or injuries to each residence or appurtenance that is the subject of the claim. Existing law requires that after notice of a constructional defect is given by a claimant to a contractor, subcontractor, supplier or design professional, the claimant and, if the notice includes an expert opinion concerning the alleged constructional defect, the expert or his or her representative with knowledge of the alleged defect must: (1) be present when a contractor, subcontractor, supplier or design professional conducts an inspection of the alleged constructional defect; and (2) identify the exact location of each alleged constructional defect. (NRS 40.647) Section 3 of this bill removes the requirement that an expert who provided an opinion concerning the alleged constructional defect or his or her representative be present at an inspection and revises certain other requirements. Existing law provides that if a residence or appurtenance that is the subject of a claim is covered by a homeowner's warranty purchased by or on behalf of the claimant: (1) the claimant is prohibited from sending notice of a constructional defect or pursuing a claim for a constructional defect unless the claimant has submitted a claim under the homeowner's warranty and the insurer has denied the claim; and (2) notice of a constructional defect may only include claims that were denied by the insurer. (NRS 40.650) Section 4 of this bill removes such provisions, and section 1.5 of this bill replaces the term "homeowner's warranty" with "builder's warranty" and clarifies that such a warranty is not a type of insurance. Section 4 provides that if a residence or appurtenance that is the subject of a claim is covered by a builder's warranty, the claimant is required to diligently pursue a claim under the builder's

warranty. Section 5.5 of this bill makes conforming changes. Existing law also provides that if a residence or appurtenance that is the subject of a claim is covered by a homeowner's warranty purchased by or on behalf of the claimant, statutes of limitation or repose are tolled from the time the claimant submits a claim under the homeowner's warranty until 30 days after the insurer rejects the claim, in whole or in part. (NRS 40.650) Section 4 removes this provision. Existing law establishes the damages proximately caused by a constructional defect that a claimant is authorized to recover, including additional costs reasonably incurred by the claimant for constructional defects proven by the claimant. (NRS 40.655) Section 5 of this bill removes the requirement that such costs be limited to constructional defects proven by the claimant. Existing law prohibits an action for the recovery of certain damages against the owner, occupier or any person performing or furnishing the design, planning, supervision or observation of construction, or the construction of an improvement to real property, from being commenced more than 6 years after the substantial completion of such an improvement. (NRS 11.202) Section 7 of this bill increases such a period to 10 years after the substantial completion of such an improvement. Section 7 also: (1) authorizes such an action to be commenced at any time after the substantial completion of such an improvement if any act of fraud caused a deficiency in the design, planning, supervision or observation of construction or the construction of such an improvement; and (2) exempts lower-tiered subcontractors from such an action in certain circumstances. Existing law prohibits a unit-owners' association from instituting, defending or intervening in litigation or in arbitration, mediation or administrative proceedings in its own name on behalf of itself or units' owners relating to an action for a constructional defect unless the action pertains exclusively to common elements. (NRS 116.3102) Section 8 of this bill requires that such an action for a constructional defect pertain to: (1) common elements; (2) any portion of the common-interest community that the association owns; or (3) any portion of the common-interest community that the association does not own but has an obligation to maintain, repair, insure or replace because the governing documents of the association expressly make such an obligation the responsibility of the association. Existing law authorizes a unit-owners' association to enter the grounds of a unit to conduct certain maintenance or remove or abate a public nuisance, or to enter the grounds or interior of a unit to abate a water or sewage leak or take certain other actions in certain circumstances. (NRS 116.310312) Section 8.5 of this bill provides that such provisions do not give rise to any rights or standing for a claim for a constructional defect.

Primary Sponsor

Assembly Committee on Judiciary

Most Recent History Action

Chapter 361.

(See full list below)

Upcoming Hearings

None scheduled

Past Hearings

Meeting Video Link	Committee	Date	Time
View archived video	Assembly Judiciary	Mar 25, 2019	8:30
View archived video	Assembly Judiciary	Apr 09, 2019	8:00
View archived video	Assembly Judiciary (Work Session)	Apr 12, 2019	8:00
View archived video	Senate Judiciary	May 15, 2019	8:00
View archived video	Senate Judiciary (Work Session)	May 17, 2019	8:00

Final Passage Votes

Assembly Final Passage
(1st Reprint)
Apr 23, 2019
Yeas: 27, Nays: 13, Excused: 2
Senate Final Passage
(3rd Reprint)
May 24, 2019
Yeas: 20, Nays: 0, Excused: 1

Conference Committees

None scheduled

Bill Text

As Introduced Reprint 1 Reprint 2 Reprint 3 As Enrolled

Adopted Amendments

Amendment 640 Amendment 808 Amendment 963

Bill History  Sort Descending

Date	Action
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Mar 25, 2019	Read first time. Referred to Committee on Judiciary. To printer.
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Mar 26, 2019	From printer. To committee.
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Apr 23, 2019	From committee: Amend, and do pass as amended. Declared an emergency measure under th Dispensed with reprinting. Read third time. Passed, as amended. Title approved, as amended.
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Apr 24, 2019	From printer. To engrossment. Engrossed. First reprint. To Senate. In Senate. Read first time.
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May 23, 2019	From committee: Amend, and do pass as amended. Placed on Second Reading File. Read sec
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May 24, 2019	From printer. To re-engrossment. Re-engrossed. Second reprint. Read third time. Amended. (as amended. Title approved, as amended. (Yeas: 20, Nays: None, Excused: 1.) To printer.
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Date	Action
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May 25, 2019	From printer. To re-engrossment. Re-engrossed. Third reprint. To Assembly.
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May 27, 2019	In Assembly.
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May 28, 2019	Senate Amendment Nos. 808 and 963 concurred in. To enrollment.
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Jun 01, 2019	Enrolled and delivered to Governor.
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Jun 03, 2019	Approved by the Governor.
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Jun 05, 2019	Chapter 361.
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- **Effective October 1, 2019.**

Bills Signed by the Governor

80th (2019) Session

Order By Chapter | Order By Bill

...

<u>AB421</u>	Chapter	Effective October 1,	<i>Revises provisions relating to</i>
361		2019.	<i>construction. (BDR 3-841)</i>

Exhibit D

Exhibit D

AFFIDAVIT OF ALEEM A. DHALLA, ESQ.

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, Aleem A. Dhalla, Esq., being first duly sworn, depose and say as follows:

1. I am an attorney with the law firm of SNELL & WILMER L.L.P., counsel for the City of North Las Vegas in this lawsuit.

2. I have personal knowledge of all matters stated below and would competently be able to testify to them if required to do so.

3. I make this affidavit pursuant to NRS 11.258.

4. In compliance with the requirements of NRS 11.258 (1), I:

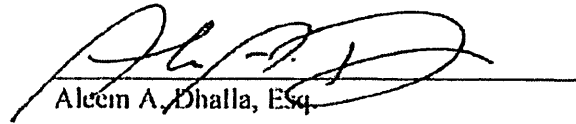
- a. Have reviewed the facts of this case;
- b. Have consulted with an expert, American Geotechnical, Inc., regarding this case;
- c. Reasonably believe the expert who was consulted is knowledgeable in the relevant discipline involved in the action; and
- d. Have concluded, based on my review and consultation with the expert, that the action has a reasonable basis in law and fact.

5. Additionally, in compliance with the requirements of NRS 11.258 (3), I have attached:

- a. A resume of the expert consulted in this matter, Edred T. Marsh, P.E. of American Geotechnical Inc (Ex. 6);
- b. A statement that the expert is experienced in each discipline which is the subject of the report, specifically in the fields of geotechnical, civil, and forensic engineering (Ex. 7);
- c. A copy of each nonprivileged document reviewed by the expert in preparing the report (Exs. 2, 8, 9, 10);
- d. The conclusions of the expert and the basis for the conclusions (Ex. 5); and

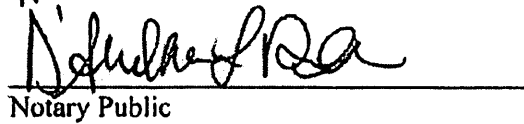
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e. A statement that the expert has concluded that there is a reasonable basis for filing the action (Ex. 7).


Aleem A. Dhalla, Esq.

STATE OF NEVADA
COUNTY OF CLARK

Subscribed and sworn to (or affirmed) before me on this
11th day of July, 2019.


Notary Public

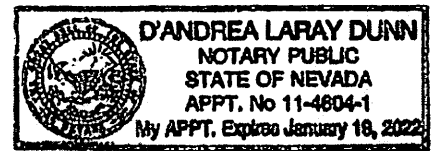


Exhibit E

Exhibit E

GEOTECHNICAL INVESTIGATION

FIRE STATION 53

2804 W. Gowan Road
North Las Vegas, Nevada

December 11, 2017
FN 40779-01



Corporate Office:
22725 Old Canal Rd.
Yorba Linda, CA 92887

2640 Financial Court
Suite A
San Diego, CA 92117

3100 Fite Circle
Suite 103
Sacramento, CA 95827

5600 Spring Mtn. Rd.
Suite 201
Las Vegas, NV 89146



**American
Geotechnical Inc.**
GEOTECHNICAL ENGINEERING / MATERIALS TESTING & INSPECTION

WWW.AMGT.COM

PETAPP.000695

December 11, 2017

File No. 40779-01

Mr. Dale Daffern
CITY OF NORTH LAS VEGAS
50 E. Brooks Avenue
North Las Vegas, Nevada 89030

Subject: **GEOTECHNICAL INVESTIGATION**
FIRE STATION 53
2804 W. Gowan Road
North Las Vegas, Nevada

Dear Mr. Daffern:

In accordance with your authorization, American Geotechnical has performed a geotechnical investigation of the site. The purpose of this investigation was to evaluate the site geotechnical conditions and to determine the probable cause(s) of the existing distress to the building and surrounding appurtenances and to provide remedial recommendations for improvement of adverse site conditions. Our findings, conclusions, and recommendations for remedial repairs are presented below. We have included concept repair plans and the backup calculations that we believe are adequate to provide to specialty contractors for determining preliminary cost estimates for remedial work at the site. These concept repair plans can be revised after a discussion of the final intentions are determined for the project going forward. If final repair plans are desired, our office or an engineering firm of your choice can prepare final repair drawings for remediation. It is recommended that a meeting take place to discuss these findings and recommendations. These concept repair recommendations can be revised as needed based on the results of the outcome of a meeting with the concerned parties.

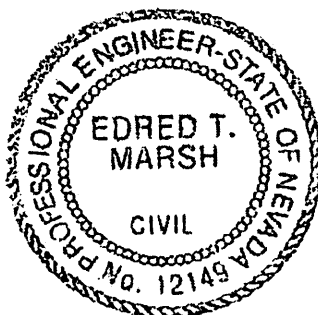
American Geotechnical and the undersigned appreciate the opportunity to work with you on this project. Should you have any questions regarding the information contained herein, please do not hesitate to contact us.

Respectfully submitted,

AMERICAN GEOTECHNICAL, INC.



Edred T. Marsh
Principal Engineer
P.E. 12149



AA/ETM: km

Distribution: Mr. Dale Daffern



Alva (Arumugam) Alvappillai
Principal Engineer

Via E-Mail Only

22725 Old Canal Road, Yorba Linda, CA 92887 - (714) 685-3900 - FAX (714) 685-3909
2640 Financial Court, Suite A, San Diego, CA 92117 - (858) 450-4040 - FAX (858) 457-0814
3100 Fite Circle, Suite 103, Sacramento, CA 95827 - (916) 368-2088 - FAX (916) 368-2188
5600 Spring Mountain Road, Suite 201, Las Vegas, NV 89146 - (702) 562-5046 - FAX (702) 562-2457

PET.APP.000696

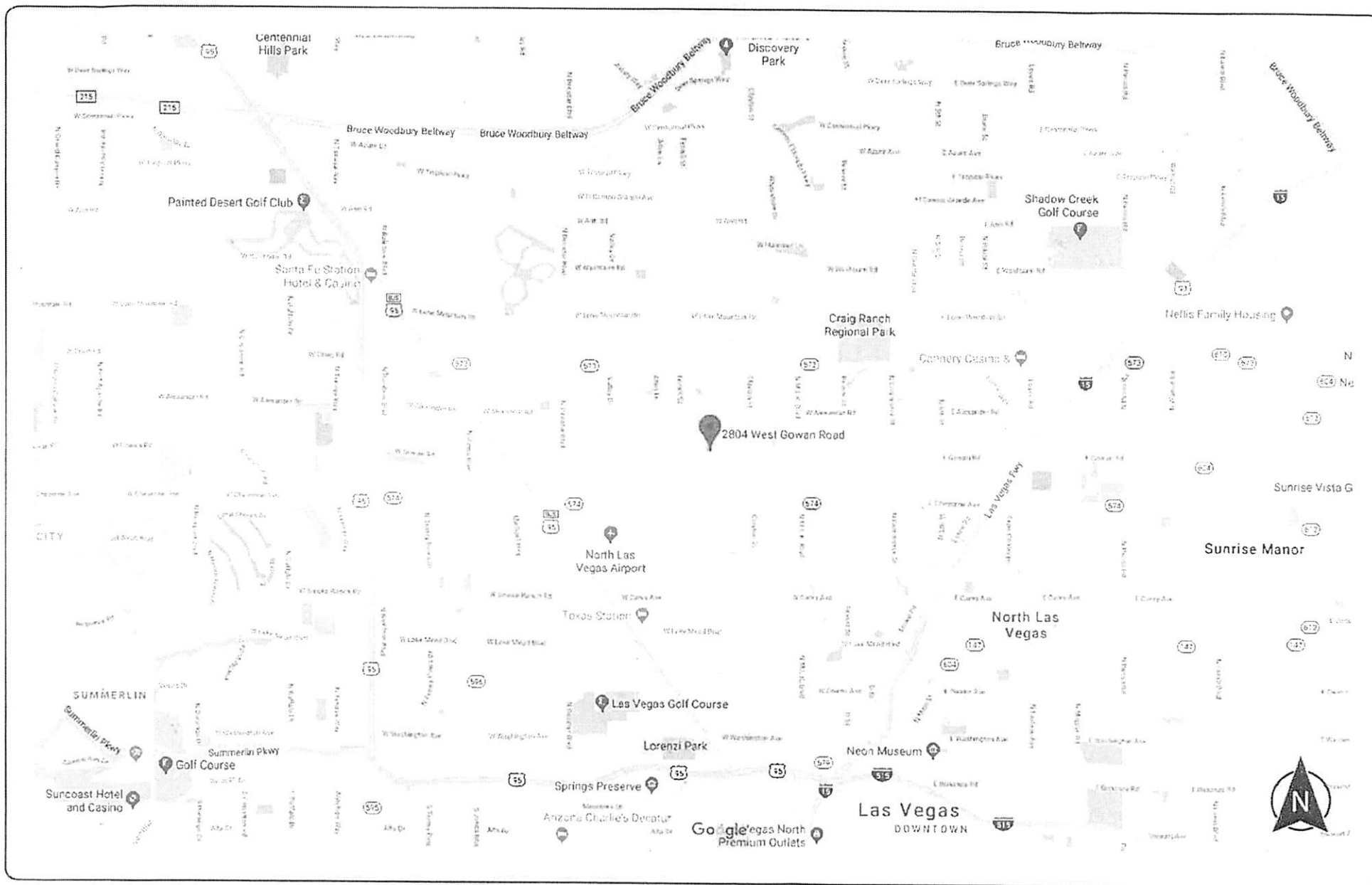
1.0 SCOPE OF WORK

The scope of work performed during this investigation included the following:

- Visual review and photo documentation of the site conditions;
- A manometer floor-level survey of the east portion of the building;
- Subsurface exploration consisting of the excavation of a test pit (AGTP-1) and drilling of three small-diameter borings (AGSB-1, AGBS-2 and AGBS-3);
- Collection of relatively undisturbed and bulk samples of representative materials encountered in the borings and test pit excavation;
- Laboratory testing of soil samples obtained during the subsurface effort;
- Engineering analyses of field and laboratory data; and,
- Preparation of this report summarizing our field investigation, findings, conclusions, and remedial recommendations.

2.0 SITE DESCRIPTION AND HISTORY

The site is located on the north side of W. Gowan Road and is presently occupied with a single-story fire station building and associated appurtenant improvements on a relatively level pad. The building has masonry as well as metal stud bearing walls and is supported on isolated shallow pad and continuous foundation footings. The interior of the building has a conventional slab-on-grade floor system. The front of the building faces south to W. Gowan Road and a 4 to 4 ½ foot high masonry retaining wall is located around the southeast corner of the building. Exterior improvements include a concrete driveway and parking areas as well as typical desert landscaping around the building. A site location map is shown on **Plate 1** and an aerial view of the site is presented on **Plate 2**.



AMERICAN GEOTECHNICAL, INC.

22725 Old Canal Road, Yorba Linda, CA 92887

(714) 685-3900 (714) 685-3909

www.amgt.com

TITLE:

SITE LOCATION MAP

2804 West Gowan Rd., N. Las Vegas, AZ

SCALE:

N.T.S

DATE:

DEC 2017

FILE NO.:

40779-01



PETAPP.000698

PLATE

1



LEGEND

- 
AGSB-3 Approximate Location of Small Diameter Boring
- 
AGTP-1 Approximate Location of Test Pit



AMERICAN GEOTECHNICAL, INC.

22725 Old Canal Road, Yorba Linda, CA 92887

☎ (714) 685-3900 ☎ (714) 685-3909

www.amgt.com

TITLE:

Aerial View/Test Location Map

2804 West Gowan Rd., N. Las Vegas, AZ

SCALE:

N.T.S

DATE:

DEC 2017

FILE NO.:

40779-01

PET.APP.000699

PLATE

2

Based on our review of available documents, Ninyo & Moore performed the preliminary geotechnical investigation for the project and provided recommendations for the design and construction of the site improvements. According to the Ninyo & Moore report dated May 11, 2007, the site was underlain by about 1.5 feet of fill over native alluvial soil. They recommended that the fill as well as surficial loose native soils be removed and replaced with a structural fill for the building pad. The recommended thickness of the structural fill was 36 inches below building foundations or 48 inches below existing grades. As we understand, the grading for the project was performed in the latter part of 2007 or early 2008 followed by the construction of the building and other site improvements.

Distress to the building in the form of wall cracks and separations, and some interior slab cracking was observed and reported after the construction for the project. In addition, damage to exterior appurtenant structures was noted and brought to our attention. Most of the damage was concentrated along the eastern portion of the building as well as the front south east portion of the lot.

3.0 OBSERVED DAMAGE

Our review indicated various cracks and separations mainly in the eastern portion of the building and surrounding exterior areas. Separations in the masonry walls were documented up to 1 to 1 ½ inches in width. Up to ½ inch wide cracks were also noted in the exterior stucco walls. The building was also found to have separations up to ½ to 1 inch from the exterior flatwork. The interior of the building possessed a concentration of cracking along the eastern side of the structure. Wall cracks ranging from 1/32 to 1/62 inch in width were documented and slab cracks were also documented through the interior floor slab where the steep transitions occurred in the manometer floor level survey. Representative photographs taken at the time of our review are presented in **Appendix B** for reference.

4.0 FLOOR-LEVEL SURVEY

During our site review, a manometer floor-level survey was conducted in the main portion of the structure that had been affected. The purpose of this survey was to evaluate the relative levelness of the foundation system. A manometer is a single-reservoir, direct-reading device commonly used for the purpose of measuring floor elevations. At the free end of the manometer device, water within the clear plastic tubing moves up and down with respect to an inverted scale to allow for the direct reading of elevation changes. The device has a sharp point fixed to the bottom of the scale, which can easily penetrate carpet without damage.

Measurements were taken at close intervals and corrected for varying floor heights and thickness of floor coverings. All point readings have been based on the same datum. By evaluating the different readings, floor deformation can be easily determined by conventional contouring techniques. The attached **Plate 3** presents the results of the manometer survey. As shown, the maximum difference in elevation across the floor is approximately 3.3 inches. The contour pattern indicates a clear downward deformation of the floor toward the east side of the building. On average, most foundation systems are constructed within $\frac{1}{2}$ of an inch level. The measured floor differential is considered excessive and appears to be related to differential settlement along the eastern portion of the structure along with expansive soil influence.

5.0 SUBSURFACE INVESTIGATION

Our subsurface investigation included the excavation of a test pit (AGTP-1) and drilling of three small-diameter borings (AGSB-1 through AGBS-3).

Test pit AGTP-1 was excavated on the east side of the building between the building foundation and the top of an exterior retaining wall. The excavation was terminated at 8.5 feet below ground surface at the top of a very hard and well cemented soil layer. Fill material consisting generally of a stiff sandy clay was documented for the entire depth of the excavation. The building footing exposed within the excavation was found to have approximately 21 inches of embedment into the soil. Up to a 1.0 inch deep void was also observed directly below the footing and the subgrade soil.

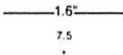




The borings AGBS-1, AGBS-2 and AGBS-3 were drilled within the planter areas located in the east, north and west sides of the building, respectively. The borings were advanced to a maximum depth of approximately 46.5 feet from the ground surface. The materials encountered in all of our borings included silty and sandy clay materials. In boring AGBS-1, a stiff to hard layer was encountered between 2.5 and 4 feet below ground surface. However, below this layer and to a depth of 28 feet, there were interbedded soft to firm silty and sandy clay layers. Below 28 feet, the materials were found to be generally firm to stiff. Similar interbedded soft and stiff soil layers were also encountered in borings AGBS-2 and AGBS-3.

Representative samples of subsurface materials were collected and forwarded to the laboratory for the purpose of estimating material properties for the use in subsequent engineering evaluations. The approximate locations of the test pit and borings are shown on **Plate 2**. Detailed logs are presented in **Appendix C**.

SCALE: 1" = 15'

[illegible]

Date of Survey: 7/12/2017

Overall Differential [with garage stemwalls]	3.30 Inches [NA]
Steepest Gradient Over 15 Feet	1:97 (1.85")
	Contours are of relative elevation in inches Survey Point / Relative elevation
	Low Point
	High Point
 	Areas that exceeds 1/300 ratio Areas that exceeds 1/240 ratio



6.0 LABORATORY TESTING

Laboratory testing was performed on samples collected during our field exploration. Samples were tested for the purpose of estimating material properties for the use in subsequent engineering evaluations. Laboratory tests included in-situ moisture/density, maximum density and optimum moisture content, expansion index, swell/collapse potential, direct shear testing and chemical testing. A summary of our laboratory test results is presented in **Appendix D**. As shown in this summary, the soil underlying the site has high expansion characteristics with an Expansion Index (EI) value of 118. Test results also indicate collapse (settlement) potential of site soils.

7.0 CONCLUSIONS

Excessive damage exists generally along the eastern and southeastern portions of the site. The existing distress includes various wall cracks and separations, slab cracking and damage to appurtenant structures. Excessive slab/foundation deformation exists in this area, which corresponds to the damaged areas.

Based on the results of the investigation of the site, it is our opinion that the existing distress to the building and surrounding appurtenant structures is due to a combination of excessive differential settlement and expansive soil activity. As discussed, the soil underlying the site includes interbedded layers of loose and stiff alluvial materials. Laboratory testing of soil samples retrieved from the site indicates that the loose soil layers have collapse or settlement potential when saturated. Settlement occurs as a result of the stresses imposed and most significant stresses usually result from the weight of the structure as well as the self-weight of the earth materials. Settlement can be aggravated by introduction of water to the subsoil. At the site, an up to 4 ½ foot high retaining wall exists near the southeast portion of the building. The building foundation is located in or within the retaining wall backfill. It appears that settlement of retaining wall backfill and/or fill beneath the retaining wall and main structure is also contributing to the damage observed.

The surface soil at the site was found to possess high expansive characteristics. Soil with a significant clay fraction tends to possess expansive characteristics. Expansive soil heaves when water is introduced and shrinks as it dries. Progressive heaving and shrinking associated with moisture changes in the expansive soil can also cause foundation settlement. The existing distress to the building as well as separations in the exterior flatwork appears to be partly related to expansive soil influences. The slab/foundation system and appurtenant structures are not considered adequate for the expansive soil conditions present at the site.

8.0 REMEDIAL RECOMMENDATIONS

The building at the site is likely to be impacted by continuing settlement and expansive soil influences. In order to reduce future problems, we recommend that the eastern portion of the building be underpinned by using a pile-grade beam system. The best method is to underpin the entire interior and exterior building foundations to below depths affected by the soil influences. However, realizing some risk, this underpinning can be limited to the perimeter footing in conjunction with releveling of the affected building area by mud jacking or foam/grout injection. We recommend that the releveling be performed first followed by the underpinning of the perimeter footings. The releveling effort should result in no more than a maximum of 1.0 inch overall differential between the highest and lowest points. The steepest local gradient for floor level tolerance should be limited to 1/4-inch over any 10-foot distance. The contractor should perform elevation surveys before and after the releveling to confirm the levelness of the building floor and provide to the project engineer for review. The contractor would be responsible for selecting grouting locations; however, we recommend that injection points not to exceed 8 feet from center to center. Care should also be taken not to damage the existing utilities and foundation elements during releveling process.

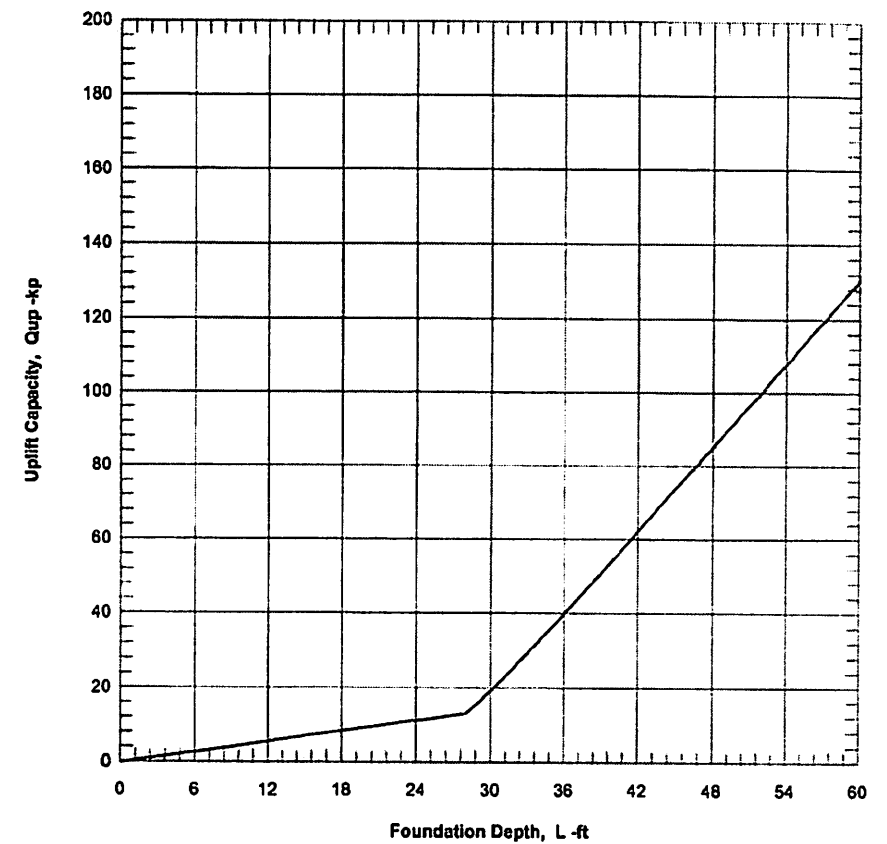
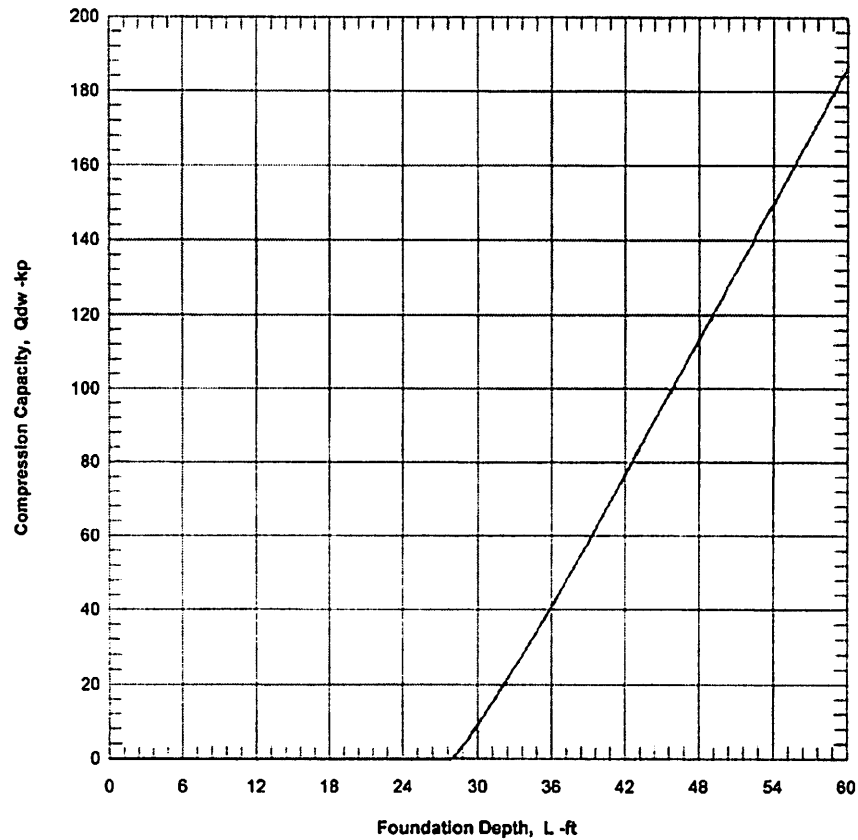
A minimum pile diameter of 2 feet is recommended for the underpinning. The pile spacing should be at least three times the pile diameter. Vertical pile capacity for an isolated, 2-foot diameter friction pile is presented on **Plate 4**. Capacities for other pile sizes can be determined in direct proportion to pile diameters. As shown on **Plate 4**, the compression capacity of piles within the upper 28 feet is neglected due to the presence of loose soil layers. In determining the pile capacity, end bearing has also been ignored.

For friction piles, care should be taken to ream the pile excavation within the bearing zone in order to clean the excavation side walls of any smear resulting from drilling operations. The bottom of the excavation should be kept free of loose or sloughed material. It should be noted that hard drilling conditions may be encountered during construction of the piles due to the presence of hard cemented soil layers.

After completion of releveling and underpinning of the building, the interior slab should be reviewed and all slab cracks be treated with full-depth epoxy injection. A detailed description of the recommended construction sequence is presented in **Appendix E**.

As requested, we have also performed a preliminary structural design of the underpinning system. A preliminary repair plan/detail as well as supporting structural calculations is also presented in **Appendix E**.

ALLOWABLE CAPACITY vs FOUNDATION DEPTH



In addition to the building repairs, the damaged exterior flatwork, including those affected by the proposed underpinning work, should be replaced. It is recommended that the new slab sections should be a minimum of 6 inches thick and reinforced with No. 4 bars at 12 inches on center, both ways. An approximately 4-inch thick layer of free-draining crushed rock base (e.g., 3/4 inch rock) is recommended below the slab and on top of subgrade. The crushed rock should have no more than ten percent passing the 3/4 inch sieve or more than three percent passing the No. 200 sieve. For larger slab areas, such as patio slabs, minimum 24-inch deep and 18-inch wide cut-off walls should be provided along the edges of the slabs. Movement of slabs adjacent to structures can be mitigated by doweling slabs to perimeter footings. Doweling should consist of No. 4 bars bent around the exterior footing reinforcement. Dowels should be extended at least 2 feet into the exterior slabs. Doweling should be spaced consistent with the reinforcement schedule for the slab. With doweling, 3/8-inch minimum thickness expansion joint material should be provided. Where expansion joint material is provided, it should be held down about 3/8-inch below the surface. The expansion joints should be finished with a color matched, flowing, flexible sealer (e.g., pool deck compound) sanded to add mortar-like texture. As an option to doweling, an architectural separation could be provided between the main structure and abutting appurtenant improvements.

9.0 CONCRETE

Laboratory testing indicated that the surface soil at the site has severe levels of sulfates and as such, sulfate-resistant concrete is required for the project. The concrete for all construction should utilize Type-V cement with a maximum 0.45-water/cementitious ratio. Limited use (subject to approval of mix designs) of a water-reducing agent may be included to increase workability. The concrete should be properly cured to minimize risk of shrinkage cracking. One-inch hard rock mixes should be provided.

10.0 CORROSION

In addition to sulfate, Chloride, pH, and resistivity tests of near-surface site soil were performed. The test results presented in **Appendix D** indicate that the metals (embedded and non-embedded) bear significant corrosion risk. Appropriate design considerations should be made for the risk of damage from this corrosion.

11.0 **REMARKS**

Only a portion of subsurface conditions have been reviewed and evaluated. Conclusions, recommendations, and other information contained in this report are based upon the assumptions that subsurface conditions do not vary appreciably between and adjacent to the observation points. Although no significant variation is anticipated, it must be recognized that variations can occur.

This report has been prepared for the sole use and benefit of our client. The intent of this report is to advise our client on geotechnical matters involving the proposed improvements. It should be understood that the geotechnical consulting provided and the contents of this report are not perfect. Any errors or omissions noted by any party reviewing this report, and/or any other geotechnical aspect of the project, should be reported to this office in a timely fashion.

Other consultants could arrive at different conclusions and recommendations. Typically, "minimum" recommendations have been presented. Although some risk will always remain, lower risk of future problems would usually result if more restrictive criteria were adopted. Final decisions on matters presented are the responsibility of the client and/or the governing agencies. No warranties in any respect are made as to the performance of the project.

Exhibit F

Exhibit F

DECLARATION OF EDRED T. MARSH, P.E.

I, Edred T. Marsh, P.E., declare as follows:

1. I am a principal geotechnical engineer at American Geotechnical, Inc.
2. I am experienced in each discipline which is the subject of my December 11, 2017 report, specifically in the fields of geotechnical, civil, and forensic engineering.
3. My December 11, 2017 report contains my conclusions and the basis for the conclusions.
4. Based on my conclusions, there is a reasonable basis for filing this action.

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

Dated: July 3rd, 2019.



Edred T. Marsh, P.E.

Exhibit G

Exhibit G

11.258

SENATE BILL 243: Requires an affidavit and a report in an action against certain design professionals involving nonresidential construction. (BDR 2-895)
I disclose that I am a member of a law firm with members who are registered lobbyists and have worked on S.B. 243. I have filed a disclosure under Nevada Revised Statute (NRS) 281.501 which is on file with the Director of the Legislative Counsel Bureau as a public document. I further disclose that I have not accepted a gift or loan from the client of the law firm on behalf of this. I have no pecuniary interest, nor does the law firm, in the passage or failure of Senate Committee on Judiciary March 23, 2007 Page 18

this bill, and I do not have a private capacity to the interest of others with respect to this bill. That is as a result of the application of the Nevada Commission on Ethics Opinion No. 89-58, "In the Matter of the Opinion Request of Bruce L. Woodbury, Clark County Commissioner," where it would not, if passed, affect the clients of the law firm I am affiliated with any differently than other people similarly situated. RUSSELL M. ROWE (American Council of Engineering Companies of Nevada):

I am here on behalf of S.B. 243 which is certificate of merit legislation. A certificate of merit requires an attorney making a claim against a design professional—an architect, engineer, landscape architect or land surveyor—to file an affidavit concurrently with the pleading stating there is a reasonable basis to bring a lawsuit in a nonresidential construction defect matter. This bill mirrors the language already in NRS 40 for residential construction defects and merely expands it to nonresidential construction defect claims, bringing uniformity to Nevada statutes. Thirteen other states have similar laws and none of those states distinguishes between residential and nonresidential construction defects. Those statutes are broader than this bill and apply to any action brought against a design professional for any claim of negligence. This bill only applies to construction defect claims and specifically nonresidential claims.

A construction defect claim against a design professional, unlike claims against a contractor or subcontractor, is a professional negligence claim. To prove a professional negligence claim, you have to show the design professional failed to meet a standard of care. There is only one way to prove that. You have to bring an expert to the hearing to show the standard of care and that the design professional fell below that standard of care. Attorneys have to find an expert to prove their case. The certificate of merit requires the expert earlier in the proceedings. They review the case to show merit to a claim and a reasonable basis to proceed with a suit. The public policy behind this legislation is to limit meritless lawsuits against design professionals but keep access to the courts. This helps the court system because it streamlines cases by clarifying the parties, which results in fewer parties in a case, less discovery, speedier trials and greater chance of settlement, all of which help alleviate the backlog and caseload in our district courts. It does not bar access to the courts, but it does ensure cases have merit. (This bill applies whether you file the claim as a plaintiff or you are a defendant making a third-party complaint.) Senate Committee on Judiciary March 23, 2007 Page 17

TIMOTHY ROWE (Associated General Contractors Nevada Chapter):

The Associated General Contractors (AGC) oppose S.B. 243. There is no crisis in construction defect litigation in commercial settings. These cases do not involve multiple plaintiffs or multiple buildings. They involve an owner, contractor, maybe a design professional and one or two subcontractors. Design professionals are not brought into commercial construction cases with meritless claims. There is at least arguable merit behind the claims. Legislation is not necessary in the area of commercial construction litigation.

Another problem is an affidavit where a report is required to be filed with the court. They become a public record. I cannot understand why any engineer or design professional would want that kind of information in the public record. It will make cases more difficult to settle. From the standpoint of AGC wherein a contractor is involved in a lawsuit and there may be claims of design deficiency, these kinds of lawsuits are more difficult to settle. They often involve complex issues and problems. In some situations, S.B. 243 presents an obstacle in settling these kinds of cases.

GARY E. MILLIKEN (Associated General Contractors Las Vegas Chapter):

This legislation will significantly delay and increase costs for commercial construction and settlements or decisions as it complicates issues.

FRED L. MILLERBY (American Institute of Architects):

I support S.B. 243. Having expert testimony ahead of time or an affidavit helps clarify a legitimate claim and lead to settlements.

SENATOR CARE:

I am going to incorporate the disclosure I made the second week of the session which is on file with the Legislative Counsel Bureau. Like myself, Mr. Timothy Rowe is a partner in the firm of McDonald Carano Wilson, Limited Liability Partnership.

CHAIRMAN QUINN:

We will close the hearing on S.B. 243.

We have a bill draft request (BDR) from the Governor's Office with the usual disclaimers on not being obligated to support in Committee or on the floor. Senate Committee on Judiciary March 23, 2007 Page 18

BILL DRAFT REQUEST 14-1428: Revises provisions relating to the registration of sex offenders and offenders convicted of a crime against a child. (Later introduced as S.B. 471.)
SENATOR WASHINGTON MOVED TO INTRODUCE BDR 14-1428.
SENATOR HORSFORD SECONDED THE MOTION.
THE MOTION CARRIED. (SENATORS MCGINNESS AND NOLAN WERE ABSENT FOR THE VOTE.)

This legislation is often referred to as the certificate of merit legislation. It applies to litigation involving design professionals in their professional capacity and arising out of commercial construction projects. It is essentially the commercial counterpart of legislation previously adopted by the 2001 Legislature relating to actions involving residential projects. Consistent with that earlier legislation, design professionals are identified in this bill as architects and engineers, including landscape architects and land surveyors, who are licensed or certificated by the State of Nevada. In general terms, the bill requires an attorney to file an affidavit with its initial pleading. The affidavit would state that the attorney has consulted with an independent design professional in the appropriate field and upon such consultation and review has concluded that the complaint against the design professional has a reasonable basis in law and fact. The affidavit must also contain a report submitted by the independent design professional setting forth the basis for that professional's opinion that there is a reasonable basis for commencing the action against the design professional.

Why should this legislation be enacted? This legislation does not preclude litigation against the design professional. What it does mean is that those suits that are filed against the design professional have a reasonable basis in law and fact that merit the expenditure of judicial time and effort. The standard of proof for professional negligence requires a finding that the design professional has failed to employ the standard of care and skill exercised by reputable members of the same profession. This law ensures that actions brought against the design professional have a reasonable likelihood of meeting that burden of proof at the time of trial.

As to the design professional who was a defendant in a case, it means that there has been a careful review of that professional's actions and in the opinion of his or her peers there is a reasonable basis to conclude that the design professional has committed an error.

As to the claimant attorney, it is good litigation practice in that it ensures that in professional negligence cases the analysis generally done before the complaint is filed, and accordingly the complaint, can be specific as to the errors alleged. The requirement of an affidavit in actions involving professionally-licensed individuals is not new or unique in the State of Nevada. As stated earlier, such affidavits are already required in affidavits against design professionals in a residential construction setting. Similar types of affidavits are required against other professionals in Nevada such as affidavits used in cases against medical and dental professionals pursuant to NRS 41A.071. Assembly Committee on Judiciary May 14, 2007 Page 14

I am told there are 13 other states that have similar affidavit requirements with respect to design professionals and in each of those states there is no limitation between whether the affidavit applies to either residential or commercial construction projects.

If enacted, this law would merely comport the commercial actions to the same as residential actions in the State of Nevada.

Chairman Anderson:

I am a bit concerned over this issue. There are 3,000 to 4,000 homes being constructed in various phases by a large developer, usually offering three or four models. In my early youth I worked for a land surveying company and one of the jobs was to set the pegs where they were going to drill the holes to set the foundation. When you come to a commercial structure, they are usually individually designed and sit in a different format; they are not all "cookie-cutters." How will this work with that kind of situation? There would not be a recurring design flaw in every building and that was one of the things that we were concerned about with home construction. Does this give an unusual protection because of that?

Bob Crowell:

It does not give an unusual protection. It extends the concept of an affidavit from residential to commercial projects, and, in general, with commercial projects there are more sophisticated claimants who are participating in that type project. Frankly, although the number of cases involving commercial projects is not as great as in residential, it does have more significance in those cases because they tend to be more engineering-specific and complex. Under those types of cases, this law would require that in complex cases of engineering standards an expert must look at the situation before filing a lawsuit.

Assemblyman Horne:

Can you walk us through exactly how this might take place and its follow-through procedure? I have concerns about being able to provide such an affidavit and get an expert to do so for these types of projects which are different from single family homes or large casinos.

Mark Ferrario, representing the American Council of Engineering Companies:
I'll use as an example a case that I just arbitrated a few months ago. In that case, I represented an owner of a large condominium project in an arbitration proceeding against the contractor. There were issues that arose in the case as it unfolded involving the plans and conduct of the architect. As those issues matured, and before either side did anything in regard to the architect, we hired Assembly

Committee on Judiciary May 14, 2007 Page 15

experts. I hired an architectural expert and so did the other side. Our respective experts evaluated the plans and drawings before we brought any of those issues into the case. Essentially what you would do in a commercial case—and I want to echo Mr. Crowell, you are dealing typically with very sophisticated litigants—if a design issue is suspected or if it arises, you first evaluate it by bringing in people in the same field to look at the conduct of the design professional. It is exactly what you would do in a medical malpractice case. It is not a bar to bringing the suit; it accelerates something that is going to happen anyway in the lawsuit. You cannot typically get to the jury or to the end of one of these lawsuits without having an expert opine on the propriety of the conduct of the design professional. Basically, you are rolling that up to the front of the lawsuit, and it is not a bar to entry to the courthouse.

Assemblyman Horne:

There is a statute of limitations on filing lawsuits; what is it in this type of case? Let us say it is 2 years, and your client-engineer comes to you 18 months out after it has been noticed that there is a problem, leaving you 6 months to file. Do you suppose that six months would be sufficient time to get an expert, have them review the plans, and get you the affidavit in order to file a timely complaint?

Mark Ferrario:

Six months would be no problem at all. Where you would be in trouble, which you are anytime you need to get an expert, is if you were right up against the statute of limitations. There is language in this bill that allows the filing of an action without the certificate in those circumstances such that you can toll the statute and then come in later and supplement with an affidavit from an expert. It is not the intent of this bill to preclude legitimate claims against design professionals.

Assemblyman Horne:

Have there been a number of these litigations?

Mark Ferrario:

We are seeing an increase in the number of commercial lawsuits involving construction-related activities. From my perspective, it appears to be a natural extension of what we saw in the residential arena.

Chairman Anderson:

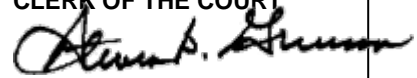
The people involved in this are in a relatively specialized field at the very beginning of the design phase. Do the lawsuits coming forward tend to be in this area, or are they pulled in as a result of other kinds of construction? Assembly Committee on Judiciary May 14, 2007 Page 18

EXHIBIT 3

PETITIONERS' APPENDIX

EXHIBIT 3

PETITIONERS' APPENDIX



JOIN

JOHN T. WENDLAND, ESQ.

Nevada Bar No. 7207

JEREMY R. KILBER, ESQ.

(Nevada Bar No. 10643)

WEIL & DRAGE, APC

2500 Anthem Village Drive

Henderson, Nevada 89052

jwendland@weildrage.com

jkilber@weildrage.com

Attorneys for Defendant,

DEKKER/PERICH/SABATINI, LTD.

DISTRICT COURT

CLARK COUNTY, NEVADA

CITY OF NORTH LAS VEGAS,

Plaintiff,

vs.

DEKKER/PERICH/SABATINI LTD.;

RICHARDSON CONSTRUCTION, INC.;

NEVADA BY DESIGN, LLC D/B/A NEVADA BY

DESIGN ENGINEERING CONSULTANTS; JW

ZUNINO & ASSOCIATES, LLC; MELROY

ENGINEERING, INC. D/B/A MSA

ENGINEERING CONSULTANTS; O'CONNOR

CONSTRUCTION MANAGEMENT INC.; NINYO

& MOORE, GEOTECHNICAL CONSULTANTS;

JACKSON FAMILY PARTNERSHIP LLC D/B/A

STARGATE PLUMBING; AVERY ATLANTIC,

LLC; BIG C LLC; RON HANLON MASONRY,

LLC; THE GUARANTEE COMPANY OF NORTH

AMERICA USA; P & W BONDS, LLC;

PAFFENBARGER & WALDEN, LLC; DOES I

through X, inclusive; and ROE CORPORATIONS I

through X, inclusive,

Defendants.

CASE NO.: A-19-798346-C

DEPT. NO.: VIII

DEFENDANT

DEKKER/PERICH/SABATINI,

LTD.'S JOINDER TO

DEFENDANT NEVADA BY

DESIGN, LLC d/b/a NEVADA BY

DESIGN ENGINEERING

CONSULTANTS' MOTION TO

DISMISS OR, IN THE

ALTERNATIVE, MOTION FOR

SUMMARY JUDGMENT

Hearing Date: 09/09/19

Hearing Time: 8:30 a.m.

**DEFENDANT DEKKER/PERICH/SABATINI, LTD.’S JOINDER TO DEFENDANT
NEVADA BY DESIGN, LLC d/b/a NEVADA BY DESIGN ENGINEERING
CONSULTANTS’ MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR
SUMMARY JUDGMENT**

COMES NOW, Defendant DEKKER/PERICH/SABATINI, LTD. (hereinafter, “DPS”), by and through its counsel of record, the law firm of WEIL & DRAGE, APC, and hereby joins in the arguments and relief requested by Defendant Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants’ (“NBD”) Motion to Dismiss or, in the alternative, Motion for Summary Judgment.

DPS states that the claims raised by Plaintiff City of North Las Vegas (“Plaintiff”) are time barred pursuant to N.R.S. 11.202. Accordingly, any dismissal of the claims and complaint against NBD would also apply to DPS, as Plaintiff’s claims and complaint against DPS are also time barred under the six (6) year statute of repose in N.R.S. 11.202 for the reasons stated in NBD’s Motions.

DATED this 6th day of August, 2019.

WEIL & DRAGE, APC

/s/ John T. Wendland

By:

JOHN T. WENDLAND, ESQ.

Nevada Bar No. 7207

JEREMY R. KILBER, ESQ.

(Nevada Bar No. 10643)

2500 Anthem Village Drive

Henderson, Nevada 89052

Attorneys for Defendant,

DEKKER/PERICH/SABATINI, LTD.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of August, 2019, service of the foregoing
**DEFENDANT DEKKER/PERICH/SABATINI, LTD.'S JOINDER TO DEFENDANT
NEVADA BY DESIGN, LLC d/b/a NEVADA BY DESIGN ENGINEERING
CONSULTANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR
SUMMARY JUDGMENT** was made this date by electronically serving a true and correct copy of
the same, through Clark County Odyssey eFileNV, to the following parties:

Justin L. Carley, Esq.
Aleem A. Dhalla, Esq.
SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169
Attorneys for Plaintiff,
CITY OF NORTH LAS VEGAS

John T. Wendland, Esq.
Anthony D. Platt, Esq.
Weil & Drage, APC
2500 Anthem Village Drive
Henderson, NV 89052
Attorneys for Defendant,
NEVADA BY DESIGN, LLC D/B/A NEVADA
BY DESIGN ENGINEERING CONSULTANTS

/s/ Joanna Medina

Joanna Medina, an Employee of
WEIL & DRAGE, APC