

Case No. \_\_\_\_\_

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*In the*  
**Supreme Court**  
*of the*  
**State of Nevada**

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Electronically Filed  
Jul 15 2020 10:51 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.*

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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

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

**VOLUME 6**

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## **CHRONOLOGICAL INDEX - APPENDIX OF EXHIBITS**

<b>Exhibit:</b>	<b>Volume:</b>	<b>Bates: PET.APP.</b>	<b>Date:</b>	<b>Description:</b>
<b>4</b>	<b>6</b>	<b>000721 – 000735</b>	<b>08/06/2019 2:44 PM</b>	<b>Dekker/Perich/Sabatini, Ltd.’s Motion to Dismiss</b>
	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
<b>5</b>	<b>6</b>	<b>000818 – 000820</b>	<b>08/08/2019 1:32 PM</b>	<b>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</b>
<b>6</b>	<b>6</b>	<b>000821 – 000826</b>	<b>08/15/2019 5:02 PM</b>	<b>City of North Las Vegas’ Motion to Strike and Opposition to Jackson Family Partnership LLC d/b/a Stargate Plumbing’s Motion to Dismiss</b>
	6	000827 – 000828	08/06/2019	<u>Exhibit 1</u> – Affidavit/Declaration of Service to Jackson Family Partnership LLC d/b/a Stargate Plumbing
<b>7</b>	<b>6</b>	<b>000829 – 000846</b>	<b>08/20/2019 1:24 PM</b>	<b>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</b>

## ALPHABETICAL INDEX - APPENDIX OF EXHIBITS

<b>Exhibit:</b>	<b>Vol.:</b>	<b>Bates: PET.APP.</b>	<b>Date:</b>	<b>Description:</b>
<b>10</b>	<b>11</b>	<b>001560 – 001562</b>	<b>08/20/2019 1:34 PM</b>	<b>City of North Las Vegas’ Appendix of Exhibits to Opposition to Dekker/Perich/Sabatini, Ltd.’s Motion to Dismiss</b>
	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
<b>8</b>	<b>7</b>	<b>000847 – 000849</b>	<b>08/20/2019 1:24 PM</b>	<b>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</b>
	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 <sup>th</sup> Session 2019
	10	001514 – 001546	05/15/2019	<u>Exhibit 3</u> - Minutes of the Senate Committee on Judiciary, 80th Legislature
<b>1</b>	<b>1</b>	<b>000001 – 000017</b>	<b>07/11/2019 4:35 PM</b>	<b>City of North Las Vegas’ Complaint Against Defendants – Exempt from Arbitration Under N.A.R. 3(A): Seeks Damages in Excess of \$50,000</b>
	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
<b>18</b>	<b>15</b>	<b>002307 – 002312</b>	<b>09/26/2019</b>	<b>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</b>
	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
<b>25</b>	<b>15</b>	<b>002407 – 002421</b>	<b>11/13/2019 11:58 AM</b>	<b>City of North Las Vegas’ Motion to Alter Judgment</b>
	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 <sup>th</sup> 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
<b>6</b>	<b>6</b>	<b>000821 – 000826</b>	<b>08/15/2019 5:02 PM</b>	<b>City of North Las Vegas' Motion to Strike and Opposition to Jackson Family Partnership LLC d/b/a Stargate Plumbing's Motion to Dismiss</b>
	6	000827 – 000828	08/06/2019	<u>Exhibit 1</u> – Affidavit/Declaration of Service to Jackson Family Partnership LLC d/b/a Stargate Plumbing
<b>62</b>	<b>20</b>	<b>003467 – 003470</b>	<b>04/02/2020 4:21 PM</b>	<b>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</b>
	20	003471 – 003480	04/02/2020	<u>Exhibit 1</u> - Order Denying Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Motion to Dismiss
<b>66</b>	<b>21</b>	<b>003589 – 003592</b>	<b>05/05/2020 3:48 PM</b>	<b>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</b>
	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	<b>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</b>
	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	<b>Dekker/Perich/Sabatini, Ltd.’s Motion to Dismiss</b>
	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	<b>Dekker/Perich/Sabatini, Ltd.’s Reply to City of North Las Vegas’ Opposition to Its Motion to Dismiss</b>
53	19	003275 – 003285	02/18/2020 3:00 PM	<b>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</b>
	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	<b>JW Zunino &amp; Associates LLC's Opposition to City of North Las Vegas' Motion to Alter Judgment</b>
	16	002528 – 002530	10/09/2019	<u>Exhibit A</u> – Affidavit of Rita Tuttle
57	20	003385 – 003391	02/19/2020 11:29 AM	<b>JW Zunino &amp; 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</b>
5	6	000818 – 000820	08/08/2019 1:32 PM	<b>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</b>
40	18	003029 – 003032	12/02/2019 3:19 PM	<b>Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Joinder to JW Zunino &amp; Associates, LLC's Opposition to City of North Las Vegas' Motion to Alter Judgment</b>
41	18	003033 – 003036	12/02/2019 3:19 PM	<b>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</b>
39	18	002911 – 002936	12/02/2019 3:19 PM	<b>Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Opposition to Motion to Alter Judgment</b>
	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	<b>003074 – 003090</b>	<b>02/04/2020 12:14 PM</b>	<b>Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Motion to Dismiss on Order Shortening Time</b>
	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	<b>003399 – 003408</b>	<b>03/16/2020 8:58 AM</b>	<b>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</b>

55	20	003308 – 003318	02/18/2020 5:02 PM	<b>Melroy Engineering, Inc. d/b/a MSA Engineering Consultants’ Reply to City of North Las Vegas’ Opposition to Its Motion to Dismiss</b>
	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	<b>Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Joinder to JW Zunino &amp; Associates LLC’s Opposition to City of North Las Vegas’ Motion to Alter</b>
48	19	003140 – 003146	02/04/2020 3:09 PM	<b>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</b>

17	15	002282 – 002292	09/18/2019 3:07 PM	<b>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</b>
	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	<b>Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, in the Alternative, Motion for Summary Judgment</b>
	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 <sup>th</sup> 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	<b>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</b>

27	16	002531 – 002558	11/26/2019 11:17 PM	<b>Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Opposition to Motion to Alter Judgment</b>
	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	<b>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</b>
54	20	003295 – 003307	02/18/2020 3:57 PM	<b>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</b>

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

<b>34</b>	<b>17</b>	<b>002888 – 002890</b>	<b>12/02/2019 1:54 PM</b>	<b>Ninyo &amp; 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</b>
<b>58</b>	<b>20</b>	<b>003392 – 003398</b>	<b>02/19/2020 2:56 PM</b>	<b>Ninyo &amp; 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</b>
<b>32</b>	<b>17</b>	<b>002689 – 002693</b>	<b>11/27/2019 1:15 PM</b>	<b>Paffenbarger &amp; Walden, LLC and P &amp; 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 &amp; Associates LLC Opposition to Motion to Alter Judgment</b>
<b>43</b>	<b>18</b>	<b>003040 – 003043</b>	<b>12/04/2019 8:35 AM</b>	<b>Paffenbarger &amp; Walden, LLC and P &amp; 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</b>
<b>16</b>	<b>15</b>	<b>002275 – 002281</b>	<b>09/13/2019 4:22 PM</b>	<b>Paffenbarger &amp; Walden, LLC and P &amp; 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</b>
<b>21</b>	<b>15</b>	<b>002331 – 002335</b>	<b>09/30/2019 11:29 AM</b>	<b>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</b>

56	20	003379 – 003384	02/18/2020 5:06 PM	<b>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</b>
33	17	002694 – 002887	11/27/2019 4:51 PM	<b>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</b>
	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



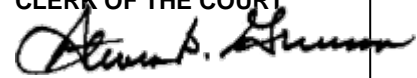
	17	002281 – 002887	10/17/2019	<u>Exhibit O</u> – Notice of Entry of Order Granting Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Change Date of Haring on Motion to Dismiss or, in the Alternative, Motion for Summary Judgment on Order Shortening Time
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# **EXHIBIT 4**

## **PETITIONERS' APPENDIX**

# **EXHIBIT 4**

## **PETITIONERS' APPENDIX**



**MDSM**  
JOHN T. WENDLAND, ESQ.  
Nevada Bar No. 7207  
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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

**[HEARING REQUESTED]**

**DEFENDANT  
DEKKER/PERICH/SABATINI,  
LTD.'S MOTION TO DISMISS**

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

Hearing Time: \_\_\_\_\_

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**DEFENDANT DEKKER/PERICH/SABATINI, LTD.’S MOTION TO DISMISS**

COMES NOW Defendant DEKKER/PERICH/SABATINI, LTD. (hereinafter, “DPS”), by and through its attorneys of record, the law firm of WEIL & DRAGE, APC, and pursuant to N.R.C.P. 12(b)(5) & 12(f), hereby files its Motion to Dismiss Plaintiff CITY OF NORTH LAS VEGAS’ (the “Plaintiff”) Complaint.

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

DATED this 6<sup>th</sup> 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)  
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Henderson, Nevada 89052  
Attorneys for Defendant,  
DEKKER/PERICH/SABATINI, LTD.

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 11th, 2019 against various design professionals and construction entities concerning  
6 alleged settlement and expansive soil issues at Fire Station 53 (the “Project”). Plaintiff  
7 claims that after completing the Project, it began to notice distress in the building including wall  
8 cracks, separation and interior slab cracking. See, Complaint at Para. 46 attached hereto as **Ex. A**  
9 (pleading only). To investigate these issues, Plaintiff hired American Geotechnical, Inc. (“AGI”),  
10 a Plaintiff oriented geotechnical firm, to perform a “*geotechnical investigation*” of Fire Station 53.  
11 *Id.* at Para. 47 (emphasis added). AGI investigated the site and concluded in December 2017 that  
12 the distress at Fire Station 53 and surrounding appurtenances arose due to a combination of  
13 excessive differential settlement and expansive soil. *Id.* at Para. 48. Thereafter, the Plaintiff  
14 implemented repairs to Fire Station 53 and filed this instant lawsuit against any entity involved in  
15 the project.

16 As stated by other parties, Plaintiff’s Complaint is significantly untimely, by four years as  
17 the statute of repose expired in July, 2015. See, Nevada By Design’s Motion to Dismiss filed  
18 separately. However, Plaintiff’s Complaint as to DPS is further defective, as it failed to properly  
19 comply with the certificate of merit statutes under N.R.S. 11.258. As Plaintiff failed to comply  
20 with N.R.S. 11.258, the Complaint is *void ab initio*<sup>1</sup>, *lacks legal effect* and dismissal is required  
21 from the Court.

22 **II.**

23 **LEGAL STANDARD**

24 N.R.C.P. 12(b) authorizes the dismissal of lawsuits when they fail to state a claim upon  
25 which relief may be granted. When, after construing the pleading liberally and drawing every fair  
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27  
28 <sup>1</sup> “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 (8<sup>th</sup> Ed. 2004)).

intendment in favor of the plaintiff, no claim has been stated, dismissal is proper. *Brown v. Kellar*, 97 Nev. 582, 583, 636 P.2d 874, 874 (1981).

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

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

### III.

#### LEGAL ARGUMENT

#### **THE PLAINTIFF FAILED TO COMPLY WITH N.R.S. 11.258 AS AGAINST DPS AND THEREFORE, PLAINTIFF’S CLAIMS AND COMPLAINT MUST BE DISMISSED PURSUANT TO N.R.S. 11.259**

##### **1. DPS is a Qualified Design Professional and the Project is a Non-Residential Project requiring the Plaintiff to Fully Comply with NRS 11.258**

As the Court is well versed, whenever there are claims brought against a design professional, the claimant (in this case, the Plaintiff) is required to comply with *all* requirements in

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1 N.R.S. 11.258. This includes filing concurrently with the service of the first pleading in the action,  
2 an Affidavit of Merit that meets the requirements of N.R.S. 11.258(1)(a)-(d). The Plaintiff is also  
3 required to attach to the Affidavit of Merit, a report, supporting documents and a statement that  
4 complies with Section (3)(a)-(e). If there are any failures, the “court shall dismiss an action  
5 governed by NRS 11.258” when an action is “commenced against a design professional ...if the  
6 attorney for the complainant fails to: (a) File an affidavit required pursuant to NRS 11.258; [or]  
7 (b) File a report required pursuant to subsection 3 of NRS 11.258.” *See*, N.R.S. 11.259(1)(a)-(c).

8 Here, Plaintiff avers that DPS is a “design professional” specializing in architectural design  
9 services and therefore, Plaintiff was required to file an Affidavit of Merit. *See*, Complaint at Para.  
10 22; *see also*, “Exhibit 1” attached to Plaintiff’s Complaint attached hereto as **Ex. B**; *see also*,  
11 N.R.S. 11.2565(2)(b). Moreover, the Project is a fire station and therefore the claims involve  
12 design related matters of a nonresidential building or structure. *Id.*, Complaint at Para. 22-24; **Ex.**  
13 **B.**

14 Given the above undisputed facts, Plaintiff is required to fully comply with N.R.S. 11.258.

15 2. **Plaintiff’s N.R.S. 11.258 Affidavit of Merit Fails to Comply with the**  
16 **Requirements of the Statute:**

17 Nevada’s Affidavit of Merit statutes in N.R.S. 11.258 apply to actions involving  
18 nonresidential construction. Pursuant to said statutes, the attorney for a claimant *shall* file and  
19 serve an Affidavit of Merit **concurrently with the first pleading in the action** when an action is  
20 commenced against a design professional. The affidavit *must* state that the attorney:

21 (a) has reviewed the facts of the case;

22 (b) has consulted with an expert;

23 (c) reasonably believes the expert who was consulted is knowledgeable **in the relevant**  
24 **discipline involved in the action**; and

25 (d) has concluded on the basis of his review and the consultation with the expert that the  
26 action has a reasonable basis in law and fact. N.R.S. 11.258(1)(a)-(d) (*emphasis added*).

27 Here, Plaintiff’s counsel, Mr. Dhalla, prepared an Affidavit of Merit that was attached to  
28 the Complaint. In his Affidavit, Mr. Dhalla, attests that he made the “affidavit pursuant to NRS

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1 11.258.” *See*, Affidavit of Merit attached hereto as **Ex. C**. Mr. Dhalla further attests that he  
2 consulted with Mr. Edred T. Marsh, P.E. of AGI and that “the expert is experienced in each  
3 discipline which is the subject of the report, **specifically** in the fields of geotechnical, civil and  
4 forensic engineering.” *Id.* at Item 5(a)-(b) (emphasis added). Therefore, the Affidavit of Merit  
5 from Mr. Dhalla admits that Mr. Marsh is a specialist in the fields of geotechnical and civil  
6 engineering and related forensic engineering (essentially litigation support work in these fields).  
7 Nothing in the Affidavit of Merit identifies Mr. Marsh as an expert in the field of architecture or  
8 any other engineering discipline beyond geotechnical or civil engineering.

9 For this action, DPS served as the architect of record and structural engineer. Therefore, to  
10 comply with N.R.S. 11.258(1)(c) requirements as to DPS, Mr. Dhalla was required to consult with  
11 an expert “knowledgeable in the relevant discipline” which required consultation with  
12 architectural and structural engineering experts. He [Mr. Dhalla] clearly did not. From the  
13 Affidavit and the attached curriculum vitae of Mr. Marsh, it is clear that Plaintiff sole consulting  
14 expert, Mr. Marsh, is not an architect, is not a structural engineer and is not able to opine on the  
15 professional services provided by DPS or provide standard of care opinions as to these services.  
16 *See*, curriculum vitae attached hereto as **Ex. D**. Therefore, by failing to consult with architectural  
17 and structural experts, Plaintiff failed to comply with N.R.S. 11.258(1)(c) as Mr. Marsh is not  
18 knowledgeable in the relevant fields involving DPS’s services.

19 By extension, Mr. Dhalla is unable to conclude, based on his review and consultation with  
20 Mr. Marsh that the action has a reasonable basis in law and fact as to DPS. *See*, N.R.S.  
21 11.258(1)(d).

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

28 {01601372;1}



1 The legislative history<sup>2</sup> in discussing N.R.S. 11.258 adds further support that the Plaintiff  
2 was required to consult with an appropriate expert that is knowledgeable in the field of  
3 architecture and structural engineering with respect to the claims against DPS. This is established  
4 from the following legislative statements raised during discussions on the enactment of N.R.S.  
5 11.258:

- 6 1. A construction defect claim against a design professional, unlike claims against a  
7 contractor or subcontractor, is a professional negligence claim. To prove a professional  
8 negligence claim, you have to show the design professional failed to meet the standard  
9 of care. There is only one way to prove that. You have to bring an expert to the  
10 hearing to show the standard of care and that the design professional fell below the  
11 standard of care. Attorneys have to find an expert to prove their case. The certificate  
12 of merit requires the expert earlier in the proceedings. They review the case **to show**  
13 **merit to a claim and a reasonable basis to proceed with a suit.** See, Legislative  
14 History of N.R.S. 11.258 attached hereto as **Ex. E** (handwritten brackets and asterisks).
- 15 2. In general terms, the bill requires an attorney to file an affidavit with its initial pleading.  
16 The affidavit would state that the attorney has consulted with an independent design  
17 professional **in the appropriate field** and upon such consultation and review has  
18 concluded that the complaint **against the design professional** has a reasonable basis in  
19 law and fact. The **affidavit must also contain a report submitted by the**  
20 **independent design professional setting forth the basis for that professional's**  
21 **opinion that there is a reasonable basis for commencing the action against the**  
22 **design professional.** *Id.* (Emphasis added).
- 23 3. NRS 11.258 was enacted to ensure that suit filed against a design professional have a  
24 **reasonable basis in law and fact** that merit the expenditure of judicial time and effort.  
25 **The standard of proof for professional negligence requires a finding that the**  
26 **design professional has failed to employ the standard of care and skill exercised**  
27 **by reputable members of the same professional.** This law ensures that actions  
28 brought against that design professional **have a reasonable likelihood of meeting that**  
**burden of proof at the time of trial.** *Id.* (Emphasis added).
4. It is also good litigation practice to ensure that professional negligence cases include  
analysis generally done before the complaint is filed **so that the complaint can be**  
**specific as to the errors alleged.** *Id.* (Emphasis added).
5. 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

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<sup>2</sup> The ultimate goal of interpreting statutes is to effectuate the Legislature's intent. *Cromer v. Wilson*, 126 Nev. 106, 109, 225 P.3d 788, 790 (2010).

lawsuits **without having an expert opine on the propriety of the conduct of the design professional**. *Id.* (Emphasis added).

As shown above, multiple excerpts from the legislative history of N.R.S. 11.258 establish that said statutes were enacted to prevent frivolous suits against design professionals and required the claimant (here, the Plaintiff) to engage and consult with an appropriate expert (or experts) prior to commencement of the action. The Nevada Legislature was keen on the claimant retaining independent experts, qualified ***in the applicable fields of discipline***, to provide opinions as to the standard of care and any failures in same. In fact, the Nevada Supreme Court in interpreting the legislative history found that the intent of N.R.S. 11.258 and 11.259(1) was to "...advance judicial economy and prevent frivolous suits against design professionals by requiring a complaint to include an expert report and attorney affidavit regarding the suit's reasonable basis." *In re CityCenter Constr. & Lien Master Litig.*, 129 Nev. 669, 678, 310 P.3d 574, 581 (2013).

Here, while Plaintiff consulted Mr. Marsh, he is not an architect and is not a structural engineer. This is established from Mr. Marsh's Declaration wherein he admits that he is not an expert in these fields. *See*, Declaration of Marsh attached hereto as **Ex. F** engineering expert and therefore, would not be qualified to opine on DPS's services. Accordingly, Plaintiff failed to comply with N.R.S. 11.258(1)(c)&(d).

3. **AGI's Expert Report fails to Comply with N.R.S. 11.258(3) Requirements:**

In addition to Affidavit of Merit, Plaintiff is also required to attach the following to the Affidavit pursuant to N.R.S. 11.258(3):

(a) the expert's resume;

(b) a statement that the expert **is experienced in each discipline which is the subject of the report;**

(c) a copy of each non-privileged document reviewed by the expert in preparing his report including, without limitation, each record, report and related document that the expert has determined is relevant to the allegations of negligent conduct that are the basis for the action;

- 1 (d) the<sup>3</sup> conclusions of the expert and the basis for the conclusions; and  
2 (e) a statement that the expert has concluded that there is a reasonable basis for filing  
3 the action. NRS 11.258(3).

4 Here, Mr. Marsh's resume establishes that he is not an architect, a structural engineer or  
5 qualified to opine on any discipline outside of geotechnical matters. See, Ex. D. Mr. Marsh's  
6 Declaration further admits that he is not knowledgeable in the fields of architecture and structural  
7 engineering. See, Ex. F.

8 In addition to these documents, the AGI's report attached to support Plaintiff's Affidavit of  
9 Merit, is devoid of any statements critical of DPS's services (architecture or structural  
10 engineering). The AGI report is titled "Geotechnical Investigation" and only provides opinions  
11 concerning geotechnical issues. See, AGI report attached hereto as Ex. G. In fact, the AGI report  
12 even states that "[t]he intent of this report is to advise our client on geotechnical matters  
13 involving the proposed improvements." *Id.* at Pg. 8, Section 11.0 "Remarks" (emphasis added).  
14 Accordingly, as the AGI report is expressly limited to geotechnical matters, the report cannot be  
15 used to support the Affidavit of Merit against DPS, as its services for the Project were outside of  
16 this discipline.

17 By extension, Mr. Marsh's 11.258(3)(e) statement is limited to the geotechnical issues  
18 identified in the AGI Report and is not relevant to any discipline outside of the geotechnical issues.  
19 Stated differently, the 3(e) statement is a representation to the Court and all receiving parties that  
20 the action has a reasonable basis for its filing. However, the statement cannot be relevant to any  
21 discipline beyond the expertise of the retained and consulted expert. This would be akin to Mr.  
22 Marsh providing standard of care opinions. To provide a standard of care opinion, the expert must  
23 be knowledgeable in the relevant discipline which is the whole point of consulting the expert in  
24 the first place. Since Mr. Marsh, as admitted in his Declaration, is not knowledgeable in the areas  
25 of practice by DPS, then his 11.258(3)(e) statement is irrelevant as to DPS.

26 \_\_\_\_\_  
27 <sup>3</sup> 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 (5<sup>th</sup> 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 For said reasons, Plaintiff failed to comply with N.R.S. 11.258(3)(b)(d)&(e). Mr. Marsh is  
2 not experienced in the area of practice of DPS (architectural and/or structural); his conclusions in  
3 the AGI Report are expressly limited to “geotechnical matters” which DPS did not provide; and  
4 his 3(e) statement is irrelevant as to DPS’s services.

5 **4. Plaintiff’s Failures to Comply with N.R.S. 11.258 Warrant Dismissal of the**  
6 **Complaint as to DPS:**

7 N.R.S. 11.259 specifically states:

8 1. *The court shall dismiss* an action involving nonresidential [and/or nonresidential]  
9 construction *if the attorney for the complainant fails to:*

- 10 (a) File an affidavit required pursuant to NRS 11.258;  
11 (b) File a report required pursuant to subsection 3 of NRS 11.258; or  
12 (c) Name the expert consulted in the affidavit required pursuant to subsection 1 of NRS  
13 11.258.

14 Here, Plaintiff failed to provide the following:

- 15 • Plaintiff’s Affidavit of Merit failed to comply with N.R.S. 11.258(1)(c)&(d) as  
16 Plaintiff’s counsel consulted with Mr. Marsh who is not an expert in the field of  
17 architecture or structural engineering. *See, Exs. D & F*. Moreover, as Mr.  
18 Marsh’s opinions were limited to geotechnical matters (*see, Ex. G*), Plaintiff’s  
19 counsel had no reasonable basis in law and fact to file the Complaint against  
20 DPS as his consultation was limited to geotechnical issues.
- 21 • Plaintiff failed to file expert report from a qualified architectural and structural  
22 engineering expert as required by NRS 11.258(3)(b) (*see, Exs. D&F*);
- 23 • AGI’s Report contained no conclusions critical of DPS or any opinions as to  
24 architectural or structural engineering issues. *See, Ex. G*. In fact, the report was  
25 expressly limited to geotechnical matters, which are outside of DPS’s services.  
26 *Id.* Accordingly, the opinions of AGI were irrelevant to DPS in violation of  
27 N.R.S. 11.258(3)(d).
- 28 • Finally, Mr. Marsh’s 3(e) statement in his Declaration is limited to an opinion as  
to geotechnical engineering matters. Nothing in the AGI report nor in Mr.  
Marsh’s qualifications would render the 3(e) statement as being relevant to DPS.

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1 In light of Plaintiff's failure to comply with NRS 11.258, DPS respectfully requests  
2 presents that pursuant to NRS 11.259, dismissal<sup>4</sup> is required and Plaintiff is not entitled to  
3 amendment or cure. *In re CityCenter Constr*, 129 Nev. 669, 310 P.3d 574.

4 **5. The failure of Plaintiff to comply with N.R.S. 11.258 renders its Complaint**  
5 **Void Ab Initio:**

6 The terms and requirements in N.R.S. 11.258 are unambiguous. *NRS 11.258(1)* requires  
7 that an affidavit and expert report shall be filed concurrently with the first pleading in the action.  
8 The use of the word "shall" imposes a duty to act and the filing of said affidavit and expert report  
9 is not optional. *See*, NRS 0.025(1)(d); *see also*, *SNEA v. Daines*, 108 Nev. 15, 19, 824 P.2d 276,  
10 278 (1992).

11 As shown herein, Plaintiff failed to file an Affidavit that fully complied with N.R.S.  
12 11.258(1)(c)&(d). Said failure is not exempted under NRS 11.258(2). Given this failure, the  
13 Complaint is defective and is rendered void *ab initio* which cannot be amended or cured to bring  
14 said defect into compliance with NRS 11.258 (as the pleading does not exist). *Otak*, 127 Nev. at  
15 599. 260 P.3d at 412. Similarly, the expert report from AGI only discusses geotechnical issues  
16 and the qualifications and the 3(e) statement by Mr. Marsh is limited to geotechnical matters.  
17 None of the opinions or the qualifications of Mr. Marsh would implicate DPS.

18 Thus, the only remedy available if the Plaintiff fails to comply with N.R.S. 11.258 is  
19 dismissal, as the underlying purpose of N.R.S. 11.258 is to ensure actions are brought in good  
20 faith and based on competent expert opinions. *See*, N.R.S. 11.259, *see also*, *Otak, supra*; *In re*  
21 *CityCenter Constr.*, *supra*.

22 ///

23 ///

24 ///

25 ///

26 \_\_\_\_\_  
27 <sup>4</sup> Under Nevada law, the Court must follow the plain language in the statute and must avoid interpretations that  
28 render any of the language therein superfluous or meaningless. *George v. State*, 128 Nev. 345, 348-49, 279 P.3d 187,  
190 (2012) (*citing*, *Hobbs v. State*, 127 Nev. 234, 237, 251 P.3d 177, 179 (2011)). If the language is clear and  
unambiguous, it must be enforced *as written*. *Id.*

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IV.

CONCLUSION

As shown herein, Plaintiff failed to comply with N.R.S. 11.258. For said failures, N.R.S. 11.259 mandates dismissal and DPS respectfully requests that the Court dismiss the Complaint under N.R.C.P. 12(b)(5) or N.R.C.P. 12(f).

DATED this 6<sup>th</sup> day of August, 2019.

WEIL & DRAGE, APC

*/s/ John T. Wendland*

By: \_\_\_\_\_  
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Attorneys for Defendant,  
DEKKER/PERICH/SABATINI, LTD.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 6<sup>th</sup> day of August, 2019, service of the foregoing  
**DEFENDANT DEKKER/PERICH/SABATINI, LTD.’S MOTION TO DISMISS** was made  
this date by electronically serving a true and correct copy of the same, through Clark County  
Odyssey eFileNV, to the following parties:

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Aleem A. Dhalla, Esq.  
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John T. Wendland, Esq.  
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Attorneys for Defendant,  
NEVADA BY DESIGN, LLC D/B/A NEVADA  
BY DESIGN ENGINEERING CONSULTANTS

*/s/ Joanna Medina*

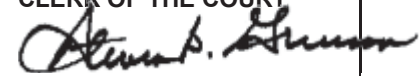
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Joanna Medina, an Employee of  
WEIL & DRAGE, APC

# **Exhibit A**

# **Exhibit A**





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

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*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

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

3 **I. PARTIES, JURISDICTION, AND VENUE**

4 1. The City of North Las Vegas (“City”) is a political subdivision of the State of  
5 Nevada.

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

8 3. Richardson Construction, Inc. (“Richardson Construction”) is a Nevada corporation  
9 conducting business in Clark County, Nevada.

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

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

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

17 7. O’Connor Construction Management Inc. (“O’Connor”) is a California corporation  
18 conducting business in Clark County, Nevada.

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

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

23 10. Avery Atlantic, LLC (“Avery Atlantic”) is a Nevada limited liability company  
24 conducting business in Clark County, Nevada.

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

27 12. Ron Hanlon Masonry, LLC is a Nevada limited liability company conducting  
28 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.

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

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

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

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

13          44.     A certificate of occupancy was issued for Fire Station 53 on or about February 25,  
14 2009.

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

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

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

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

25          49.     American Geotechnical concluded that the distress to Fire Station 53 and  
26 surrounding appurtenant structures was due to a combination of excessive differential settlement  
27 and expansive soil activity.  
28

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.

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1           72.     Richardson Construction materially breach the Construction Contract by failing to  
2 fulfill its obligations including, among other things, failing to complete its work in a good and  
3 workmanlike manner as detailed above.

4           73.     As a direct and proximate result of the Richardson Construction breaches of the  
5 Construction Contract, the City has been damaged in excess of fifteen thousand dollars (\$15,000).

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

10                               **Third Claim for Relief**

11                               ***Breach of the Covenant of Good Faith and Fair Dealing***

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

13                               ***CORPORATIONS I through X***

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

15           75.     The Design Agreement and the Construction Contract are both valid, existing, and  
16 enforceable contracts.

17           76.     It is well established in Nevada that every contract imposes upon the contracting  
18 parties the duty of good faith and fair dealing.

19           77.     Under both the Design Agreement and Construction Contract, each of Defendants  
20 individually owes a duty of good faith and fair dealing to the City.

21           78.     Defendants each breached their duty by performing in a manner unfaithful to the  
22 purpose of the Design Agreement and/or Construction Contract.

23           79.     Defendants' actions are counter to the purpose and intent of the Design Agreement  
24 and Construction Contract.

25           80.     Defendants' denied the City's justified expectations under the Design Agreement  
26 and Construction Contract.

27           81.     As direct and proximate result of Defendants' actions, the City has been damaged  
28 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



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.

119. 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.

WHEREFORE, the City prays for relief as follows:

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

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

## ON THE SIXTH CLAIM FOR RELIEF

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

## ON THE SEVENTH CLAIM FOR RELIEF

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

## ON THE EIGHTH CLAIM FOR RELIEF

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

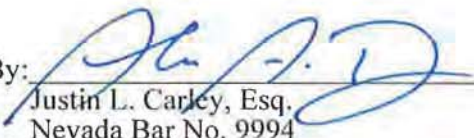
ON ALL CLAIMS FOR RELIEF

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*

Snell & Wilmer

LAW OFFICES  
1881 HOWARD HUGHES PARKWAY, SUITE 1100  
LAS VEGAS, NEVADA 89169  
(702)784-5200

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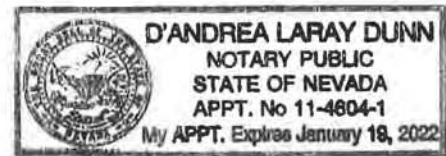
e. A statement that the expert has concluded that there is a reasonable basis for filing the action (Ex. 7).

  
Aleem A. Dhalla, Esq.

STATE OF NEVADA  
COUNTY OF CLARK

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

  
\_\_\_\_\_  
Notary Public



# **Exhibit B**

# **Exhibit B**

# **EXHIBIT 1**

**PROFESSIONAL ARCHITECTURAL SERVICES AGREEMENT  
FOR THE FIRE STATION 53  
AND PROTOTYPE FIRE STATION DESIGNS PROJECT**

**THIS PROFESSIONAL ARCHITECTURAL SERVICES AGREEMENT** (as such may be modified, amended or supplemented, the **"AGREEMENT"**) is made and entered into as of the 7th day of February, 2006, by and between the **CITY OF NORTH LAS VEGAS, NEVADA**, a political subdivision of the State of Nevada, (hereinafter referred to as **"CITY"**), and **DEKKER/PERICH/SABATINI**, a corporation established in the State of Nevada, (hereinafter referred to as **"CONSULTANT"**).

**RECITALS:**

1. The CITY intends to construct Fire Station 53, which generally consists of a new 15,000 square foot building and associated onsite and offsite improvements on a CITY-owned parcel on the northeast corner of Simmons Street and Gowan Road and future Fire Stations 50, 58, 59, 150 through 161, and 163 (hereinafter referred to as the **"IMPROVEMENTS"**).
2. The CITY desires to obtain quality professional services of the CONSULTANT to perform final design, bid phase support, and construction management support services including the preparation of Contract Documents for Fire Station 53 and substantial final design for two prototype designs for future Fire Stations 50, 58, 59, 150 through 161, and 163 (hereinafter referred to as the **"PROJECT"**) for construction of the IMPROVEMENTS; and
3. The CONSULTANT's scope of service and compensation have been arrived at after meaningful negotiations between the CITY and the CONSULTANT.

**NOW, THEREFORE**, in consideration of the above recitals and mutual promises contained herein, the parties hereto agree to the following terms, conditions and covenants set forth in Sections I through XII hereof.

**SECTION I - RESPONSIBILITY OF CONSULTANT**

In addition to any other responsibilities of CONSULTANT set forth in this AGREEMENT, CONSULTANT shall have the following responsibilities:

- A. The CONSULTANT shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by the CONSULTANT, by CONSULTANT's subconsultants, and by any of the principals, officers, employees and agents of CONSULTANT or any subconsultant under this AGREEMENT. In performing these services, CONSULTANT shall follow practices consistent with generally accepted professional architectural standards of care. The CONSULTANT shall, without additional compensation, promptly correct and revise any errors or deficiencies in its design, drawings, specifications, reports and other services, or in any portion of the PROJECT performed by CONSULTANT's subconsultants. Approval by the

CITY of any products or services furnished by CONSULTANT shall not in any way relieve the CONSULTANT of responsibility for the professional and technical accuracy of its services.

- B. CONSULTANT shall assign Christopher W. Larsen, whose license number is 3534, as the Principal-in-Charge ("PRINCIPAL-IN-CHARGE"), and Kevin R. Thompson, whose license number is 5531, as the Project Manager ("PROJECT MANAGER"). All of the services specified by this AGREEMENT shall be performed by the PROJECT MANAGER, or by CONSULTANT's associates, employees and subconsultants under the personal supervision of the PROJECT MANAGER. Should the PRINCIPAL-IN-CHARGE or the PROJECT MANAGER be unable to complete his or her responsibility for any reason, the CONSULTANT shall notify the CITY in writing, and within four (4) calendar days thereafter, nominate a replacement for CITY approval, in its reasonable discretion, who has an equivalent amount of experience performing the same type of services as required for the PROJECT. An approved replacement shall be assigned to the PROJECT within ten (10) calendar days.
- C. In accordance with NRS 338.140, the CONSULTANT shall not produce a design and/or specification for the PROJECT which would limit the bidding, directly or indirectly, to any one specific concern unless a unique or novel product application is required to be used in the public interest, or only one brand or trade name is known to the CITY. The CITY shall be notified of and must pre-approve any sole source proposals.
- D. CONSULTANT and any subconsultant shall furnish CITY with a preliminary draft of any proposed correspondence to any federal, state or other regulatory agency for the CITY's review and approval at least seven (7) calendar days prior to mailing such correspondence.
- E. The CONSULTANT agrees that its officers, partners, employees, and subconsultants will cooperate with the CITY in the performance of services under this AGREEMENT and will be available for consultation with CITY at such reasonable times with advance notice as to not conflict with other responsibilities.

## **SECTION II - RESPONSIBILITY OF CITY**

- A. The CITY will cooperate with CONSULTANT in the performance of services under this AGREEMENT and will be available for consultation with CONSULTANT at such reasonable times with advance notice as to not conflict with their other responsibilities.
- B. The services to be performed by CONSULTANT under this AGREEMENT are subject to periodic review by the CITY. For those documents submitted to the CITY by the CONSULTANT with regard to the PROJECT, the CITY will examine and respond in writing to the CONSULTANT within fourteen (14) calendar days of receipt of such documents. It is understood that CITY comments upon review of the CONSULTANT's documents do not relieve CONSULTANT from the



responsibility for the professional and technical accuracy of all work delivered under this AGREEMENT.

- C. The CITY shall assemble selected data and information related to the PROJECT and provide same to the CONSULTANT on or prior to the kick-off meeting. The data and information to be provided by the CITY is identified as follows:

1. Drafting and plan sheet layout standards;
2. Standard "front-end" contract documents and general conditions;
3. Cover sheet format and CITY logo in AutoCAD 2005 format;
4. Copies of existing, publicly available assessors maps, record-of-surveys, parcel maps, final maps, improvement plans, drainage studies, utility plans, geotechnical studies, and survey datum which are within the PROJECT specific area; and
5. Basis of bearing, bench mark and aerial topographic mapping for the PROJECT. Aerial mapping will be in AutoCAD 2005 format with 1-foot contour intervals.

The CONSULTANT shall be responsible for updating this data and information during the PROJECT development process, and shall be responsible for acquiring supplemental data and information which the CONSULTANT deems necessary.

- D. The CITY will be responsible for performing the work noted below and upon completion will provide the results thereof to the CONSULTANT:

1. Printing of the construction bidding document package;
2. Completing the competitive bidding procedures for public works projects; and
3. Performing construction management, inspection and quality assurance during construction of the IMPROVEMENTS.

### **SECTION III - SCOPE OF SERVICES**

Services to be performed by the CONSULTANT shall consist of the Basic Services described in Exhibit "A", and may consist of those Supplemental Services described in Exhibit "A-1" of this AGREEMENT.

#### **SECTION IV - CHANGES TO SCOPE OF SERVICES**

- A. The CITY may at any time, but only by written order, make changes within the general scope of this AGREEMENT and in the services or work to be performed. If such changes cause a significant increase or decrease in the CONSULTANT's cost or time required for performance of any services under this AGREEMENT, the Parties shall formally amend this AGREEMENT. Any claim of CONSULTANT for adjustment under this clause must be asserted in writing within thirty (30) calendar days from the date of receipt by the CONSULTANT of notification of changes by the CITY, or such claim shall be deemed waived by CONSULTANT and CONSULTANT will be deemed to have agreed to the changes without modification of the compensation or time of performance hereunder.
- B. No additional compensation shall be paid, and no increase in the time of performance shall be awarded, to the CONSULTANT for changes in scope of work without the prior written authorization of the CITY to proceed with such changes.
- C. No additional compensation shall be paid to CONSULTANT for additional costs or delay due to the negligence or intentional acts of CONSULTANT or any subconsultant or any of the officers, employees, or agents of CONSULTANT or any subconsultant.

#### **SECTION V - SUPPLEMENTAL SERVICES OF CONSULTANT**

Supplemental Services will be provided only as specifically authorized in writing by the CITY's representative and may consist of any or all of the work described in Exhibit "A-1". Any other significant change of work determined by the CITY as essential to efficient and timely completion of the PROJECT shall require a formal Amendment to this AGREEMENT as provided by Section IV of this AGREEMENT.

#### **SECTION VI - SUBCONSULTANTS**

CONSULTANT agrees to include in all professional service subcontracts in connection with performance of the terms and obligations imposed under this AGREEMENT provisions in substantially the following form:

- A. CONSULTANT agrees to pay the subconsultant when CONSULTANT is paid for the subconsultant's portion of the work by the CITY and, upon written request by the CITY, to obtain and provide to CITY lien releases from the subconsultant for such payment.
- B. The subconsultant does not have any rights against the CITY.
- C. The subconsultant agrees to be bound by all terms, conditions and obligations of CONSULTANT under this AGREEMENT. CONSULTANT shall provide a copy of this AGREEMENT to each subconsultant.

D. CITY has the right in its reasonable discretion to approve every subconsultant prior to such subconsultant's performance of any portion of the PROJECT.

E. The term "subconsultant" as used herein, also means a sub-subconsultant.

## SECTION VII - TERM OF AGREEMENT

This AGREEMENT commences upon the date this AGREEMENT is approved by the CITY in a formal CITY Council proceeding and shall end one (1) year after the date the CITY makes final payment to the CONSULTANT for services rendered under this AGREEMENT, unless this AGREEMENT is terminated by the CITY.

## SECTION VIII - COMPENSATION AND TERMS OF PAYMENT

### A. TOTAL COMPENSATION

1. The CITY shall pay the CONSULTANT an amount for each of the tasks described in Exhibits "A" and "A-1" as follows:

<u>Basic Services</u>	<u>Lump Sum Amount</u>
1. <u>Final Design Services</u>	<u>\$293,110.00</u>
2. <u>Bid Phase Support Services</u>	<u>7,580.00</u>
3. <u>Construction Management Support Services</u>	<u>46,280.00</u>
4. <u>Prototype Design Services</u>	<u>161,800.00</u>
<b>Subtotal</b>	<u><b>\$ 508,770.00</b></u>

<u>Time &amp; Material Amount</u>		
<b>Supplemental Services</b>	Not-to-exceed	<u><b>\$ 30,000.00</b></u>
<u><b>Grand Total Not-to-Exceed</b></u>		<u><b>\$ 538,770.00</b></u>

### B. TERMS OF PAYMENT

1. Subject to the CITY's right to dispute any charges, the CITY shall make monthly progress payments to the CONSULTANT for services performed as follows:
  - (a) With respect to progress payments for Basic Services completed, the CITY shall pay that percentage of the lump sum amount for each task (as set forth in Subsection VIII.A.1 above) which relates to the percentage of completion of such task, less amounts paid by the CITY to CONSULTANT in prior progress payments.



- (b) With respect to Supplemental Services that are authorized in writing by the CITY's representative, the CITY shall make progress payments for completed Supplemental Services on a Time and Material basis in accordance with the Fee Schedule provided in Exhibit "B".
- 2. Payment to the CONSULTANT under Section VIII.A.1 shall be made within thirty (30) calendar days of the date CITY receives each invoice provided by the CONSULTANT to the CITY, provided that such invoice is complete, correct, and undisputed by the CITY, and that it contains the following information:
  - (a) With respect to progress payments for Basic Services, the CONSULTANT shall prepare and submit to the CITY a written invoice indicating the percentage of completion of each Basic Services task set forth in Section VIII.A.1 during the invoice period. The invoice amount shall be supported with a written summary noting the various tasks worked on during the invoice period.
  - (b) For payment of Supplemental Services authorized in writing by the CITY's representative, the CONSULTANT shall prepare and submit to the CITY a written invoice of costs for the work completed during the invoice period. The invoice amount shall be determined on a Time and Material basis in accordance with the Fee Schedule provided in Exhibit "B", and shall be supported by backup documentation detailing labor costs and other expenses directly related to the authorized work.
- 3. The CITY shall have fourteen (14) calendar days after receipt of an invoice to dispute any or all of the charges on the invoice. Undisputed amounts shall be paid to the CONSULTANT within thirty (30) calendar days of the date CITY receives the invoice. Disputed amounts shall be resolved through the Dispute Resolution mechanism in Section XII.N.
- 4. If the CITY fails to pay the CONSULTANT an undisputed amount within thirty (30) calendar days after the date the CITY receives the invoice, the CITY may be assessed one-half of one percent ( $\frac{1}{2}\%$ ) of the undisputed amount each month, not to exceed \$1,000 total for the PROJECT.
- 5. Billings shall be submitted during the first week of each month for work performed during the preceding month. Invoices shall conform to the format provided by the CITY.

## **SECTION IX - TIME OF PERFORMANCE**

CONSULTANT shall commence work immediately following written notice to proceed by the CITY. Work shall be completed in accordance with the PROJECT Schedule

attached as Exhibit "C", as it may be amended from time to time by written agreement between the CONSULTANT and the CITY.

If the CONSULTANT's performance of services is delayed, CONSULTANT shall notify the CITY's representative in writing of the reasons for delay and prepare a revised schedule for performance of services and submit the revised schedule to the CITY's representative. If the CONSULTANT is delayed, the CITY shall have the right to retain from monthly payments up to ten percent (10%) of subsequent invoices until such time as the CONSULTANT has complied with the schedule or presented an acceptable plan for compliance with the schedule.

No additional time shall be given to CONSULTANT for delay due to the negligence or intentional acts of CONSULTANT or any subconsultant or any of the officers, employees, or agents of CONSULTANT or any subconsultant.

#### **SECTION X - AUDIT: ACCESS TO RECORDS**

- A. The CONSULTANT shall maintain books, records, documents, and other evidence directly pertinent to performance under this AGREEMENT in accordance with generally accepted accounting principles and practices. The CONSULTANT shall also maintain the financial information and data used by the CONSULTANT in the preparation or support of the invoices, and a copy of the cost summaries and invoices submitted to the CITY. The CITY, or any of its duly authorized representatives shall have access to such books, records, documents, and other evidence for the purpose of inspection, audit and copying. The CONSULTANT will provide proper facilities for such access and inspection.
- B. Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines for the reviewing or audit agencies.
- C. The CONSULTANT agrees to the disclosure of all information and reports resulting from access to records pursuant to paragraph "A" above, to any PROJECT funding agency provided that the CONSULTANT is afforded the opportunity for an audit exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report.
- D. Records pursuant to paragraph "A" above shall be maintained and made available during performance under this AGREEMENT and until three (3) years from date of final payment for the PROJECT. In addition, those records which relate to any dispute resolution, litigation or appeal, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until three (3) years after the date of resolution of such dispute, litigation, appeal, claim, or exception. This Section X.D. shall survive the completion of the PROJECT and the termination or expiration of this AGREEMENT.

- E. Public Records Act. Pursuant to NRS 239.010, each and every document provided to the CITY is a "public record" open to inspection and copying by any person, except for those documents otherwise declared by law to be confidential. The CITY shall not in any way be liable to CONSULTANT for the disclosure of any public record. In any event the CITY is required to defend an action with regard to a public records request for documents submitted by CONSULTANT, CONSULTANT agrees to indemnify, hold harmless, and defend the CITY from all damages, costs, and expenses, including court costs and attorney fees, in any action or liability arising under or because of the Nevada Public Records Act, NRS 239.010. This Section X.E. shall survive the completion of the PROJECT and the termination or expiration of this AGREEMENT.
- F. The CONSULTANT agrees to include language substantially similar to the language of paragraphs "A" through "E" of this section in all CONSULTANT subcontracts directly related to performance of services specified in this AGREEMENT which are in excess of \$10,000.00.

#### **SECTION XI - REPRESENTATIONS AND WARRANTIES**

CONSULTANT hereby represents and warrants for the benefit of CITY, in addition to any other representations and warranties made in this AGREEMENT, with the knowledge and expectation of CITY's reliance thereon, as follows:

- A. CONSULTANT is a duly formed and validly existing corporation and is in good standing pursuant to the laws of the State of Nevada, and has the full power, authority and legal right to execute, deliver and perform under this AGREEMENT.
- B. The execution and delivery of this AGREEMENT, the consummation of the transactions provided for herein, and the fulfillment of the terms hereof on the part of CONSULTANT will not result in a breach of any instrument to which CONSULTANT is a party or by which CONSULTANT is bound or of any judgment, decree or order of any court or governmental body or any law, rule or regulation applicable to CONSULTANT.
- C. The execution, delivery and performance of this AGREEMENT and the taking of all other lawful actions necessary to consummate the PROJECT contemplated hereunder, by the persons executing, delivering and performing the same on behalf of CONSULTANT, have been duly and validly authorized (and by their execution hereof or of any document delivered in connection with the PROJECT contemplated hereunder such persons individually represent and warrant that they are so authorized), and this AGREEMENT and the other agreements and instruments contemplated hereby, constitute legal, valid and binding obligations of CONSULTANT, enforceable in accordance with their respective terms.



- D. No consent, approval or authorization of any governmental authority or private party is required in connection with the execution of this AGREEMENT by CONSULTANT.
- E. The CONSULTANT's PROJECT MANAGER and PRINCIPAL-IN-CHARGE are each a duly registered Architect with the State of Nevada and each has a certificate of registration that is in full force and effect. CONSULTANT has obtained any and all licenses, certificates and permits that are required to be obtained by CONSULTANT by the Nevada Revised Statutes and the Nevada Administrative Code, and by any other law, rule, regulation or ordinance applicable to CONSULTANT and to the performance of the PROJECT by CONSULTANT.
- F. CONSULTANT is duly licensed and authorized to do business in the CITY, and CONSULTANT's business license is in full force and effect.
- G. CONSULTANT is a sophisticated and qualified CONSULTANT, whose personnel possess the level of professional expertise and experience that is necessary to properly perform the PROJECT within the required time period, with an appropriate level of diligence, skill and care, and pursuant to the terms, specifications and conditions of this AGREEMENT. CONSULTANT has the necessary personnel, equipment, tools, supplies, materials, and facilities to properly perform the PROJECT within the required time period, with an appropriate level of diligence, skill and care, and pursuant to the terms, specifications and conditions of this AGREEMENT.
- H. CONSULTANT is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the PROJECT within the time period required by this AGREEMENT, and to perform its obligations under this AGREEMENT.
- I. CONSULTANT shall require that each subconsultant performing any portion of the PROJECT:
  - 1. Is duly formed, in good standing, and authorized to do business in the State of Nevada;
  - 2. Is a duly licensed or registered Architect or Engineer, as the case may be, with the State of Nevada, and such license or certificate of registration is in full force and effect;
  - 3. Has obtained any and all licenses, certificates and permits that are required to be obtained by subconsultant by the Nevada Revised Statutes and the Nevada Administrative Code, and by any other law, rule, regulation or ordinance applicable to subconsultant and to the performance of any part of the PROJECT by subconsultant;

4. Is duly licensed and authorized to do business in the CITY, and such business license is in full force and effect; and
5. Shall comply with all laws, rules, regulations, and ordinances, as such may be amended, supplemented or modified from time to time, that are applicable to subconsultant and any portion of the PROJECT performed by subconsultant.

The representations and warranties made by CONSULTANT herein shall survive the completion of the PROJECT and the termination or expiration of the AGREEMENT.

## **SECTION XII - MISCELLANEOUS PROVISIONS**

### **A. SUSPENSION:**

CITY may suspend performance by CONSULTANT under this AGREEMENT for such period of time as CITY, in its sole discretion may prescribe, by providing written notice to CONSULTANT at least seven (7) calendar days prior to the date on which CITY wishes to suspend such performance. Upon such suspension, CITY shall pay CONSULTANT compensation based on percentage of PROJECT completion, earned until the effective date of suspension less all previous payments. CONSULTANT shall not perform further work under this AGREEMENT after the effective date of suspension until receipt of written notice from CITY to resume performance. In the event that CITY suspends performance by CONSULTANT for any cause other than the error or omission of the CONSULTANT for an aggregate period in excess of thirty (30) calendar days, CONSULTANT shall be entitled to an equitable adjustment of the compensation payable to CONSULTANT under this AGREEMENT to reimburse CONSULTANT for additional costs occasioned as a result of such suspension of performance by CITY. In no event will the CITY be liable to the CONSULTANT for more than \$2,000.00.

### **B. TERMINATION:**

The CITY may terminate this AGREEMENT, with or without cause, upon fourteen (14) calendar days prior written notification of the termination to the CONSULTANT. Notification to the CONSULTANT of such termination shall be sent by the CITY in accordance with Section XII.U.

In the event of termination, the CITY agrees to pay the CONSULTANT the reasonable value for all work and services performed to the date of termination in accordance with the Section entitled "Compensation and Terms of Payment" of this AGREEMENT.

**C. FISCAL FUNDING OUT:**

The CITY reasonably believes that sufficient funds can be obtained to make all payments during the term of this AGREEMENT. Pursuant to NRS Chapter 354, if the CITY does not allocate funds to continue the function performed by CONSULTANT obtained under this AGREEMENT, this AGREEMENT will be terminated when appropriate funds expire in accordance with Section XII.B.

**D. OWNERSHIP OF DOCUMENTS:**

All plans, drawings, specifications, reports, photographs, studies, permits, estimates, digital mapping, CAD files, mylar, or other like documents given, prepared or assembled by the CONSULTANT or any subconsultant which are related to the performance of this AGREEMENT shall be the joint property of the CITY and CONSULTANT, provided however, the rights of ownership are limited as follows:

1. The CITY may utilize the drawings and specifications with respect to the construction, maintenance, repair and modification of each of the IMPROVEMENTS and any subsequent projects.
2. Upon the CITY's prior written consent, CONSULTANT may utilize any of the constituent parts of the drawings and specifications on any other project except for any unique or distinctive architectural components or effects which taken independently or in combination would produce a project with substantially similar or distinctive features to the IMPROVEMENTS or any subsequent IMPROVEMENTS of the CITY.
3. The CITY may also utilize the original drawings and specifications with respect to any of the IMPROVEMENTS or any other subsequent IMPROVEMENTS if the CITY engages CONSULTANT or a new consultant to perform professional services with respect thereto.
4. In the event the CITY engages a new consultant to perform professional services on any of the IMPROVEMENTS or other subsequent IMPROVEMENTS utilizing the original drawings and specifications, CONSULTANT agrees to waive its copyright on the original drawings and specifications to the extent necessary for the new consultant to make modifications and changes which take into account the new site specific conditions for the new IMPROVEMENTS.
5. In the event the CITY engages the CONSULTANT to perform professional services on any of the IMPROVEMENTS or any subsequent IMPROVEMENTS utilizing the original drawings and specifications, the CITY agrees to pay the CONSULTANT re-site fees necessary for the new site adaptation of the original drawings and specifications, as mutually agreed upon in writing by the CITY and the CONSULTANT.



## **E. INSURANCE:**

CONSULTANT shall procure and maintain, and shall cause each subconsultant to procure and maintain, at its own expense, during the entire term of this AGREEMENT, the following insurances:

1. Workers' Compensation Insurance. Such insurance must be provided by an insurance company authorized to provide workers' compensation insurance in Nevada by the Nevada Department of Business and Industry, Division of Insurance. Such insurance must protect CONSULTANT and CITY from employee claims based on PROJECT related sickness, disease or accident.
2. Comprehensive General Liability (bodily injury and property damage) insurance with respect to CONSULTANT's agents and vehicles assigned to the prosecution of work under this AGREEMENT in a policy limit of not less than \$1,000,000 for combined single limit per occurrence. CONSULTANT's General Liability insurance policies shall be endorsed as to include the CITY as an additional insured.
3. Professional Liability insurance, for the protection from claims arising out of performance of professional services caused by a negligent act, error, or omission for which the insured is legally liable; such Professional Liability insurance will provide for coverage in an amount of not less than \$1,000,000 for each occurrence and \$2,000,000 in the aggregate for the period of time covered by this AGREEMENT. CONSULTANT will provide CITY thirty (30) calendar days notice in writing of any cancellation of, or material change in, the above described policy.
4. The CONSULTANT's Comprehensive General Liability policy shall automatically include or be endorsed to cover CONSULTANT's contractual liability to the CITY, to waive subrogation against the CITY, its officers, agents, servants and employees, and to provide that the CITY will be given thirty (30) calendar days notice in writing of any cancellation of, or material change in, the policy.
5. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer and licensed by the State of Nevada. All deductibles and self-insured retentions shall be fully disclosed in the Certificate of Insurance. No deductible or self-insured retention may exceed \$250,000 without the written approval of the CITY.
6. Certificates indicating that such insurance is in effect shall be delivered to the CITY before work is begun under this AGREEMENT. If the CONSULTANT is underwritten on a claims-made basis, the retroactive date shall be prior to or coincident with the date of this AGREEMENT, and

the Certificate of Insurance shall state that coverage is claims-made and the retroactive date. CONSULTANT shall provide the CITY annually with a Certificate of Insurance as evidence of such insurance. It is further agreed that the CONSULTANT and/or Insurance Carrier shall provide the CITY with 30-day advance written notice of policy cancellation of any insurance policy required to be maintained by CONSULTANT.

**F. INDEMNITY:**

Notwithstanding any of the insurance requirements herein above set forth or limits of liability set forth therein, CONSULTANT shall defend, protect, indemnify and hold harmless the CITY, its officers, agents and employees from any liabilities, claims, damages, losses, expenses, proceedings, suits, actions, decrees, judgments, reasonable attorney fees, and court costs which the CITY suffers, and/or its officers or employees suffer, as a result of, or arising out of, the intentional or negligent acts or omissions of the CONSULTANT, its subconsultants, or agents or anyone employed by the CONSULTANT or its subconsultants or agents, in fulfillment or performance of the terms, conditions or covenants of this AGREEMENT. This Section XII.F. shall survive the completion of the PROJECT and the termination or expiration of this AGREEMENT until such time as the applicable statutes of limitation expire.

**G. ASSIGNMENT:**

This AGREEMENT shall inure to the benefit of, and be binding upon, the Parties hereto and their respective successors and assigns. The CONSULTANT shall not assign, sublet or transfer its interest in this AGREEMENT without the prior written approval of the CITY representative. Nothing contained herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

**H. WAIVER:**

No consent or waiver, express or implied, by either party to this AGREEMENT or of any breach by the other in the performance of any obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach by such party hereunder. Failure on the part of any party hereto to complain of any act or failure to act on the other party or to declare that other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder. Inspection, payment, or tentative approval or acceptance by the CITY or the failure of the CITY to perform any inspection hereunder, shall not constitute a final acceptance of the work or any part thereof and shall not release CONSULTANT of any of its obligations hereunder.



**I. DESIGNATION OF REPRESENTATIVE:**

The Director of Public Works or the Director's authorized representative is hereby designated as the CITY's representative with respect to the work to be performed under this AGREEMENT. Said representative shall only have the authority to transmit instructions, receive information, and interpret and define the CITY's policies and decisions with respect to the services of the CONSULTANT.

**J. CONSULTANT'S EMPLOYEES:**

The CONSULTANT shall be responsible for maintaining satisfactory standards of employee competency, conduct and integrity, and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. In the event that CONSULTANT fails to remove any employee from the contract work whom the CITY deems incompetent, careless or insubordinate, or whose continued employment on the work is deemed by the CITY to be contrary to the public interest, the CITY reserves the right to require such removal as a condition for the continuation of this AGREEMENT.

**K. INDEPENDENT CONTRACTOR:**

It is hereby expressly agreed and understood that in the performance of the services provided herein, the CONSULTANT and any other person employed by CONSULTANT hereunder shall be deemed to be an independent contractor and not an agent or employee of the CITY. This AGREEMENT is not intended to create, and shall not be deemed to create, any partnership, joint venture or other similar business arrangement between CITY and CONSULTANT.

**L. APPLICABLE LAW:**

This AGREEMENT shall be construed and interpreted in accordance with the laws of the State of Nevada.

**M. COMPLIANCE WITH LAWS:**

In connection with the performance of work under this AGREEMENT, the CONSULTANT agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation or age, including, without limitation, with regard to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including, without limitation, apprenticeship.

The CONSULTANT further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

CONSULTANT shall comply with laws, rules, regulations, and ordinances applicable to the work performed by CONSULTANT with respect to the PROJECT, as such laws, rules, regulations and ordinances may be modified, supplemented or amended from time to time.

**N. PROHIBITION AGAINST CONTINGENT FEES:**

The CONSULTANT warrants that no person or entity has been employed or retained to solicit or secure this AGREEMENT upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. For breach of this warranty, the CITY shall have the right to annul this AGREEMENT without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

**O. DISPUTE RESOLUTION:**

Disputes concerning standards of performance, time of performance, scope of work, compensation or terms specified in the AGREEMENT shall be resolved in the following manner:

1. The CITY's representative and the CONSULTANT's PROJECT MANAGER will endeavor to conduct good faith negotiations in an effort to resolve any and all disputes in a timely manner.
2. If any disputes between the Parties remain unresolved after thirty (30) calendar days, the CITY's representative and the CONSULTANT's PROJECT MANAGER shall, within fourteen (14) calendar days, prepare a brief, concise written report summarizing the:
  - (a) basis for the dispute,
  - (b) negotiations accomplished and results thereof, and
  - (c) current status of all relevant unresolved issues.

Copies of each written summary shall be exchanged between the CITY's representative and the CONSULTANT's PROJECT MANAGER, and provided to the CITY's Public Works Director and the CONSULTANT's PRINCIPAL-IN-CHARGE. Within thirty (30) calendar days thereafter, the CITY's Public Works Director, or his designee, and the CONSULTANT's PRINCIPAL-IN-CHARGE will meet to resolve the dispute. A written record of these negotiations will be made. The record will summarize:

- (a) all issues of dispute,

- (b) the resolutions to resolved issues, and
- (c) unresolved issues, if any.

The written record will be reviewed by the CITY's Public Works Director or his designee, and the CITY's Public Works Director or his designee, will render a determination regarding such dispute.

- 3. If the CONSULTANT disagrees with the determination of the CITY's Public Works Director, or his designee, the CONSULTANT may only initiate an action in the Eighth Judicial District Court in and for Clark County to resolve such dispute. The CITY retains the right to all remedies available in law or equity. The Parties agree that no dispute under this AGREEMENT shall be submitted to or resolved through arbitration or mediation.

**P. ATTORNEY'S FEES:**

In the event any action is commenced by either Party against the other in connection herewith, the prevailing Party shall be entitled to its reasonable costs and expenses, including reasonable attorney's fees, as determined by the court. This Section XII.P shall survive the completion of the PROJECT and the termination or expiration of this AGREEMENT.

**Q. SITE INSPECTION:**

CONSULTANT represents that CONSULTANT has visited the PROJECT location and is satisfied as to the general condition thereof and that the CONSULTANT's compensation as provided for in the AGREEMENT is just and reasonable compensation for performance hereunder including reasonably foreseen and foreseeable risks, hazards and difficulties in connection therewith based on such above-ground observations.

**R. SEVERABILITY:**

In the event that any provision of this AGREEMENT shall be held to be invalid or unenforceable, the remaining provisions of this AGREEMENT shall remain valid and binding on the Parties hereto.

**S. AMENDMENTS:**

This AGREEMENT may only be modified by a written Amendment that is executed by both Parties hereto.

**T. FINAL INTEGRATION:**

This AGREEMENT is fully integrated and constitutes the entire agreement and understanding between the Parties concerning the subject matter of this AGREEMENT. This AGREEMENT supersedes all other oral and written negotiations, agreements and understandings of any and every kind relating to the subject matter of this AGREEMENT.

**U. CONSTRUCTION:**

In the event of any dispute regarding any provision of this AGREEMENT, the terms of this AGREEMENT shall not be construed more strongly against or in favor of either party. The parties acknowledge that each has participated equally in the negotiation and drafting of this AGREEMENT.

**V. NOTICE:**

Any notice required to be given hereunder shall be deemed to have been given when sent to the party to whom it is directed by personal service, hand delivery or U.S. certified mail, return receipt requested, at the following addresses:

TO CITY: CITY OF NORTH LAS VEGAS  
Robert E. Huggins, P.E., Project Manager  
2266 Civic Center Drive  
North Las Vegas, NV 89030

TO CONSULTANT: DEKKER/PERICH/SABATINI  
Christopher W. Larsen, AIA, Managing Principal  
6860 Bermuda Road, Suite 100  
Las Vegas, NV 89119

**W. HEADINGS:**

The headings of the various Sections of this AGREEMENT have been inserted only for convenience, and shall not be deemed in any manner to modify or limit any of the provisions of this AGREEMENT, or to be used in any manner in the interpretation of this AGREEMENT.

**X. CONFIDENTIALITY:**

CONSULTANT shall treat all information relating to the PROJECT and all information supplied to the CONSULTANT by the CITY as confidential and proprietary information of the CITY and shall not permit its release by CONSULTANT's employees to other parties or make any public announcement or release without the CITY's prior written authorization. CONSULTANT shall also require subconsultants and vendors to comply with this requirement.

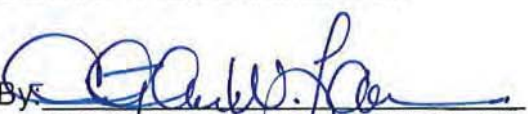


IN WITNESS WHEREOF, the Parties have caused this AGREEMENT to be executed the day and year first above written.

CITY OF NORTH LAS VEGAS, NEVADA

By:   
MICHAEL L. MONTANDON  
MAYOR

DEKKER/PERICH/SABATINI

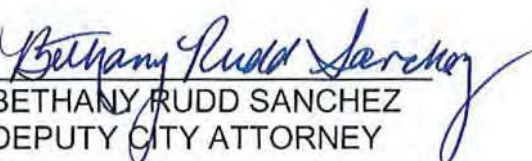
By:   
CHRISTOPHER W. LARSEN, AIA  
MANAGING PRINCIPAL

ATTEST:

By:   
KAREN L. STORMS, CMC  
CITY CLERK

APPROVED AS TO FORM:

SEAN T. MCGOWAN, CITY ATTORNEY

By:   
BETHANY RUDD SANCHEZ  
DEPUTY CITY ATTORNEY

**PROFESSIONAL ARCHITECTURAL SERVICES AGREEMENT  
FOR THE FIRE STATION 53  
AND PROTOTYPE FIRE STATION DESIGNS PROJECT**

**EXHIBIT "A"  
SCOPE OF BASIC SERVICES**

**INTRODUCTION**

This exhibit outlines the scope of work for Basic Services to be provided to the CITY by the CONSULTANT for the design and construction of the IMPROVEMENTS and the prototype design for future IMPROVEMENTS. The CITY reserves the right to cancel, re-prioritize, and/or alter the schedule of the PROJECT as identified herein. The CITY will give "Notice-To-Proceed" on a task-by-task basis.

**PROJECT DESCRIPTION**

The PROJECT consists of final design, bidding phase, and construction management support services for a new 15,000 square-foot Fire Station 53 on a CITY-owned parcel on the northeast corner of Simmons Street and Gowan Road, as shown on the attached Vicinity Map. The onsite improvements will primarily consist of the building, parking, driveways and fire access, and landscaping. The building will include an apparatus bay, shared sleep areas, locker/shower area, kitchen, recreation area, physical fitness room, and restrooms. Offsite improvements will include the construction of the within the limits of the CITY's parcel, including street base and asphalt, curb and gutter, sidewalk, driveways, and street lighting. As part of the PROJECT, the CONSULTANT shall produce final prototype drawings for both 10,000 and 15,000 square foot fire stations for exclusive use by the CITY for future IMPROVEMENTS including Fire Stations 50, 58, 59, 150 through 161, and 163 .

**STANDARDS**

The PROJECT design shall be in complete compliance with the CITY's Commercial Development Standards and Design Guideline requirements for site development, landscaping, parking, and structures. In addition, the CITY's Building Maintenance Division shall provide a list of recommended equipment and materials to be incorporated into the IMPROVEMENTS by CONSULTANT.

Locally adopted standards used for the design of the PROJECT shall include, but are not limited to, the following:

1. International Building Code, 2006, as adopted by the CITY.
2. Clark County Regional Flood Control District, Hydrologic Criteria and Drainage Design manual, current edition.
3. Uniform Standard Specifications for Public Work's Construction Off-site Improvements, Clark County Area, Nevada, current edition.
4. Uniform Standard Drawings for Public Work's Construction Off-site Improvements, Clark County Area, Nevada, Volume's I and II, current edition.

5. "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities", Dept. of Justice Code of Regulations, 28 CFR Part 36, current edition.

When the PROJECT involves other infrastructures, the adopted standards for such, as adopted by the CITY, shall be recognized and followed. Such standards may include:

1. City of North Las Vegas Water Service District Rules and Regulations, current edition.
2. Uniform Design and Construction Standards for Water Distribution Systems, Clark County Nevada, current edition.
3. Design and Construction Standards for Wastewater Collection Systems, Southern Nevada, current edition.

### **PURPOSE**

The purpose of Exhibit A is to establish the scope for the following Tasks:

1. **Final Design Services** - Services related to preparation of construction Contract Documents and construction cost estimates for the IMPROVEMENTS.
2. **Bidding Phase Support Services** - Services intended to support the CITY during public bidding of the IMPROVEMENTS.
3. **Construction Management Support Services** - Services intended to support the CITY during construction activities associated with the IMPROVEMENTS.
4. **Prototype Design Services** – Services intended to provide Prototype designs for both 10,000 and 15,000 square foot future IMPROVEMENTS.

### **SUBCONSULTANTS**

The following subconsultants will be used for the PROJECT:

Civil:	Nevada by Design Engineering Consultants
Landscape:	JW Zunino & Associates
Mechanical/Electrical/Plumbing:	MSA Engineering Consultants
Estimating:	O'Connor Construction Management

### **TASK 1 FINAL DESIGN SERVICES**

Upon receipt of written authorization by the CITY, the CONSULTANT shall perform the services listed below. The goal of this Task is the completion of all design services necessary to provide for the public bidding and construction of the IMPROVEMENTS including furnishing plans and specifications for a 15,000 square foot facility to the CITY for review, approval, and printing. A set of construction Contract Documents shall be prepared to allow public bidding for the IMPROVEMENTS, and will consist of full size (24" x 36" or 30" x 42") mylars and reproducible-

ready specifications. Drawings will be prepared in AutoCAD 2004 edition. The drawing format will be based on standards and details provided by the CITY.

The CONSULTANT shall assume the "front end" legal and contractual sections including Invitation to Bid, Instruction to Bidders, Bid Form, General Conditions and Special Conditions will be provided by the CITY and reviewed and completed by the CONSULTANT. The CONSULTANT will provide any supplemental general conditions, Technical Specifications, and modifications to the Standard Specifications and Standard Drawings in CSI format, for insertion into the Bid Package.

### **1.1 Project Management**

The CONSULTANT shall:

- Perform day-to-day work to administer interrelated activities, manage personnel and resources, and monitor schedules and budgets; coordinate with the CITY; prepare and distribute PROJECT monthly schedule updates; and prepare and distribute monthly status reports.
- Draft schedules and status reports shall be submitted to the CITY for review and approval prior to distribution.
- Utilize the services of an independent construction cost estimator to specify the construction materials and methods necessary to meet the CITY's budget and monitor all aspects of the design effort for compliance.

### **1.2 Progress Meetings**

The CONSULTANT shall:

- Conduct monthly progress meetings during the Final Design Phase. The meetings will be attended by the CONSULTANT's Project Manager, the CITY's Project Manager, and other key personnel as determined to be necessary. Progress meetings may be held in conjunction with other scheduled meetings.
- Prepare meeting minutes recording the discussion issues, decisions, action items and status of PROJECT schedule and cost compliance.
- Prepare a draft agenda and minutes for CITY review prior to issuing final versions for distribution.

### **1.3 Design Charettes**

The CONSULTANT shall:

- Conduct design charette meetings during the Final Design Phase as necessary to obtain design guidelines and program elements from City Departments. A total of three (3) meetings are expected and will be attended, at a minimum, by the CONSULTANT's Project Manager and cost estimator, the CITY's Project Manager, and representatives from the following Departments (at a minimum): Fire, Parks & Recreation, Utilities, Planning and Zoning, Information Technology, and Public Works.



#### **1.4 90% Design Submittal**

The CONSULTANT shall:

- Prepare and submit fifteen (12) sets (4 half-size and 8 full-size) of 90% PROJECT Contract Documents for the PROJECT to the CITY for review and comment. The 90% submittal shall include: a survey monument summary table, utilities and agencies coordination record, detailed technical specifications, construction schedule, permit coordination matrices, and all CITY-supplied bid forms. In addition, an opinion of probable cost for construction and all associated IMPROVEMENT costs will be included.
- After submittal to the CITY, the CONSULTANT shall meet with the CITY and other agencies as necessary to obtain and review comments on the 90% submittal package. It is anticipated that the 90% submittal will include, at a minimum, the following drawings:

Cover Sheet and Sheet Index  
General Notes  
Symbols, Abbreviations and Design Analysis  
Civil/Utility Sheets  
Landscaping and Irrigation Sheets  
Architectural Site Sheets  
Floor Plan Sheets  
Room Finish Schedule  
Door and Window Drawings  
Reflected Ceiling Plan  
Roof Plan and Detail Sheets  
Exterior Elevation Sheets  
Building Section Sheets  
Wall Section Sheets  
Casework Details  
Furniture, Fixtures & Equipment (FF&E) Sheets  
Structural Sheets  
Plumbing Sheets  
Mechanical Sheets  
Electrical Sheets

#### **1.5 Pre-Final Submittal of Contract Documents**

The CONSULTANT shall:

- Prepare and submit to CITY fifteen (6) sets (4 half-size and 2 full-size) of Pre-Final Contract Documents, addressing and incorporating CITY and other agency comments from the 90% review.
- Provide an itemized construction schedule and updated estimate of the construction costs for the IMPROVEMENTS.
- The CONSULTANT shall meet with the CITY and other agencies as necessary to obtain and review comments on the Pre-Final submittal package.

## **1.6 Final Submittal of Contract Documents**

The CONSULTANT shall:

- Address and incorporate CITY comments from the Pre-Final review into the Final Contract Documents.
- Coordinate with and obtain necessary signatures from utilities and agencies, and provide to the CITY original, sealed plans (4 mil mylar) with a sealed, unbound copy of the specifications, special provisions, and final cost estimate.
- Provide all required plans, specifications, calculations, reports, and other documents in the necessary package format for submittal to the CITY's Building Safety Division to obtain a building permit. Revise and re-submit any of the proceeding materials as necessary to obtain approval from the Building Safety Division.
- Submit plans, specifications, calculations, reports, and other documents to other agencies and utilities (including but not limited to Nevada Power, Embarq, Cox, Southwest Gas, and Republic Services) as necessary to obtain addendum drawings for the Contract Documents and secure needed services.
- Provide other necessary documents and information as requested for CITY's PROJECT files.

## **1.7 Utility and Entity Coordination**

The CONSULTANT shall:

- Coordinate with local utility companies, other governmental agencies, including all applicable CITY Departments and Divisions, and other consultants as necessary.
- Review a sample permit matrix, provided by the CITY, and determine all permits needed for the PROJECT.
- Prepare permit applications for the CITY's signature and obtain necessary agency and utility approvals and signatures.

## **1.8 Presentations**

The CONSULTANT shall:

- Conduct a maximum of two (2) PROJECT presentations to the CITY Council, Planning Commission and/or the Chief of the North Las Vegas Fire Department summarizing the PROJECT and prepare renderings or professional quality graphic presentation materials and backup information required for such presentations. This requirement shall include neighborhood meetings or other public outreach meetings.

## **TASK 2 BIDDING PHASE SUPPORT SERVICES**

Upon receipt of written authorization by the CITY, the CONSULTANT shall perform the following tasks related to providing bidding phase support services to the CITY for the IMPROVEMENTS.

### **2.1 Pre-Bid Conference**

The CONSULTANT shall:

- Have the Project Manager only attend and participate in the Pre-Bid Conference to provide technical support.

### **2.2 Addenda Preparation**

The CONSULTANT shall:

- Assist the CITY in the preparation of Addenda to the construction Contract Documents for the PROJECT, as requested by the CITY. The CITY shall sign and issue the Addenda to the plan holders.

### **2.3 Bid Requests and Responses**

When requested by the CITY during the bidding period, the CONSULTANT shall:

- Interpret requests for clarification of the construction Contract Drawings and specifications and promptly provide CITY with written responses. The CITY will respond directly to bidder's questions.

## **TASK 3 CONSTRUCTION MANAGEMENT SUPPORT SERVICES**

Upon receipt of written authorization by the City, the CONSULTANT shall perform the following tasks related to providing construction management support services to the City for the IMPROVEMENTS.

### **3.1 Conformed Drawing Set**

The CONSULTANT shall:

- Prepare a conformed set of drawings incorporating all Addenda and changes addressed during the Bid Phase and provide reproducible copies to the CITY for reproduction and distribution to the Contractor and Construction Management Team.

### **3.2 Project Management/Progress Meetings**

The CONSULTANT shall:

- Have the Project Manager only attend the Preconstruction Conference and weekly construction progress meetings/site visits as requested by the

CITY's Construction Manager and provide a written report if requested. This subtask will be limited to a maximum of twenty (20) progress meetings/site visits.

- Review site visit observations with the Construction Manager. This task shall not be construed to include the services of a Resident Project Engineer or Architect.

### **3.3 Shop Drawing Review**

The CONSULTANT shall:

- Review and accept (or reject) all technical shop drawings, including technical submittals, re-submittals, and samples provided by the Contractor during construction. Specifically, submittals will be marked (all copies), tracked in a submittal log, and returned within seven (7) calendar days to the CITY's Construction Manager.
- Present written recommendations for items submitted by the Contractor for evaluation under a "substitution clause" but only for the limited purpose of checking for conformance with the information given and the design concepts expressed in the Contract Documents.

### **3.4 Coordination/Clarifications**

The CONSULTANT shall:

- Assist the CITY with responding to all Contractor requests for information or technical clarifications and return within seven (7) calendar days to the CITY's Construction Manager.
- Prepare drawings, details, specifications, and cost estimates as required to support construction change orders as requested by the CITY's Construction Manager.
- Provide guidance to assist the Construction Manager to resolve conflicts.

### **3.5 Pre-Final Inspection/Punch List**

The CONSULTANT shall:

- Assist the CITY in conducting pre-final inspections with CITY Construction Manager and Inspector and prepare a list of construction deficiencies for resolution by the Contractor.

### **3.6 Final Inspection**

The CONSULTANT shall:

- Assist the CITY in conducting final inspections with CITY Construction Manager and Inspector to determine that construction deficiencies noted on the punch list have been corrected. The CONSULTANT will also make recommendations to CITY regarding whether issuance of certificates of substantial completion are appropriate at the time.



### **3.7 Project Closeout**

The CONSULTANT shall:

- Prepare Record Drawings, on mylar and CD-ROM, based on the marked-up, as-constructed drawings maintained in the field by the Contractor. These drawings shall reflect all addenda, substitutions, change orders, field changes, and all deviations from the original contract documents. The marked-up drawings, PROJECT files and documents shall be returned to the CITY along with one (1) set of Mylar reproducible drawings, five (5) sets (4 half-size and 1 full-size) of copies, and an electronic copy in AutoCAD 2004 format. The CONSULTANT shall assist the CITY during the 12-month IMPROVEMENTS warranty period if corrective work is required.

## **TASK 4 PROTOTYPE DESIGN SERVICES**

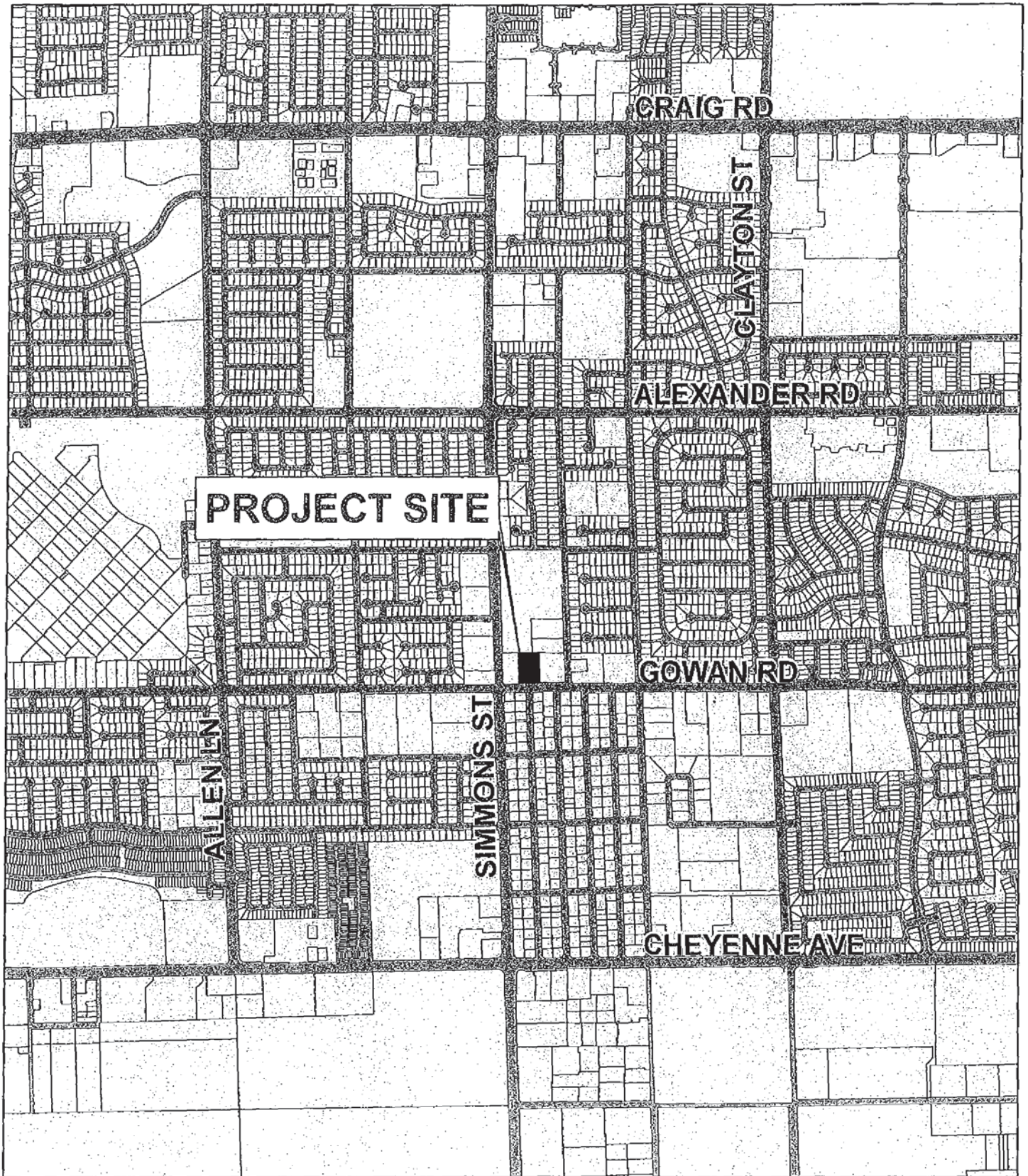
Upon receipt of written authorization by the City, the CONSULTANT shall perform the following tasks related to providing prototype design services to the City for future IMPROVEMENTS.

### **4.1 Prototype Design Submittal and Final Documents**

The CONSULTANT shall:

- After incorporating CITY comments from the 90% design submittal for the 15,000 square foot facility per Subtask 1.3, prepare and provide to the CITY (for the CITY's exclusive use on future IMPROVEMENTS) prototype drawings, on mylar and CD-ROM in AutoCAD 2004 format.
- Develop prototype drawings for a 10,000 square foot fire station facility to be used exclusively by the CITY for future IMPROVEMENTS concurrently with Task 1. The CONSULTANT will provide the same drawings as required for the 15,000 square foot prototype and IMPROVEMENTS with the exclusion of any offsite work. The drawings for this Subtask will be submitted for comments to the CITY and after incorporating CITY comments, the CONSULTANT shall prepare and provide to the CITY prototype drawings, on mylar and CD-ROM in AutoCAD 2004 format.





CITY OF  
NORTH LAS VEGAS  
*Your Community of Choice*  
DEPARTMENT OF PUBLIC WORKS  
ENGINEERING DIVISION

## FIRE STATION 53 VICINITY MAP



NOT TO SCALE

This information is for display purposes only. No liability is assumed as to the accuracy of data.

PET.APP.000780

January 9, 2007



**PROFESSIONAL ARCHITECTURAL SERVICES AGREEMENT  
FOR THE FIRE STATION 53  
AND PROTOTYPE FIRE STATION DESIGNS PROJECT**

**EXHIBIT "A-1"  
SUPPLEMENTAL SERVICES**

The CONSULTANT shall provide Supplemental Services directly related to the PROJECT when requested, and authorized in writing to do so by the CITY. Compensation for Supplemental Services shall be made pursuant to Section VIII, B.1 (b). The Fee Schedule included as Exhibit "B" shall be in effect for the duration of the PROJECT. Supplemental Services of the CONSULTANT may include any, or all of the following:

**SS 1.0 Significant Revision of Design**

The CONSULTANT shall:

- Revise the plans and specifications as necessary to accommodate significant revisions to the building design.

**SS 2.0 Supplemental Utility Potholing**

The CONSULTANT shall:

- Perform, or perform through subconsultant, supplemental potholing determined during the PROJECT to be essential to verify the horizontal and vertical location of underground utilities.

**SS 3.0 Additional Design Services**

The CONSULTANT shall:

- Provide additional architectural or engineering design services that are directly related to the PROJECT but which were not anticipated nor which could be reasonably construed to be associated with work described in Exhibit "A". Additional design services are normally identified by the CITY for the CITY's convenience.

**SS 4.0 Meetings/Site Visits**

The CONSULTANT shall:

- Attend additional progress or coordination meetings or make additional site visits in excess of the quantity specified in Exhibit "A".

## **SS 5.0 Presentations**

The CONSULTANT shall:

- Conduct additional PROJECT presentations, beyond that required in Exhibit "A", to the CITY Council, CITY Department Directors and/or other committees summarizing the PROJECT and prepare renderings or professional quality graphic presentation materials and backup information required for agenda items and meetings.

## **SS 6.0 Additional Construction Management Support Services**

The CONSULTANT shall:

- Assist the CITY on an as-needed basis in accomplishing the following:
  - Construction Management Support Services in excess of those specified in Exhibit "A".
  - Construction inspection, or additional testing and analysis work as required by the City.
  - Quality Assurance and materials testing.



**PROFESSIONAL ARCHITECTURAL SERVICES AGREEMENT  
FOR THE FIRE STATION 53  
AND PROTOTYPE FIRE STATION DESIGNS PROJECT**

**EXHIBIT "B"  
FEE SCHEDULE**

**ARCHITECTURAL LABOR**

<u>Classification</u>	<u>Hourly Rate</u>
Principal	\$ 150.00
Associate / Project Manager	\$ 125.00
Senior CAD Drafter	\$ 75.00
CAD Drafter	\$ 65.00
Intern	\$ 65.00
Administrative	\$ 45.00

These hourly-billing rates shall remain in effect for the duration of the AGREEMENT, and include direct salaries, overhead and profit.

**DIRECT EXPENSES (APPLICABLE TO THE PROJECT)**

Mileage	\$0.445/mile
Subconsultant Fees	At Cost
Reproduction	At Cost
Photocopies	
Blueline/Blackline Prints	
Mylar Drawings	
Photographs	At Cost
Permit Fees	At Cost
Other Direct Costs	At Cost

Direct Expenses (non-salary costs) shall be billed at actual cost without markup, as verified by receipt, invoices or other documentation acceptable to CITY.

**CIVIL LABOR**

<u>Classification</u>	<u>Hourly Rate</u>
Professional Engineer	\$ 135.00
Staff Designer/Engineer	\$ 110.00
Junior Designer	\$ 95.00
Technician/Drafter	\$ 85.00
Clerical/Office Support	\$ 45.00

## STRUCTURAL LABOR

<u>Classification</u>	<u>Hourly Rate</u>
Senior Structural Engineer	\$ 125.00
Structural Engineer	\$ 95.00
Senior Designer	\$ 75.00
Designer	\$ 65.00
Administrative Assistant	\$ 45.00

## LANDSCAPE ARCHITECTURE LABOR

<u>Classification</u>	<u>Hourly Rate</u>
Principal/Landscape Architect	\$ 175.00
Interpretive Planner	\$ 150.00
Landscape Architect	\$ 125.00
Landscape Project Manager	\$ 120.00
Landscape Project Coordinator	\$ 95.00
PhotoShop & Visual Simulation Expert	\$ 105.00
Estimator	\$ 105.00
CAD Operator	\$ 95.00
Senior Draftsperson	\$ 95.00
Draftsperson	\$ 85.00
Clerical	\$ 60.00
Runner	\$ 45.00

## ELECTRICAL & MECHANICAL LABOR

<u>Classification</u>	<u>Hourly Rate</u>
Principal	\$ 200.00
Engineers	\$ 175.00
Engineering Designers	\$ 110.00
Engineering Draftsman	\$ 65.00
Clerical	\$ 45.00

## ESTIMATING LABOR

<u>Classification</u>	<u>Hourly Rate</u>
Principal Estimator	\$ 180.00
Senior Estimator	\$ 135.00
Senior Scheduler	\$ 135.00

Senior Project Manager	\$ 135.00
Estimator	\$ 120.00
Scheduler	\$ 120.00
Project Manager	\$ 120.00
Clerical	\$ 45.00

PROFESSIONAL ARCHITECTURAL SERVICES AGREEMENT  
 FOR THE FIRE STATION 53  
 AND PROTOTYPE FIRE STATION DESIGNS PROJECT  
 EXHIBIT "C"  
 PROJECT SCHEDULE

TASK NUMBER	TASK NAME	MONTH																	
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
1	FINAL DESIGN SERVICES																		
2	BIDDING PHASE SUPPORT SERVICES																		
3	CONSTRUCTION MANAGEMENT PHASE SUPPORT SERVICES																		
4	PROTOTYPE DESIGN SERVICES																		

# Exhibit C

# Exhibit C

**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

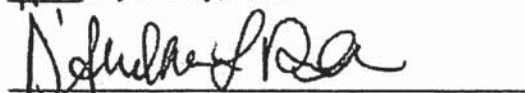
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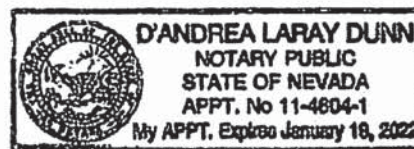
e. A statement that the expert has concluded that there is a reasonable basis for filing the action (Ex. 7).

  
Aleem A. Dhalla, Esq.

STATE OF NEVADA  
COUNTY OF CLARK

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

  
Notary Public



# **Exhibit D**

# **Exhibit D**



RESUME OF

**EDRED T. MARSH**

PRINCIPAL GEOTECHNICAL ENGINEER

---

EMPLOYMENT HISTORY

1999 - Present	Principal Geotechnical Engineer <b>AMERICAN GEOTECHNICAL, INC.</b> San Diego, California
1990 -1999	Project/Senior Engineer <b>AMERICAN GEOTECHNICAL, INC.</b> San Diego, California
1988 -1990	Staff Engineer <b>AMERICAN GEOTECHNICAL, INC.</b> San Diego, California
1988	Engineering Assistant/Laboratory Manager <b>AMERICAN GEOTECHNICAL, INC.</b> San Diego, California
1987 -1988	Student Engineer CITY OF CORONADO Coronado, California

<u>EDUCATION</u>	San Diego State University San Diego, CA B.S. in Civil Engineering
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<u>POST GRADUATE STUDIES</u>	Advanced Foundation Engineering Advanced Soil Mechanics Open Channel Hydraulics Waste and Wastewater Engineering Research Project on the Effect of Partial Wetting on Compacted Fills
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PROFESSIONAL  
REGISTRATIONS

State of California, Registered Geotechnical Engineer, G.E. 2387  
State of California, Civil Engineer, R.C.E. 50315  
State of Nevada, Civil Engineer, R.C.E. 12149  
State of Colorado, Civil Engineer, R.C.E. 33623  
State of Arizona, Civil Engineer, C.E. 41710

PROFESSIONAL  
AFFILIATIONS

American Society of Civil Engineers  
Chi Epsilon National Civil Engineering Honor Society  
ACI - American Concrete Institute  
PTI- Post-Tensioning Institute  
ASTM International

PUBLICATIONS

"The Importance of Communication in the Geotechnical Industry," *Condo Management*, 1992.

"Tri-Axial A-Value Versus Swell or Collapse For Compacted Soils," *American Society of Civil Engineers, Journal of Geotechnical Engineering*, July 1995.

"Common Causes of Retaining Wall Distress: Case Study," *American Society of Civil Engineers, Journal of Performance of Constructed Facilities, Technical Council on Forensic Engineering*, February 1996.

"Seepage and Salt Deposition at the Toe of a Fill Slope," *Environmental & Engineering Geoscience*, Spring 1996.

"Damage and Distortion Criteria for Residential Slab-on-Grade Structures," *American Society of Civil Engineers, Journal of Performance of Constructed Facilities, Technical Council on Forensic Engineering*, July 1999.

"Hydrogeology and Remediation of Shallow Groundwater conditions in Henderson, Las Vegas Valley, Nevada" *AEG News*, July 2007.

PROFESSIONAL EXPERIENCE SUMMARY

Mr. Marsh is the Office Manager and Principal Geotechnical Engineer for American Geotechnical's San Diego and Las Vegas offices. During the course of his professional career, he has become an accomplished leader in the fields of geotechnical, civil, and forensic engineering. He has been involved with projects throughout the southwestern United States. Projects have included hillside developments, deep fill, expansive soil and other sensitive soil sites, infrastructure design and construction consulting, liquefaction and dynamic soil evaluations, slope stability, and landslide evaluation and stabilization, construction material corrosion assessments, concrete problem evaluations, and moisture intrusion studies, among others.

Management responsibilities primarily include training and supervising the engineering, geology, and support-level staff, supervising our soil laboratory, maintaining quality control and necessary licensing and educational information, reviewing proposals and reports, and planning and directing geotechnical and forensic investigations.

Technical abilities include an extensive knowledge of soil mechanics and foundation engineering, and the latest problem-solving techniques and experience related to settlement and expansive soil influence, analysis and design of earth retaining structures, landslide and slope stability, soil dynamics and earthquake engineering, subsurface exploration, soil sampling and in-situ testing, field instrumentation, moisture intrusion and drainage problems, pavement and concrete problems, among other items.

Because of his expertise in geotechnical engineering and other related subjects, Mr. Marsh frequently gives educational presentations for both public and private groups and serves as a professional expert for dispute resolution.

# **Exhibit E**

# **Exhibit E**

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. 88-58, "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 those 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.

CHAIR ANODEL:

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 set 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 Ferraro:**

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 Ferraro:**

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 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.



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Edred T. Marsh, P.E.

# **Exhibit G**

# **Exhibit G**

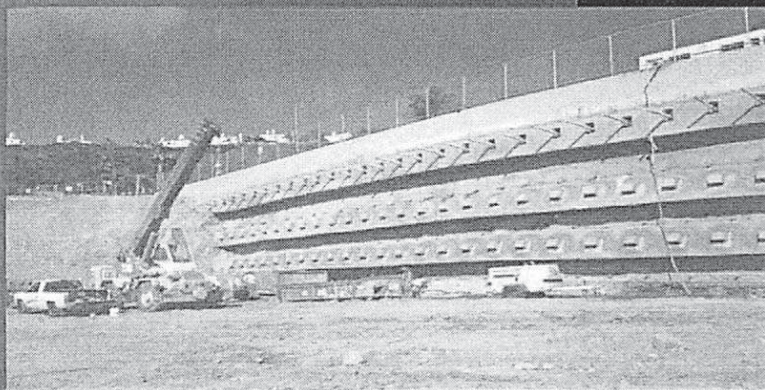


# GEOTECHNICAL INVESTIGATION

## 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](http://WWW.AMGT.COM)

PET.APP.000805



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.

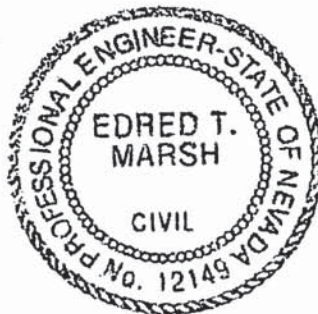
American Geotechnical and the undersigned appreciate the opportunity to work with you on this project. Should you have any questions regarding the information contained herein, please do not hesitate to contact us.

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  
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5600 Spring Mountain Road, Suite 201, Las Vegas, NV 89146 - (702) 562-5046 - FAX (702) 562-2457

PET.APP.000806

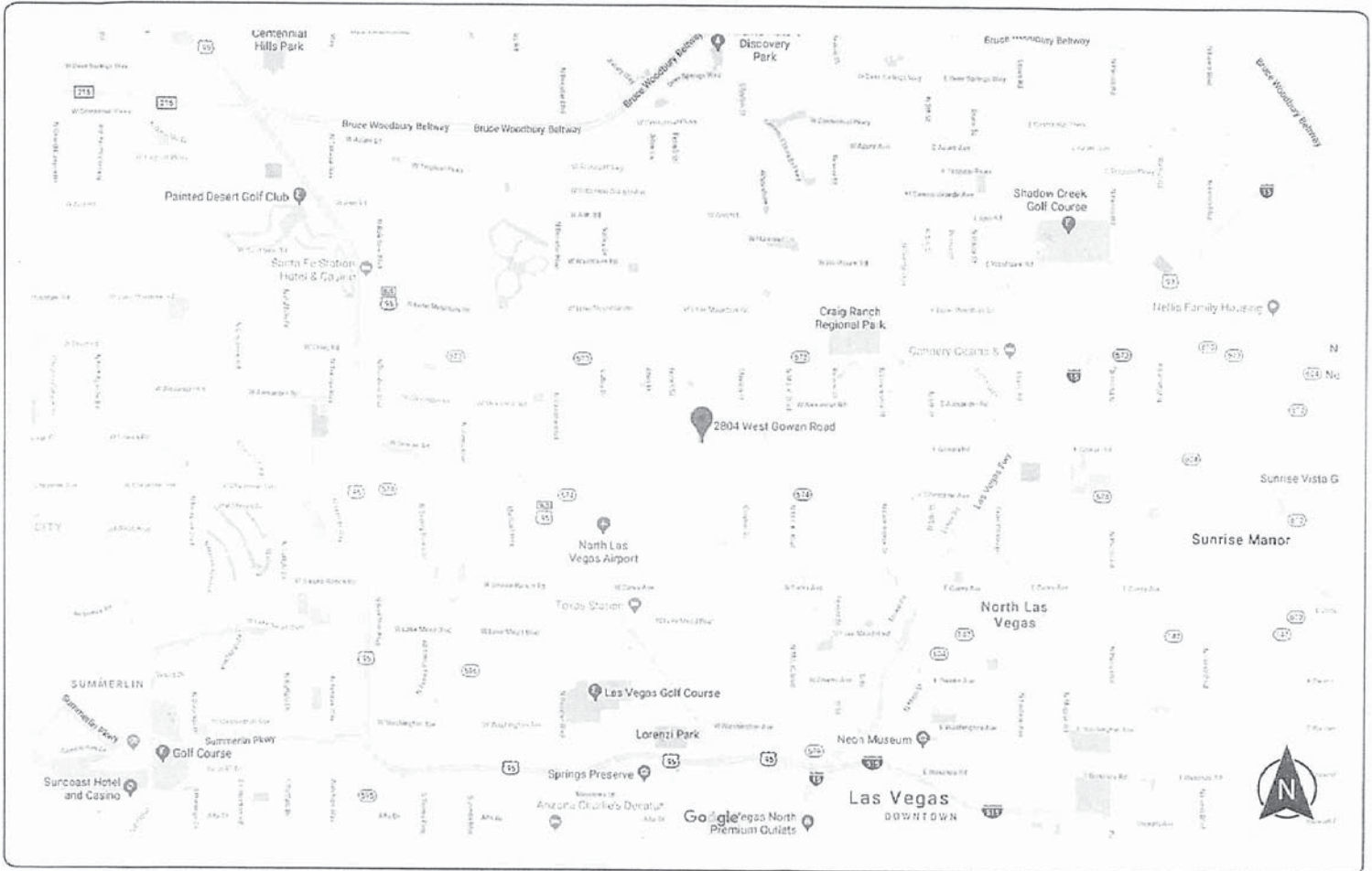
## **1.0 SCOPE OF WORK**

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: <b>SITE LOCATION MAP</b>		
2804 West Gowan Rd., N. Las Vegas, AZ		
SCALE:	DATE:	FILE NO.:
<b>N.T.S</b>	<b>DEC 2017</b>	<b>40779-01</b>



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](http://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**

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.

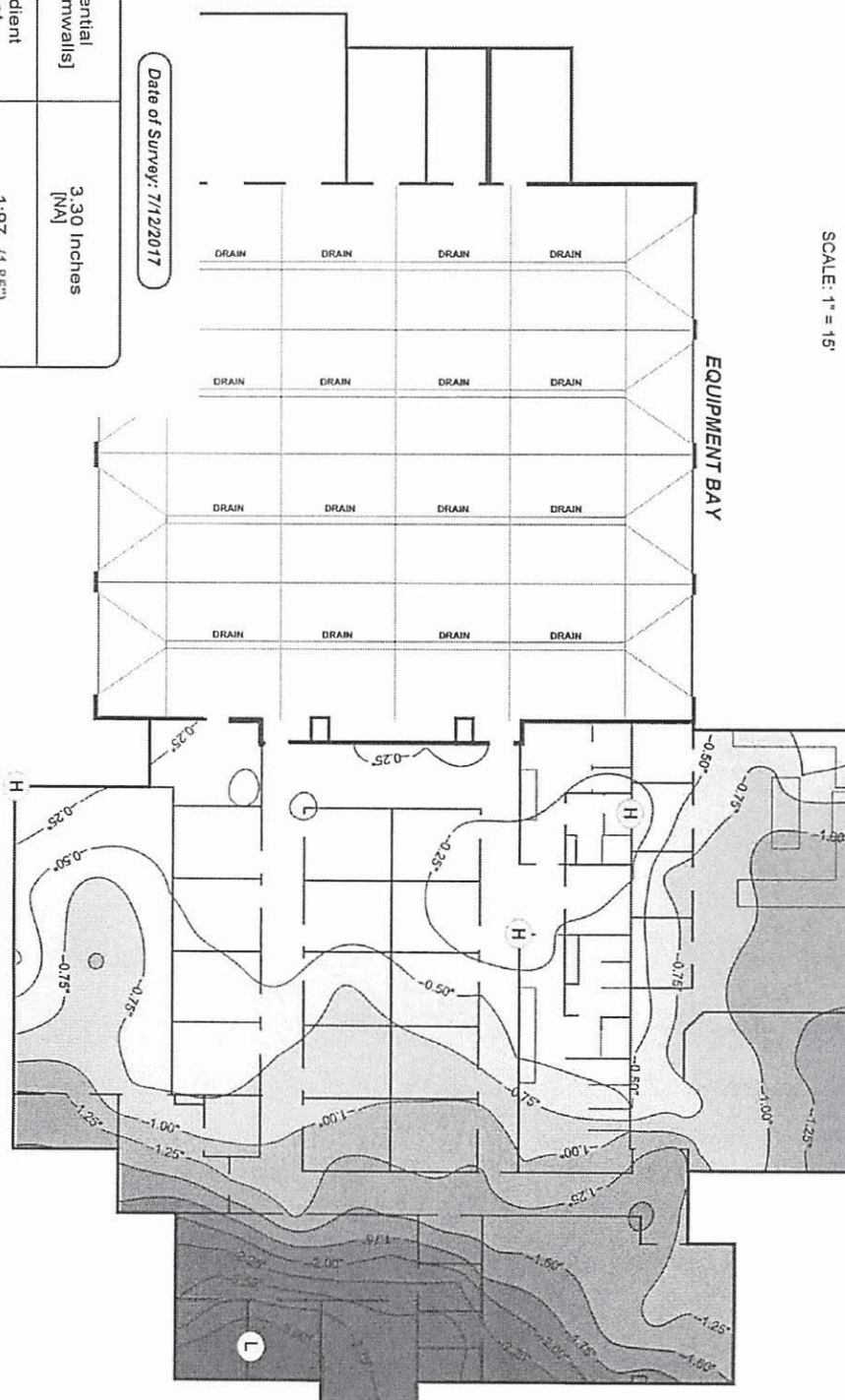
The borings AGBS-1, AGBS-2 and AGBS-3 were drilled within the planter areas located in the east, north and west sides of the building, respectively. The borings were advanced to a maximum depth of approximately 46.5 feet from the ground surface. The materials encountered in all of our borings included 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'



EQUIPMENT BAY



## Date of Survey: 7/12/2017

Overall Differential [with garage stemwells]	3.30 inches [NA]
Steepest Gradient Over 15 Feet  _____ 1.6' _____ 7.5' +	1.97 (1.85")
 	<p>Contours are of relative elevation in inches</p> <p>Survey Point / Relative elevation</p> <p>Low Point</p> <p>High Point</p>
  	<p>Areas that exceeds 1/300 ratio</p> <p>Areas that exceeds 1/240 ratio</p>



MANOMETER SURVEY  
FIRE STATION #53

PLATE 3

PET.APP.000812

~~Docket 81459 Document 2020-25972~~



## **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

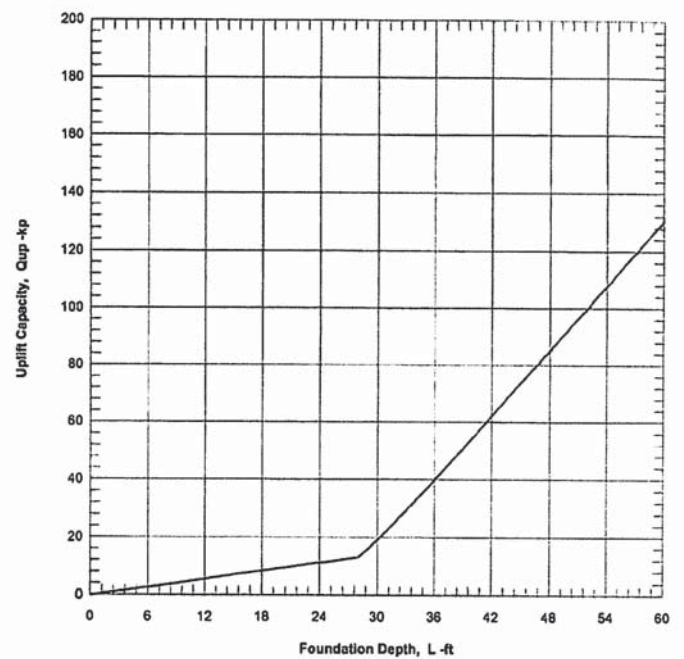
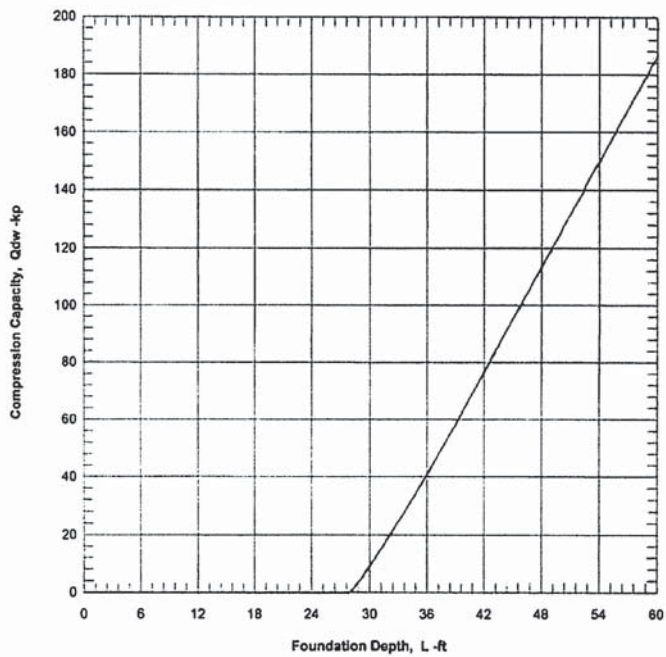
**AMERICAN GEOTECHNICAL****Fire Station 53  
24 inch Diameter Pile**

Plate 4

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

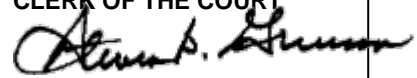
Only a portion of subsurface conditions have been reviewed and evaluated. Conclusions, recommendations, and other information contained in this report are based upon the assumptions that subsurface conditions do not vary appreciably between and adjacent to the observation points. Although no significant 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 5**  
**PETITIONERS' APPENDIX**

**EXHIBIT 5**  
**PETITIONERS' APPENDIX**



**JOIN**

JEREMY R. KILBER, ESQ.  
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[jkilber@weildrage.com](mailto:jkilber@weildrage.com)  
Attorney for Defendant,  
MSA ENGINEERING CONSULTANTS

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

CITY OF NORTH LAS VEGAS,	)	CASE NO.: A-19-798346-C
	)	
Plaintiff,	)	DEPT. NO.: VIII
	)	
vs.	)	
	)	
DEKKER/PERICH/SABATINI LTD.;	)	<b>DEFENDANT MELROY</b>
RICHARDSON CONSTRUCTION, INC.;	)	<b>ENGINEERING, INC. D/B/A MSA</b>
NEVADA BY DESIGN, LLC D/B/A NEVADA BY	)	<b>ENGINEERING CONSULTANTS</b>
DESIGN ENGINEERING CONSULTANTS; JW	)	<b>JOINDER TO DEFENDANT</b>
ZUNINO & ASSOCIATES, LLC; MELROY	)	<b>NEVADA BY DESIGN, LLC d/b/a</b>
ENGINEERING, INC. D/B/A MSA	)	<b>NEVADA BY DESIGN</b>
ENGINEERING CONSULTANTS; O'CONNOR	)	<b>ENGINEERING CONSULTANTS'</b>
CONSTRUCTION MANAGEMENT INC.; NINYO	)	<b>MOTION TO DISMISS OR, IN</b>
& MOORE, GEOTECHNICAL CONSULTANTS;	)	<b>THE ALTERNATIVE, MOTION</b>
JACKSON FAMILY PARTNERSHIP LLC D/B/A	)	<b>FOR SUMMARY JUDGMENT</b>
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,	)	Hearing Date: <u>09/09/19</u>
	)	
Defendants.	)	Hearing Time: <u>8:30 a.m.</u>
	)	
	)	

///

///

///

///

{01602064;1}



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 8<sup>th</sup> day of August, 2019, service of the foregoing  
**DEFENDANT MELROY ENGINEERING, INC. D/B/A MSA ENGINEERING**  
**CONSULTANTS 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.  
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*/s/ Joanna Medina*

---

Joanna Medina, an Employee of  
WEIL & DRAGE, APC

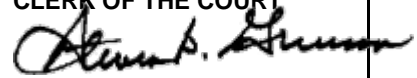
# **EXHIBIT 6**

## **PETITIONERS' APPENDIX**

# **EXHIBIT 6**

## **PETITIONERS' APPENDIX**





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*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.: A-19-798346-C

DEPT. NO.: VIII

**HEARING REQUESTED**

**PLAINTIFF'S MOTION TO STRIKE  
AND OPPOSITION TO  
DEFENDANT JACKSON FAMILY  
PARTNERSHIP LLC D/B/A  
STARGATE PLUMBING'S MOTION  
TO DISMISS**

The City of North Las Vegas ("City") submits its motion to strike and opposition to Defendant Jackson Family Partnership LLC d/b/a Stargate Plumbing's ("Stargate") motion to dismiss ("Motion to Dismiss").

## I. INTRODUCTION

Stargate's Motion to Dismiss is improper so should be stricken. No attorney has appeared on behalf of Stargate. Instead, Jerome Jackson, a non-attorney and the LLC's member, filed Stargate's Motion to Dismiss. The law does not allow Stargate to be self-represented and Mr. Jackson cannot represent Stargate. Therefore, the Court should strike Stargate's Motion to Dismiss.

If the Court decides not to strike the Motion to Dismiss, the Court should still deny it. Under Nevada's notice-pleading standard, the City has alleged sufficient facts to support its legal theories. Moreover, Stargate admits that it installed the plumbing system on the construction project, but disputes that its work resulted in the alleged damage. Mot. to Dismiss 2:4–8, 22–28. A factual dispute, however, is not appropriate grounds for a motion to dismiss, especially when the Court must construe the pleadings liberally and accept all factual allegations in the complaint as true. Therefore, if inclined to even consider it, the Court should deny Stargate's Motion to Dismiss.

## II. PROCEDURAL HISTORY

The City filed its complaint on July 11, 2019 and served Stargate on July 31, 2019 through its registered agent. Aff. Service, Ex. 1. On August 1, 2019, the City received Stargate's Motion to Dismiss via U.S. Mail, which was dated July 31, 2019. *See* Mot. to Dismiss. Jerome Jackson, a non-attorney and a member of the Jackson Family Partnership LLC, filed the Motion to Dismiss and asserts that Stargate is "Self-Represented." *Id.* 1:7. Stargate concedes that it installed the plumbing system during construction of Fire Station 53 ("Project"). *Id.* 2:4–8.

## III. ARGUMENT

### A. The Court should strike Stargate's Motion to Dismiss.

A business entity must be represented by counsel and may not appear or file documents in proper person. *See State v. Stu's Bail Bonds*, 115 Nev. 436, 436 n.1, 991 P.2d 469, 470 n.1 (1999) (noting that "business entities are not permitted to appear, or file documents, in proper person"); *Salman v. Newell*, 110 Nev. 1333, 1336, 885 P.2d 607, 608 (1994) (observing that no statute or rule permits a non-lawyer to represent an entity and concluding that an entity cannot proceed in proper person); *Sunde v. Contel of California*, 112 Nev. 541, 542–43, 915 P.2d 298, 299 (1996) (explaining that non-lawyers may not represent entities in court).

Here, no attorney has appeared on behalf of Stargate. Instead, Jerome Jackson, a non-attorney and the LLC's member, filed Stargate's Motion to Dismiss. But the law does not allow Stargate to be self-represented nor can Mr. Jackson, a non-lawyer, represent it. Therefore, the Motion to Dismiss is improper and should be stricken.

**B. If the Court decides not to strike the Motion to Dismiss, the Court should still deny it.**

Nevada's notice pleading standard only "requires plaintiffs to set forth the facts which support a legal theory." *Liston v. Las Vegas Metro. Police Dep't*, 111 Nev. 1575, 1578, 908 P.2d 720, 723 (1995) "Because Nevada is a notice-pleading jurisdiction, our courts liberally construe pleadings to place into issue matters which are fairly noticed to the adverse party." *Hay v. Hay*, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984).

Under NRCP 12(b)(5), dismissal is only appropriate "if it appears beyond a doubt that the plaintiff could prove no set of facts, which, if true, would entitle the plaintiff to relief." *Facklam v. HSBC Bank USA for Deutsche ALT-A Sec. Mortg. Loan Tr.*, 401 P.3d 1068, 1070 (Nev. 2017) (internal quotations omitted). In considering a motion to dismiss, the Court "must construe the pleadings liberally and accept all factual allegations in the complaint as true." *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000). "Furthermore, this court must draw every fair inference in favor of the non-moving party." *Id.*

Here, the City's complaint satisfies Nevada's notice pleading standard. In its complaint, the City alleges that, after construction of Fire Station 53 was completed, the City noticed distress to the building including wall cracks and separations, and interior slab cracking. Compl. ¶ 46. The City retained American Geotechnical, Inc. ("American Geotechnical") to perform a geotechnical investigation of the site. *Id.* ¶ 47. 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. *Id.* 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. *Id.* In short, settlement of the building was caused by stresses from the weight of the structure and self-weight of the earth materials *and was aggravated by introduction of water to the subsoil.* *Id.* ¶ 52.

1 The City alleges that Stargate's work on the Project constituted a breach of the construction  
2 contract (*Id.* ¶¶ 69–74), breach of the covenant of good faith and fair dealing (*Id.* ¶¶ 75–82),  
3 negligence (*Id.* ¶¶ 83–86), and breach of implied warranty (*Id.* ¶¶ 87–92). In short, the City alleges,  
4 among other things, that Stargate “failed to perform the work on the Project with care, skill,  
5 reasonable expediency, and faithfulness, and in a workmanlike manner as would be expected for  
6 this type of work.” *Id.* ¶ 90. Stargate admits that it installed the plumbing system on the Project,  
7 (Mot. to Dismiss 2:4–8) which would have carried water through the soil under the property. While  
8 Stargate disputes that its work resulted in the alleged damage, a factual dispute is not grounds for  
9 a motion to dismiss.

10 In sum, the City has alleged facts sufficient to support its legal theories and the Court must  
11 construe the pleadings liberally and accept all factual allegations in the complaint as true. The City's  
12 complaint satisfies Nevada's notice-pleading standard, as Stargate is fairly on notice of the City's  
13 claims against it. Thus, the Court should deny Stargate's Motion to Dismiss.

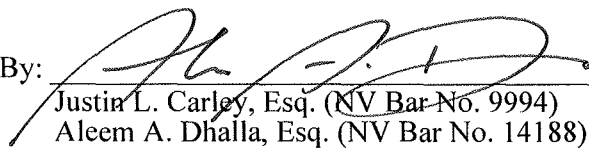
#### 14 IV. CONCLUSION

15 The Court should strike Stargate's Motion to Dismiss. Business entities cannot represent  
16 themselves in Court and must be represented by an attorney. Mr. Jackson, as manager of the LLC,  
17 cannot represent Stargate. Therefore, the Court should strike the Motion to Dismiss. Moreover, if  
18 the Court decides not to strike the Motion to Dismiss, the Court should still deny it; the City has  
19 presented sufficient facts to support its legal theories and Stargate's factual dispute regarding its  
20 work on the Project is not appropriate for a motion to dismiss.

21 Dated: August 15, 2019

SNELL & WILMER L.L.P.

22  
23 By:

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

26 Attorneys for the City of North Las Vegas  
27  
28

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **PLAINTIFF'S MOTION TO STRIKE AND OPPOSITION TO DEFENDANT JACKSON FAMILY PARTNERSHIP LLC D/B/A STARGATE PLUMBING'S MOTION TO DISMISS** to the following:

**VIA U.S. MAIL & E-MAIL**

Jerome Jackson, Member  
Jackson Family Partnership LLC d/b/a  
Stargate Plumbing  
1951 Stella Lake St., Suite 1  
Las Vegas, Nevada 89106  
Telephone: (702) 648-7525  
Email: [stargatepl@aol.com](mailto:stargatepl@aol.com)  
*Pro Se*

**VIA U.S. MAIL**

Theodore Parker III, Esq.  
**Parker Nelson & Associates, Chtd.**  
2460 Professional Court, Ste. 200  
Las Vegas, Nevada 89128  
*Attorney for Defendant Richardson  
Construction, Inc.*

Jorge A. Ramirez, Esq.  
**Wilson, Elser, Moskowitz, Edelman &  
Dicker LLP**  
300 South 4<sup>th</sup> Street, 11<sup>th</sup> Floor  
Las Vegas, Nevada 89101  
*Attorney for Defendant Ninyo & Moore,  
Geotechnical Consultants*

**VIA E-SERVICE ONLY**

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  
and Dekker/Perich/Sabatini, Ltd.*

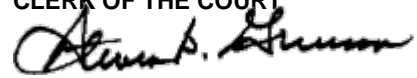
Jeremy R. Kilber, Esq.  
**Weil & Drage, APC**  
2500 Anthem Village Drive  
Henderson, Nevada 89052  
*Attorney for MSA Engineering Consultants*

DATED this 15th day of August, 2019.

/s/ Lyndsey Luxford  
An employee of SNELL & WILMER L.L.P.



# **EXHIBIT 1**



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Attorneys for the City of North Las Vegas

**DISTRICT COURT, CLARK COUNTY, NEVADA**

<b>Plaintiff / Petitioner:</b> City of North Las Vegas	<b>Case No:</b> A-19-798346-C Department 8
<b>Defendant / Respondent:</b> 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 CO	AFFIDAVIT/DECLARATION OF SERVICE JACKSON FAMILY PARTNERSHIP LLC d/b/a STARGATE PLUMBING

I, MICHELLE ELY, R-004357, EXPIRES 02/07/2022, being duly sworn, or under penalty of perjury, state that at all times relevant, I was over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents.

That on Tue, Jul 23 2019 at 12:26 PM, at the address of 1951 STELLA LAKE ST SUITE 1, within LAS VEGAS, NV, the undersigned duly served the following document(s): SUMMONS; COMPLAINT in the above entitled action upon JACKSON FAMILY PARTNERSHIP LLC d/b/a STARGATE PLUMBING, by then and there, personally delivering 1 true and correct copy(ies) of the above documents to JEROME JACKSON, REGISTERED AGENT by leaving with HESTER JACKSON, PER NEVADA REVISED STATUTE 14.020 2. as a person of suitable age and discretion at the address above, which address is the most recent street address of the registered agent shown on the information filed with the Secretary of

///

///

///

State pursuant to chapter 77 of NRS.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct. No Notary is Required per NRS 53.045.

**Date:** 07/25/2019

A handwritten signature in cursive script, appearing to read 'MEly', positioned above a horizontal line.

---

MICHELLE ELY, R-004357, EXPIRES 02/07/2022

ACE Executive Services, LLC (NV #2021C)

8275 S EASTERN AVE STE 200

LAS VEGAS, NV 89123

702 919-7223

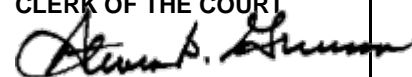
Job: 3583638 (City of North Las Vegas)

# **EXHIBIT 7**

## **PETITIONERS' APPENDIX**

# **EXHIBIT 7**

## **PETITIONERS' APPENDIX**



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*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.: A-19-798346-C

DEPT. NO.: VIII

**PLAINTIFF'S OPPOSITION TO  
DEFENDANT NEVADA BY DESIGN,  
LLC D/B/A NEVADA BY DESIGN  
ENGINEERING CONSULTANT'S  
MOTION TO DISMISS OR, IN THE  
ALTERNATIVE, MOTION FOR  
SUMMARY JUDGMENT**

The City of North Las Vegas ("City") opposes 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 ("NBD Motion"), along with Dekker/Perich/Sabatini Ltd.'s ("Dekker")'s and Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' ("MSA")'s partial joinder to the NBD Motion with respect to its statute of repose argument ("Joinders").



## I. INTRODUCTION

The City's claims are timely under the applicable ten-year statute of repose and it fully complied with NRS 11.258, so the Court should deny both the NBD Motion and the Joinders.

Regarding the statute of repose, NBD, Dekker and MSA fail to examine the text of Nevada's recently passed bill. Had they, they would have seen that the Nevada legislature made the newly extended ten-year statute of repose applicable retroactively, meaning the City's claims are timely. More specifically, the Nevada Legislature amended the applicable statute of repose to extend it from six years to ten years. In so doing, they stated that the amendment applied "retroactively to actions in which the substantial completion of the improvement to the real property occurred before October 1, 2019."<sup>1</sup> NBD, Dekker, and MSA do not dispute that the construction of Fire Station 53 reached substantial completion on July 13, 2009 or that the City filed its complaint on July 11, 2019. Because the City's claims are timely under the applicable ten-year statute of repose, the Court should deny the NBD Motion and Joinders.

Regarding NRS 11.258, NBD attempts to improperly add requirements that are not actually contained in the statute. By selectively quoting it, relying on irrelevant legislative history, and confusing the requirements of NRS 11.258 with the affidavit requirement in medical malpractice cases, NBD improperly seeks to dismiss the City's claims, which would permanently bar the City's claims if erroneously allowed. But the City's complaint fully complies with NRS 11.258. The statute requires that, before commencing an action against a design professional, the attorney consult with an expert, attach the required attorney affidavit with the complaint, and attach the expert's report with the Complaint with the documents reviewed by the expert. The City did exactly that, so it complied with the plain, unambiguous requirements of NRS 11.258.

Because the City's claims are timely under the applicable ten-year statute of repose and because it fully complied with NRS 11.258, the Court should deny both the NBD Motion and the Joinders.

---

<sup>1</sup> AB 421, 80th Leg. (2019). AB 421 was signed into law by the Governor on June 3, 2019.

## II. RELEVANT FACTS

This case concerns the deficient construction of Fire Station 53 in North Las Vegas (“Project”). Ex. 1 ¶¶ 22–23. The City retained Dekker/Perich/Sabatini Ltd. (“Dekker”) to provide Professional Architectural Services for the design of Fire Station 53 (“Property”). *Id.* As part of the Design Agreement, Dekker was responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by the Dekker and its subconsultants. Ex. 1 ¶¶ 24–25. Dekker contracted with several subconsultants on the Project, including Nevada By Design, JW Zunino, MSA, O’Connor, and Ninyo & Moore. Ex. 1 ¶ 27.

Following completion of the design phase, the City awarded the Project to Richardson Construction, Inc. (“Richardson Construction”). Ex. 1 ¶¶ 36–38. Richardson Construction’s scope of work included site clearing, earthwork, masonry, structural steel roofing, interior finishes, plumbing, fire protection, heating, ventilating and air conditioning systems, electrical systems, lighting, power, telephone, data-communications, landscaping, utilities, asphalt/concrete drives, concrete sidewalk and patios, furnishing equipment, and other work included in the Construction Documents. Ex. 1 ¶ 39. 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. Ex. 1 ¶ 40.

The Project reached substantial completion on July 13, 2009 when the notice of completion was recorded. Ex. 1 ¶ 45 & p. 133. After the Project was completed, the City noticed distress to the building including wall cracks and separations, and interior slab cracking. Ex. 1 ¶ 46. The City retained Edred T. Marsh, P.E. of American Geotechnical, Inc. (“American Geotechnical”) to perform a geotechnical investigation of the site. Ex. 1 ¶ 47. 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. Ex. 1 ¶ 47. Mr. Marsh 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. Ex. 1 ¶ 49. In short, settlement of the building occurred as a result of stresses from the weight of the structure and self-weight of the earth materials and was aggravated by introduction of water to the subsoil. Ex. 1 ¶ 52.

### III. PROCEDURAL HISTORY

The City filed its complaint on July 11, 2019, which included its attorney's affidavit as required by NRS 11.258, along with its expert's report, a separate statement from its expert, the documents reviewed by its expert, and several other exhibits. *See* Ex. 1. NBD filed its motion on August 5, 2019. *See* NBD Motion. Dekker joined NBD's motion to dismiss with respect to its statute of repose argument. *See* Dekker Joinder, filed August 6, 2019. Melroy Engineering, Inc. d/b/a MSA Engineering Consultants ("MSA") also joined NBD's motion to dismiss with respect to its statute of repose argument. *See* MSA Joinder, filed August 8, 2019.

### IV. LEGAL STANDARD

"Nevada has not adopted the federal 'plausibility' pleading standard." *Compare McGowen, Tr. of McGowen & Fowler, PLLC v. Second Judicial Dist. Court*, 134 Nev. Adv. Op. 89, 432 P.3d 220, 225 (2018) with NBD Mot. 5:11–17. Rather, Nevada's notice-pleading standard only "requires plaintiffs to set forth the facts which support a legal theory." *Liston v. Las Vegas Metro. Police Dep't*, 111 Nev. 1575, 1578, 908 P.2d 720, 723 (1995) "Because Nevada is a notice-pleading jurisdiction, our courts liberally construe pleadings to place into issue matters which are fairly noticed to the adverse party." *Hay v. Hay*, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984).

Under NRCP 12(b)(5), dismissal is only appropriate "if it appears beyond a doubt that the plaintiff could prove no set of facts, which, if true, would entitle the plaintiff to relief." *Facklam v. HSBC Bank USA for Deutsche ALT-A Sec. Mortg. Loan Tr.*, 401 P.3d 1068, 1070 (Nev. 2017) (internal quotations omitted). In considering a motion to dismiss, the Court "must construe the pleadings liberally and accept all factual allegations in the complaint as true." *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000). "Furthermore, this court must draw every fair inference in favor of the non-moving party." *Id.*

## V. ARGUMENT

### A. The City's claims are timely under the applicable ten-year statute of repose.

The City's claims are timely. The Legislature Nevada recently extended NRS 11.202—which sets a statute of repose on claims regarding construction and design deficiencies—from six years to ten years. The Legislature explicitly made the amendment to NRS 11.202 *effective retroactively* to actions in which substantial completion occurred before October 1, 2019. It is undisputed that substantial completion occurred before October 1, 2019, so the new ten-year statute of repose applies to this case. In turn, because substantial completion occurred less than ten years before the City filed its complaint, the City's claims are timely.

#### 1. AB 421 amended NRS 11.202 to extend the statute of repose to ten years.

The Nevada Legislature recently amended NRS 11.202 to extend the applicable statute of repose. AB 421 was signed into law on June 3, 2019. *See* Ex. 2. Section 7 of AB 421 extends the statute of repose for claims regarding deficiencies in construction from six to ten years after substantial completion. *Id.* Specifically, the relevant portion of Section 7 states:

Sec. 7. NRS 11.202 is hereby amended to read as follows:

11.202 1. No action may be commenced 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 more than ~~6~~ 10 years after the substantial completion of such an improvement, for the recovery of damages for:

(a) ~~Any~~ *Except as otherwise provided in subsection 2, any* deficiency in the design, planning, supervision or observation of construction or the construction of such an improvement;

(b) Injury to real or personal property caused by any such deficiency;  
or

(c) Injury to or the wrongful death of a person caused by any such deficiency.

*Id.* (emphasis in original).<sup>2</sup>

---

<sup>2</sup> AB 421 also added subsection 2 to NRS 11.202 which removes the deadline when an act of fraud caused the deficiency. The City does not allege a fraud claim in its Complaint, and subsection 2 is not applicable here. However, the City does not waive, and expressly reserves, its right to pursue a fraud claim should it later discover facts to support such a claim.

1 This change was only one of many made through AB 421. Among other things, the bill also  
2 amended NRS Chapter 40’s notice and inspection requirements, amended the homeowner warranty  
3 definition and recovery process, amended the recovery of costs by homeowners. *Id.* The Legislature  
4 gave separate effective dates to each section of the statute. *Id.* Sec. 11. This is important because,  
5 while the Legislature made all other sections of AB 421 effective prospectively, the Legislature  
6 singled out Section 7 and made the ten-year statute of repose effective retroactively. *Id.* And they  
7 did so on purpose.

8 **2. The ten-year statute of repose applies retroactively.**

9 “It is well settled in Nevada that words in a statute should be given their plain meaning  
10 unless this violates the spirit of the act.” *In re Estate of Thomas*, 116 Nev. 492, 495, 998 P.2d 560,  
11 562 (2000) (quoting *McKay v. Bd. of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986)).  
12 Further, the Court “must attribute the plain meaning to a statute that is not ambiguous” and should  
13 only look to legislative history if it finds that the text is ambiguous. *State v. Catanio*, 120 Nev.  
14 1030, 1032, 102 P.3d 588, 590 (2004); *State v. Lucero*, 127 Nev. 92, 95–96, 249 P.3d 1226, 1228  
15 (2011). “In addition, no provision of a statute should be rendered nugatory by this court’s  
16 construction, nor should any language be made mere surplusage, if such a result can be avoided.”  
17 *Id.*

18 As a general rule, “statutes operate prospectively, ***unless the Legislature clearly manifests***  
19 ***an intent to apply the statute retroactively.***” *Pub. Employees’ Benefits Program v. Las Vegas*  
20 *Metro. Police Dep’t*, 124 Nev. 138, 154, 179 P.3d 542, 553 (2008) (emphasis added).

21 Here, the Legislature provided separate effective dates for each section of AB 421. While  
22 other sections of the bill are effective “on or after October 1, 2019,” section 7 is ***effective***  
23 ***retroactively*** to actions where substantial completion occurred before October 1, 2019. Specifically,  
24 Section 11 states:

25 **Sec. 11. 1.** The provisions of NRS 40.645 and 40.650, as amended  
26 by sections 2 and 4 of this act, respectively, apply to a notice of  
constructional defect given on or after October 1, 2019.

27 **2.** The provisions of NRS 40.647, as amended by section 3 of this  
28 act, apply to an inspection conducted pursuant to NRS 40.6462 on or  
after October 1, 2019.



1 3. The provisions of NRS 40.655, as amended by section 5 of this  
2 act, apply to any claim for which a notice of constructional defect is  
given on or after October 1, 2019.

3 **4. The period of limitations on actions set forth in NRS 11.202, as**  
4 **amended by section 7 of this act, apply retroactively to actions in**  
5 **which the substantial completion of the improvement to the real**  
6 **property occurred before October 1, 2019.**

7 Ex. 2 (emphasis added).

8 Importantly, the Legislature went out of its way to provide effective dates for each section  
9 of AB 421. The Legislature was perfectly capable of making the entire statute effective on a certain  
10 date. *See, e.g.*, AB 221 (2019) (“Sec. 2. This act becomes effective on July 1, 2019”). Instead, the  
11 Legislature purposely made the ten-year statute of repose effective retroactively, in contrast to other  
12 sections of the bill.<sup>3</sup> This shows that the Legislature intended for Section 7 of the bill to be effective  
on a different date as the rest of the bill.

13 The Legislature was clear and unambiguous in providing for a retroactive effective date for  
14 Section 7 and the Court should apply the plain meaning of AB 421. To the extent the Court finds  
15 the effective date of Section 7 to be ambiguous and chooses to look beyond the text of the bill, the  
16 legislative history shows that the Legislature, by lengthening the statute of repose, intended to  
17 specifically protect property owners in situations just like that present in this case. *See Minutes of*  
18 *the Senate Committee on Judiciary at 10, 80th Leg. (Nev., May 15, 2019), Ex. 3, p. 10.* In fact,  
19 protecting property owners against later discovered soil issues was specially discussed in the  
20 legislative history:

21 I have had a number of homeowners call and we have been unable to  
22 help because they have been past the original six-year statute of  
23 repose. We had a homeowner testify in the Assembly that she missed  
24 the deadline by two months and she has extreme soils movement.  
She cannot open or close her windows or lock her door. We had  
another homeowner who was past the six years and the back of her  
home is falling down the hill.

25  
26  
27 <sup>3</sup> NBD provides a link to the Nevada Electronic Legislative Information System (“NELIS”)  
28 website which shows “Effective October 1, 2019.” (Mot. 9:6–11). However, the language of the  
bill controls, not the website.

1           Assembly Bill 421 extends the statute of repose period to ten years.  
2           **Soils is a good example because soil cases do not show up until**  
3           **Years 8, 9 or 10. We had a geotechnical expert testify in the**  
4           **Assembly who explained that in more detail.**

5           *Id.*

6           The Legislature passed AB 421 to give greater protection to property owners and quite  
7 specifically to protect them against defects such as soil issues that manifest many years after  
8 substantial completion. Considering this, and that the Legislature made the ten-year statute of  
9 repose *effective retroactively*, it would not make sense for the Court to read the statute in such a  
10 way as to create a gap between when then ten-year statute of repose was passed and when it became  
11 effective, such that it would exclude certain claimants from its protection. In short, the amended  
12 ten-year statute of repose “appl[ies] retroactively to actions in which the substantial completion of  
13 the improvement to the real property occurred before October 1, 2019.” Thus, because the Project  
14 certainly reached substantial completion before October 1, 2019, the ten-year statute of repose  
15 applies.

16           **3.       *The City’s claims are timely.***

17           Under NRS 11.2055, the statute of repose begins on the latest date of either: “(a) The final  
18 building inspection of the improvement is conducted; (b) A notice of completion is issued for the  
19 improvement; or (c) A certificate of occupancy is issued for the improvement.” A notice of  
20 completion is considered issued when it is recorded. *See Dykema v. Del Webb Communities, Inc.*,  
21 132 Nev. Adv. Op. 82, 385 P.3d 977, 979–80 (2016) (“Construing the statutes in harmony with one  
22 another, and consistent with what reason and public policy suggest the Legislature intended, we  
23 conclude that it is the act of recording that signifies that a notice of completion has been ‘issued.’”)

24           Here, the notice of completion was recorded July 13, 2009. Ex. 1 p. 133. Under the ten-year  
25 statue of repose, the City had until July 13, 2019 to file its complaint; it did so on July 11, 2019.  
26 *See* Ex. 1. Thus, the City’s claims are timely, so the Court should deny NBD Motion and the  
27 Joinders.  
28

1     **B.     The City complied with NRS 11.258.**

2           The City properly and timely filed an attorney affidavit with its complaint that complies  
3 with NRS 11.258. *See* Ex. 1, p. 16–17. NRS 11.258 requires that, before commencing an action  
4 against a design professional, the attorney consult with an expert, attach the required attorney  
5 affidavit with the complaint, and attach the expert’s report, along with documents reviewed by the  
6 expert. The City did so. Now, NBD—by selectively quoting the statute, relying on irrelevant  
7 legislative history, and confusing the requirements of NRS 11.258 with the affidavit requirement  
8 in medical malpractice cases—attempts to improperly impute additional requirements into NRS  
9 11.258 that are not contained in the statute.

10          First, the City complied with the plain, unambiguous requirements of NRS 11.258. Second,  
11 the City consulted with a qualified expert as defined by the statute. Third, the statute does *not*  
12 require the expert to specifically name the contractor at fault in his report. Fourth, NBD’s reliance  
13 on legislative history is unnecessary and unpersuasive. Finally, dismissal is not appropriate under  
14 NRS 11.259 because the City complied with all requirements of NRS 11.258.

15           **1.     The City’s attorney affidavit satisfies NRS 11.258.**

16          The City, concurrently with its first pleading, filed the required attorney affidavit and expert  
17 report with supporting documents. Specifically, NRS 11.258(1) requires that:

18                   1. Except as otherwise provided in subsection 2, in an action  
19 involving nonresidential construction, the attorney for the  
20 complainant shall file an affidavit with the court concurrently with  
the service of the first pleading in the action stating that the attorney:

21                   (a) Has reviewed the facts of the case;

22                   (b) Has consulted with an expert;

23                   (c) Reasonably believes the expert who was consulted is  
knowledgeable in the relevant discipline involved in the action; and

24                   (d) Has concluded on the basis of the review and the consultation  
25 with the expert that the action has a reasonable basis in law and fact.

1 Additionally, NRS 11.258(3) requires that:

2 3. In addition to the statement included in the affidavit pursuant to  
3 subsection 1, a report must be attached to the affidavit. Except as  
4 otherwise provided in subsection 4, the report must be prepared by  
the expert consulted by the attorney and must include, without  
limitation:

5 (a) The resume of the expert;

6 (b) A statement that the expert is experienced in each discipline  
7 which is the subject of the report;

8 (c) A copy of each nonprivileged document reviewed by the  
9 expert in preparing the report, including, without limitation, each  
10 record, report and related document that the expert has determined is  
11 relevant to the allegations of negligent conduct that are the basis for  
the action;

12 (d) The conclusions of the expert and the basis for the  
13 conclusions; and

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

16 Here, the City's attorney affidavit complies with all requirements from NRS 11.258 (1) and  
17 (3). The City's attorney swore that he reviewed the facts of the case, consulted with an expert that  
18 he reasonably believed to be qualified, and concluded that there was a reasonable basis to file this  
19 action. Ex 1, p. 16. The City's attorney also confirmed that he attached all the required documents  
20 to the complaint. Ex 1, p. 16-17. Below is a side by side comparison of the statute with the  
21 corresponding statement from the City's attorney affidavit.  
22  
23  
24  
25  
26  
27  
28

<b>NRS 11.258 (1)</b>	<b>Affidavit of Aleem A. Dhalla, Esq.<sup>4</sup></b>
... the attorney for the complainant shall file an affidavit with the court concurrently with the service of the first pleading in the action stating that the attorney:	In compliance with the requirements of NRS 11.258 (1), I:
(a) Has reviewed the facts of the case;	a. Have reviewed the facts of this case;
(b) Has consulted with an expert;	b. Have consulted with an expert, American Geotechnical, Inc., regarding this case;
(c) Reasonably believes the expert who was consulted is knowledgeable in the relevant discipline involved in the action; and	c. Reasonably believe the expert who was consulted is knowledgeable in the relevant discipline involved in the action; and
(d) Has concluded on the basis of the review and the consultation with the expert that the action has a reasonable basis in law and fact.	d. Have concluded, based on my review and consultation with the expert, that the action has a reasonable basis in law and fact.

<b>NRS 11.258 (3)</b>	<b>Affidavit of Aleem A. Dhalla, Esq.<sup>5</sup></b>
In addition to the statement included in the affidavit pursuant to subsection 1, a report must be attached to the affidavit. Except as otherwise provided in subsection 4, the report must be prepared by the expert consulted by the attorney and must include, without limitation:	Additionally, in compliance with the requirements of NRS 11.258 (3), I have attached:
(a) The resume of the expert;	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;	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, including, without limitation, each record, report and related document that the expert has determined is relevant to the allegations of negligent conduct that are the basis for the action;	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; and	d. The conclusions of the expert and the basis for the conclusions (Ex. 5); and
(e) A statement that the expert has concluded that there is a reasonable basis for filing the action.	e. A statement that the expert has concluded that there is a reasonable basis for filing the action (Ex. 7).

<sup>4</sup> Ex 1, p. 16–17.

<sup>5</sup> Ex 1, p. 16–17.



1 NBD appears to confuse the NRS 11.258 requirements with the affidavit of merit  
2 requirement in medical malpractice cases, which are simply inapplicable to this case. Specifically,  
3 NRS 41A.071 requires that an affidavit submitted with the complaint state as follows:

- 4 1. Supports the allegations contained in the action;
- 5 2. Is submitted by a medical expert who practices or has practiced  
6 in an area that is substantially similar to the type of practice engaged  
7 in at the time of the alleged professional negligence;
- 8 3. Identifies by name, or describes by conduct, each provider of  
9 health care who is alleged to be negligent; and
- 10 4. Sets forth factually a specific act or acts of alleged negligence  
separately as to each defendant in simple, concise and direct terms.

11 To be clear, NRS 41A.071 applies to medical malpractice actions and *is not* applicable here;  
12 however, the statute is key to illustrating not only that NBD is confusing the requirements of the  
13 two statutes, but that the Legislature intended to make the requirements different. NRS 11.258 does  
14 not require claimant's expert to be experienced in the exact same fields as the defendant, unlike the  
15 medical malpractice statute. *Compare* NRS 11.258 (3)(c–e) *with* NRS 41A.071 (3). NRS 11.258  
16 does not require claimant's expert to name each individual design professional at fault, unlike the  
17 medical malpractice statute. *Compare* NRS 11.258 (3)(b) *with* NRS 41A.071 (2). The Legislature  
18 was capable of making NRS 11.258 mirror the medical malpractice requirements; it chose not to.  
19 In short, the City has complied with the requirements of NRS 11.258.

20 **2. The City's expert is a qualified expert under the statute.**

21 The statute defines the term "expert." NRS 11.258 (6) states that: "As used in this section,  
22 'expert' means a person who is licensed in a state to engage in the practice of *professional*  
23 *engineering*, land surveying, architecture or landscape architecture." (emphasis added).  
24 Additionally, NRS 11.258 (3)(b) requires "[a] statement that the expert is experienced in each  
25 discipline which is the subject of the report." Importantly, the statute does not require claimant's  
26 expert to be experienced in the exact same fields and sub-specialties as each design professional.

27 Here, the City's expert, Edred T. Marsh, P.E. of American Geotechnical Inc., is a  
28 *professional engineer*, specializing in geotechnical, civil, and forensic engineering. Ex. 1, p.16–17.

1 Thus, Mr. Marsh qualifies as an expert under the NRS 11.258 (6) definition. Additionally, he was  
2 qualified to create his report. According to the American Society of Civil Engineers, “Geotechnical  
3 engineering utilizes the disciplines of rock and soil mechanics to investigate subsurface and  
4 geologic conditions. These investigations are used to design, build foundations, earth structures,  
5 and pavement sub-grades.”<sup>6</sup> Both the City’s attorney and Mr. Marsh provided a statement that Mr.  
6 Marsh is “experienced in each discipline which is the subject of the report” as required by the  
7 statute. Further, Mr. Marsh’s resume, attached to the Complaint, shows that he is a professional  
8 engineer well qualified in many disciplines, including geotechnical, civil, and forensic engineering.

9 Interestingly, but improperly, NBD attempts to expand the expert qualification  
10 requirements of NRS 11.258. NBD argues that “Mr. Marsh is not an ‘expert’ in all design  
11 professional fields and using his Declaration for the entire design team is wholly improper.” NBD  
12 Mot. 11:15–16. However, NBD’s argument is not based on the plain reading of the statute, which,  
13 as explained above, requires the City’s expert to simply be a professional engineer experienced in  
14 each discipline *which is the subject of the report*.

15 NBD only cites one case, which does not support its faulty reading of the statute - *Otak*  
16 *Nevada, LLC v. Eighth Jud. District Ct.*, 127 Nev. 593, 599, 260 P.3d 408, 412 (2011). Contrary  
17 to NBD’s argument, however, *Otak Nevada* does not require the City’s expert to be experienced in  
18 all design professional fields. In that case, a defendant, the general contractor, attempted to use  
19 another party’s expert report already filed in the case to support its third-party complaint. *Id.* The  
20 *Otak Nevada* court found that this violated NRS 11.258, as each party was required to consult with  
21 an expert and supply a supporting affidavit and report; the Court *did not* require the expert to be  
22 experienced in all design professional fields. *Id.*

23 In short, the City was not required to provide an expert “in all design professional fields”  
24 as NBD argues. While the City anticipates that it may require additional experts later in this  
25 litigation, depending what is found in discovery, requiring the City to include expert reports from  
26 multiple sub-fields at this point would be impossible and is not what the statute requires. Based on  
27 the NRS 11.258 (6) definition, the City’s expert is qualified under the statute.

28 <sup>6</sup> <https://www.asce.org/geotechnical-engineering/geotechnical-engineering/>

1           **3.     *NRS 11.258 does not require the expert report to specially name or express an***  
2           ***opinion regarding a particular defendant.***

3           NRS 11.258 requires that claimant provide a report with “(d) The conclusions of the expert  
4 and the basis for the conclusions; and (e) A statement that the expert has concluded that there is a  
5 reasonable basis for filing the action.” As explained earlier, this should be contrasted with the  
6 “affidavit of merit” requirement in medical malpractice cases (which is not applicable to this case),  
7 which requires “Identif[y] by name, or describes by conduct, each provider of health care who is  
8 alleged to be negligent.” *Compare* NRS 11.258 (3)(b) *with* NRS 41A.071 (2).

9           Here, the City complied with the only statute that applies. The City attached an expert report  
10 with its complaint along with a statement from its expert that he concluded there was a reasonable  
11 basis for filing the action. Ex. 1, p. 135–269, 275. The City attached the report of its expert, Mr.  
12 Marsh, which it hired to perform a geotechnical investigation of the site. *Id.* The purpose of this  
13 investigation was to evaluate the site geotechnical conditions and to determine the probable cause  
14 of the distress to the building and surrounding appurtenances. Ex. 1 ¶ 47. Marsh concluded that the  
15 distress to Fire Station 53 and surrounding appurtenant structures was due to a combination of  
16 excessive differential settlement and expansive soil activity. Ex. 1 ¶ 49. Marsh concluded that  
17 settlement of the building occurred as a result of stresses from the weight of the structure and self-  
18 weight of the earth materials and was aggravated by introduction of water to the subsoil. Ex. 1 ¶  
19 52. The expert’s report is extremely detailed and provides the technical basis for his conclusion.

20           NBD seeks to expand the requirements of NRS 11.258, this time by arguing that the City’s  
21 expert was required to individually name each design professional who might later be determined  
22 to be at fault. Mot. 11:26–28. This is incorrect. The plain meaning of the statute does not require  
23 this, and NBD does not cite any case to support adding this requirement. In *Otak Nevada*, the court  
24 held that one party could not use another party’s expert to support its third-party complaint; the  
25 Court *did not* require a party to file a separate report against each defendant or require the expert to  
26 name each defendant specifically.<sup>7</sup>

27           <sup>7</sup> While the *Otak Nevada* court reviewed NRS 41A.071’s mandatory language requirement to  
28 evaluate whether or not it had discretion to allow claimant to amend, the court did not extend the  
requirements in medical malpractices cases to NRS 11.258 and construction cases.

1 And again, unlike the medical malpractice statute, the Legislature chose not to require that  
2 experts in construction cases name each design professional in their report or make specific  
3 conclusions against each design professional. The medical malpractice statute specifically states  
4 that the claimant's expert must "[i]dentif[y] by name, or describes by conduct, each provider of  
5 health care who is alleged to be negligent"; NRS 11.258 does not include this requirement.  
6 *Compare* NRS 11.258 (3)(b) *with* NRS 41A.071 (2). In short, NBD seeks to unjustifiably expand  
7 the requirements of NRS 11.258.

8 **4. NBD's reliance on legislative history is unnecessary and unpersuasive.**

9 "The starting point for determining legislative intent is the statute's plain meaning; *when*  
10 *a statute is clear on its face, a court cannot go beyond the statute in determining legislative*  
11 *intent.*" *Id.* (emphasis added); *see also State v. Catanio*, 120 Nev. 1030, 1032, 102 P.3d 588, 590  
12 (2004) ("We must attribute the plain meaning to a statute that is not ambiguous."). But when "the  
13 statutory language lends itself to two or more reasonable interpretations," the statute is ambiguous,  
14 and the Court may only then look beyond the statute in determining legislative intent. *Catanio*, 120  
15 Nev. at 1033, 102 P.3d at 590.

16 Here, the requirements of NRS 11.258 are clear and unambiguous, so the Court does not  
17 need to delve into the legislative history. NRS 11.258 provides a list of requirements for the content  
18 of an attorney affidavit and expert report, with which the City complied. Importantly, NBD does  
19 not argue that the statute is ambiguous. Instead, NBD seeks to use legislative history to expand the  
20 unambiguous, plain meaning of NRS 11.258, while being unable to point to any specific ambiguity  
21 that would require the Court to evaluate materials outside of the statute. Because the statute is  
22 unambiguous, that is improper here.

23 Even if the Court reviews the legislative history for NRS 11.258, it does not support NBD's  
24 expansive interpretation. While NBD emphasizes select phrases from the legislative history, none  
25 aid their argument. The legislative history does not show that the Legislature intended to require a  
26 claimant's expert to be qualified "in all design professional fields" as NBD argues. Moreover, the  
27 legislative history does not show that a claimant's expert is required to name the particular  
28 defendant in his report or provide specific conclusions regarding each defendant, as NBD argues.

1 In fact, NBD selectively did not emphasize several portions of the legislative history that actually  
2 counters its argument, such as: “It [NRS 11.25] is not a bar to bringing the suit; it accelerates  
3 something that is going to happen anyway in the lawsuit.” NBD Mot. 13:8–9. In short, the  
4 Legislature did not intend the statute to be a highly-prohibitive bar to bringing a claim; instead, the  
5 statute was meant to require claimants to have an expert evaluate their claims to curtail frivolous  
6 claims and to accelerate the process.

7 NRS 11.258 was not intended to require claimant to prove their entire case in the complaint,  
8 which would be the inevitable result of NBD’s arguments. The Court should apply the statute as  
9 written, not expand its requirements.

10 **5. *Dismissal under NRS 11.259 is not appropriate.***

11 Because the City complied with NRS 11.258, dismissal is not appropriate. NRS 11.259  
12 states that:

- 13 1. The court shall dismiss an action involving nonresidential  
14 construction if the attorney for the complainant fails to:
  - 15 (a) File an affidavit required pursuant to NRS 11.258;
  - 16 (b) File a report required pursuant to subsection 3 of NRS  
11.258; or
  - 17 (c) Name the expert consulted in the affidavit required pursuant  
18 to subsection 1 of NRS 11.258.

19 Here, as explained above, the City filed the required attorney affidavit pursuant to NRS  
20 11.258, filed the required expert report, and named the expert in the attorney affidavit. Thus,  
21 dismissal under NRS 11.259 is not appropriate.



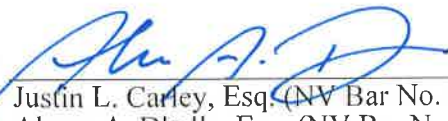
VI. CONCLUSION

The Court should deny the NDB Motion and Joinders because the City's claims are timely under the applicable ten-year statute of repose and it fully complied with NRS 11.258.

Dated: August 20, 2019.

SNELL & WILMER L.L.P.

By:



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**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANT NEVADA BY DESIGN, LLC D/B/A NEVADA BY DESIGN ENGINEERING CONSULTANT'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT** to the following:

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DATED this 20<sup>th</sup> day of August, 2019.

/s/ Ruby Lengsavath  
An employee of SNELL & WILMER L.L.P.

4825-1811-7536