

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

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

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Electronically Filed  
Jul 15 2020 10:59 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 17**

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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>31</b>	<b>17</b>	<b>002686 – 002688</b>	<b>11/27/2019 10:43 AM</b>	<b>JW Zunino &amp; Associates LLC's Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Opposition to Motion to Alter Judgment</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>33</b>	<b>17</b>	<b>002694 – 002887</b>	<b>11/27/2019 4:51 PM</b>	<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	09/30/2019	<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 Hearing on Motion to Dismiss or, in the Alternative, Motion for Summary Judgment on Order Shortening Time
<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>35</b>	<b>17</b>	<b>002891 – 002893</b>	<b>12/02/2019 1:54PM</b>	<b>Ninyo &amp; Moore, Geotechnical Consultants' Joinder to JW Zunino &amp; Associates LLC's Opposition to City of North Las Vegas' Motion to Alter Judgment</b>

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<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

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

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>

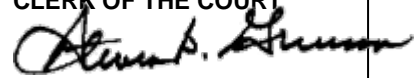
56	20	003379 – 003384	02/18/2020 5:06 PM	<b>Richardson Construction, Inc. and The Guarantee Company of North America USA's Limited Response to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Motion to Dismiss on Order Shortening Times and All Joinder Thereto</b>
33	17	002694 – 002887	11/27/2019 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 31**  
**PETITIONERS' APPENDIX**

**EXHIBIT 31**  
**PETITIONERS' APPENDIX**



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*Attorneys for JW Zunino & Associates*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CITY OF NORTH LAS VEGAS,

Plaintiff,

vs.

Dekker/Perich/Sabatini Ltd.; Richardson  
Construction, Inc.; Nevada By Design, LLD  
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 Halon 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. 8

**DEFENDANT JW ZUNINO &  
ASSOCIATES LLC'S JOINDER TO  
DEFENDANT NEVADA by DESIGN  
LLC, D/B/A NEVADA BY DESIGN  
ENGINEERING CONSULTANTS'  
OPPOSITION TO MOTION TO  
ALTER JUDGMENT**

Defendant JW Zunino & Associates ("JW Zunino"), by and through its attorneys of records,  
the law firm of Foran Glennon Palandech Ponzi & Rudloff PC, hereby joins, and incorporates by  
reference as if fully stated herein, all arguments and relief requested by Defendant NV By Design

d/b/a Nevada By Design Engineering Consultants’ (“NBD”) Opposition to Motion to Alter Judgment.

Dated: November 27, 2019

FORAN GLENNON PALANDECH PONZI &  
RUDLOFF PC

By: /s/ Dylan P. Todd

Dylan P. Todd, NV Bar No. 10456

Lee H. Gorlin, NV Bar No. 13879

2200 Paseo Verde Parkway, Suite 280

Henderson, NV 89052

*Attorneys for Defendant JW Zunino & Associates*

**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 **DEFENDANT JW ZUNINO & ASSOCIATES LLC'S JOINDER TO DEFENDANT NEVADA by DESIGN LLC, D/B/A NEVADA BY DESIGN ENGINEERING CONSULTANTS' OPPOSITION TO MOTION TO ALTER JUDGMENT** by the method indicated below:

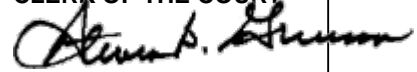
- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.
- ☒ **BY ELECTRONIC SERVICE:** submitted to the above-entitled Court for electronic service upon the Court's Service List for the above-referenced case.
- ☐ **BY EMAIL:** by emailing a PDF of the document listed above to the email addresses of the individual(s) listed below.

Dated this 27<sup>th</sup> day of November 2019.

/s/ Rita Tuttle  
An Employee of Foran Glennon

**EXHIBIT 32**  
**PETITIONERS' APPENDIX**

**EXHIBIT 32**  
**PETITIONERS' APPENDIX**



**JOPP**

Charles W. Bennion (Nevada Bar No. 5582)

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Email: pwelch@jsslaw.com

*Attorneys for Defendants Paffenbarger & Walden, LLC and P & W Bonds, LLC*

**Affirmation:**

I the undersigned hereby affirm that this document does not contain the social security number of any persons.  
(Per NRS 239B.030)

**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

Case No: A-19-798346-C

Dept No: VIII

**DEFENDANTS PAFFENBARGER & WALDEN, LLC'S AND P & W BONDS, LLC'S JOINDER IN: (1) DEFENDANT NEVADA BY DESIGN, LLC D/B/A NEVADA BY DESIGN ENGINEERING CONSULTANTS' OPPOSITION TO MOTION TO ALTER JUDGMENT; AND (2) DEFENDANT JW ZUNINO & ASSOCIATES, LLC'S OPPOSITION TO PLAINTIFF'S MOTION TO ALTER JUDGMENT**

1 Guarantee Company of North America  
2 USA; P&W Bonds, LLC; Paffenbarger &  
3 Walden, LLC; DOES I through X,  
4 inclusive; and ROE CORPORATIONS I  
5 through X, inclusive,

Defendants.

6 Defendants Paffenbarger & Walden, LLC and P & W Bonds, LLC (collectively  
7 “P&W”), through undersigned counsel, file this Joinder in Defendant Nevada By Design,  
8 LLC d/b/a Nevada By Design Engineering’s (“NBD”) Opposition to Plaintiff’s Motion to  
9 Alter Judgment.

10 In Section III (H) of its Opposition, NBD requests the Court re-open and consider all  
11 pending motions to dismiss that the Court deemed as moot based on its statute of repose  
12 ruling if the Court ultimately decides to grant Plaintiff’s Motion to Alter Judgment. On  
13 August 30, 2019, P&W filed its separate motion to dismiss Plaintiff’s claims against P&W.  
14 Plaintiff’s claims against P&W include: (1) the Sixth Claim for Relief (Claim on Performance  
15 Bond); (2) the Seventh Claim for Relief (Claim on Payment Bond); and (3) the Eighth Claim  
16 for Relief (Claim on Guarantee Bond). In its motion to dismiss, P&W contends that  
17 Plaintiff’s Complaint fails to state a claim against P&W because there is nothing in the bonds,  
18 the statutes requiring the bonds, or the case law that holds, imposes, suggests, or even hints  
19 that a “resident agent” such as P&W has any substantive obligations under the bonds issued  
20 on behalf of Defendant Richardson Construction, Inc.

21 If this Court ultimately decides to grant Plaintiff’s Motion to Alter Judgment, P&W’s  
22 motion to dismiss, which has been fully briefed, would no longer be deemed moot. In that  
23 case, P&W requests that the Court immediately set a hearing on its motion because that  
24 motion provides an independent basis for dismissal beyond the statute of repose ruling.

25 ///

26 ///

1 P&W also joins in Sections I, II, and III (A), (B), and (C) of Defendant JW Zunino &  
2 Associates, LLC's Opposition to Plaintiff's Motion to Alter Judgment.

3 RESPECTFULLY SUBMITTED this 27th day of November, 2019.

4  
5 **JENNINGS, STROUSS & SALMON, P.L.C.**

6 By: /s/Patrick F. Welch

7 Patrick F. Welch

8 One East Washington Street, Suite 1900

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10 *Attorneys for Paffenbarger & Walden, L.L.C.*  
11 *and P & W Bonds, LLC*  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Jennings, Strouss & Salmon, P.L.C. and that on the 27th day of November, 2019, I caused to be served a true and correct copy of foregoing **DEFENDANTS PAFFENBARGER & WALDEN, LLC'S AND P & W BONDS, LLC' JOINDER IN: (1) DEFENDANT NEVADA BY DESIGN, LLC D/B/A NEVADA BY DESIGN ENGINEERING CONSULTANTS' OPPOSITION TO MOTION TO ALTER JUDGMENT; AND (2) DEFENDANT JW ZUNINO & ASSOCIATES, LLC'S OPPOSITION TO PLAINTIFF'S MOTION TO ALTER JUDGMENT** in the following manner: via Odyssey File and Serve.

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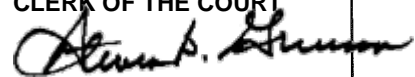
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/s/A. Saldivar

An Employee of Jennings, Strouss & Salmon, P.L.C.

**EXHIBIT 33**  
**PETITIONERS' APPENDIX**

**EXHIBIT 33**  
**PETITIONERS' APPENDIX**



**OPPO**  
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The Guarantee Company of North America USA*

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

CITY OF NORTH LAS VEGAS,  
  
Plaintiff,

v.

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

**DEFENDANTS 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 CONSULTANT'S  
OPPOSITION TO MOTION TO ALTER  
JUDGMENT AND JOINDER TO  
DEFENDANT JW ZUNINO &  
ASSOCIATES LLC'S OPPOSITION TO  
PLAINTIFF'S MOTION TO ALTER  
JUDGMENT**

COMES NOW, Defendants, RICHARDSON CONSTRUCTION, INC. and THE  
GUARANTEE COMPANY OF NORTH AMERICA USA (hereinafter "Defendants"), by and  
through their attorney of record, THEODORE PARKER, III, ESQ. of the law firm of PARKER,  
NELSON & ASSOCIATES, CHTD., and hereby file this Opposition to Motion to Alter Judgment

**PET.APP.002694**

1 and Joinder to Defendant NEVADA BY DESIGN LLC d/b/a NEVADA BY DESIGN  
2 ENGINEERING CONSULTANT's Motion to Alter Judgment and Joinder to Defendant JW  
3 ZUNINO & ASSOCIATES LLC'S Opposition to Plaintiff's Motion to Alter Judgment.

4 This Opposition and Joinder(s) are made and based upon the pleadings and papers on file  
5 herein, the points and authorities included herewith, EDCR 2.20(d), and such oral argument as the  
6 Court may entertain at the time of the hearing of this matter.

7 DATED this 27<sup>th</sup> day of November, 2019.

8 **PARKER, NELSON & ASSOCIATES, CHTD.**

9 

10 THEODORE PARKER, III, ESQ.  
11 Nevada Bar No. 4716  
12 2460 Professional Court, Suite 200  
13 Las Vegas, Nevada 89128  
14 *Attorneys for Defendants,*  
*Richardson Construction, Inc. and*  
*The Guarantee Company of North America USA*

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I.**

17 **INTRODUCTION**

18 Pursuant to EDCR 2.20(d), Defendants hereby join the facts, legal authorities, and arguments  
19 contained in NEVADA BY DESIGN LLC d/b/a NEVADA BY DESIGN ENGINEERING  
20 CONSULTANT's (hereinafter "NEVADA DESIGN"), Opposition to Motion to Alter Judgment as  
21 though fully set forth herein. For the same reasons contained in NEVADA DESIGN's Motion, and  
22 adopted as though fully set forth herein, Plaintiff's contrived interpretation of NRS 11.202 also  
23 violates the constitution rights of Defendants. Also pursuant to EDCR 2.20(d), Defendants join the  
24 facts, legal authorities, and arguments contained in Defendant, JW ZUNINO & ASSOCIATES  
25 LLC'S Opposition to Plaintiff's Motion to Alter Judgment regarding revival of a stale claim and/or  
26 the statute of repose as though fully set forth herein. Further, and in addition, Defendants provide  
27 the following additional points in regards to EDCR 2.26 and EDCR 2.20.

1 On July 11, 2019, Plaintiff, CITY OF NORTH LAS VEGAS (hereinafter "Plaintiff"), filed  
2 a Complaint naming various parties, including Defendants, and asserting causes of action for Breach  
3 of Contract (both Design and Construction contracts), Breach of the Covenant of Good Faith and  
4 Fair Dealing, Negligence, Breach of Implied Warranty, Claim on Performance Bond, Claim on  
5 Payment Ground, and Claim on Guarantee Bond. (See Complaint, filed July 11, 2019, a true and  
6 correct copy attached hereto as Exhibit "A".) The case was randomly assigned to Department 8. (Id.)  
7 On August 5, 2019, Defendant, NEVADA DESIGN, filed a Motion to Dismiss, or in the Alternative,  
8 Motion for Summary Judgment. (See NEVADA DESIGN's Motion to Dismiss, or in the Alternative,  
9 Motion for Summary Judgment, filed August 5, 2019, a true and correct copy attached hereto as  
10 Exhibit "B".) The basis of the Motion was that Plaintiff's claims were barred by the applicable  
11 statute of repose. A Notice of Hearing, setting the hearing for NEVADA DESIGN's Motion, was  
12 filed on August 6, 2019, and set the hearing for September 9, 2019. (See Notice of Hearing, filed  
13 August 6, 2019, a true and correct copy attached hereto as Exhibit "C".) Defendants had not yet  
14 appear in the case.

15 Fifteen days later, on August 20, 2019, Plaintiff filed an Opposition to NEVADA DESIGN's  
16 Motion. (See Opposition to Motion to Dismiss or, in the Alternative, Motion for Summary  
17 Judgment, filed August 20, 2019, a true and correct copy attached hereto as Exhibit "D".) In regards  
18 to NEVADA DESIGN's argument that the statute of repose barred the action, Plaintiff relied  
19 exclusively on a newly passed, but not yet effective, amendment to NRS 11.202, extending the  
20 statute of limitations to ten years. (Id.) At this time, Defendants still had not yet appeared in the case.  
21 On August 28, 2019, NEVADA DESIGN filed its Reply in Support of its Motion. Defendants had  
22 still not yet appeared in the case.

23 At the time NEVADA DESIGN's Motion was filed, Defendants had not yet appeared in the  
24 case. In fact, Defendants did not appear in the case until September 4, 2019, just five days before the  
25 hearing was originally set for NEVADA DESIGN's Motion. Defendants appeared in the action by  
26 filing a Motion to Dismiss. (See Motion to Dismiss, filed September 4, 2019, a true and correct copy  
27 attached hereto as Exhibit "E".) The sole basis of the Motion was that Plaintiff's claims were barred  
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1 by the applicable statute of limitations/statute of repose.

2 At the time the Motions to Dismiss were filed, the applicable statute of repose was six years.  
3 However, the statute was amended and would change the statute of repose to ten years. The amended  
4 statute became effective October 1, 2019.

5 On August 8, 2019, Trevor L. Atkin was appointed to preside over Department 8. However,  
6 Judge Atkin did not immediately take the bench. On September 6, 2019, Department 8 rescheduled  
7 the hearing on all Motions to Dismiss to October 21, 2019. (See Notice of Rescheduling Motions  
8 to Dismiss and Joinders, filed September 6, 2019, a true and correct copy attached hereto as Exhibit  
9 “F”.) A law clerk vacated the September 9, 2019 hearing. (See Register of Actions, a true and correct  
10 copy attached hereto as Exhibit “G”.)

11 Following the unilateral move of the hearing date, counsel for NEVADA DESIGN requested  
12 all parties agree to a different date in September, so that no parties’ rights would be prejudiced by  
13 the Court’s rescheduling of the hearing. Oddly, Plaintiff’s counsel, a national firm (pursuant to its  
14 own website), with “approximately 50 attorneys” claimed to be entirely unavailable the entire last  
15 half of September. (See correspondence from Justin Carley, Esq., dated September 10, 2019, a true  
16 and correct copy attached hereto as Exhibit “H”.)

17 On September 18, 2019, NEVADA DESIGN filed a Motion to Change the Date of Hearing  
18 on its Motion to Dismiss, or in the Alternative, Motion for Summary Judgement. (See Motion to  
19 Change Date of Hearing on Motion to Dismiss or, in the Alternative, Motion for Summary  
20 Judgment, filed September 18, 2019, a true and correct copy attached hereto as Exhibit “I”.) The  
21 Court set a hearing date for September 27, 2019. (Id.) It was NEVADA DESIGN’s position, and  
22 Defendants’ understanding as well, that NEVADA DESIGN’s Motion to Dismiss would be heard  
23 on September 27, 2019.

24 On September 20, 2019, NEVADA DESIGN advised all parties that its Motion to Dismiss  
25 would be heard on September 27, 2019. (See correspondence from John T. Wetland, Esq., dated  
26 September 20, 2019, a true and correct copy attached hereto as Exhibit “J”.) Thus, Plaintiff’s  
27 counsel was well aware that the hearing on NEVADA DESIGN’s Motion to Dismiss was intended  
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1 to be heard on September 27, 2019. Despite filing a Limited Opposition to the Motion to Change  
2 Date of Hearing, the day before the hearing on NEVADA DESIGN's Motion to Dismiss, Plaintiff  
3 was able to and did attend the September 27, 2019 hearing. As noted in a Reply filed by NEVADA  
4 DESIGN, Plaintiff was not prejudiced by the hearing date of September 27, 2019 and was on full  
5 notice that NEVADA DESIGN's Motion to Dismiss would be heard on September 27, 2019. (See  
6 Reply to Plaintiff's Limited Opposition to Motion to Change Date of Hearing, filed September 26,  
7 2019, a true and correct copy attached hereto as Exhibit "K".)

8 Unfortunately, at the September 27, 2019 hearing, the Court continued the hearing on the  
9 Motion to Change Date to September 30, 2019. September 30, 2019 was the Honorable Judge Atkins  
10 first day on the bench in Department 8. As justice delayed is justice denied, in light of the impending  
11 statute change, the Honorable Judge Atkins determined the Motions to Dismiss should be heard on  
12 their merits and advanced the hearing dates for all Motions to September 30, 2019. (See Court  
13 Minutes, dated September 30, 2019, 8:30 a.m., a true and correct copy attached hereto as Exhibit  
14 "L".)

15 At the continued hearing on September 30, 2019, Defendants orally joined NEVADA  
16 DESIGN's Motion to Dismiss. Plaintiff did not object to Defendants' joinder, presumably because  
17 Defendants first appearance was also by way of a Motion to Dismiss with the exact same statute of  
18 repose arguments raised by NEVADA DESIGN. (See Exhibit "E").<sup>1</sup> After oral arguments on the  
19 merits, this Court granted the "Motions to Dismiss and Joinders". (See Court Minutes, dated  
20 September 30, 2019, 10:30 a.m., a true and correct copy attached hereto as Exhibit "M".) The Notice  
21 of Entry of Order granting NEVADA DESIGN's Motion to Dismiss, and all Joinders, was entered  
22 on October 17, 2019. (See Notice of Entry of Order, filed October 17, 2019, a true and correct copy  
23 attached hereto as Exhibit "O".)

24 On November 13, 2019, Plaintiff filed its Motion to Alter Judgment. Plaintiff argues that as  
25 the law has changed, its' claim is now timely, that the Order entered on October 17, 2019 is void

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26  
27 <sup>1</sup>To ensure the record reflected Defendants' joinder, Defendants also filed a written Joinder on the same  
28 day. (See Joinder, filed September 30, 2019, a true and correct copy attached hereto as Exhibit "N".)

1 because it violated EDCR 2.26, and that Defendants (among others) joinders were untimely under  
2 EDCR 2.20(d). However, Plaintiff's arguments fail, in addition to the reasons, authority, and  
3 arguments contained in NEVADA DESIGN's Opposition, which is joined by Defendants, because  
4 EDCR is to be liberally construed to promote and facilitate the administration of justice.

## 5 II.

### 6 DISCUSSION

#### 7 A. Legal Authorities

##### 8 Administration of Justice

9 EDCR 1.10 provides:

10 These rules govern the administration of the Eighth Judicial District Court  
11 and all actions or proceedings cognizable therein. **They must be liberally**  
12 **construed** to secure the proper and efficient administration of the business  
and affairs of the court and to **promote and facilitate the administration of**  
**justice.** (emphasis added.)

13 NRCP 1 provides that the Nevada Rules of Civil Procedure "should be construed,  
14 administered, and employed by the court and the parties to secure the just, speedy, and inexpensive  
15 determination of every action and proceeding."

16 EDCR 2.20(d) provides:

17 Within 5 days after service of the motion, a nonmoving party may file  
18 written joinder thereto, together with a memorandum of points and  
19 authorities and any supporting affidavits. If the motion becomes moot or is  
20 withdrawn by the movant, the joinder becomes its own stand alone motion  
and the court shall consider its points and authorities in conjunction with  
those in the motion.

21 Pursuant to the definitions contained in EDCR "may" is permissive. Thus, there is nothing  
22 within EDCR that prevents a party from orally joining a motion in open Court. The Nevada Rules  
23 of Civil Procedure also appear to support this interpretation. NRCP 61 provides:

24 Unless justice requires otherwise, no error in admitting or excluding evidence  
25 – or any other error by the court or a party – is ground for granting a new trial,  
26 for setting aside a verdict, or for vacating, modifying, or otherwise disturbing  
a judgment or order. **At every stage of the proceeding,** the court **must**  
27 **disregard all errors and defects** that do not affect any party's substantial  
rights. (emphasis added.)

1 As this Court is likely well aware, must is a mandatory term requiring application. If an error  
2 was committed by the Court or a party, but the error was harmless, then said error cannot serve as  
3 a basis to amend or alter a judgment. (i.e. Cardinal v. Zonneveld, 89 Nev. 403 (1973) (finding failure  
4 to strictly comply with NRCP 27(a)(2) regarding notice was harmless error). NRCP 83(1)(3),  
5 specifically addressing local rules, prohibits the imposition of a local rule “imposing a requirement  
6 of form” from being “enforced in a way that causes a party to lose any right because of a nonwillful  
7 failure to comply.”

8 EDCR 2.26 provides:

9 Ex parte motions to shorten time may not be granted except upon unsworn  
10 declaration under penalty of perjury or affidavit of counsel describing the  
11 circumstances claimed to constitute good cause and justify shortening of  
12 time. If a motion to shorten time is granted, it must be served upon all parties  
13 promptly. An order which shortens the notice of a hearing to less than 10  
14 days may not be served by mail. In no event may the notice of the hearing of  
15 a motion be shortened to less than 1 full judicial day. A courtesy copy shall  
16 be delivered by the movant to the appropriate department, if a motion is filed  
17 on an order shortening time and noticed on less than 10 days’ notice.

18 An examination of EDCR in regards to joinders and shortening the time for hearings is  
19 clearly to ensure all parties are on notice and have proper time to address all substantive arguments.

20 **B. Argument**

21 **EDCR is to be liberally construed to promote and facilitate the administration**  
22 **of justice**

23 Defendants were not parties to the action when NEVADA DESIGN’s Motion to Dismiss was  
24 filed on August 6, 2019. (See Exhibit “E”.) It was impossible for Defendants to comply with EDCR  
25 2.20(d) permitting joinders to motions to be filed within five days of the filing of the motion.  
26 Plaintiff now tries to argue that this procedural rule serves as a “gotcha” barring Defendants from  
27 forever joining a Motion that was fully briefed before Defendants made an appearance in this matter.  
28 This rigid construction of the procedural rules should be rejected outright by this Court. (See EDCR  
1.10.)

Defendants did not make an appearance in the action until after briefing on NEVADA  
DESIGN’s Motion to Dismiss was completed. (Compare Exhibits “B” and “D” with Exhibit “E”).

1 As Defendants did not enter the matter until September 4, 2019, it was impossible for Defendants to  
2 join NEVADA DESIGN's Motion to Dismiss within five days of the filing on August 6, 2019. As  
3 EDCR by their own mandate should be liberally construed to "promote and facilitate the  
4 administration of justice," Defendants joinder should not be disregarded. Further, NRCP 83(a)(3)  
5 prohibits this Court from enforcing a local rule, such as EDCR 2.20(d) in a way that "causes a party  
6 to lose any right because of a nonwillful failure to comply". Defendants did not choose to not comply  
7 with EDCR 2.20(d). Rather, compliance was an impossibility. EDCR 2.20(d) should not be strictly  
8 applied to strip Defendants of their right to join.

9 Moreover, the only truly valid complaint a party can make regarding an allegedly late joinder  
10 is Court is a lack of notice. However, here, Plaintiff cannot maintain a position that it was unaware  
11 Defendants were seeking dismissal based on the statute of repose as Defendants filed its own Motion  
12 on September 4, 2019. Plaintiff was aware well in advance of the September 30, 2019 hearing that  
13 Defendants were seeking dismissal based on the statute of repose. Indeed, Plaintiff does not once  
14 claim it was unaware of Defendants legal position. Instead, Plaintiff asks this Court to implement a  
15 draconian application of EDCR which is expressly prohibited. (See EDCR 1.10) As such, this Court  
16 should deny the relief requested by Plaintiff based on a fundamental misunderstanding and strict  
17 application of EDCR 2.20(d).

18 Plaintiff further requests this Court apply EDCR 2.26 just as rigidly. Plaintiff is arguing that  
19 it did not have enough notice in regards to the hearing on the Motion to Dismiss. This is absurd and  
20 contradicted by the Court's own record. Briefing on NEVADA DESIGN's Motion to Dismiss was  
21 completed by August 28, 2019. The original hearing date was set for September 9, 2019. (See Exhibit  
22 "C".) Plaintiff was aware there was going to be a hearing on the Motion to Dismiss since August 6,  
23 2019. For Plaintiff to now claim their due process rights were impacted by the Court hearing  
24 NEVADA DESIGN's Motion to Dismiss twenty-one days **after the originally scheduled hearing**  
25 is disingenuous at best.

26 In Soebbing, the Court disapproved of a sua sponte entry of summary judgment because a  
27 party was denied notice and a reasonable opportunity to be heard. Soebbing v. Carpet Barn, 109 Nev.  
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1 78 (1993). In Soebbing, the lower court granted the motion to amend the complaint and immediately  
2 thereafter granted summary judgment against the same party. Id. at p. 83. Here, Plaintiff cannot  
3 reasonably maintain any argument that it was not afforded notice and an opportunity to be heard as  
4 Plaintiff filed its Opposition to the Motion to Dismiss on August 20, 2019, approximately 40 days  
5 before the September 30, 2019 hearing. Plaintiff is mistakenly putting form over substance and again  
6 seeking a draconian application of EDCR, prohibited by EDCR itself and in violation of NRCP  
7 83(1)(3). For these reasons, Plaintiff's requested relief of voiding the October 30, 2019 hearing,  
8 should also be denied.

9 **III.**

10 **CONCLUSION**

11 Based on the foregoing, Defendants respectfully request that this honorable Court deny  
12 Plaintiff's Motion to Alter Judgment.

13 DATED this 27<sup>th</sup> day of November, 2019.

14 **PARKER, NELSON & ASSOCIATES, CHTD.**

15 

16 THEODORE PARKER, III, ESQ.  
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18 Las Vegas, Nevada 89128  
*Attorneys for Defendants,*  
19 *Richardson Construction, Inc. and*  
*The Guarantee Company of North America USA*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of the Law Offices of PARKER, NELSON & ASSOCIATES, CHTD., and that on this 27<sup>th</sup>, day of November, 2019 and pursuant to NRCP 5(b), I served a true and correct copy of the foregoing **DEFENDANTS 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 CONSULTANT'S OPPOSITION TO MOTION TO ALTER JUDGMENT AND JOINDER TO DEFENDANT JW ZUNINO & ASSOCIATES LLC'S OPPOSITION TO PLAINTIFF'S MOTION TO ALTER JUDGMENT** on the party(s) set forth below by:

- ☐ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Las Vegas, NV, postage prepaid, following ordinary business practices.
- ☐ Facsimile transmission, pursuant to the amendment to the Eighth Judicial District Court Rule 7.26, by faxing a true and correct copy of the same to each party addressed as follows:
- ☐ By E-mail: by electronic mail delivering the document(s) listed above to the e-mail address(es) set forth below on this date before 5:00 p.m.
- ☒ By EFC: by electronic filing and service with the Court delivering the document(s) listed above via E-file & E-serve (Odyssey) filing system.

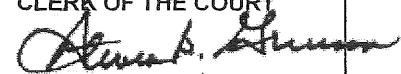
Party	Attorney	E-Mail
Plaintiff	Justin L. Carley, Esq. Aleem A. Dhalla, Esq. SNELL & WILMER L.L.P. 3883 Howard Hughes Parkway, Suite 1100 Las Vegas, NV 89169 (702) 784-5200 Fax: (702) 784-5252	<a href="mailto:jcarley@swlaw.com">jcarley@swlaw.com</a> <a href="mailto:adhalla@swlaw.com">adhalla@swlaw.com</a>
Defendant, Jackson Family Partnership LLC d/b/a Stargate Plumbing	Richard L. Peel, Esq. Ronald J. Cox, Esq. PEEL BRIMLEY LLP 3333 E. Serene Avenue, Suite 200 Henderson, NV 89074-6571 (702) 990-7272 Fax: (702) 990-7273	<a href="mailto:rpeel@peelbrimley.com">rpeel@peelbrimley.com</a> <a href="mailto:rcox@peelbrimley.com">rcox@peelbrimley.com</a>

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Defendant, Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants	John T. Wendland, Esq. Anthony D. Platt, Esq. WEIL & DRAGE, APC 2500 Anthem Village Drive Henderson, NV 89052 (702) 314-1905 Fax: (702) 314-1909	<a href="mailto:jwendland@weildrage.com">jwendland@weildrage.com</a> <a href="mailto:aplatt@weildrage.com">aplatt@weildrage.com</a>
Defendant, Dekker/Perich/Sabatini, Ltd.	John T. Wendland, Esq. Jeremy R. Kilber, Esq. WEIL & DRAGE, APC 2500 Anthem Village Drive Henderson, NV 89052 (702) 314-1905 Fax: (702) 314-1909	<a href="mailto:jwendland@weildrage.com">jwendland@weildrage.com</a> <a href="mailto:jkilber@weildrage.com">jkilber@weildrage.com</a>
Defendant, Melroy Engineering, Inc. d/b/a MSA Engineering Consultants	Jeremy R. Kilber, Esq. WEIL & DRAGE, APC 2500 Anthem Village Drive Henderson, NV 89052 (702) 314-1905 Fax: (702) 314-1909	<a href="mailto:jkilber@weildrage.com">jkilber@weildrage.com</a>
Defendant, Ninyo & Moore, Geotechnical Consultants	Jorge A. Ramirez, Esq. Jonathan C. Pattillo, Esq. WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP 300 S. Fourth Street, 11th Floor Las Vegas, NV 89101-6014 (702) 727-1400 Fax: (702) 727-1401	<a href="mailto:Jorge.Ramirez@wilsonelser.com">Jorge.Ramirez@wilsonelser.com</a> <a href="mailto:Jonathan.Pattillo@wilsonelser.com">Jonathan.Pattillo@wilsonelser.com</a>

Party	Attorney	E-Mail
Defendants, P & W Bonds, LLC and Paffenbarger & Walden, LLC	Charles W. Bennion, Esq. ELLSWORTH & BENNION, CHTD. 777 N. Rainbow Blvd., Suite 270 Las Vegas, NV 89107 (702) 658-6100 Fax: (702) 658-2502	<a href="mailto:charles@silverstatelaw.com">charles@silverstatelaw.com</a>
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An employee of PARKER, NELSON & ASSOCIATES CHTD.

# **EXHIBIT “A”**



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

*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.

23. The Design Agreement specified that the City intended to construct Fire Station 53 to generally consist 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 ("Project") and future Fire Stations 50, 58, 59, 150 through 161, and 163 ("Future Fire Stations").

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

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

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

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

27. DPS contracted with several subconsultants on the Project, including Nevada By Design, JW Zunino, MSA, O'Connor, and Ninyo & Moore (all collectively with DPS, "Design Defendants").

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

29. Specifically, the purpose of the Ninyo & Moore study was to evaluate the subsurface soil conditions at the site and to provide design and construction recommendations 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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III. CLAIMS FOR RELIEF

First Claim for Relief

*Breach of Contract (The Design Agreement)*

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

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

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

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

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

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

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

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

Second Claim for Relief

*Breach of Contract (The Construction Contract)*

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

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

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

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

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

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

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

### Third Claim for Relief

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

#### *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.

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

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

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

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

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

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

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

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

5                                   **Fourth Claim for Relief**

6                                   *Negligence*

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

8                                   ***CORPORATIONS I through X***

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

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

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

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

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

20                                   **Fifth Claim for Relief**

21                                   *Breach of Implied Warranty*

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

23                                   ***CORPORATIONS I through X***

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

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

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

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

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

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

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

10                               **Sixth Claim for Relief**

11                               ***Claim on Performance Bond***

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

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

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

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

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

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

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

28

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

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

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

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



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

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

7                                   **PRAYER FOR RELIEF**

8           WHEREFORE, the City prays for relief as follows:

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

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

12                                   **ON THE SIXTH CLAIM FOR RELIEF**

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

15                                   **ON THE SEVENTH CLAIM FOR RELIEF**

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

18                                   **ON THE EIGHTH CLAIM FOR RELIEF**

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

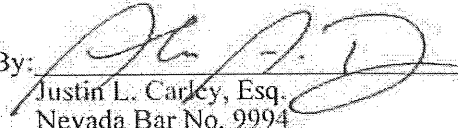
ON ALL CLAIMS FOR RELIEF

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

Dated: July 11, 2019

SNELL & WILMER L.L.P.

By:

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

*Attorneys for the City of North Las Vegas*

**AFFIDAVIT OF ALEEM A. DHALLA, ESQ.**

STATE OF NEVADA            )  
  ) 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

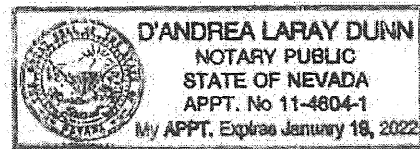
1 e. A statement that the expert has concluded that there is a reasonable basis for filing  
2 the action (Ex. 7).  
3  
4

5   
Aleem A. Dhalla, Esq.

6 STATE OF NEVADA  
7 COUNTY OF CLARK

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

10   
11 Notary Public



# EXHIBIT “B”



1 MSJD

2 JOHN T. WENDLAND, ESQ.

3 (Nevada Bar No. 7207)

4 ANTHONY D. PLATT, ESQ.

5 (Nevada Bar No. 9652)

6 WEIL & DRAGE, APC

7 2500 Anthem Village Drive

8 Henderson, NV 89052

9 (702) 314-1905 • Fax (702) 314-1909

10 [jwendland@weildrage.com](mailto:jwendland@weildrage.com)

11 [aplatt@weildrage.com](mailto:aplatt@weildrage.com)

12 Attorneys for Defendant,

13 NEVADA BY DESIGN, LLC d/b/a

14 NEVADA BY DESIGN ENGINEERING CONSULTANTS

15 DISTRICT COURT

16 CLARK COUNTY, NEVADA

17 CITY OF NORTH LAS VEGAS,

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

18 Plaintiff,

) DEPT. NO.: VIII

19 vs.

) [HEARING REQUESTED]

20 DEKKER/PERICH/SABATINI LTD.;

) NEVADA BY DESIGN, LLC d/b/a

21 RICHARDSON CONSTRUCTION, INC.;

) NEVADA BY DESIGN ENGINEERING

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

) CONSULTANTS' MOTION TO

23 DESIGN ENGINEERING CONSULTANTS; JW

) DISMISS OR, IN THE

24 ZUNINO & ASSOCIATES, LLC; MELROY

) ALTERNATIVE, MOTION FOR

25 ENGINEERING, INC. D/B/A MSA

) SUMMARY JUDGMENT

26 ENGINEERING CONSULTANTS; O'CONNOR

27 CONSTRUCTION MANAGEMENT INC.; NINYO

28 & MOORE, GEOTECHNICAL CONSULTANTS;

JACKSON FAMILY PARTNERSHIP LLC D/B/A

STARGATE PLUMBING; AVERY ATLANTIC,

LLC; BIG C LLC; RON HANLON MASONRY,

LLC; THE GUARANTEE COMPANY OF NORTH

AMERICA USA; P & W BONDS, LLC;

PAFFENBARGER & WALDEN, LLC; DOES I

through X, inclusive; and ROE CORPORATIONS I

through X, inclusive,

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

Defendants.

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

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

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

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

12                    DATED this 5<sup>th</sup> day of August, 2019.

13                    WEIL & DRAGE, APC

14                    */s/ John T. Wendland*

15                    By: \_\_\_\_\_

JOHN T. WENDLAND, ESQ.

(Nevada Bar No. 7207)

ANTHONY D. PLATT, ESQ.

(Nevada Bar No. 9652)

2500 Anthem Village Drive

Henderson, NV 89052

Attorneys for Defendant,

NEVADA BY DESIGN, LLC D/B/A NEVADA

BY DESIGN ENGINEERING CONSULTANTS

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

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

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

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

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

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

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

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

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

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

26                    DATED this 5<sup>th</sup> day of August, 2019.

27                    */s/ John T. Wendland*

28                    By: \_\_\_\_\_  
                         John T. Wendland

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 PROCEDURAL AND FACTUAL HISTORY / INTRODUCTION

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

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

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

26 ///

27 ///

28 ///

1 II.

2 LEGAL STANDARD

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

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

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

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

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

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

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

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

24  
25  
26 <sup>1</sup> The opposing party is not entitled to denial of a motion for summary judgment on mere hope that at trial he  
27 will be able to discredit movant’s evidence. *Hickman v. Meadow Wood Reno*, 96 Nev. 782, 617 P.2d 871 (1980).

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

{01599963;1}

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

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

### 15 III.

#### 16 UNDISPUTED MATERIAL FACTS

17 FACT #	UNDISPUTED MATERIAL FACT	EVIDENCE
18 1	Plaintiff recorded its Notice of Completion on July 13, 2009.	<u>Ex. A. Para. 45; Ex. B.</u>
19 2	Plaintiff’s Complaint is filed July 11, 2009.	<u>Id., Pg. 1 of Ex. A.</u>
20 3	AB 421’s Effective Date is October 1, 2019.	<u>Ex. C.</u>

### 23 IV.

#### 24 LEGAL ARGUMENT

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

26 NRS 11.202 in pertinent part states:

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

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

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

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

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

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

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

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

12 → whichever occurs later.

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

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

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

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

20 Accepting the allegations in the Complaint as true, the Plaintiff recorded the Notice of  
21 Completion on July 13, 2009. Pursuant to the six (6) year statute of repose, the Plaintiff was  
22 required to file its Complaint **on or before July 13, 2015.** *See, N.R.S. 11.202.* However,  
23 Plaintiff’s Complaint against NBD was filed on July 11, 2019, *nearly four (4) years after* the  
24 expiration of the statute of repose. *See, Ex. A.* Therefore, Plaintiff’s claims against NBD are time  
25 barred by the statute of repose<sup>3</sup> and NBD respectfully requests that the Court grant its Motion to  
26 Dismiss, with prejudice.

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

{01599963;1}

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

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

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

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

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

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

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

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

12 Plaintiff’s Complaint includes an Affidavit of Merit along with various attached  
13 documents, including a report prepared by AGI, a geotechnical engineering firm. *See*, Affidavit of  
14 Merit attached hereto as **Ex. D**. Pursuant to N.R.S. 11.258(3)(d), Plaintiff’s Affidavit of Merit  
15 must attest there is a “reasonable basis in law and fact” to commence the action against NBD, a  
16 civil engineering design firm. *See*, N.R.S. 11.58(1)(d). The Affidavit must also include a report  
17 that contains the “[t]he<sup>5</sup> conclusions of the expert and the basis for the conclusions...” *Id.* at  
18 3(d)&(e).

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

25  
26  
27 <sup>5</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.

{01599963;1}

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

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

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

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

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

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

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

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

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

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

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

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

26 Here, AGI's report lacks any opinions as to NBD and offers no basis for criticisms against  
27 NBD. These are basic requirements under Section 3(d). If there are no opinions/conclusions and  
28 no basis for said opinions as to NBD, then by extension, neither the Plaintiff's counsel's nor Mr.  
Marsh's statements of compliance comply with the language and intent behind N.R.S.

11.258(1)(d)&(3)(e). Stated differently, how can Mr. Marsh and Mr. Dhalla conclude there is a  
reasonable basis (in law and fact) to proceed against NBD if there are no opinions concerning  
NBD's services?

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

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

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

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

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

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

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

9 In line with the statutory provisions of N.R.S. 11.259, the Nevada Supreme Court, in *Otak*  
10 announced that per N.R.S. 11.259, the District Court lacks discretion if the Plaintiff fails to  
11 comply with any of the requirements stated in N.R.S. 11.259 and dismissal is mandatory. Indeed,  
12 the *Otak* Court specifically stated, “shall dismiss” is clear and unambiguous, we must give effect to  
13 that meaning and will not consider outside sources beyond that statute.” *Otak*, 127 Nev. at 598,  
14 260 P.3d at 411 (citing, *City of Reno v. Citizens for Cold Springs*, 126 Nev. —, —, 236 P.3d  
15 10, 16 (2010) (quoting, *NAIW v. Nevada Self-Insurers Association*, 126 Nev. —, —, 225  
16 P.3d 1265, 1271 (2010)); see also, N.R.S. 0.025(1)(d) and *SNEA v. Daines*, 108 Nev. 15, 19, 824  
17 P.2d 276, 278 (1992). The *Otak* Court further held that any failure to comply cannot be cured by  
18 amendment because the pleading is void ab initio<sup>6</sup> (void) and therefore, does not legally exist. *Id.*  
19 at 127 Nev. at 599, 260 P.3d at 411.

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

23 V.

## 24 CONCLUSION

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

28 <sup>6</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)).

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

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

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

8 DATED this 5<sup>th</sup> day of August, 2019.

9 WEIL & DRAGE, APC

10 */s/ John T. Wendland*

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

JOHN T. WENDLAND, ESQ.

(Nevada Bar No. 7207)

ANTHONY D. PLATT, ESQ.

(Nevada Bar No. 9652)

2500 Anthem Village Drive

Henderson, NV 89052

Attorneys for Defendant,

NEVADA BY DESIGN, LLC D/B/A NEVADA

BY DESIGN ENGINEERING CONSULTANTS

**CERTIFICATE OF SERVICE**

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

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

*/s/ Joanna Medina*

\_\_\_\_\_  
Joanna Medina, an Employee of  
WEIL & DRAGE, APC

# **Exhibit A**

# **Exhibit A**

Electronically Filed  
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Steven D. Grierson  
CLERK OF THE COURT



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.

CASE NO.:  
  
DEPT. NO.:

**COMPLAINT**

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

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.

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

**Snell & Wilmer**

LLP  
LAW OFFICES  
3883 HOWARD HUGHES PARKWAY, SUITE 1100  
LAS VEGAS, NEVADA 89169  
(702) 784-5200

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.

23. The Design Agreement specified that the City intended to construct Fire Station 53 to generally consist 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 ("Project") and future Fire Stations 50, 58, 59, 150 through 161, and 163 ("Future Fire Stations").

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

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

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

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

27. DPS contracted with several subconsultants on the Project, including Nevada By Design, JW Zunino, MSA, O'Connor, and Ninyo & Moore (all collectively with DPS, "Design Defendants").

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

29. Specifically, the purpose of the Ninyo & Moore study was to evaluate the sub-surface soil conditions at the site and to provide design and construction recommendations 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.

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.

### III. CLAIMS FOR RELIEF

#### First Claim for Relief

##### *Breach of Contract (The Design Agreement)*

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

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

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

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

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

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

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

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

#### Second Claim for Relief

##### *Breach of Contract (The Construction Contract)*

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

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

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

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





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

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

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

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

10                                   Seventh Claim for Relief

11                                   *Claim on Payment Bond*

12                                   *Against the Guarantee Company and P & W*

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

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

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

21           105. Through the Payment Bond, the Guarantee Company agreed that upon the failure of  
22 Richardson Construction to pay for any materials, equipment, or other supplies for the Project as  
23 stated in the Construction Contract, the Guarantee Company would pay the City up to an amount  
24 equal to the full penal sum of the Payment Bond.

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

26           107. 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, with payments  
28 outstanding to adequately complete the work performed.

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

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

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

**Eighth Claim for Relief**

***Claim on Guarantee Bond***

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

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

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

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

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

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

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

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

118. 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).

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.

# **PRAYER FOR RELIEF**

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;

Snell & Wilmer

LAW OFFICES  
188 HOWARD HUGHES PARKWAY, SUITE 1100  
LAS VEGAS, NEVADA 89169  
(702) 734-3300

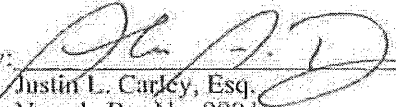
ON ALL CLAIMS FOR RELIEF

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

Dated: July 11, 2019

SNELL & WILMER L.L.P.

By:

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

*Attorneys for the City of North Las Vegas*

**AFFIDAVIT OF ALEEM A. DHALLA, ESQ.**

STATE OF NEVADA            )  
  ) 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

Snell & Wilmer

LAW OFFICES  
1883 HOWARD STREET, SUITE 1100  
LAS VEGAS, NEVADA 89169  
(702) 384-5200

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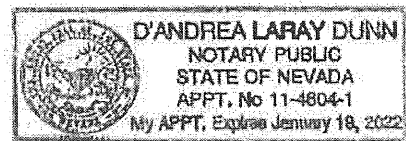
e. A statement that the expert has concluded that there is a reasonable basis for filing the action (Ex. 7).

  
Aleem A. Dhatta, 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 4**

(2)

20090713-0000778

Fee: \$15.00

N/C Fee: \$0.00

07/13/2009

08:13:23

T20090716

Requestor:

NORTH LAS VEGAS CITY

Debbie Conway

JRV

Clark County Recorder Pgs: 2

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

NOTICE is hereby given that:

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

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

3. The names and addresses of the transferors of the undersigned owner: (to be shown if the under-signed is a successor in interest of the owner who caused the improvement to be constructed, etc.)

4. A work of improvement on the property hereinafter described was completed on

March 17, 2009

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

Richardson Construction, Inc.

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

The Fire Station #53 Project includes construction of a 15,000 square foot building with 4 apparatus bays, 14 dorms, kitchen, training, exercise and locker rooms, emergency generator, paved parking lot, landscaping, and associated onsite and offsite improvements. The station is located on a City-owned parcel at 2800 West Gowan Road, east of Simmons Street.

# **Exhibit C**

# **Exhibit C**

## AB421

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

Summary:

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

Title:

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

Introduction Date:

Monday, March 25, 2019

Fiscal Notes:

Effect on Local Government: No.

Effect on the State: No.

Digest:

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

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

Primary Sponsor

Assembly Committee on Judiciary

## Most Recent History Action

Chapter 361.

(See full list below)

## Upcoming Hearings

*None scheduled*

## Past Hearings

Meeting Video Link	Committee	Date	Time
<a href="#">View archived video</a>	Assembly Judiciary	Mar 25, 2019	8:30
<a href="#">View archived video</a>	Assembly Judiciary	Apr 09, 2019	8:00
<a href="#">View archived video</a>	Assembly Judiciary (Work Session)	Apr 12, 2019	8:00
<a href="#">View archived video</a>	Senate Judiciary	May 15, 2019	8:00
<a href="#">View archived video</a>	Senate Judiciary (Work Session)	May 17, 2019	8:00

## Final Passage Votes

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

Conference Committees

*None scheduled*

Bill Text

As Introduced Reprint 1 Reprint 2 Reprint 3 As Enrolled

Adopted Amendments

Amendment 640 Amendment 808 Amendment 963

Bill History ☐ Sort Descending

Date	Action
------	--------

Mar 25, 2019	Read first time. Referred to Committee on Judiciary. To printer.
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Mar 26, 2019	From printer. To committee.
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Apr 23, 2019	From committee: Amend, and do pass as amended. Declared an emergency measure under th Dispensed with reprinting. Read third time. Passed, as amended. Title approved, as amended.
--------------	--

Apr 24, 2019	From printer. To engrossment. Engrossed. First reprint. To Senate. In Senate. Read first time.
--------------	--

May 23, 2019	From committee: Amend, and do pass as amended. Placed on Second Reading File. Read sec
--------------	--

May 24, 2019	From printer. To re-engrossment. Re-engrossed. Second reprint. Read third time. Amended. ( as amended. Title approved, as amended. (Yeas: 20, Nays: None, Excused: 1.) To printer.
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<b>Date</b>	<b>Action</b>
-------------	---------------

May 25, 2019	From printer. To re-engrossment. Re-engrossed. Third reprint. To Assembly.
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May 27, 2019	In Assembly.
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May 28, 2019	Senate Amendment Nos. 808 and 963 concurred in. To enrollment.
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Jun 01, 2019	Enrolled and delivered to Governor.
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Jun 03, 2019	Approved by the Governor.
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Jun 05, 2019	Chapter 361.
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- Effective October 1, 2019.

# Bills Signed by the Governor

80th (2019) Session

Order By Chapter | Order By Bill

...

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

# **Exhibit D**

# **Exhibit D**

**AFFIDAVIT OF ALEEM A. DHALLA, ESQ.**

STATE OF NEVADA            )  
  ) ss.  
COUNTY OF CLARK         )

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

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

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

3. I make this affidavit pursuant to NRS 11.258.

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

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

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

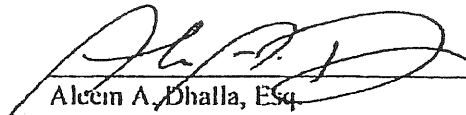
- a. A resume of the expert consulted in this matter, Edred T. Marsh, P.E. of American Geotechnical Inc (Ex. 6);
- b. A statement that the expert is experienced in each discipline which is the subject of the report, specifically in the fields of geotechnical, civil, and forensic engineering (Ex. 7);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

Snell & Wilmer

LAW OFFICES  
1883 HOWARD HUGHES PARKWAY, SUITE 1100  
LAS VEGAS, NEVADA 89169  
(702) 784-3500

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

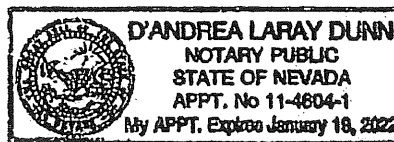
  
Alceen A. Dhalla, Esq.

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 E**

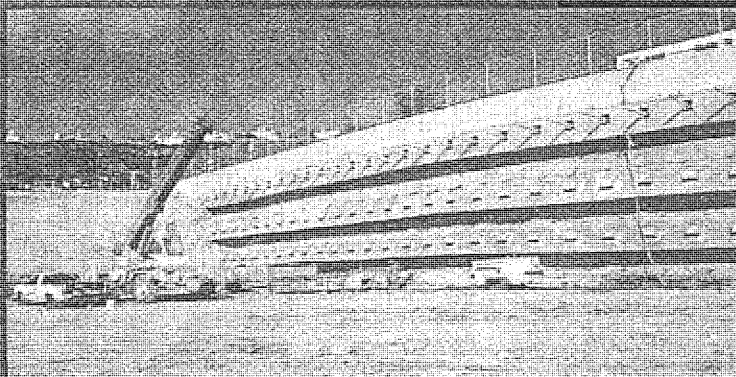
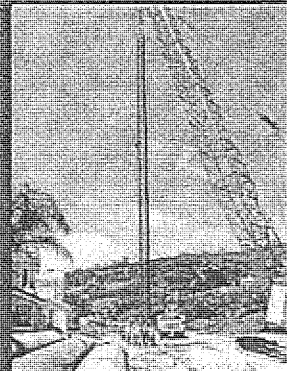
# **Exhibit E**

# GEOTECHNICAL INVESTIGATION

## FIRE STATION 53

2804 W. Gowan Road  
North Las Vegas, Nevada

December 11, 2017  
FN 40779-01



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

2640 Financial Court  
Suite A  
San Diego, CA 92117

3100 Fite Circle  
Suite 103  
Sacramento, CA 95827

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



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

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

PET.APP.002772



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

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:

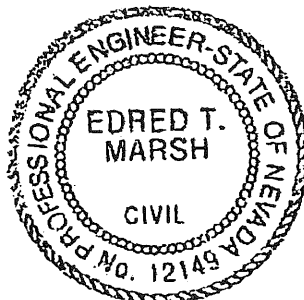
In accordance with your authorization, American Geotechnical has performed a geotechnical investigation of the site. The purpose of this investigation was to evaluate the site geotechnical conditions and to determine the probable cause(s) of the existing distress to the building and surrounding appurtenances 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



Alva (Arumugam) Alvappillai  
Principal Engineer

AA/ETM: km

Distribution: Mr. Dale Daffern

*Via E-Mail Only*

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

**PET.APP.002773**

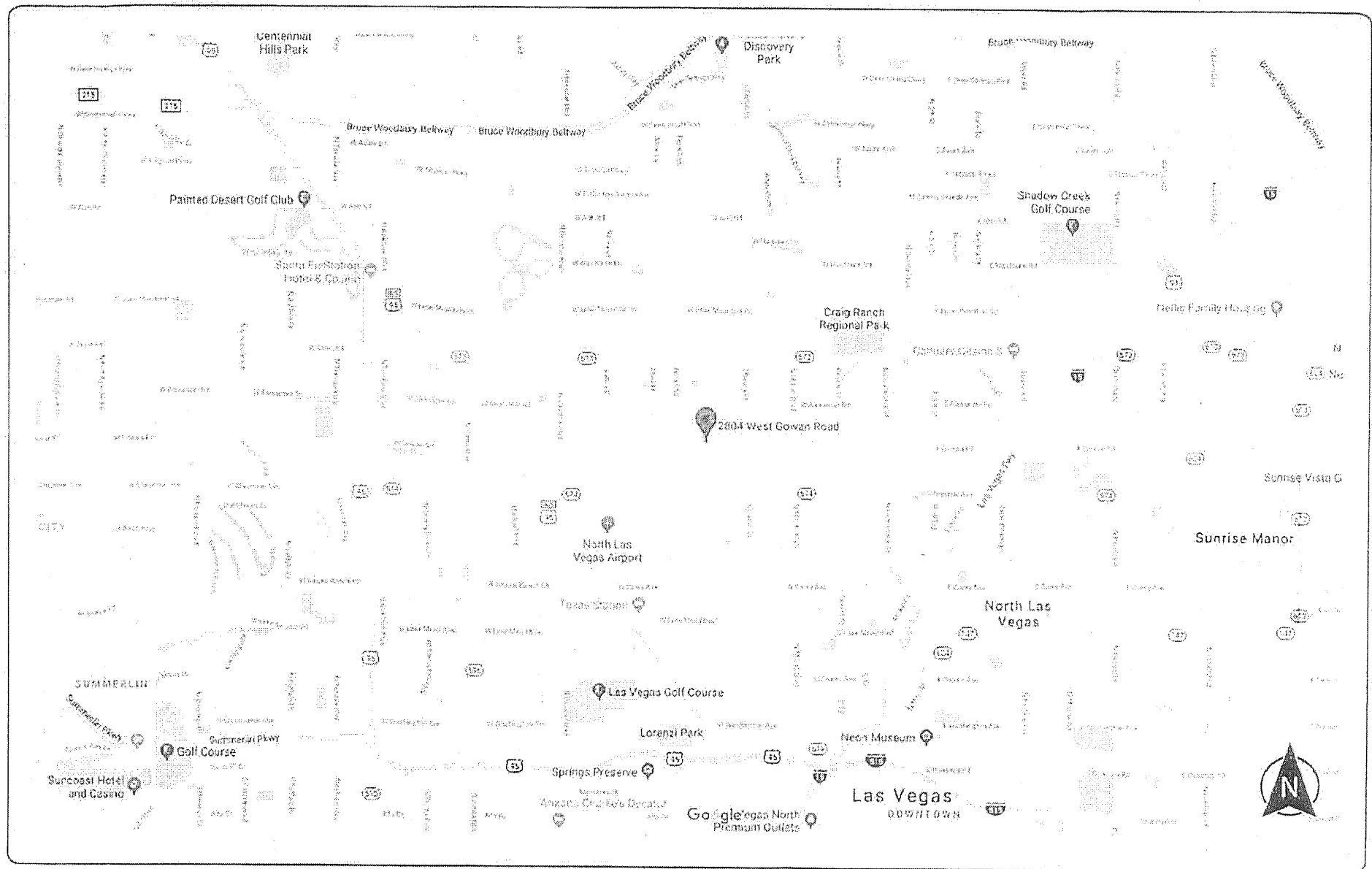
## 1.0 SCOPE OF WORK

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

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

## 2.0 SITE DESCRIPTION AND HISTORY

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



**AMERICAN GEOTECHNICAL, INC.**

22725 Old Canal Road, Yorba Linda, CA 92887

☎ (714) 685-3900 ☎ (714) 685-3909

www.amgt.com

TITLE:

**SITE LOCATION MAP**

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

SCALE:

**N.T.S**

DATE:

**DEC 2017**

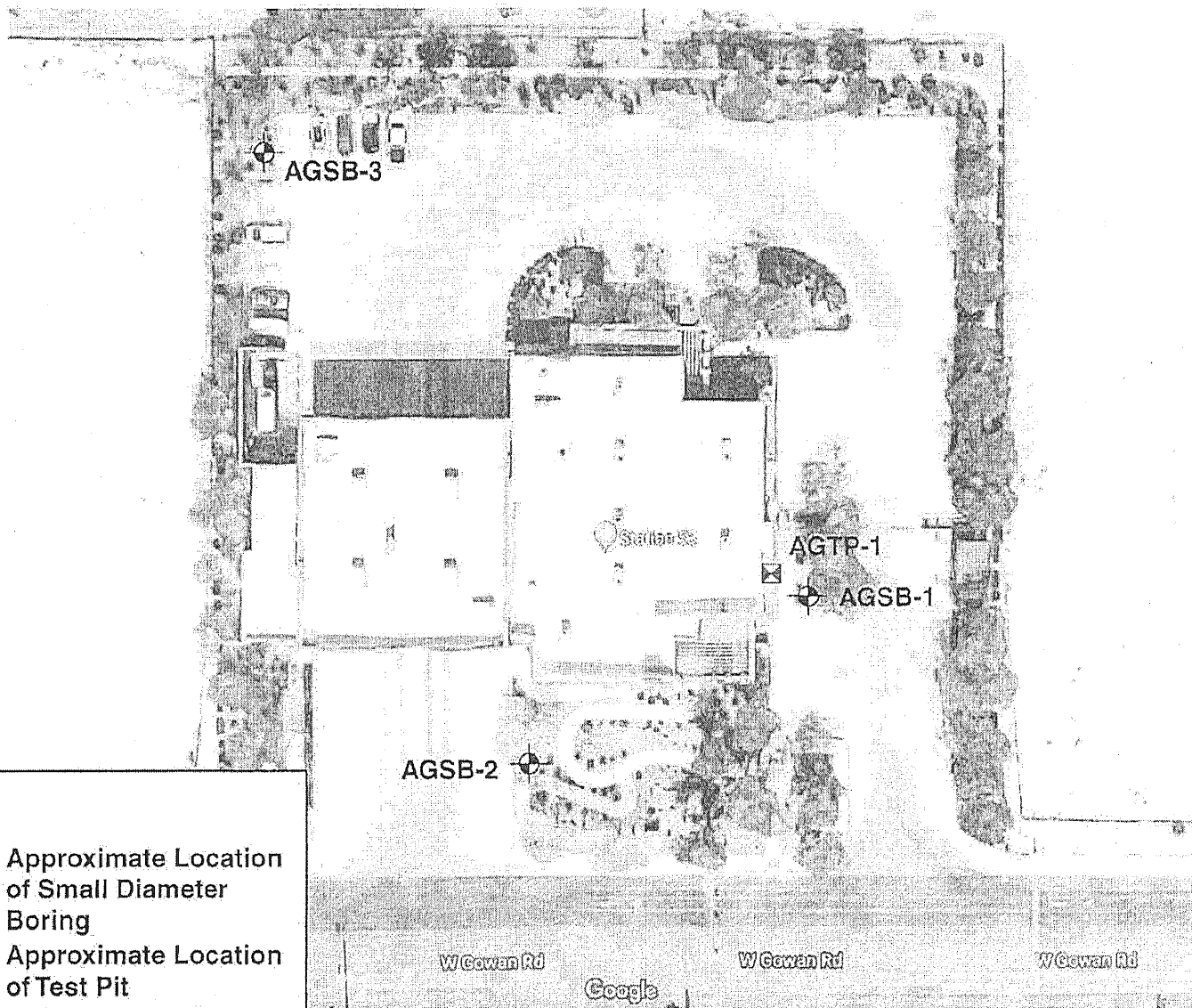
FILE NO.:

**40779-01**



PLATE

**1**

**PET.APP.002775**



# LEGEND

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



**AMERICAN GEOTECHNICAL, INC.**

22725 Old Canal Road, Yorba Linda, CA 92887

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

www.amgt.com

TITLE:

**Aerial View/Test Location Map**

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

SCALE:

**N.T.S**

DATE:

**DEC 2017**

FILE NO.:

**40779-01**

PLATE

**2**

**PET.APP.002776**

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.

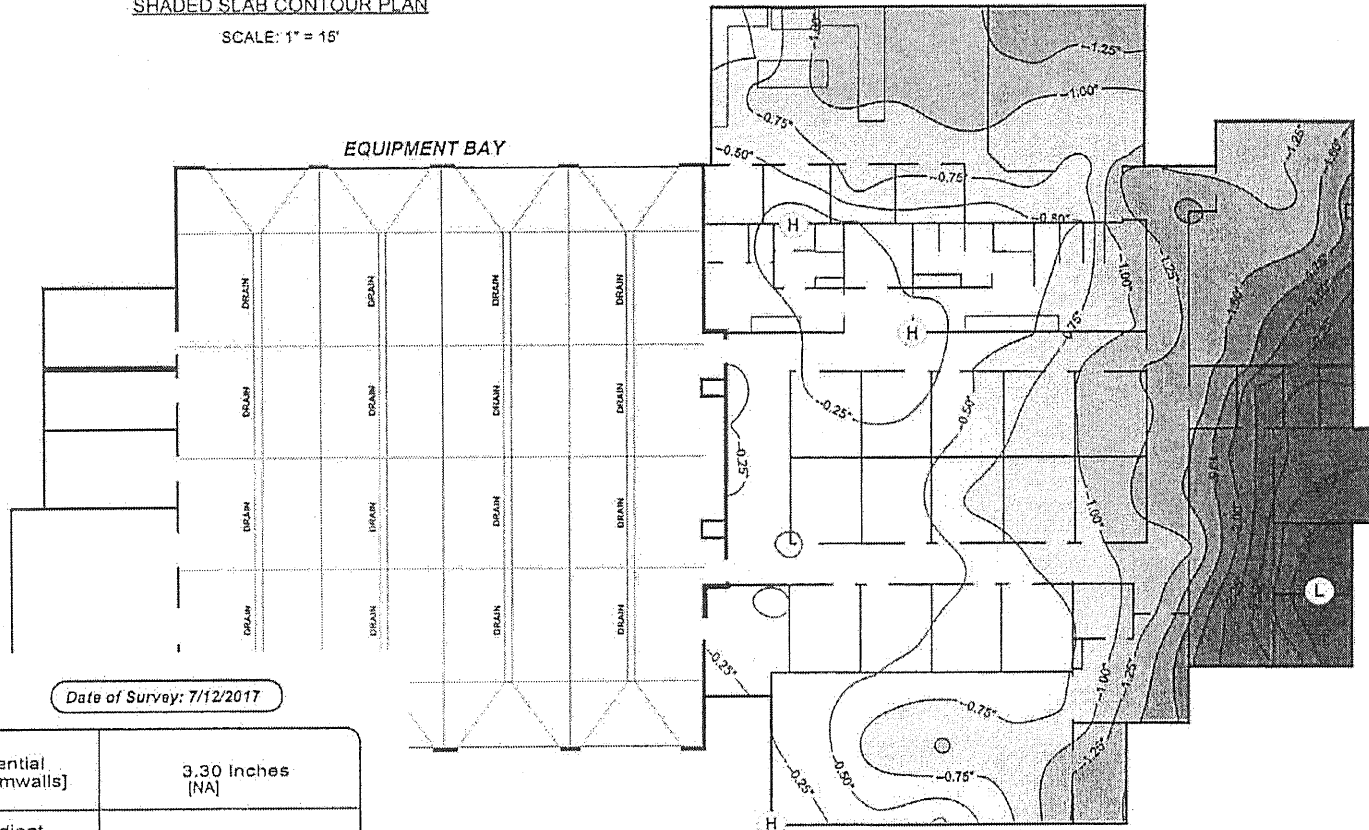
Representative samples of subsurface materials were collected and forwarded to the laboratory for the purpose of estimating material properties for the use in subsequent engineering evaluations. The approximate locations of the test pit and borings are shown on Plate 2. Detailed logs are presented in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

# SHADED SLAB CONTOUR PLAN

SCALE: 1" = 15'



EQUIPMENT BAY



## LEGEND

Date of Survey: 7/12/2017

Overall Differential (with garage stemwalls)	3.30 Inches [NA]
Steepest Gradient Over 15 Feet	1:97 (1.85")
<div style="display: flex; align-items: center;"> <div style="width: 20px; height: 2px; background-color: black; margin-right: 5px;"></div> <div style="text-align: center;">1.5"</div> </div> <div style="display: flex; align-items: center;"> <div style="width: 20px; height: 1px; background-color: black; margin-right: 5px;"></div> <div style="text-align: center;">7.5"</div> </div>	Contours are of relative elevation in inches Survey Point / Relative elevation
(L)	Low Point
(H)	High Point
<div style="width: 20px; height: 10px; background-color: lightgray; margin-bottom: 2px;"></div> <div style="width: 20px; height: 10px; background-color: gray;"></div>	Areas that exceeds 1/300 ratio Areas that exceeds 1/240 ratio

PLATE 3

F.N. 40779.01  
Fire Station #53

MANOMETER SURVEY  
FIRE STATION #53

American  
Geotechnical Inc.  
(800)275-4436



PET.APP.002779

## 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.

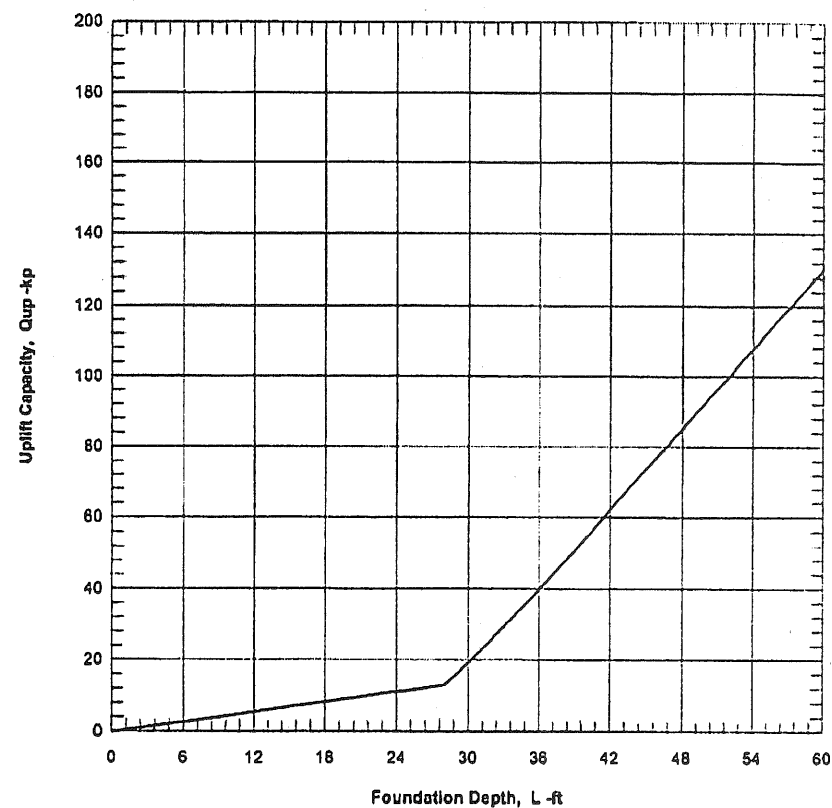
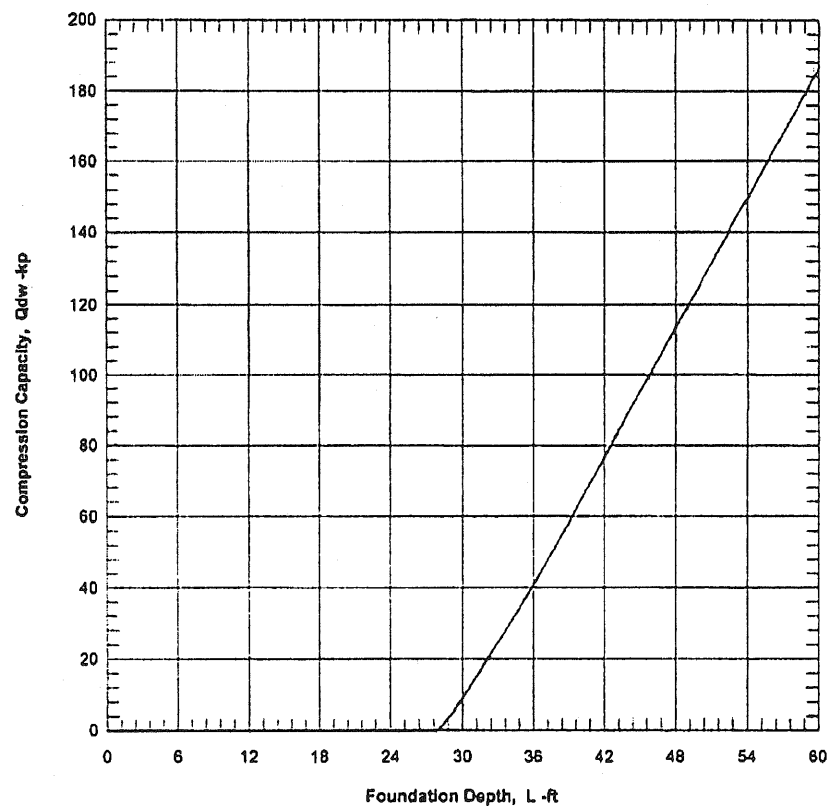
A minimum pile diameter of 2 feet is recommended for the underpinning. The pile spacing should be at least three times the pile diameter. Vertical pile capacity for an isolated, 2-foot diameter friction pile is presented on Plate 4. Capacities for other pile sizes can be determined in direct proportion 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  
PET.APP.002782**

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

#### **9.0 CONCRETE**

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

#### **10.0 CORROSION**

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

#### 11.0 REMARKS

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

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

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

# **Exhibit F**

# **Exhibit F**

**DECLARATION OF EDRED T. MARSH, P.E.**

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

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

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

Dated: July 3rd, 2019.

A handwritten signature in black ink, appearing to be 'ETM', is written above a horizontal line.

Edred T. Marsh, P.E.

# Exhibit G

# Exhibit G

11.258

**SENATE BILL 243:** Requires an affidavit and a report in an action against certain design professionals involving nonresidential construction. (BDR 2-898)  
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 19

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. 99-58, "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. HILLERBY (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 Council Bureau. Like myself, Mr. Timothy Rowe is a partner in the firm of McDonald Carano Wilson, Limited Liability Partnership.

CHAIR AMODEI:

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 HORBFORD 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 certified 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 all 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 Horner:**

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 “C”**

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*

Electronically Filed  
8/6/2019 8:56 AM  
Steven D. Grierson  
CLERK OF THE COURT



North Las Vegas City of, Plaintiff(s)  
vs.  
Dekker/Perich/Sabatini Ltd, Defendant(s)

Case No.: A-19-798346-C

Department 8

**NOTICE OF HEARING**

Please be advised that the Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment in the above-entitled matter is set for hearing as follows:

**Date:** September 09, 2019

**Time:** 8:30 AM

**Location:** Phoenix Building 11th Floor 110  
Regional Justice Center  
200 Lewis Ave.  
Las Vegas, NV 89101

**NOTE:** Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Chaunte Pleasant  
Deputy Clerk of the Court

**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Chaunte Pleasant  
Deputy Clerk of the Court

PET.APP.002796

# **EXHIBIT “D”**



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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").

Snell & Wilmer

LLP  
LAW OFFICES  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, Nevada 89169  
702.784.5200

## 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.

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<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.

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### 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.

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### 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.*

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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.

I. 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  
3 given on or after October 1, 2019.

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

8 Ex. 2 (emphasis added).

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

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

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

<sup>3</sup> NBD provides a link to the Nevada Electronic Legislative Information System (“NELIS”) 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.  
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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           **I.     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.  
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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  
5                     the expert consulted by the attorney and must include, without  
6                     limitation:

7                     (a) The resume of the expert;

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

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

15                    (d) The conclusions of the expert and the basis for the  
16                    conclusions; and

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

19                    Here, the City's attorney affidavit complies with all requirements from NRS 11.258 (1) and  
20                    (3). The City's attorney swore that he reviewed the facts of the case, consulted with an expert that  
21                    he reasonably believed to be qualified, and concluded that there was a reasonable basis to file this  
22                    action. Ex 1, p. 16. The City's attorney also confirmed that he attached all the required documents  
23                    to the complaint. Ex 1, p. 16-17. Below is a side by side comparison of the statute with the  
24                    corresponding statement from the City's attorney affidavit.  
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NRS 11.258 (1)	Affidavit of Aleem A. Dhalla, Esq. <sup>4</sup>
... 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.

NRS 11.258 (3)	Affidavit of Aleem A. Dhalla, Esq. <sup>5</sup>
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  
11 separately as to each defendant in simple, concise and direct terms.

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

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

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

28 Here, the City's expert, Edred T. Marsh, P.E. of American Geotechnical Inc., is a  
*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.

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<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  
17 11.258; or
  - 18 (c) Name the expert consulted in the affidavit required pursuant  
19 to subsection 1 of NRS 11.258.

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

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Las Vegas, Nevada 89169

*Attorneys for the City of North Las Vegas*

**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:

**VIA 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*

Theodore Parker III, Esq.  
**Parker Nelson & Associates, Chtd.**  
2460 Professional Court, Ste. 200  
Las Vegas, Nevada 89128  
[tparker@pnalaw.net](mailto:tparker@pnalaw.net)  
*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  
[Jorge.ramirez@wilsonelser.com](mailto:Jorge.ramirez@wilsonelser.com)  
*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 20<sup>th</sup> day of August, 2019.

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

4825-1811-7536

# **EXHIBIT “E”**



1 **MDSM**  
2 THEODORE PARKER, III, ESQ.  
3 Nevada Bar No. 4716  
4 **PARKER, NELSON & ASSOCIATES, CHTD.**  
5 2460 Professional Court, Suite 200  
6 Las Vegas, Nevada 89128  
7 Telephone: (702) 868-8000  
8 Facsimile: (702) 868-8001  
9 Email: [tparker@pnalaw.net](mailto:tparker@pnalaw.net)

10 *Attorneys for Defendants,*  
11 *Richardson Construction, Inc. and*  
12 *The Guarantee Company of North America USA*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 CITY OF NORTH LAS VEGAS,  
16  
17 Plaintiff,

18 v.

19 DEKKER/PERICH/SABATINI LTD.;  
20 RICHARDSON CONSTRUCTION, INC.;  
21 NEVADA BY DESIGN, LLC D/B/A  
22 NEVADA BY DESIGN ENGINEERING  
23 CONSULTANTS; JW ZUNINO &  
24 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

**DEFENDANTS RICHARDSON  
CONSTRUCTION, INC. AND THE  
GUARANTEE COMPANY OF NORTH  
AMERICA USA'S MOTION TO  
DISMISS**

**(HEARING REQUESTED)**

COME NOW, Defendants RICHARDSON CONSTRUCTION, INC. and THE  
GUARANTEE COMPANY OF NORTH AMERICA USA (hereinafter "Defendants"), by and  
through their attorney of record, THEODORE PARKER, III, ESQ. of the law firm of PARKER,  
NELSON & ASSOCIATES, CHTD., and hereby move this Court pursuant to NRCP 12(b)(5) to

1 dismiss Plaintiff's Complaint for failing to state a claim upon which relief can be granted.

2 This Motion is made and based upon the pleadings and papers on file herein, the points and  
3 authorities included herewith, and such oral argument as the Court may entertain at the time of the  
4 hearing of this matter.

5 DATED this 4<sup>th</sup> day of September, 2019.

6 **PARKER, NELSON & ASSOCIATES, CHTD.**

7 /s/ Theodore Parker III

8 THEODORE PARKER, III, ESQ.

9 Nevada Bar No. 4716

2460 Professional Court, Suite 200

Las Vegas, Nevada 89128

10 *Attorneys for Defendants,*

11 *Richardson Construction, Inc. and*

12 *The Guarantee Company of North America USA*

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I.**

15 **STATEMENT OF FACTS**

16 Plaintiff's Complaint identifies Richardson Construction, Inc. as a Nevada corporation  
17 conducting business in Clark County, Nevada.<sup>1</sup> Plaintiff also identifies that on January 16, 2008,  
18 the City of North Las Vegas entered into a construction contract with Richardson Construction.<sup>2</sup>  
19 Plaintiff also alleges that Richardson Construction provided three (3) bonds for the full value of the  
20 construction contract issued by The Guarantee Company and P & W Bonds, LLC.<sup>3</sup> The bonds  
21 included a performance bond, a labor and material bond, and a guarantee bond.<sup>4</sup>

22 On or about March 5, 2008, the City issued its notice to proceed. A certificate of occupancy  
23

24 \_\_\_\_\_  
25 <sup>1</sup> See Complaint at pp. 2 ¶3.

26 <sup>2</sup> *Id.* at pp. 5 ¶38.

27 <sup>3</sup> *Id.* at pp. 6 ¶41.

28 <sup>4</sup> *Id.* at pp. 6 ¶42.

1 was issued on the project on February 25, 2009.<sup>5</sup> The notice of completion was recorded on July 13,  
2 2009.<sup>6</sup>

3 NRCP 12(b)(5) provides:

4 (b) Every defense to a claim for relief in any pleading must be  
5 asserted in the responsive pleading if one is required. But a party may  
6 assert the following defenses by motion:

7 ...

8 (5) failure to state a claim upon which relief can be granted;

9 Plaintiff has brought the following claims for relief against these Defendants: (1) Breach of  
10 Contract (The Design Agreement); (2) Breach of Contract (The Construction Contract); (3) Breach  
11 of the Covenant of Good Faith and Fair Dealing; (4) Negligence; (5) Breach of Implied Warranty;  
12 (6) Claim on Performance Bond; (7) Claim on Payment Bond; and (8) Claim on Guarantee Bond.  
13 The statute of limitations has run on each of the above-referenced claims for relief. NRS 11.190  
14 provides the periods of limitations applicable to the Plaintiff's claims for relief. Plaintiff's claims  
15 for relief for Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing, as well  
16 as the Bond claims are all governed by NRS 11.190(1) which is for six (6) years. Plaintiff's claim  
17 for Negligence is governed by NRS 11.190(3)(c), which allows for three (3) years within which time  
18 the action should be brought.

19 ///

20 ///

21 ///

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26 ///

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27 <sup>5</sup> *Id.* at pp. 6 ¶43 and ¶44.

28 <sup>6</sup> *Id.* at pp. 6 ¶45.

Given the allegations contained in Plaintiff's Complaint, Plaintiff's claims for relief are all barred by the above-referenced periods of limitation under NRS 11.190. As a result, Plaintiff does not present a claim upon which relief can be granted against these Defendants. Therefore, Defendants request that Plaintiff's Complaint be dismissed in its entirety.

DATED this 4<sup>th</sup> day of September, 2019.

Respectfully submitted,

**PARKER, NELSON & ASSOCIATES, CHTD.**

/s/ Theodore Parker III  
THEODORE PARKER, III, ESQ.  
Nevada Bar No. 4716  
2460 Professional Court, Suite 200  
Las Vegas, Nevada 89128

*Attorneys for Defendants,  
Richardson Construction, Inc. and  
The Guarantee Company of North America USA*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of the Law Offices of PARKER, NELSON & ASSOCIATES, CHTD., and that on this 4<sup>th</sup> day of September, 2019 and pursuant to NRCP 5(b), I served a true and correct copy of the foregoing **DEFENDANTS RICHARDSON CONSTRUCTION, INC. AND THE GUARANTEE COMPANY OF NORTH AMERICA USA'S MOTION TO DISMISS** on the party(s) set forth below by:

- ☐ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Las Vegas, NV, postage prepaid, following ordinary business practices.
- ☐ Facsimile transmission, pursuant to the amendment to the Eighth Judicial District Court Rule 7.26, by faxing a true and correct copy of the same to each party addressed as follows:
- ☐ By E-mail: by electronic mail delivering the document(s) listed above to the e-mail address(es) set forth below on this date before 5:00 p.m.
- ☒ By EFC: by electronic filing and service with the Court delivering the document(s) listed above via E-file & E-serve (Odyssey) filing system.

Party	Attorney	E-Mail
Plaintiff	Justin L. Carley, Esq. Aleem A. Dhalla, Esq. SNELL & WILMER L.L.P. 3883 Howard Hughes Parkway, Suite 1100 Las Vegas, NV 89169 (702) 784-5200 Fax: (702) 784-5252	<a href="mailto:jcarley@swlaw.com">jcarley@swlaw.com</a> <a href="mailto:adhalla@swlaw.com">adhalla@swlaw.com</a>
Defendant, Jackson Family Partnership LLC d/b/a Stargate Plumbing	Richard L. Peel, Esq. Ronald J. Cox, Esq. PEEL BRIMLEY LLP 3333 E. Serene Avenue, Suite 200 Henderson, NV 89074-6571 (702) 990-7272 Fax: (702) 990-7273	<a href="mailto:rpeel@peelbrimley.com">rpeel@peelbrimley.com</a> <a href="mailto:rcox@peelbrimley.com">rcox@peelbrimley.com</a>
Defendant, Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants	John T. Wendland, Esq. Anthony D. Platt, Esq. WEIL & DRAGE, APC 2500 Anthem Village Drive Henderson, NV 89052 (702) 314-1905 Fax: (702) 314-1909	<a href="mailto:jwendland@weildrage.com">jwendland@weildrage.com</a> <a href="mailto:aplatt@weildrage.com">aplatt@weildrage.com</a>

Party	Attorney	E-Mail
Defendant, Dekker/Perich/Sabatini, Ltd.	John T. Wendland, Esq. Jeremy R. Kilber, Esq. WEIL & DRAGE, APC 2500 Anthem Village Drive Henderson, NV 89052 (702) 314-1905 Fax: (702) 314-1909	<a href="mailto:jwendland@weildrage.com">jwendland@weildrage.com</a> <a href="mailto:jkilber@weildrage.com">jkilber@weildrage.com</a>
Defendant, Melroy Engineering, Inc. d/b/a MSA Engineering Consultants	Jeremy R. Kilber, Esq. WEIL & DRAGE, APC 2500 Anthem Village Drive Henderson, NV 89052 (702) 314-1905 Fax: (702) 314-1909	<a href="mailto:jkilber@weildrage.com">jkilber@weildrage.com</a>
Defendants, P & W Bonds, LLC and Paffenbarger & Walden, LLC	Charles W. Bennion, Esq. ELLSWORTH & BENNION, CHTD. 777 N. Rainbow Blvd., Suite 270 Las Vegas, NV 89107 (702) 658-6100 Fax: (702) 658-2502  Patrick F. Welch, Esq. JENNINGS STROUSS & SALMON, PLC One East Washington Street, Suite 1900 Phoenix, AZ 85004-2554 (602) 262-5847 Fax: (602) 495-2781	<a href="mailto:charles@silverstatelaw.com">charles@silverstatelaw.com</a>          <a href="mailto:pwelch@jsslaw.com">pwelch@jsslaw.com</a>

/s/ Eloisa Nuñez

An employee of PARKER, NELSON & ASSOCIATES CHTD.

# EXHIBIT “F”

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*

Electronically Filed  
9/6/2019 9:30 AM  
Steven D. Grierson  
CLERK OF THE COURT



North Las Vegas City of, Plaintiff(s)  
vs.  
Dekker/Perich/Sabatini Ltd, Defendant(s)

Case No.: A-19-798346-C

Department 8

**NOTICE OF HEARING**

Please be advised that the Defendants Richardson Construction, Inc. and The Guarantee Company of North America USA s Motion to Dismiss in the above-entitled matter is set for hearing as follows:

**Date:** October 21, 2019  
**Time:** 8:30 AM  
**Location:** RJC Courtroom 11B  
Regional Justice Center  
200 Lewis Ave.  
Las Vegas, NV 89101

**NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.**

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Joshua Raak  
Deputy Clerk of the Court

**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Joshua Raak  
Deputy Clerk of the Court

PET.APP.002824

# **EXHIBIT “G”**

[Skip to Main Content](#) [Logout My Account](#) [Search Menu](#) [New District Civil/Criminal Search](#) [Refine Search](#) [Back](#) [Location : District Court Civil/Criminal](#) [Help](#)

**REGISTER OF ACTIONS****CASE NO. A-19-798346-C**

North Las Vegas City of, Plaintiff(s) vs. Dekker/Perich/Sabatini Ltd,  
Defendant(s)

§  
§  
§  
§  
§  
§  
§

Case Type: **Building and Construction**  
Date Filed: **07/11/2019**  
Location: **Department 8**  
Cross-Reference Case Number: **A798346**

**PARTY INFORMATION**

		<b>Lead Attorneys</b>
<b>Defendant</b>	<b>Avery Atlantic LLC</b>	
<b>Defendant</b>	<b>Big C LLC</b>	
<b>Defendant</b>	<b>Dekker/Perich/Sabatini Ltd</b>	<b>John T. Wendland</b> <i>Retained</i> 7023141905(W)
<b>Defendant</b>	<b>Jackson Family Partnership LLC <i>Doing Business As</i> Stargate Plumbing</b>	<b>Shannon G. Splaine</b> <i>Retained</i> 7022571997(W)
<b>Defendant</b>	<b>JW Zunino &amp; Associates LLC</b>	<b>Dylan P. Todd</b> <i>Retained</i> 702-827-1511(W)
<b>Defendant</b>	<b>Melroy Engineering Inc <i>Doing Business As</i> MSA Engineering Consultants</b>	<b>Jeremy R Kilber, ESQ</b> <i>Retained</i> 702-314-1905(W)
<b>Defendant</b>	<b>Nevada by Design LLC <i>Doing Business As</i> Nevada by Design Engineering Consultants</b>	<b>John T. Wendland</b> <i>Retained</i> 7023141905(W)
<b>Defendant</b>	<b>Ninyo &amp; Moore Geotechnical Consultants</b>	<b>Jorge A. Ramirez</b> <i>Retained</i> 702-727-1400(W)
<b>Defendant</b>	<b>Ron Hanlon Masonry LLC</b>	
<b>Plaintiff</b>	<b>North Las Vegas City of</b>	<b>Richard C. Gordon</b> <i>Retained</i> 7027845252(W)

**EVENTS & ORDERS OF THE COURT****DISPOSITIONS**

09/11/2019 **Order of Dismissal Without Prejudice** (Judicial Officer: Vacant, DC 8)  
Debtors: O'Connor Construction Management Inc (Defendant)  
Creditors: North Las Vegas City of (Plaintiff)  
Judgment: 09/11/2019, Docketed: 09/12/2019

**PET.APP.002826**

**10/15/2019 Order of Dismissal With Prejudice** (Judicial Officer: Atkin, Trevor)  
 Debtors: North Las Vegas City of (Plaintiff)  
 Creditors: Richardson Construction Inc (Defendant), Nevada by Design LLC (Defendant), Guarantee Company of North America USA (Defendant), P & W Bonds LLC (Defendant), Paffenbarger & Walden LLC (Defendant)  
 Judgment: 10/15/2019, Docketed: 10/16/2019

**OTHER EVENTS AND HEARINGS**

07/11/2019 **Complaint**  
*Complaint*

07/11/2019 **Initial Appearance Fee Disclosure**  
*Initial Appearance Fee Disclosure*

07/19/2019 **Summons Electronically Issued - Service Pending**  
*Summons - Civil*

07/19/2019 **Summons Electronically Issued - Service Pending**  
*Summons - Civil*

07/19/2019 **Summons Electronically Issued - Service Pending**  
*Summons - Civil*

07/19/2019 **Summons Electronically Issued - Service Pending**  
*Summons - Civil*

07/19/2019 **Summons Electronically Issued - Service Pending**  
*Summons - Civil*

07/19/2019 **Summons Electronically Issued - Service Pending**  
*Summons - Civil*

07/19/2019 **Summons Electronically Issued - Service Pending**  
*Summons - Civil*

07/19/2019 **Summons Electronically Issued - Service Pending**  
*Summons - Civil*

07/19/2019 **Summons Electronically Issued - Service Pending**  
*Summons - Civil*

07/19/2019 **Summons Electronically Issued - Service Pending**  
*Summons - Civil*

07/19/2019 **Summons Electronically Issued - Service Pending**  
*Summons - Civil*

07/19/2019 **Summons Electronically Issued - Service Pending**  
*Summons - Civil*

07/22/2019 **Request for Exemption From Arbitration**  
*Request for Exemption from Arbitration*

07/31/2019 **Motion to Dismiss**  
*(8/27/19 Withdrawn) Motion to Dismiss*

07/31/2019 **Clerk's Notice of Hearing**  
*Notice of Hearing*

08/05/2019 **Initial Appearance Fee Disclosure**  
*Initial Appearance Fee Disclosure*

08/05/2019 **Motion for Summary Judgment**  
*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 **Clerk's Notice of Hearing**  
*Notice of Hearing*

08/06/2019 **Affidavit of Service**  
*Affidavit/Declaration of Service - Dekker/Perich/Sabatini Ltd.*

08/06/2019 **Affidavit of Service**  
*Affidavit/Declaration of Service - Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants*

08/06/2019 **Affidavit of Service**  
*Affidavit/Declaration of Service - Jackson Family Partnership LLC d/b/a Stargate Plumbing*

08/06/2019 **Affidavit of Service**  
*Affidavit/Declaration of Service - JW Zunino & Associates, LLC*

08/06/2019 **Affidavit of Service**  
*Affidavit/Declaration of Service - Melroy Engineering, Inc. d/b/a MSA Engineering Consultants*

08/06/2019 **Affidavit of Service**  
*Affidavit/Declaration of Service - Ninyo & Moore, Geotechnical Consultants*

08/06/2019 **Affidavit of Service**  
*Affidavit/Declaration of Service - O'Connor Construction Management, Inc.*

08/06/2019 **Affidavit of Service**  
*Affidavit/Declaration of Service - Richardson Construction, Inc.*

08/06/2019 **Affidavit of Service**  
*Affidavit/Declaration of Service - Paffenbarger & Walden L.L.C.*

08/06/2019 **Proof of Service**  
*Proof of Service - The Guarantee Company of North America USA*

08/06/2019 **Initial Appearance Fee Disclosure**  
*Initial Appearance Fee Disclosure*

08/06/2019 **Joinder to Motion For Summary Judgment**  
*Defendant Dekker/Perich/Sabatini, LTD.'s Joinder to Defendant Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants' Motion to Dismiss or, In the Alternative, Motion for Summary Judgment*

08/06/2019 **Motion to Dismiss**  
*Defendant Dekker/Perich/Sabatini, LTD.'s Motion to Dismiss*

08/06/2019 **Clerk's Notice of Hearing**  
*Notice of Hearing*

08/08/2019 **Initial Appearance Fee Disclosure**  
*Initial Appearance Fee Disclosure*

08/08/2019 **Notice of Appearance**  
*Notice of Appearance of Counsel*

08/08/2019 **Joinder**  
*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*

08/15/2019 **Motion to Strike**  
*Plaintiff's Motion to Strike and Opposition to Defendant Jackson Family Partnership LLC d/b/a Stargate Plumbing's Motion to Dismiss*

08/16/2019 **Clerk's Notice of Hearing**  
*Notice of Hearing*

PET.APP.002827

08/20/2019 **Opposition to Motion**  
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 Judgement

08/20/2019 **Appendix**  
Appendix of Exhibits to 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 Judgement

08/20/2019 **Opposition**  
Plaintiffs Opposition to Defendant Dekker/Perich/Sabatini Ltd.'s Motion to Dismiss

08/20/2019 **Appendix**  
Appendix of Exhibits to Plaintiffs Opposition to Defendant Dekker/Perich/Sabatini Ltd.'s Motion to Dismiss

08/23/2019 **Joinder To Motion**  
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

08/23/2019 **Initial Appearance Fee Disclosure**  
Initial Appearance Fee Disclosure

08/23/2019 **Joinder To Motion**  
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

08/23/2019 **Disclosure Statement**  
Ninyo & Moore, Geotechnical Consultants' NRCP 7.1 Disclosure Statement

08/23/2019 **Notice of Appearance**  
Notice of Appearance

08/23/2019 **Joinder**  
Jackson Family Partnership LLC dba Stargate Plumbing's Joinder To Nevada By Design, LLC dba Nevada By Design Engineering Consultants Motion To Dismiss Or, In The Alternative, Motion For Summary Judgment

08/24/2019 **Clerk's Notice of Hearing**  
Notice of Hearing

08/27/2019 **Notice of Withdrawal of Motion**  
Notice of Withdrawal of Motion

08/28/2019 **Reply to Opposition**  
Dekker/Perich/Sabatini, Ltd.'s Reply to Plaintiff's Opposition to Its Motion to Dismiss

08/28/2019 **Reply to Opposition**  
Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultant's Reply to Plaintiff's Opposition to Motion to Dismiss or, in the Alternative, Motion for Summary Judgment

08/30/2019 **Filing Fee Remittance**  
Filing Fee Remittance

08/30/2019 **Initial Appearance Fee Disclosure**  
Fee Disclosure

08/30/2019 **Motion to Dismiss**  
Defendants Paffenbarger & Walden, LLC and P & W Bonds, LLC's Motion to Dismiss

08/30/2019 **Filing Fee Remittance**  
Filing fee for Ninyo & Moore's Joinder to Nevada by Design's Motion for Summary Judgment

09/04/2019 **Clerk's Notice of Hearing**  
Notice of Hearing

09/04/2019 **Motion to Dismiss**  
Defendants Richardson Construction, Inc. and The Guarantee Company of North America USA s Motion to Dismiss

09/04/2019 **Initial Appearance Fee Disclosure**  
Initial Appearance Fee Disclosure (NRS Chapter 19)

09/06/2019 **Clerk's Notice of Hearing**  
Notice of Hearing

09/06/2019 **Joinder To Motion**  
Ninyo & Moore, Geotechnical Consultants' Joinder to Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants Motion to Dismiss or, in the Alternative, Motion for Summary Judgment

09/06/2019 **Notice of Rescheduling of Hearing**  
Notice of Rescheduling Motions to Dismiss and Joinders

09/06/2019 **Clerk's Notice of Hearing**  
Notice of Hearing

09/09/2019 **CANCELED Motion to Dismiss (8:30 AM)** (Judicial Officer Bonaventure, Joseph T.)  
Vacated - per Law Clerk  
Defendant Jackson Family Partnership LLC's Motion to Dismiss  
09/03/2019 Reset by Court to 09/09/2019

09/09/2019 **CANCELED Motion to Strike (8:30 AM)** (Judicial Officer Bonaventure, Joseph T.)  
Vacated - per Law Clerk  
Plaintiff's Motion to Strike and Opposition to Defendant Jackson Family Partnership LLC d/b/a Stargate Plumbing's Motion to Dismiss  
09/18/2019 Reset by Court to 09/09/2019

09/10/2019 **Association of Counsel**  
Association of Counsel for Defendant Jackson Family Partnership LLC dba Stargate Plumbing

09/11/2019 **Stipulation and Order for Dismissal Without Prejudice**  
Stipulation and Order to Dismiss O'Connor Construction Management Inc. Without Prejudice

09/12/2019 **Notice of Entry**  
Notice of Entry of Stipulation and Order to Dismiss O'Connor Construction Management Inc. Without Prejudice

09/13/2019 **Opposition**  
Plaintiff's Opposition to Defendants Paffenbarger & Walden, LLC and P & W Bonds, LLC's Motion to Dismiss

09/13/2019 **Joinder To Motion**  
Defendants Paffenbarger & Walden, LLC's and P & W Bonds, LLC's Limited Joinder in Nevada By Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment

09/16/2019 **Opposition to Motion**  
Plaintiff's Opposition to Defendants Richardson Construction, Inc.'s and The Guarantee Company of North America USA's Motion to Dismiss

09/18/2019 **Notice of Association of Counsel**  
2019.09.18 Notice of Association of Counsel for Defendant Jackson Family Partnership, LLC . dba Stargate Plumbing's

09/18/2019 **Motion**  
Defendant 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

**PET.APP.002828**

09/20/2019 **Receipt of Copy**  
Receipt of Copy

09/20/2019 **Reply in Support**  
Defendants Paffenbarger & Walden, LLC's and P&W Bonds, LLC's Reply in Support of Their Motion to Dismiss

09/23/2019 **Reply in Support**  
Defendants Richardson Construction, Inc. and The Guarantee Company of North America USA s Reply in Support of Motion to Dismiss

09/26/2019 **Opposition to Motion**  
Plaintiff's 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

09/26/2019 **Reply**  
Plaintiff's 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

09/27/2019 **Motion (9:30 AM) (Judicial Officer Cherry, Michael A.)**  
Defendant 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  
Parties Present  
Minutes  
Result: Matter Continued

09/27/2019 **Reply**  
Plaintiff's 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

09/27/2019 **Notice**  
Notice of Disassociation of Counsel

09/30/2019 **Motion to Dismiss (10:30 AM) (Judicial Officer Atkin, Trevor)**  
Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment  
09/09/2019 Reset by Court to 10/21/2019  
10/21/2019 Reset by Court to 09/30/2019  
Result: Granted

09/30/2019 **Motion to Dismiss (10:30 AM) (Judicial Officer Atkin, Trevor)**  
Defendant Dekker/Perich/Sabatini, LTD.'s Motion to Dismiss  
09/09/2019 Reset by Court to 10/21/2019  
10/21/2019 Reset by Court to 09/30/2019  
Result: Granted

09/30/2019 **Joinder (10:30 AM) (Judicial Officer Atkin, Trevor)**  
Defendant Dekker/Perich/Sabatini, LTD.'s Joinder to Defendant Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants' Motion to Dismiss or, In the Alternative, Motion for Summary Judgment  
09/09/2019 Reset by Court to 10/21/2019  
10/21/2019 Reset by Court to 09/30/2019  
Result: Granted

09/30/2019 **Joinder (10:30 AM) (Judicial Officer Atkin, Trevor)**  
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  
09/09/2019 Reset by Court to 10/21/2019  
10/21/2019 Reset by Court to 09/30/2019  
Result: Granted

09/30/2019 **Joinder (10:30 AM) (Judicial Officer Atkin, Trevor)**  
Defendants Ninyo & Moore, Geotechnical Consultants' Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants Motion to Dismiss or, in the Alternative, Motion for Summary Judgment  
09/09/2019 Reset by Court to 10/21/2019  
10/21/2019 Reset by Court to 09/30/2019  
Result: Granted

09/30/2019 **Joinder (10:30 AM) (Judicial Officer Atkin, Trevor)**  
Jackson Family Partnership LLC dba Stargate Plumbing's Joinder to Nevada By Design, LLC dba Nevada by Design Engineering Consultants Motion to Dismiss or, in the Alternative, Motion for Summary Judgment  
09/09/2019 Reset by Court to 10/21/2019  
10/21/2019 Reset by Court to 09/30/2019  
Result: Granted

09/30/2019 **Motion to Dismiss (10:30 AM) (Judicial Officer Atkin, Trevor)**  
Defendants Paffenbarger & Walden, LLC and P & W Bonds, LLC's Motion to Dismiss  
10/01/2019 Reset by Court to 10/21/2019  
10/21/2019 Reset by Court to 09/30/2019  
Result: Granted

09/30/2019 **Motion to Dismiss (10:30 AM) (Judicial Officer Atkin, Trevor)**  
Defendants Richardson Construction, Inc. and The Guarantee Company of North America USA's Motion to Dismiss  
10/21/2019 Reset by Court to 09/30/2019  
Result: Granted

09/30/2019 **Joinder (10:30 AM) (Judicial Officer Atkin, Trevor)**  
Ninyo & Moore, Geotechnical Consultants' Joinder to Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants Motion to Dismiss or, in the Alternative, Motion for Summary Judgment  
10/21/2019 Reset by Court to 09/30/2019  
Result: Granted

09/30/2019 **Joinder (10:30 AM) (Judicial Officer Atkin, Trevor)**  
Defendants Paffenbarger & Walden, LLC's and P & W Bonds, LLC's Limited Joinder in Nevada By Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment  
10/21/2019 Reset by Court to 09/30/2019

PET.APP.002829

Result: **Granted**

09/30/2019 **Administrative Reassignment - Judicial Officer Change**  
From Vacant DC8 to Judge Trevor L. Atkin

09/30/2019 **All Pending Motions (10:30 AM)** (Judicial Officer Atkin, Trevor)  
Parties Present  
Minutes

Result: Matter Heard

09/30/2019 **Joinder**  
Defendants 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

09/30/2019 **Joinder To Motion**  
Defendant JW Zunino & Associates LLC's Joinder to Defendant Nevada by Design LLC dba Nevada by Design Engineering Consultants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment

09/30/2019 **Initial Appearance Fee Disclosure**  
JW Zunino & Associates LLC's Initial Appearance Fee Disclosure

09/30/2019 **Motion (8:30 AM)** (Judicial Officer Atkin, Trevor)  
Defendant 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  
Parties Present  
Minutes

Result: **Granted**

10/10/2019 **Recorders Transcript of Hearing**  
Recorders Transcript of Hearing Re: All Pending Motions, September 30, 2019

10/15/2019 **Order Granting**  
Order Granting Defendant 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 OST

10/15/2019 **Order Granting**  
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

10/17/2019 **Notice of Entry of Order**  
Notice of Entry of Order

10/17/2019 **Notice of Entry of Order**  
Notice of Entry of Order

10/21/2019 **CANCELED Motion to Dismiss (8:30 AM)** (Judicial Officer Atkin, Trevor)  
Vacated - Duplicate Entry  
Defendants Richardson Construction Inc and the Guarantee Company of North America USA Motion to Dismiss

11/13/2019 **Motion to Amend Judgment**  
Motion to Alter Judgment

11/13/2019 **Clerk's Notice of Hearing**  
Notice of Hearing

11/20/2019 **Substitution of Attorney**  
Substitution of Attorneys for Defendant Jackson Family Partnership LLC dba Stargate Plumbing

11/20/2019 **Notice of Change of Address**  
Notice of Change of Address

11/20/2019 **Notice of Change of Address**  
Notice of Change of Address

11/20/2019 **Notice of Change of Address**  
Notice of Change of Address

11/25/2019 **Opposition to Motion**  
JW Zunino & Associates LLC's Opposition to Plaintiff's Motion to Alter Judgment

11/26/2019 **Opposition to Motion**  
Defendant Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultant's Opposition to Motion to Alter Judgment

11/26/2019 **Joinder to Opposition to Motion**  
Defendant Dekker/Perich/Sabatini, Ltd.'s Joinder to Defendant 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

11/26/2019 **Joinder to Opposition to Motion**  
Defendant Dekker/Perich/Sabatini, Ltd.'s Joinder to Defendant J.W. Zunino & Associates, LLC's Opposition to Plaintiff s Motion to Alter

11/26/2019 **Joinder to Opposition to Motion**  
Defendant Nevada by Design d/b/a Nevada by Design Engineering Consultants' Joinder to Defendant J.W. Zunino & Associates, LLC's Opposition to Plaintiff's Motion to Alter

11/27/2019 **Joinder to Opposition to Motion**  
Defendant JW Zunino & Associates LLC's Joinder to Defendant Nevada by Design LLC, d/b/a Nevada By Design Engineering Consultants' Opposition to Motion to Alter Judgment

12/17/2019 **Motion to Amend Judgment (9:00 AM)** (Judicial Officer Atkin, Trevor)  
Plaintiff's Motion to Alter Judgment

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**FINANCIAL INFORMATION**


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<b>Defendant Dekker/Perich/Sabatini Ltd</b>		
Total Financial Assessment		423.00
Total Payments and Credits		423.00
<b>Balance Due as of 11/27/2019</b>		<b>0.00</b>
08/06/2019	Transaction Assessment	423.00
08/06/2019	Efile Payment      Receipt # 2019-47987-CCCLK      Dekker/Perich/Sabatini Ltd	(423.00)

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**Defendant Jackson Family Partnership LLC**
**PET.APP.002830**

Total Financial Assessment	423.00
Total Payments and Credits	423.00
<b>Balance Due as of 11/27/2019</b>	<b>0.00</b>

07/31/2019	Transaction Assessment		223.00
07/31/2019	Payment (Window)	Receipt # 2019-46638-CCCLK	Jackson Family Partnership LLC (223.00)
08/30/2019	Transaction Assessment		200.00
08/30/2019	Efile Payment	Receipt # 2019-53393-CCCLK	Jackson Family Partnership LLC (200.00)

**Defendant JW Zunino & Associates LLC**

Total Financial Assessment	423.00
Total Payments and Credits	0.00
<b>Balance Due as of 11/27/2019</b>	<b>423.00</b>

10/01/2019	Transaction Assessment		223.00
10/01/2019	Transaction Assessment		200.00

**Defendant Melroy Engineering Inc**

Total Financial Assessment	423.00
Total Payments and Credits	423.00
<b>Balance Due as of 11/27/2019</b>	<b>0.00</b>

08/08/2019	Transaction Assessment		423.00
08/08/2019	Efile Payment	Receipt # 2019-48560-CCCLK	Melroy Engineering Inc (423.00)

**Defendant Nevada by Design LLC**

Total Financial Assessment	423.00
Total Payments and Credits	423.00
<b>Balance Due as of 11/27/2019</b>	<b>0.00</b>

08/05/2019	Transaction Assessment		423.00
08/05/2019	Efile Payment	Receipt # 2019-47678-CCCLK	Nevada by Design LLC (423.00)

**Defendant Ninyo & Moore Geotechnical Consultants**

Total Financial Assessment	423.00
Total Payments and Credits	423.00
<b>Balance Due as of 11/27/2019</b>	<b>0.00</b>

09/03/2019	Transaction Assessment		423.00
09/03/2019	Efile Payment	Receipt # 2019-53679-CCCLK	Ninyo & Moore Geotechnical Consultants (423.00)

**Defendant Paffenbarger & Walden LLC**

Total Financial Assessment	453.00
Total Payments and Credits	0.00
<b>Balance Due as of 11/27/2019</b>	<b>453.00</b>

09/04/2019	Transaction Assessment		253.00
09/16/2019	Transaction Assessment		200.00

**Defendant Richardson Construction Inc**

Total Financial Assessment	453.00
Total Payments and Credits	253.00
<b>Balance Due as of 11/27/2019</b>	<b>200.00</b>

09/04/2019	Transaction Assessment		253.00
09/04/2019	Efile Payment	Receipt # 2019-54213-CCCLK	Richardson Construction Inc (253.00)
09/30/2019	Transaction Assessment		200.00

**Plaintiff North Las Vegas City of**

Total Financial Assessment	270.00
Total Payments and Credits	270.00
<b>Balance Due as of 11/27/2019</b>	<b>0.00</b>

07/11/2019	Transaction Assessment		270.00
07/11/2019	Efile Payment	Receipt # 2019-42414-CCCLK	City of North Las Vegas (270.00)

# **EXHIBIT “H”**

## John T. Wendland

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**From:** Carley, Justin <jcarley@swlaw.com>  
**Sent:** Tuesday, September 10, 2019 4:04 PM  
**To:** John T. Wendland; 'Welch, Patrick F.'; 'Ronnie Cox'; Dhalla, Aleem; Jeremy Kilber; 'Ramirez, Jorge'; 'tparker@pnalaw.net'; 'charles@silverstatelaw.com'; 'Kahn, David'  
**Cc:** Joanna Medina; Sharp, Deborah L.  
**Subject:** RE: City of North Las Vegas v. Dekker/Perich/Sabatini, Ltd.; et al./ Rescheduling of Hearing on NV by Design Motion

We are unavailable for the last two weeks of September. It's unfortunate that the Court rescheduled the hearings to a date you can't make work, but our schedules are just as hectic. We are fine with the current hearing date (Oct. 21) or almost anything in October with a few exceptions. We will try our best to accommodate you, we just can't make September work.

-Justin Carley  
(702) 784-5250

**From:** John T. Wendland <jwendland@weiltdrager.com>  
**Sent:** Tuesday, September 10, 2019 10:28 AM  
**To:** 'Welch, Patrick F.' <PWelch@jsslaw.com>; Carley, Justin <jcarley@swlaw.com>; 'Ronnie Cox' <rcox@peelbrimley.com>; Dhalla, Aleem <adhalla@swlaw.com>; Jeremy Kilber <jkilber@weiltdrager.com>; 'Ramirez, Jorge' <Jorge.Ramirez@wilsonelser.com>; 'tparker@pnalaw.net' <tparker@pnalaw.net>; 'charles@silverstatelaw.com' <charles@silverstatelaw.com>; 'Kahn, David' <David.Kahn@wilsonelser.com>  
**Cc:** Joanna Medina <jmedina@weiltdrager.com>; Sharp, Deborah L. <DSharp@jsslaw.com>  
**Subject:** RE: City of North Las Vegas v. Dekker/Perich/Sabatini, Ltd.; et al./ Rescheduling of Hearing on NV by Design Motion  
**Importance:** High

[EXTERNAL]

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Justin: Just following up if you can provide any additional dates in September or not. If not, we will need to seek relief from the court. Let me know.

*John T. Wendland, Esq.*  
Partner  
WEIL & DRAGE, APC  
(702) 314-1905, Ext. 419 (Nevada)  
(602) 971-0159 (Arizona)  
Licensed in Nevada & Arizona

---

**From:** Welch, Patrick F. [mailto:PWelch@jsslaw.com]  
**Sent:** Monday, September 9, 2019 5:07 PM  
**To:** John T. Wendland; 'Carley, Justin'; 'Ronnie Cox'; Dhalla, Aleem; Jeremy Kilber; 'Ramirez, Jorge'; 'tparker@pnalaw.net'; 'charles@silverstatelaw.com'; 'Kahn, David'  
**Cc:** Joanna Medina; Sharp, Deborah L.  
**Subject:** RE: City of North Las Vegas v. Dekker/Perich/Sabatini, Ltd.; et al./ Rescheduling of Hearing on NV by Design Motion

# **EXHIBIT “I”**

ORIGINAL

Electronically Filed  
9/18/2019 3:07 PM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

MOT  
JOHN T. WENDLAND, ESQ.  
(Nevada Bar No. 7207)  
ANTHONY D. PLATT, ESQ.  
(Nevada Bar No. 9652)  
WEIL & DRAGE, APC  
2500 Anthem Village Drive  
Henderson, NV 89052  
(702) 314-1905 • Fax (702) 314-1909  
[jwendland@weildrage.com](mailto:jwendland@weildrage.com)  
[aplatt@weildrage.com](mailto:aplatt@weildrage.com)  
Attorneys for Defendant,  
NEVADA BY DESIGN, LLC d/b/a  
NEVADA BY DESIGN ENGINEERING CONSULTANTS

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]

DFFENDANT 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*

Hearing Date: 9/27/19

Hearing Time: 9:30 A.M.

*pw*

ORIGINAL

DEFENDANT 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

Pursuant to Eighth Judicial District Court ("EJDCR") Rule 2.26, the instant Motion represents the first request to change the date of the hearing (presently scheduled to October 21, 2019) on NEVADA BY DESIGN, LLC d/b/a NEVADA BY DESIGN ENGINEERING CONSULTANTS' ("NBD") Motion to Dismiss or, in the alternative, Motion for Summary Judgment (hereinafter collectively, the "Motions").

COMES NOW NBD, by and through its attorneys of record, the law firm of WEIL & DRAGE, APC, and pursuant to EJDCR 2.26, hereby respectfully requests that the hearing on NBD's Motions be changed from the current hearing date of October 21, 2019 to the Court's first available hearing date in September, 2019. The hearing on these Motions was initially scheduled for September 9, 2019. On September 6, 2019, the Court continued the hearing to October 21, 2019. Following an inquiry on the reason for the move, counsel for NBD tried to secure consent from counsels for all parties to re-set the hearing in September, 2019 as it would place all parties in the same exact position they occupied on September 9, 2019 and avoid impacting or causing additional arguments and briefing on these fully briefed Motions. Unfortunately, counsel for Plaintiff declined to consent to have NBD's Motions heard in September, 2019 (all other counsels agreed).

NBD's Motion to Change the time for Hearing is supported by the attached Declaration of John T. Wendland, the memorandum of points and authorities, all papers and pleadings on file

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///

///

1 herein and any oral argument the Court may require.

2 DATED this 16<sup>th</sup> day of September, 2019.

3  
4 WEIL & DRAGE, APC

5 */s/ John T. Wendland*

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

JOHN T. WENDLAND, ESQ.

(Nevada Bar No. 7207)

7 ANTHONY D. PLATT, ESQ.

8 (Nevada Bar No. 9652)

2500 Anthem Village Drive

9 Henderson, NV 89052

Attorneys for Defendant,

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

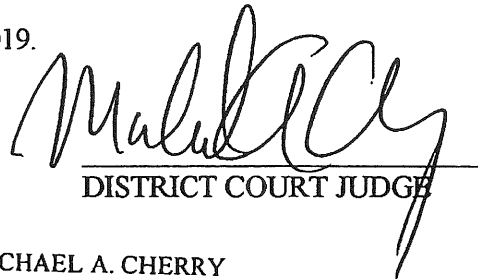
11 BY DESIGN ENGINEERING CONSULTANTS

**ORDER SHORTENING TIME**

TO: ALL PARTIES AND TO THEIR RESPECTIVE COUNSEL OF RECORD:

PLEASE TAKE NOTICE that good cause appearing and Pursuant to EJD CR 2.26, therefore, it is hereby ORDERED by the Court that the time and date for the hearing on DFEENDANT 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 shall be shortened and will be heard before the above-entitled Court on the 27<sup>th</sup> day of September, 2019, at the hour of 9:30 A.m., or as soon thereafter as counsel may be heard.

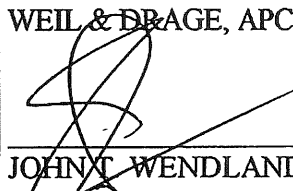
DATED this 17<sup>th</sup> day of September, 2019.

  
DISTRICT COURT JUDGE

MICHAEL A. CHERRY  
SENIOR DISTRICT COURT JUDGE

Respectfully Submitted By:

WEIL & DRAGE, APC

  
JOHN T. WENDLAND, ESQ.  
(Nevada Bar No. 7207)  
ANTHONY D. PLATT, ESQ.  
(Nevada Bar No. 9652)

2500 Anthem Village Drive  
Henderson, NV 89052  
Attorneys for Defendant,  
NEVADA BY DESIGN, LLC d/b/a  
NEVADA BY DESIGN ENGINEERING CONSULTANTS

1        **DECLARATION OF JOHN T. WENDLAND, ESQ. IN SUPPORT OF MOTION TO**  
2        **CHANGE DATE OF HEARING ON ORDER SHORTENING TIME PURSUANT TO**  
3        **E.J.D.C.R. 2.26**

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

7            1.        I am counsel of record for Defendant NBD in the above entitled action;

8            2.        On August 5, 2019, NBD filed its Motion to Dismiss or in the Alternative, its  
9        Motion for Summary Judgment (hereinafter, the "Motions") against Plaintiff North Las Vegas'  
10       ("Plaintiff") Complaint. The Motions argued in part that Plaintiff's Complaint was untimely filed in  
11       NRS 11.202 six (6) year statute of repose, rendering said pleading a fugitive document. The  
12       Motions were duly served on counsel for Plaintiff via eFileNV and all parties in the action at the  
13       time.

14           3.        On August 20, 2019, Plaintiff filed its Opposition to NBD's Motions.

15           4.        On August 28, 2019, NBD filed its Reply to Plaintiff's Opposition. Accordingly, as  
16       of August 28, 2019, all substantive pleadings were filed with the Court ready for hearing.

17           5.        The Court set the hearing on NBD's Motions for September 9, 2019. *See*, a true  
18       and correct copy of the Notice of Hearing attached to this Motion as **Ex. A**.

19           6.        No party in this action objected to the September 9, 2019, hearing date.

20           7.        On September 6, 2019, while preparing for the hearing, NBD's counsel learned that  
21       the Court rescheduled the hearing on its Motions to October 21st, 2019. *See*, a true and correct  
22       copy of the Notice of Rescheduling of the Hearing attached hereto as **Ex. B**.

23           8.        Unfortunately, the rescheduled hearing date conflicts with a complex AAA  
24       arbitration hearing (Frank v. Moser, AAA Case No. 01-18-0003-4590) that counsel for NBD must  
25       appear at on October 21, 2019. Accordingly, all counsels for NBD will also be working on the  
26       AAA matter on October 21, 2019 and throughout the month of October 2019.

27           9.        Furthermore, a core argument in NBD's Motions pertains to the statute of repose  
28       under NRS 11.202. *See*, Motions. Those issues were fully briefed and ready for the Court to  
decide as of late August 2019. *See*, court docket. Unfortunately, the continuance of the hearing to  
October 21, 2019 may inadvertently impact one or more of the arguments in the Motions and may  
require additional supplemental briefing that would not be necessary if the hearing is held in  
September 2019.

          10.        Additionally, maintaining the current hearing date of these Motions (October 21,  
2019) would mean that the hearing would not occur until nearly three (3) months after the Motions  
were first filed and nearly two (2) months after the pleadings and issues were fully briefed. As a

{01613267;3}

1 final point, re-scheduling the hearing to the Court's first available date in September, 2019 does not  
2 change any of the fully briefed arguments; does not prejudice any party (matter explained further  
3 below) and would place the parties in the exact same position they were in if the September 9, 2019  
hearing had proceeded.

4 11. Counsel for NBD notified counsels for all parties about re-scheduling the NBD's  
5 Motions from October 21, 2019 to a date in September, 2019. Counsels for all parties, save for  
6 Plaintiff's counsel (and at present, no response from Mr. Parker, counsel for Richardson  
7 Construction), represented that they are available to appear at a hearing in September, 2019. *See*,  
8 true and correct copies of email communications from counsels for the other parties collectively  
9 attached hereto as Ex. C. Furthermore, counsel for Defendants Paffenbarger & Walden, LLC &  
P&W Bonds (collectively hereinafter, "P&W"), the party that filed the latest motion scheduled to  
be heard on October 21, 2019, represented that not only is he available, his motion involves issues  
outside of NBD's Motions and he had no concerns with proceeding with a hearing on NBD's  
Motions in September, 2019. *Id.*

10 12. Unfortunately, after a follow up inquiry, counsel for Plaintiff, Mr. Carley,  
11 represented that his schedule is hectic and he could not "make September work." *See*, a true and  
12 correct email from Mr. Carley attached hereto as Ex. D. He stated the October 21<sup>st</sup> date worked  
13 for his schedule as well as other dates in October, 2019. *Id.*

14 13. Counsel for NBD has examined the webpage of Mr. Carley's firm, The Law Offices  
15 of Snell & Wilmer ("S&W") and attached hereto, is a true and correct copy taken from S&W's  
16 website by Declarant representing that its Nevada office has approximately fifty (50) lawyers. *See*,  
17 a true and correct copy from webpage taken on September 11, 2019 (at underline inserted for  
18 clarity on the source) attached hereto as Ex. E. While NBD's counsel is appreciative and  
19 understanding of scheduling conflicts, with approximately fifty (50) lawyers, S&W has the ability to  
send counsel to a September, 2019 hearing even if Mr. Carley and/or his associate is/are unable to  
attend. By comparison, NBD's attorneys who are physically in the Nevada office (two lawyers)  
number far less than S&W's 50 lawyers. All of NBD's attorneys will be working on the Frank v.  
Moser action.

20 14. Given that the October 21, 2019 hearing creates an actual conflict to NBD's  
21 counsel; given the potential impact to the Motions if heard after October 1, 2019 which may  
22 require further briefing of issues solely arising from the rescheduling of NBD's Motions; and the  
23 fact that Plaintiff's counsels should be able to send an attorney for a hearing in September, 2019,  
NBD respectfully requests that the Court re-set the hearing of its pending Motions to a date in  
September, 2019.

24 15. NBD respectfully contends that good cause exists to hear these Motions in  
25 September, 2019 (NBD's counsel is available any date) and this request is made in good faith and is  
26 not for the purposes of harassment or delay.

27 ///

28 ///

1 16. Accordingly, NBD respectfully requests that the hearings on its Motions be re-  
2 scheduled to the Court's first available date in September, 2019.

3 FURTHER DECLARANT SAYETH NAUGHT

4 DATED this 16<sup>th</sup> day of September, 2019.

5  
6 By:   
7 John T. Wendland

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 I.

10 **PROCEDURAL ISSUES/LEGAL ARGUMENT**

11 This action arises out of Plaintiff's Complaint filed against NBD and other parties  
12 concerning alleged settlement and expansive soils at a fire station. Plaintiff filed its Complaint on  
13 August 5, 2019 despite the project being substantially completed in July 11, 2009. As the  
14 Complaint is in clear violation of NRS 11.202's six (6) year statute of repose, NBD filed its Motion  
15 to Dismiss or in the alternative, its Motion for Summary Judgment (collectively, the "Motions").  
16 The Court set the hearing on these Motions for September 9, 2019. On September 6, 2019, the  
17 Court re-scheduled these Motions to October 21, 2019. Unfortunately, the new hearing date  
18 conflicts with a complex American Arbitration Association ("AAA") hearing that counsel for NBD  
19 had scheduled for over a year. Moreover, the only other attorney physically in NBD's Nevada  
20 office is also involved in this AAA action.

21 Furthermore, a core argument in NBD's Motions is the application of the statute of repose  
22 that existed on July 11, 2019, when Plaintiff filed its Complaint. Under the six (6) year repose, the  
23 Complaint is untimely and automatically void. Plaintiff's argument is that a new statute of repose  
24 of ten (10) years was passed by the Nevada Legislature (AB 421), which Plaintiff alleges allowed it  
25 to file the Complaint pursuant to a ten (10) year statute of repose. These arguments were fully  
26 briefed in the submitted papers and the parties (in particular, NBD) were ready for the September  
27 9, 2019.

1 On September 6, 2019, the Court re-scheduled NBD's Motions to October 21, 2109. The  
2 rescheduling of the Motions may impact one or more arguments; create potential new  
3 arguments/issues, and/or require additional/supplemental briefing that would not have existed if the  
4 Motions were heard on September 9, 2019.

5 NBD is aware that new parties, Defendants P&W recently filed a separate motion to dismiss  
6 on other legal and factual issues. P&W's motion was scheduled on October 21, 2019. Counsel for  
7 P&W has reviewed NBD's Motions and represented that he has no issues with these Motions being  
8 heard in September 2019.

9 Aside from one other attorney (Mr. Parker who has not responded), all other parties, save  
10 Plaintiff, have stipulated to have the Court hear NBD's Motions in September 2019 as originally  
11 scheduled. Plaintiff's counsel has declined to stipulate, citing scheduling conflicts in September  
12 2019. However, as shown from S&W's own website page, there are at least fifty (50) lawyers in  
13 S&W's Nevada office and it is difficult to believe that S&W could not send an attorney to argue if  
14 the hearing is scheduled in September 2019.

15 The papers have been fully briefed and the parties were ready to argue at the September 9,  
16 2019 hearing. Moving the hearing from October 21, 2019 to a date in September 2019 will not  
17 prejudice any party and it would put the parties in the same position they were in on September 6,  
18 2019, when the court moved the hearing, with no impact or change to any argument that the Court  
19 would have heard on September 9, 2019. Therefore, the prejudice to NBD and the potential of  
20 impacting/complicating the issues presently before the Court (plus judicial efficiency being impacted  
21 by more briefing on new issues created solely from the re-scheduling of the Motions), significantly  
22 outweighs any scheduling issues Plaintiff's counsel may have. This request is made pursuant to  
23 E.J.D.C.R. 2.26 which states:

24 **Rule 2.26. Shortening time.** Ex parte motions to shorten time may not be granted  
25 except upon an unsworn declaration under penalty of perjury or affidavit of counsel  
26 describing the circumstances claimed to constitute good cause and justify shortening of  
27 time. If a motion to shorten time is granted, it must be served upon all parties promptly. An  
28 order which shortens the notice of a hearing to less than 10 days may not be served by  
mail. In no event may the notice of the hearing of a motion be shortened to less than 1 full  
judicial day. A courtesy copy shall be delivered by the movant to the appropriate

1 department, if a motion is filed on an order shortening time and noticed on less than 10  
2 days' notice.

3 II.

4 CONCLUSION

5 For said reasons, NBD respectfully requests that the Court shorten the hearing date on its  
6 Motions from October 21, 2019 to the Court's first available date in September, 2019. There is  
7 little to no prejudice to Plaintiff's counsel and would allow the Court to hear the pleadings which  
8 have been fully briefed and prepared for decision. Additionally, the P&W motion to dismiss  
9 presently scheduled for October 21, 2019 involves separate issues and facts unique to P&W, and  
10 P&W consented to having its motion heard separately.

11 Maintaining the October 21, 2019 would prejudice NBD as it could impact the decision on  
12 the Motions; create new arguments and additional briefing caused by the rescheduling of the  
13 hearing. Finally, returning the parties to their position if the hearing proceeded on September 9,  
14 2019 is fair and equitable.

15 DATED this 16<sup>th</sup> day of September, 2019.

16 WEIL & DRAGE, APC

17 */s/ John T. Wendland*

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

19 JOHN T. WENDLAND, ESQ.

20 (Nevada Bar No. 7207)

21 ANTHONY D. PLATT, ESQ.

22 (Nevada Bar No. 9652)

23 2500 Anthem Village Drive

24 Henderson, NV 89052

25 Attorneys for Defendant,

26 NEVADA BY DESIGN, LLC d/b/a

27 NEVADA BY DESIGN ENGINEERING

28 CONSULTANTS

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 18<sup>th</sup> day of September, 2019, service of the foregoing  
DEFENDANT 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 was  
made this date by electronically serving a true and correct copy of the same, through Clark County  
Odyssey eFileNV, to the following parties:

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

John T. Wendland, Esq.  
Jeremy R. Kilber, Esq.  
WEIL & DRAGE, APC  
2500 Anthem Village Drive  
Henderson, NV 89052  
Attorneys for Defendant,  
DEKKER/PERICH/SABATINI, LTD.

Jeremy R. Kilber, Esq.  
WEIL & DRAGE, APC  
2500 Anthem Village Drive  
Henderson, NV 89052  
Attorney for Defendant,  
MSA ENGINEERING CONSULTANTS

Jorge A. Ramirez, Esq.  
Jonathan C. Pattillo, Esq.  
WILSON ELSEER MOSKOWITZ EDELMAN &  
DICKER, LLP  
300 S. 4<sup>th</sup> Street, 11<sup>th</sup> Floor  
Las Vegas, NV 89101  
Attorneys for Defendant,  
NINYO & MOORE GEOTECHNICAL  
CONSULTANTS

Richard L. Peel, Esq.  
Ronald J. Cox, Esq.  
PEEL BRIMLEY, LLP  
3333 E. Serene Avenue, Suite 200  
Henderson, NV 89074  
Attorneys for Defendant,  
JACKSON FAMILY PARTNERSHIP LLC  
dba STARGATE PLUMBING

Shannon G. Splaine, Esq.  
LINCOLN, GUSTAFSON & CERCOS, LLP  
3960 Howard Hughes Parkway, Suite 200  
Las Vegas, NV 89169  
Co-Counsel for Defendant,  
JACKSON FAMILY PARTNERSHIP LLC  
dba STARGATE PLUMBING

Patrick F. Welch, Esq.  
JENNINGS STROUSS & SALMON, P.L.C.  
One East Washington Street, Suite 1900  
Phoenix, AZ 85004-2554  
Attorneys for Defendants,  
PAFFENBARGER & WALDEN LLC and  
P & W BONDS LLC

Theodore Parker, III, Esq.  
PARKER, NELSON & ASSOCIATES, CHTD.  
2460 Professional Court, Suite 200  
Las Vegas, NV 89128  
Attorney for Defendants,  
RICHARDSON CONSTRUCTION, INC. and  
GUARANTEE COMPANY OF NORTH  
AMERICA USA

1 Charles W. Bennion, Esq.  
2 ELLSWORTH & BENNION, CHTD.  
3 777 N. Rainbow Boulevard, Suite 270  
4 Las Vegas, NV 89107  
5 Attorneys for Defendants,  
6 PAFFENBARGER & WALDEN LLC and  
7 P & W BONDS LLC

*/s/ Joanna Medina*

Joanna Medina, an Employee of  
WEIL & DRAGE, APC

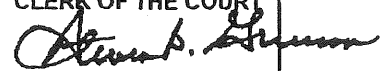
# **Exhibit A**

# **Exhibit A**

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*

Electronically Filed  
8/6/2019 8:56 AM  
Steven D. Grierson  
CLERK OF THE COURT



North Las Vegas City of, Plaintiff(s)

Case No.: A-19-798346-C

vs.

Dekker/Perich/Sabatini Ltd, Defendant(s)

Department 8

**NOTICE OF HEARING**

Please be advised that the Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment in the above-entitled matter is set for hearing as follows:

**Date:** September 09, 2019

**Time:** 8:30 AM

**Location:** Phoenix Building 11th Floor 110  
Regional Justice Center  
200 Lewis Ave.  
Las Vegas, NV 89101

**NOTE:** Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Chaunte Pleasant  
Deputy Clerk of the Court

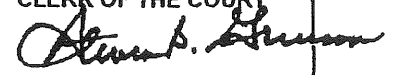
**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Chaunte Pleasant  
Deputy Clerk of the Court

# **Exhibit B**

# **Exhibit B**




DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*

NORTH LAS VEGAS CITY OF, PLAINTIFF(S) VS. DEKKER/PERICH/SABATINI LTD, DEFENDANT(S)	CASE NO: A-19-798346-C  DEPARTMENT 8
--	--

**NOTICE OF RESCHEDULING MOTIONS TO DISMISS AND JOINDERS**

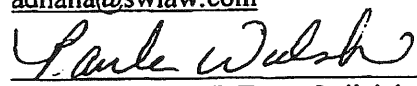
Please be advised that the date and time of all Motions to Dismiss and Joinders presently set in the above matter have been rescheduled to October 21, 2019, at 8:30 a.m.

By:   
Paula Walsh  
Judicial Executive Assistant  
to Judge DC 8 Vacant  
Department 8

**Certificate of Service**

I hereby certify that on the date filed, a copy of this Order was electronically served on all parties registered through the Eighth Judicial District Court EFP system, or emailed or mailed to any party or attorney not registered with the EFT system.

[icarley@swlaw.com](mailto:icarley@swlaw.com)  
[adhalla@swlaw.com](mailto:adhalla@swlaw.com)

  
PAULA WALSH, Temp Judicial Assistant

# **Exhibit C**

# **Exhibit C**

## John T. Wendland

---

**From:** Welch, Patrick F. <PWelch@jsslaw.com>  
**Sent:** Monday, September 9, 2019 5:07 PM  
**To:** John T. Wendland; 'Carley, Justin'; 'Ronnie Cox'; Dhalla, Aleem; Jeremy Kilber; 'Ramirez, Jorge'; 'tparker@pnalaw.net'; 'charles@silverstatelaw.com'; 'Kahn, David'  
**Cc:** Joanna Medina; Sharp, Deborah L.  
**Subject:** RE: City of North Las Vegas v. Dekker/Perich/Sabatini, Ltd.; et al./ Rescheduling of Hearing on NV by Design Motion

All:

I am available on Sept. 17-19 or Sept. 24-26 for a hearing on Nevada by Design's motion. I am unavailable the first two weeks of October as I will be in Mexico for a conference followed by vacation. I am available in October beginning on October 17<sup>th</sup>.

Prior to my e-mail response this morning, I had not had a chance to review Nevada by Design's motion to dismiss. The issues raised in that motion are unrelated to those raised in P&W's motion; therefore, I have no objection to the hearing of Nevada by Design's motion being set in September. Moreover, I can appear telephonically at the hearing on Nevada by Design's motion.

Best regards,  
Patrick

**From:** John T. Wendland [mailto:jwendland@weiltdrager.com]  
**Sent:** Monday, September 09, 2019 1:32 PM  
**To:** 'Carley, Justin'; Welch, Patrick F.; 'Ronnie Cox'; Dhalla, Aleem; Jeremy Kilber; 'Ramirez, Jorge'; 'tparker@pnalaw.net'; 'charles@silverstatelaw.com'; 'Kahn, David'  
**Cc:** Joanna Medina  
**Subject:** RE: City of North Las Vegas v. Dekker/Perich/Sabatini, Ltd.; et al./ Rescheduling of Hearing on NV by Design Motion

This message originated outside of Jennings Strouss.

---

Justin:

We filed our motion on August 5<sup>th</sup>, the briefing has been long done, and frankly the motion should have been heard and decided today. As you know, the court unilaterally moved the hearing to a date almost two months away without any advance notice, and without confirming our availability. Regarding your call, I don't know who you spoke with, but we have a significant arbitration that will require preparation in early October, as the arbitration is set to take place at the time of the rescheduled hearing.

As the hearing was moved without our knowledge and consent, we simply cannot accommodate it. To this end, we requested the hearing be set to accommodate our conflicts in October. The Court proposed 5 days in September that it can hear our motions. The September dates are reasonable based on when the motion was filed, and the fact that the hearing was originally set for today. We see no reason the motion cannot be heard in September and disagree with the October dates.

With respect to the later filed motions submitted by parties asserting defenses unrelated to those raised in our motions, they have no bearing on what date should be set for our motions. As those motions address issues different from those addressed in our motions, we fail to see how there is any efficiency in trying to find a date

## John T. Wendland

---

**From:** Ramirez, Jorge <Jorge.Ramirez@wilsonelser.com>  
**Sent:** Monday, September 9, 2019 10:27 AM  
**To:** John T. Wendland; 'adhalla@swlaw.com'; Jeremy Kilber; 'rcox@peelbrimley.com'; 'tparker@pnalaw.net'; 'pwelch@jsslw.com'; 'charles@silverstatelaw.com'; Kahn, David  
**Cc:** Joanna Medina  
**Subject:** RE: City of North Las Vegas v. Dekker/Perich/Sabatini, Ltd.; et al./ Rescheduling of Hearing on NV by Design Motion

**Follow Up Flag:** Moved to Worldox (Client Matters\2022\197\01612907.MSG)

Hi All,

We can be available any of those dates. Just let us know when we should schedule it.

Thanks,

Jorge

Jorge Ramirez  
Attorney at Law  
Wilson Elser Moskowitz Edelman & Dicker LLP  
300 South 4th Street - 11th Floor  
Las Vegas, NV 89101-6014  
702.727.1270 (Direct)  
702.354.6005 (Cell)  
702.727.1400 (Main)  
702.727.1401 (Fax)  
[jorge.ramirez@wilsonelser.com](mailto:jorge.ramirez@wilsonelser.com)

---

**From:** John T. Wendland [<mailto:jwendland@weildrage.com>]  
**Sent:** Monday, September 09, 2019 9:40 AM  
**To:** 'adhalla@swlaw.com' <[adhalla@swlaw.com](mailto:adhalla@swlaw.com)>; Jeremy Kilber <[jkilber@weildrage.com](mailto:jkilber@weildrage.com)>; Ramirez, Jorge <[Jorge.Ramirez@wilsonelser.com](mailto:Jorge.Ramirez@wilsonelser.com)>; 'rcox@peelbrimley.com' <[rcox@peelbrimley.com](mailto:rcox@peelbrimley.com)>; 'tparker@pnalaw.net' <[tparker@pnalaw.net](mailto:tparker@pnalaw.net)>; 'pwelch@jsslw.com' <[pwelch@jsslw.com](mailto:pwelch@jsslw.com)>; 'charles@silverstatelaw.com' <[charles@silverstatelaw.com](mailto:charles@silverstatelaw.com)>; Kahn, David <[David.Kahn@wilsonelser.com](mailto:David.Kahn@wilsonelser.com)>  
**Cc:** Joanna Medina <[jmedina@weildrage.com](mailto:jmedina@weildrage.com)>  
**Subject:** RE: City of North Las Vegas v. Dekker/Perich/Sabatini, Ltd.; et al./ Rescheduling of Hearing on NV by Design Motion  
**Importance:** High

Correction September 23-24<sup>th</sup>.

*John T. Wendland, Esq.*  
Partner  
WEIL & DRAGE, APC  
(702) 314-1905, Ext. 419 (Nevada)  
(602) 971-0159 (Arizona)  
Licensed in Nevada & Arizona

---

**From:** John T. Wendland  
**Sent:** Monday, September 9, 2019 9:38 AM  
**To:** 'adhalla@swlaw.com'; Jeremy Kilber; 'Ramirez, Jorge'; 'rcox@peelbrimley.com'; [tparker@pnalaw.net](mailto:tparker@pnalaw.net); 'pwelch@jsslaw.com'; [charles@silverstatelaw.com](mailto:charles@silverstatelaw.com); Kahn, David  
**Cc:** Joanna Medina  
**Subject:** City of North Las Vegas v. Dekker/Perich/Sabatini, Ltd.; et al./ Rescheduling of Hearing on NV by Design Motion  
**Importance:** High

Good Morning counsels;

Late on Friday, we were notified that the hearing on Nevada By Design's Motion to Dismiss/MSJ was unilaterally moved into October, 2019. The moving of the hearing created a scheduling conflict with our office as we are involved in a complex arbitration hearing during the new hearing date. The Court has graciously provided new alternative hearing dates to accommodate our availability and has requested that we notify you of these for the hearing:

September 16-19 at 9:00 am

September 24-26 at 9:00 am

Please let us know which of the following dates will work for your schedule and we can notify the court of same.

Thank you,

*John T. Wendland, Esq.*  
Partner  
WEIL & DRAGE, APC  
(702) 314-1905, Ext. 419 (Nevada)  
(602) 971-0159 (Arizona)  
Licensed in Nevada & Arizona

[jwendland@weildrage.com](mailto:jwendland@weildrage.com)

---

23212 Mill Creek Drive  
Laguna Hills, CA 92653  
(949) 837-8200 phone  
(949) 837-9300 fax

2500 Anthem Village Drive  
Henderson, NV 89052  
(702) 314-1905 phone  
(702) 314-1909 fax

20 East Thomas Road, Suite 2200  
Phoenix, AZ 85012  
(602) 971-0159 phone



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For further information about Wilson, Elser, Moskowitz, Edelman & Dicker LLP, please see our website at [www.wilsonelser.com](http://www.wilsonelser.com) or refer to any of our offices.

Thank you.

-Patrick

**From:** Ronnie Cox [mailto:[rcox@peelbrimley.com](mailto:rcox@peelbrimley.com)]

**Sent:** Monday, September 09, 2019 9:49 AM

**To:** John T. Wendland; 'adhalla@swlaw.com'; Jeremy Kilber; 'Ramirez, Jorge'; 'tparker@pnalaw.net'; Welch, Patrick F.; 'charles@silverstatelaw.com'; 'Kahn, David'

**Cc:** Joanna Medina; Ronnie Cox

**Subject:** RE: City of North Las Vegas v. Dekker/Perich/Sabatini, Ltd.; et al./ Rescheduling of Hearing on NV by Design Motion

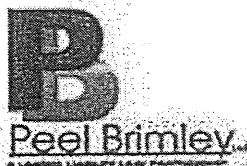
This message originated outside of Jennings Strouss.

Good morning,

We are available on the 19<sup>th</sup>, 23<sup>rd</sup> and 24<sup>th</sup>.

Sincerely,

Ronald J. Cox, Esq.  
Partner



NEVADA OFFICE: 3333 E. Serene Avenue - Suite 200 - Henderson - Nevada - 89074

NEVADA OFFICE PHONE: (702) 990-7272

NEVADA OFFICE FAX: (702) 990-7273

WASHINGTON OFFICE: 1215 Fourth Avenue - Suite 1235 - Seattle - Washington - 98161

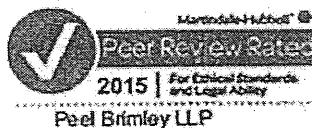
WASHINGTON OFFICE PHONE: (206) 770-3339

WASHINGTON OFFICE FAX: (702) 990-7273

[rcox@peelbrimley.com](mailto:rcox@peelbrimley.com)

MOBILE: (702) 630-5402

URL [www.peelbrimley.com](http://www.peelbrimley.com)



*(Attorneys licensed to practice in: Nevada • Washington • California • Utah • Arizona • Hawaii • North Dakota • US Court of Federal Claims)*

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

---

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

---

Electronically Filed  
Jul 15 2020 10:59 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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

*Petitioners,*

vs.

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

*Respondents,*

CITY OF NORTH LAS VEGAS,

*Real Party in Interest.*

---

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

---

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

**VOLUME 17**

---

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

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

**WEIL & DRAGE, APC**

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[jwendland@weildrage.com](mailto:jwendland@weildrage.com)

[aplatt@weildrage.com](mailto:aplatt@weildrage.com)

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

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

**WEIL & DRAGE, APC**

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[jkilber@weildrage.com](mailto:jkilber@weildrage.com)

*Attorney for Petitioner, MSA ENGINEERING CONSULTANTS*

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

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

**FORAN GLENNON PALANDECH PONZI & RUDLOFF PC**

2200 Paseo Verde Parkway, Suite 280

Henderson, NV 89052

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[dtodd@fgppr.com](mailto:dtodd@fgppr.com)

[lgorlin@fgppr.com](mailto:lgorlin@fgppr.com)

*Attorneys for Petitioner, JW ZUNINO & ASSOCIATES, LLC*

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

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

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

**WILSON ELSEER MOSKOWITZ EDELMAN & DICKER, LLP**

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[harry.peetris@wilsonelser.com](mailto:harry.peetris@wilsonelser.com)

[jonathan.pattillo@wilsonelser.com](mailto:jonathan.pattillo@wilsonelser.com)

*Attorneys for Petitioner, NINYO & MOORE GEOTECHNICAL CONSULTANTS*

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

<b>Exhibit:</b>	<b>Volume:</b>	<b>Bates: PET.APP.</b>	<b>Date:</b>	<b>Description:</b>
<b>31</b>	<b>17</b>	<b>002686 – 002688</b>	<b>11/27/2019 10:43 AM</b>	<b>JW Zunino &amp; Associates LLC's Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Opposition to Motion to Alter Judgment</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>33</b>	<b>17</b>	<b>002694 – 002887</b>	<b>11/27/2019 4:51 PM</b>	<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	09/30/2019	<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 Hearing on Motion to Dismiss or, in the Alternative, Motion for Summary Judgment on Order Shortening Time
<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>35</b>	<b>17</b>	<b>002891 – 002893</b>	<b>12/02/2019 1:54PM</b>	<b>Ninyo &amp; Moore, Geotechnical Consultants' Joinder to JW Zunino &amp; Associates LLC's Opposition to City of North Las Vegas' Motion to Alter Judgment</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

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

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'</b> <b>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'</b> <b>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
19	15	002321 – 002325	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>

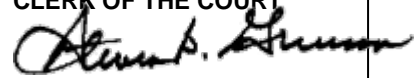
56	20	003379 – 003384	02/18/2020 5:06 PM	<b>Richardson Construction, Inc. and The Guarantee Company of North America USA's Limited Response to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Motion to Dismiss on Order Shortening Times and All Joinder Thereto</b>
33	17	002694 – 002887	11/27/2019 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 31**  
**PETITIONERS' APPENDIX**

**EXHIBIT 31**  
**PETITIONERS' APPENDIX**



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*Attorneys for JW Zunino & Associates*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CITY OF NORTH LAS VEGAS,

Plaintiff,

vs.

Dekker/Perich/Sabatini Ltd.; Richardson  
Construction, Inc.; Nevada By Design, LLD  
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 Halon 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. 8

**DEFENDANT JW ZUNINO &  
ASSOCIATES LLC'S JOINDER TO  
DEFENDANT NEVADA by DESIGN  
LLC, D/B/A NEVADA BY DESIGN  
ENGINEERING CONSULTANTS'  
OPPOSITION TO MOTION TO  
ALTER JUDGMENT**

Defendant JW Zunino & Associates ("JW Zunino"), by and through its attorneys of records,  
the law firm of Foran Glennon Palandech Ponzi & Rudloff PC, hereby joins, and incorporates by  
reference as if fully stated herein, all arguments and relief requested by Defendant NV By Design

d/b/a Nevada By Design Engineering Consultants’ (“NBD”) Opposition to Motion to Alter Judgment.

Dated: November 27, 2019

FORAN GLENNON PALANDECH PONZI &  
RUDLOFF PC

By: /s/ Dylan P. Todd

Dylan P. Todd, NV Bar No. 10456

Lee H. Gorlin, NV Bar No. 13879

2200 Paseo Verde Parkway, Suite 280

Henderson, NV 89052

*Attorneys for Defendant JW Zunino & Associates*

**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 **DEFENDANT JW ZUNINO & ASSOCIATES LLC'S JOINDER TO DEFENDANT NEVADA by DESIGN LLC, D/B/A NEVADA BY DESIGN ENGINEERING CONSULTANTS' OPPOSITION TO MOTION TO ALTER JUDGMENT** by the method indicated below:

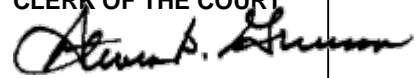
- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.
- ☒ **BY ELECTRONIC SERVICE:** submitted to the above-entitled Court for electronic service upon the Court's Service List for the above-referenced case.
- ☐ **BY EMAIL:** by emailing a PDF of the document listed above to the email addresses of the individual(s) listed below.

Dated this 27<sup>th</sup> day of November 2019.

/s/ Rita Tuttle  
An Employee of Foran Glennon

**EXHIBIT 32**  
**PETITIONERS' APPENDIX**

**EXHIBIT 32**  
**PETITIONERS' APPENDIX**



**JOPP**

Charles W. Bennion (Nevada Bar No. 5582)

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*Attorneys for Defendants Paffenbarger & Walden, LLC and P & W Bonds, LLC*

**Affirmation:**

I the undersigned hereby affirm that this document does not contain the social security number of any persons.  
(Per NRS 239B.030)

**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

Case No: A-19-798346-C

Dept No: VIII

**DEFENDANTS PAFFENBARGER & WALDEN, LLC'S AND P & W BONDS, LLC'S JOINDER IN: (1) DEFENDANT NEVADA BY DESIGN, LLC D/B/A NEVADA BY DESIGN ENGINEERING CONSULTANTS' OPPOSITION TO MOTION TO ALTER JUDGMENT; AND (2) DEFENDANT JW ZUNINO & ASSOCIATES, LLC'S OPPOSITION TO PLAINTIFF'S MOTION TO ALTER JUDGMENT**

1 Guarantee Company of North America  
2 USA; P&W Bonds, LLC; Paffenbarger &  
3 Walden, LLC; DOES I through X,  
4 inclusive; and ROE CORPORATIONS I  
5 through X, inclusive,

Defendants.

6 Defendants Paffenbarger & Walden, LLC and P & W Bonds, LLC (collectively  
7 “P&W”), through undersigned counsel, file this Joinder in Defendant Nevada By Design,  
8 LLC d/b/a Nevada By Design Engineering’s (“NBD”) Opposition to Plaintiff’s Motion to  
9 Alter Judgment.

10 In Section III (H) of its Opposition, NBD requests the Court re-open and consider all  
11 pending motions to dismiss that the Court deemed as moot based on its statute of repose  
12 ruling if the Court ultimately decides to grant Plaintiff’s Motion to Alter Judgment. On  
13 August 30, 2019, P&W filed its separate motion to dismiss Plaintiff’s claims against P&W.  
14 Plaintiff’s claims against P&W include: (1) the Sixth Claim for Relief (Claim on Performance  
15 Bond); (2) the Seventh Claim for Relief (Claim on Payment Bond); and (3) the Eighth Claim  
16 for Relief (Claim on Guarantee Bond). In its motion to dismiss, P&W contends that  
17 Plaintiff’s Complaint fails to state a claim against P&W because there is nothing in the bonds,  
18 the statutes requiring the bonds, or the case law that holds, imposes, suggests, or even hints  
19 that a “resident agent” such as P&W has any substantive obligations under the bonds issued  
20 on behalf of Defendant Richardson Construction, Inc.

21 If this Court ultimately decides to grant Plaintiff’s Motion to Alter Judgment, P&W’s  
22 motion to dismiss, which has been fully briefed, would no longer be deemed moot. In that  
23 case, P&W requests that the Court immediately set a hearing on its motion because that  
24 motion provides an independent basis for dismissal beyond the statute of repose ruling.

25 ///

26 ///

1 P&W also joins in Sections I, II, and III (A), (B), and (C) of Defendant JW Zunino &  
2 Associates, LLC's Opposition to Plaintiff's Motion to Alter Judgment.

3 RESPECTFULLY SUBMITTED this 27th day of November, 2019.

4  
5 **JENNINGS, STROUSS & SALMON, P.L.C.**

6 By: /s/Patrick F. Welch

7 Patrick F. Welch

8 One East Washington Street, Suite 1900

9 Phoenix, AZ 85004-2554

10 *Attorneys for Paffenbarger & Walden, L.L.C.*  
11 *and P & W Bonds, LLC*  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Jennings, Strouss & Salmon, P.L.C. and that on the 27th day of November, 2019, I caused to be served a true and correct copy of foregoing **DEFENDANTS PAFFENBARGER & WALDEN, LLC'S AND P & W BONDS, LLC' JOINDER IN: (1) DEFENDANT NEVADA BY DESIGN, LLC D/B/A NEVADA BY DESIGN ENGINEERING CONSULTANTS' OPPOSITION TO MOTION TO ALTER JUDGMENT; AND (2) DEFENDANT JW ZUNINO & ASSOCIATES, LLC'S OPPOSITION TO PLAINTIFF'S MOTION TO ALTER JUDGMENT** in the following manner: via Odyssey File and Serve.

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dba Design Engineering Consultants  
and Dekker/Perich/Sabatini, LTD*

///

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10 and  
11

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15 *Attorneys for Jackson Family Partnership, LLC*  
16 *dba Stargate Plumbing*

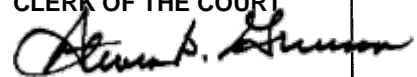
17 Theodore Parker III, Esq.  
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22 /s/A. Saldivar  
23

24 An Employee of Jennings, Strouss & Salmon, P.L.C.  
25  
26  
27  
28

**EXHIBIT 33**  
**PETITIONERS' APPENDIX**

**EXHIBIT 33**  
**PETITIONERS' APPENDIX**



**OPPO**  
THEODORE PARKER, III, ESQ.  
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*Attorneys for Defendants,  
Richardson Construction, Inc. and  
The Guarantee Company of North America USA*

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

CITY OF NORTH LAS VEGAS,  
  
Plaintiff,

v.

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

**DEFENDANTS 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 CONSULTANT'S  
OPPOSITION TO MOTION TO ALTER  
JUDGMENT AND JOINDER TO  
DEFENDANT JW ZUNINO &  
ASSOCIATES LLC'S OPPOSITION TO  
PLAINTIFF'S MOTION TO ALTER  
JUDGMENT**

COMES NOW, Defendants, RICHARDSON CONSTRUCTION, INC. and THE  
GUARANTEE COMPANY OF NORTH AMERICA USA (hereinafter "Defendants"), by and  
through their attorney of record, THEODORE PARKER, III, ESQ. of the law firm of PARKER,  
NELSON & ASSOCIATES, CHTD., and hereby file this Opposition to Motion to Alter Judgment

**PET.APP.002694**

1 and Joinder to Defendant NEVADA BY DESIGN LLC d/b/a NEVADA BY DESIGN  
2 ENGINEERING CONSULTANT's Motion to Alter Judgment and Joinder to Defendant JW  
3 ZUNINO & ASSOCIATES LLC'S Opposition to Plaintiff's Motion to Alter Judgment.

4 This Opposition and Joinder(s) are made and based upon the pleadings and papers on file  
5 herein, the points and authorities included herewith, EDCR 2.20(d), and such oral argument as the  
6 Court may entertain at the time of the hearing of this matter.

7 DATED this 27<sup>th</sup> day of November, 2019.

8 **PARKER, NELSON & ASSOCIATES, CHTD.**

9 

10 THEODORE PARKER, III, ESQ.  
11 Nevada Bar No. 4716  
12 2460 Professional Court, Suite 200  
13 Las Vegas, Nevada 89128  
14 *Attorneys for Defendants,*  
*Richardson Construction, Inc. and*  
*The Guarantee Company of North America USA*

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I.**

17 **INTRODUCTION**

18 Pursuant to EDCR 2.20(d), Defendants hereby join the facts, legal authorities, and arguments  
19 contained in NEVADA BY DESIGN LLC d/b/a NEVADA BY DESIGN ENGINEERING  
20 CONSULTANT's (hereinafter "NEVADA DESIGN"), Opposition to Motion to Alter Judgment as  
21 though fully set forth herein. For the same reasons contained in NEVADA DESIGN's Motion, and  
22 adopted as though fully set forth herein, Plaintiff's contrived interpretation of NRS 11.202 also  
23 violates the constitution rights of Defendants. Also pursuant to EDCR 2.20(d), Defendants join the  
24 facts, legal authorities, and arguments contained in Defendant, JW ZUNINO & ASSOCIATES  
25 LLC'S Opposition to Plaintiff's Motion to Alter Judgment regarding revival of a stale claim and/or  
26 the statute of repose as though fully set forth herein. Further, and in addition, Defendants provide  
27 the following additional points in regards to EDCR 2.26 and EDCR 2.20.

1 On July 11, 2019, Plaintiff, CITY OF NORTH LAS VEGAS (hereinafter "Plaintiff"), filed  
2 a Complaint naming various parties, including Defendants, and asserting causes of action for Breach  
3 of Contract (both Design and Construction contracts), Breach of the Covenant of Good Faith and  
4 Fair Dealing, Negligence, Breach of Implied Warranty, Claim on Performance Bond, Claim on  
5 Payment Ground, and Claim on Guarantee Bond. (See Complaint, filed July 11, 2019, a true and  
6 correct copy attached hereto as Exhibit "A".) The case was randomly assigned to Department 8. (Id.)  
7 On August 5, 2019, Defendant, NEVADA DESIGN, filed a Motion to Dismiss, or in the Alternative,  
8 Motion for Summary Judgment. (See NEVADA DESIGN's Motion to Dismiss, or in the Alternative,  
9 Motion for Summary Judgment, filed August 5, 2019, a true and correct copy attached hereto as  
10 Exhibit "B".) The basis of the Motion was that Plaintiff's claims were barred by the applicable  
11 statute of repose. A Notice of Hearing, setting the hearing for NEVADA DESIGN's Motion, was  
12 filed on August 6, 2019, and set the hearing for September 9, 2019. (See Notice of Hearing, filed  
13 August 6, 2019, a true and correct copy attached hereto as Exhibit "C".) Defendants had not yet  
14 appear in the case.

15 Fifteen days later, on August 20, 2019, Plaintiff filed an Opposition to NEVADA DESIGN's  
16 Motion. (See Opposition to Motion to Dismiss or, in the Alternative, Motion for Summary  
17 Judgment, filed August 20, 2019, a true and correct copy attached hereto as Exhibit "D".) In regards  
18 to NEVADA DESIGN's argument that the statute of repose barred the action, Plaintiff relied  
19 exclusively on a newly passed, but not yet effective, amendment to NRS 11.202, extending the  
20 statute of limitations to ten years. (Id.) At this time, Defendants still had not yet appeared in the case.  
21 On August 28, 2019, NEVADA DESIGN filed its Reply in Support of its Motion. Defendants had  
22 still not yet appeared in the case.

23 At the time NEVADA DESIGN's Motion was filed, Defendants had not yet appeared in the  
24 case. In fact, Defendants did not appear in the case until September 4, 2019, just five days before the  
25 hearing was originally set for NEVADA DESIGN's Motion. Defendants appeared in the action by  
26 filing a Motion to Dismiss. (See Motion to Dismiss, filed September 4, 2019, a true and correct copy  
27 attached hereto as Exhibit "E".) The sole basis of the Motion was that Plaintiff's claims were barred  
28

1 by the applicable statute of limitations/statute of repose.

2 At the time the Motions to Dismiss were filed, the applicable statute of repose was six years.  
3 However, the statute was amended and would change the statute of repose to ten years. The amended  
4 statute became effective October 1, 2019.

5 On August 8, 2019, Trevor L. Atkin was appointed to preside over Department 8. However,  
6 Judge Atkin did not immediately take the bench. On September 6, 2019, Department 8 rescheduled  
7 the hearing on all Motions to Dismiss to October 21, 2019. (See Notice of Rescheduling Motions  
8 to Dismiss and Joinders, filed September 6, 2019, a true and correct copy attached hereto as Exhibit  
9 “F”.) A law clerk vacated the September 9, 2019 hearing. (See Register of Actions, a true and correct  
10 copy attached hereto as Exhibit “G”.)

11 Following the unilateral move of the hearing date, counsel for NEVADA DESIGN requested  
12 all parties agree to a different date in September, so that no parties’ rights would be prejudiced by  
13 the Court’s rescheduling of the hearing. Oddly, Plaintiff’s counsel, a national firm (pursuant to its  
14 own website), with “approximately 50 attorneys” claimed to be entirely unavailable the entire last  
15 half of September. (See correspondence from Justin Carley, Esq., dated September 10, 2019, a true  
16 and correct copy attached hereto as Exhibit “H”.)

17 On September 18, 2019, NEVADA DESIGN filed a Motion to Change the Date of Hearing  
18 on its Motion to Dismiss, or in the Alternative, Motion for Summary Judgement. (See Motion to  
19 Change Date of Hearing on Motion to Dismiss or, in the Alternative, Motion for Summary  
20 Judgment, filed September 18, 2019, a true and correct copy attached hereto as Exhibit “I”.) The  
21 Court set a hearing date for September 27, 2019. (Id.) It was NEVADA DESIGN’s position, and  
22 Defendants’ understanding as well, that NEVADA DESIGN’s Motion to Dismiss would be heard  
23 on September 27, 2019.

24 On September 20, 2019, NEVADA DESIGN advised all parties that its Motion to Dismiss  
25 would be heard on September 27, 2019. (See correspondence from John T. Wetland, Esq., dated  
26 September 20, 2019, a true and correct copy attached hereto as Exhibit “J”.) Thus, Plaintiff’s  
27 counsel was well aware that the hearing on NEVADA DESIGN’s Motion to Dismiss was intended  
28

1 to be heard on September 27, 2019. Despite filing a Limited Opposition to the Motion to Change  
2 Date of Hearing, the day before the hearing on NEVADA DESIGN's Motion to Dismiss, Plaintiff  
3 was able to and did attend the September 27, 2019 hearing. As noted in a Reply filed by NEVADA  
4 DESIGN, Plaintiff was not prejudiced by the hearing date of September 27, 2019 and was on full  
5 notice that NEVADA DESIGN's Motion to Dismiss would be heard on September 27, 2019. (See  
6 Reply to Plaintiff's Limited Opposition to Motion to Change Date of Hearing, filed September 26,  
7 2019, a true and correct copy attached hereto as Exhibit "K".)

8 Unfortunately, at the September 27, 2019 hearing, the Court continued the hearing on the  
9 Motion to Change Date to September 30, 2019. September 30, 2019 was the Honorable Judge Atkins  
10 first day on the bench in Department 8. As justice delayed is justice denied, in light of the impending  
11 statute change, the Honorable Judge Atkins determined the Motions to Dismiss should be heard on  
12 their merits and advanced the hearing dates for all Motions to September 30, 2019. (See Court  
13 Minutes, dated September 30, 2019, 8:30 a.m., a true and correct copy attached hereto as Exhibit  
14 "L".)

15 At the continued hearing on September 30, 2019, Defendants orally joined NEVADA  
16 DESIGN's Motion to Dismiss. Plaintiff did not object to Defendants' joinder, presumably because  
17 Defendants first appearance was also by way of a Motion to Dismiss with the exact same statute of  
18 repose arguments raised by NEVADA DESIGN. (See Exhibit "E").<sup>1</sup> After oral arguments on the  
19 merits, this Court granted the "Motions to Dismiss and Joinders". (See Court Minutes, dated  
20 September 30, 2019, 10:30 a.m., a true and correct copy attached hereto as Exhibit "M".) The Notice  
21 of Entry of Order granting NEVADA DESIGN's Motion to Dismiss, and all Joinders, was entered  
22 on October 17, 2019. (See Notice of Entry of Order, filed October 17, 2019, a true and correct copy  
23 attached hereto as Exhibit "O".)

24 On November 13, 2019, Plaintiff filed its Motion to Alter Judgment. Plaintiff argues that as  
25 the law has changed, its' claim is now timely, that the Order entered on October 17, 2019 is void

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26  
27 <sup>1</sup>To ensure the record reflected Defendants' joinder, Defendants also filed a written Joinder on the same  
28 day. (See Joinder, filed September 30, 2019, a true and correct copy attached hereto as Exhibit "N".)

1 because it violated EDCR 2.26, and that Defendants (among others) joinders were untimely under  
2 EDCR 2.20(d). However, Plaintiff's arguments fail, in addition to the reasons, authority, and  
3 arguments contained in NEVADA DESIGN's Opposition, which is joined by Defendants, because  
4 EDCR is to be liberally construed to promote and facilitate the administration of justice.

## 5 II.

### 6 DISCUSSION

#### 7 A. Legal Authorities

##### 8 Administration of Justice

9 EDCR 1.10 provides:

10 These rules govern the administration of the Eighth Judicial District Court  
11 and all actions or proceedings cognizable therein. **They must be liberally**  
12 **construed** to secure the proper and efficient administration of the business  
and affairs of the court and to **promote and facilitate the administration of**  
**justice.** (emphasis added.)

13 NRCP 1 provides that the Nevada Rules of Civil Procedure "should be construed,  
14 administered, and employed by the court and the parties to secure the just, speedy, and inexpensive  
15 determination of every action and proceeding."

16 EDCR 2.20(d) provides:

17 Within 5 days after service of the motion, a nonmoving party may file  
18 written joinder thereto, together with a memorandum of points and  
19 authorities and any supporting affidavits. If the motion becomes moot or is  
20 withdrawn by the movant, the joinder becomes its own stand alone motion  
and the court shall consider its points and authorities in conjunction with  
those in the motion.

21 Pursuant to the definitions contained in EDCR "may" is permissive. Thus, there is nothing  
22 within EDCR that prevents a party from orally joining a motion in open Court. The Nevada Rules  
23 of Civil Procedure also appear to support this interpretation. NRCP 61 provides:

24 Unless justice requires otherwise, no error in admitting or excluding evidence  
25 – or any other error by the court or a party – is ground for granting a new trial,  
26 for setting aside a verdict, or for vacating, modifying, or otherwise disturbing  
a judgment or order. **At every stage of the proceeding,** the court **must**  
27 **disregard all errors and defects** that do not affect any party's substantial  
rights. (emphasis added.)

1 As this Court is likely well aware, must is a mandatory term requiring application. If an error  
2 was committed by the Court or a party, but the error was harmless, then said error cannot serve as  
3 a basis to amend or alter a judgment. (i.e. Cardinal v. Zonneveld, 89 Nev. 403 (1973) (finding failure  
4 to strictly comply with NRCP 27(a)(2) regarding notice was harmless error). NRCP 83(1)(3),  
5 specifically addressing local rules, prohibits the imposition of a local rule “imposing a requirement  
6 of form” from being “enforced in a way that causes a party to lose any right because of a nonwillful  
7 failure to comply.”

8 EDCR 2.26 provides:

9 Ex parte motions to shorten time may not be granted except upon unsworn  
10 declaration under penalty of perjury or affidavit of counsel describing the  
11 circumstances claimed to constitute good cause and justify shortening of  
12 time. If a motion to shorten time is granted, it must be served upon all parties  
13 promptly. An order which shortens the notice of a hearing to less than 10  
14 days may not be served by mail. In no event may the notice of the hearing of  
15 a motion be shortened to less than 1 full judicial day. A courtesy copy shall  
16 be delivered by the movant to the appropriate department, if a motion is filed  
17 on an order shortening time and noticed on less than 10 days’ notice.

18 An examination of EDCR in regards to joinders and shortening the time for hearings is  
19 clearly to ensure all parties are on notice and have proper time to address all substantive arguments.

#### 20 **B. Argument**

#### 21 **EDCR is to be liberally construed to promote and facilitate the administration 22 of justice**

23 Defendants were not parties to the action when NEVADA DESIGN’s Motion to Dismiss was  
24 filed on August 6, 2019. (See Exhibit “E”.) It was impossible for Defendants to comply with EDCR  
25 2.20(d) permitting joinders to motions to be filed within five days of the filing of the motion.  
26 Plaintiff now tries to argue that this procedural rule serves as a “gotcha” barring Defendants from  
27 forever joining a Motion that was fully briefed before Defendants made an appearance in this matter.  
28 This rigid construction of the procedural rules should be rejected outright by this Court. (See EDCR  
1.10.)

Defendants did not make an appearance in the action until after briefing on NEVADA  
DESIGN’s Motion to Dismiss was completed. (Compare Exhibits “B” and “D” with Exhibit “E”).

1 As Defendants did not enter the matter until September 4, 2019, it was impossible for Defendants to  
2 join NEVADA DESIGN's Motion to Dismiss within five days of the filing on August 6, 2019. As  
3 EDCR by their own mandate should be liberally construed to "promote and facilitate the  
4 administration of justice," Defendants joinder should not be disregarded. Further, NRC 83(a)(3)  
5 prohibits this Court from enforcing a local rule, such as EDCR 2.20(d) in a way that "causes a party  
6 to lose any right because of a nonwillful failure to comply". Defendants did not choose to not comply  
7 with EDCR 2.20(d). Rather, compliance was an impossibility. EDCR 2.20(d) should not be strictly  
8 applied to strip Defendants of their right to join.

9 Moreover, the only truly valid complaint a party can make regarding an allegedly late joinder  
10 is Court is a lack of notice. However, here, Plaintiff cannot maintain a position that it was unaware  
11 Defendants were seeking dismissal based on the statute of repose as Defendants filed its own Motion  
12 on September 4, 2019. Plaintiff was aware well in advance of the September 30, 2019 hearing that  
13 Defendants were seeking dismissal based on the statute of repose. Indeed, Plaintiff does not once  
14 claim it was unaware of Defendants legal position. Instead, Plaintiff asks this Court to implement a  
15 draconian application of EDCR which is expressly prohibited. (See EDCR 1.10) As such, this Court  
16 should deny the relief requested by Plaintiff based on a fundamental misunderstanding and strict  
17 application of EDCR 2.20(d).

18 Plaintiff further requests this Court apply EDCR 2.26 just as rigidly. Plaintiff is arguing that  
19 it did not have enough notice in regards to the hearing on the Motion to Dismiss. This is absurd and  
20 contradicted by the Court's own record. Briefing on NEVADA DESIGN's Motion to Dismiss was  
21 completed by August 28, 2019. The original hearing date was set for September 9, 2019. (See Exhibit  
22 "C".) Plaintiff was aware there was going to be a hearing on the Motion to Dismiss since August 6,  
23 2019. For Plaintiff to now claim their due process rights were impacted by the Court hearing  
24 NEVADA DESIGN's Motion to Dismiss twenty-one days **after the originally scheduled hearing**  
25 is disingenuous at best.

26 In Soebbing, the Court disapproved of a sua sponte entry of summary judgment because a  
27 party was denied notice and a reasonable opportunity to be heard. Soebbing v. Carpet Barn, 109 Nev.  
28

1 78 (1993). In Soebbing, the lower court granted the motion to amend the complaint and immediately  
2 thereafter granted summary judgment against the same party. Id. at p. 83. Here, Plaintiff cannot  
3 reasonably maintain any argument that it was not afforded notice and an opportunity to be heard as  
4 Plaintiff filed its Opposition to the Motion to Dismiss on August 20, 2019, approximately 40 days  
5 before the September 30, 2019 hearing. Plaintiff is mistakenly putting form over substance and again  
6 seeking a draconian application of EDCR, prohibited by EDCR itself and in violation of NRCP  
7 83(1)(3). For these reasons, Plaintiff's requested relief of voiding the October 30, 2019 hearing,  
8 should also be denied.

9 **III.**

10 **CONCLUSION**

11 Based on the foregoing, Defendants respectfully request that this honorable Court deny  
12 Plaintiff's Motion to Alter Judgment.

13 DATED this 27<sup>th</sup> day of November, 2019.

14 **PARKER, NELSON & ASSOCIATES, CHTD.**

15 

16 THEODORE PARKER, III, ESQ.  
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19 *Richardson Construction, Inc. and*  
*The Guarantee Company of North America USA*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of the Law Offices of PARKER, NELSON & ASSOCIATES, CHTD., and that on this 27<sup>th</sup>, day of November, 2019 and pursuant to NRCP 5(b), I served a true and correct copy of the foregoing **DEFENDANTS 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 CONSULTANT'S OPPOSITION TO MOTION TO ALTER JUDGMENT AND JOINDER TO DEFENDANT JW ZUNINO & ASSOCIATES LLC'S OPPOSITION TO PLAINTIFF'S MOTION TO ALTER JUDGMENT** on the party(s) set forth below by:

- ☐ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Las Vegas, NV, postage prepaid, following ordinary business practices.
- ☐ Facsimile transmission, pursuant to the amendment to the Eighth Judicial District Court Rule 7.26, by faxing a true and correct copy of the same to each party addressed as follows:
- ☐ By E-mail: by electronic mail delivering the document(s) listed above to the e-mail address(es) set forth below on this date before 5:00 p.m.
- ☒ By EFC: by electronic filing and service with the Court delivering the document(s) listed above via E-file & E-serve (Odyssey) filing system.

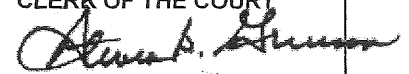
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Defendant, Melroy Engineering, Inc. d/b/a MSA Engineering Consultants	Jeremy R. Kilber, Esq. WEIL & DRAGE, APC 2500 Anthem Village Drive Henderson, NV 89052 (702) 314-1905 Fax: (702) 314-1909	<a href="mailto:jkilber@weildrage.com">jkilber@weildrage.com</a>
Defendant, Ninyo & Moore, Geotechnical Consultants	Jorge A. Ramirez, Esq. Jonathan C. Pattillo, Esq. WILSON ELSEER MOSKOWITZ EDELMAN & DICKER LLP 300 S. Fourth Street, 11th Floor Las Vegas, NV 89101-6014 (702) 727-1400 Fax: (702) 727-1401	<a href="mailto:Jorge.Ramirez@wilsonelser.com">Jorge.Ramirez@wilsonelser.com</a> <a href="mailto:Jonathan.Pattillo@wilsonelser.com">Jonathan.Pattillo@wilsonelser.com</a>

Party	Attorney	E-Mail
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An employee of PARKER, NELSON & ASSOCIATES CHTD.

# **EXHIBIT “A”**



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

*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.

23. The Design Agreement specified that the City intended to construct Fire Station 53 to generally consist 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 ("Project") and future Fire Stations 50, 58, 59, 150 through 161, and 163 ("Future Fire Stations").

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

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

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

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

27. DPS contracted with several subconsultants on the Project, including Nevada By Design, JW Zunino, MSA, O'Connor, and Ninyo & Moore (all collectively with DPS, "Design Defendants").

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

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

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

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

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

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

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

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

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

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

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

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

26

27

28

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.

1 III. CLAIMS FOR RELIEF

2 First Claim for Relief

3 *Breach of Contract (The Design Agreement)*

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

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

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

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

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

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

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

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

21 Second Claim for Relief

22 *Breach of Contract (The Construction Contract)*

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

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

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

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

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).

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

5                                   **Fourth Claim for Relief**

6                                   *Negligence*

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

8                                   ***CORPORATIONS I through X***

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

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

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

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

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

20                                   **Fifth Claim for Relief**

21                                   *Breach of Implied Warranty*

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

23                                   ***CORPORATIONS I through X***

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

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

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

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

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

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

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

10 **Sixth Claim for Relief**

11 ***Claim on Performance Bond***

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

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

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

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

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

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

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

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

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

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



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

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

7 **PRAYER FOR RELIEF**

8 WHEREFORE, the City prays for relief as follows:

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

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

12 **ON THE SIXTH CLAIM FOR RELIEF**

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

15 **ON THE SEVENTH CLAIM FOR RELIEF**

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

18 **ON THE EIGHTH CLAIM FOR RELIEF**

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

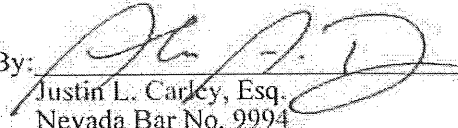
ON ALL CLAIMS FOR RELIEF

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

Dated: July 11, 2019

SNELL & WILMER L.L.P.

By:

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

*Attorneys for the City of North Las Vegas*

**AFFIDAVIT OF ALEEM A. DHALLA, ESQ.**

STATE OF NEVADA                    )  
  ) 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

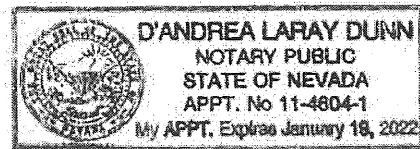
1 e. A statement that the expert has concluded that there is a reasonable basis for filing  
2 the action (Ex. 7).  
3  
4

5   
Aleem A. Dhalla, Esq.

6 STATE OF NEVADA  
7 COUNTY OF CLARK

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

10   
11 Notary Public



# EXHIBIT “B”



1 MSJD

2 JOHN T. WENDLAND, ESQ.

3 (Nevada Bar No. 7207)

4 ANTHONY D. PLATT, ESQ.

5 (Nevada Bar No. 9652)

6 WEIL & DRAGE, APC

7 2500 Anthem Village Drive

8 Henderson, NV 89052

9 (702) 314-1905 • Fax (702) 314-1909

10 [jwendland@weildrage.com](mailto:jwendland@weildrage.com)

11 [aplatt@weildrage.com](mailto:aplatt@weildrage.com)

12 Attorneys for Defendant,

13 NEVADA BY DESIGN, LLC d/b/a

14 NEVADA BY DESIGN ENGINEERING CONSULTANTS

15 DISTRICT COURT

16 CLARK COUNTY, NEVADA

17 CITY OF NORTH LAS VEGAS,

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

18 Plaintiff,

) DEPT. NO.: VIII

19 vs.

) [HEARING REQUESTED]

20 DEKKER/PERICH/SABATINI LTD.;

) NEVADA BY DESIGN, LLC d/b/a

21 RICHARDSON CONSTRUCTION, INC.;

) NEVADA BY DESIGN ENGINEERING

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

) CONSULTANTS' MOTION TO

23 DESIGN ENGINEERING CONSULTANTS; JW

) DISMISS OR, IN THE

24 ZUNINO & ASSOCIATES, LLC; MELROY

) ALTERNATIVE, MOTION FOR

25 ENGINEERING, INC. D/B/A MSA

) SUMMARY JUDGMENT

26 ENGINEERING CONSULTANTS; O'CONNOR

27 CONSTRUCTION MANAGEMENT INC.; NINYO

28 & MOORE, GEOTECHNICAL CONSULTANTS;

JACKSON FAMILY PARTNERSHIP LLC D/B/A

STARGATE PLUMBING; AVERY ATLANTIC,

LLC; BIG C LLC; RON HANLON MASONRY,

LLC; THE GUARANTEE COMPANY OF NORTH

AMERICA USA; P & W BONDS, LLC;

PAFFENBARGER & WALDEN, LLC; DOES I

through X, inclusive; and ROE CORPORATIONS I

through X, inclusive,

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

Defendants.

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

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

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

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

12                    DATED this 5<sup>th</sup> day of August, 2019.

13                    WEIL & DRAGE, APC

14                    */s/ John T. Wendland*

15                    By: \_\_\_\_\_

JOHN T. WENDLAND, ESQ.

(Nevada Bar No. 7207)

ANTHONY D. PLATT, ESQ.

(Nevada Bar No. 9652)

2500 Anthem Village Drive

Henderson, NV 89052

Attorneys for Defendant,

NEVADA BY DESIGN, LLC D/B/A NEVADA

BY DESIGN ENGINEERING CONSULTANTS

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

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

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

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

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

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

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

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

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

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

26                    DATED this 5<sup>th</sup> day of August, 2019.

27                    */s/ John T. Wendland*

28                    By: \_\_\_\_\_  
                         John T. Wendland

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 PROCEDURAL AND FACTUAL HISTORY / INTRODUCTION

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

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

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

26 ///

27 ///

28 ///

1 II.

2 LEGAL STANDARD

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

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

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

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

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

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

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

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

24  
25  
26  
27 <sup>1</sup> The opposing party is not entitled to denial of a motion for summary judgment on mere hope that at trial he  
will be able to discredit movant’s evidence. *Hickman v. Meadow Wood Reno*, 96 Nev. 782, 617 P.2d 871 (1980).

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

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

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

### 15 III.

#### 16 UNDISPUTED MATERIAL FACTS

17 FACT #	UNDISPUTED MATERIAL FACT	EVIDENCE
18 1	Plaintiff recorded its Notice of Completion on July 13, 2009.	<u>Ex. A. Para. 45; Ex. B.</u>
19 2	Plaintiff’s Complaint is filed July 11, 2009.	<u>Id., Pg. 1 of Ex. A.</u>
20 3	AB 421’s Effective Date is October 1, 2019.	<u>Ex. C.</u>

### 23 IV.

#### 24 LEGAL ARGUMENT

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

26 NRS 11.202 in pertinent part states:

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

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

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

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

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

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

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

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

12 → whichever occurs later.

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

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

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

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

20 Accepting the allegations in the Complaint as true, the Plaintiff recorded the Notice of  
21 Completion on July 13, 2009. Pursuant to the six (6) year statute of repose, the Plaintiff was  
22 required to file its Complaint **on or before July 13, 2015.** *See, N.R.S. 11.202.* However,  
23 Plaintiff’s Complaint against NBD was filed on July 11, 2019, *nearly four (4) years after* the  
24 expiration of the statute of repose. *See, Ex. A.* Therefore, Plaintiff’s claims against NBD are time  
25 barred by the statute of repose<sup>3</sup> and NBD respectfully requests that the Court grant its Motion to  
26 Dismiss, with prejudice.

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

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

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

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

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

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

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

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

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

12 Plaintiff’s Complaint includes an Affidavit of Merit along with various attached  
13 documents, including a report prepared by AGI, a geotechnical engineering firm. *See*, Affidavit of  
14 Merit attached hereto as **Ex. D**. Pursuant to N.R.S. 11.258(3)(d), Plaintiff’s Affidavit of Merit  
15 must attest there is a “reasonable basis in law and fact” to commence the action against NBD, a  
16 civil engineering design firm. *See*, N.R.S. 11.58(1)(d). The Affidavit must also include a report  
17 that contains the “[t]he<sup>5</sup> conclusions of the expert and the basis for the conclusions...” *Id.* at  
18 3(d)&(e).

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

25  
26  
27 <sup>5</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.

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

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

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

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

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

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

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

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

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

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

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

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

26 Here, AGI's report lacks any opinions as to NBD and offers no basis for criticisms against  
27 NBD. These are basic requirements under Section 3(d). If there are no opinions/conclusions and  
28 no basis for said opinions as to NBD, then by extension, neither the Plaintiff's counsel's nor Mr.  
Marsh's statements of compliance comply with the language and intent behind N.R.S.

11.258(1)(d)&(3)(e). Stated differently, how can Mr. Marsh and Mr. Dhalla conclude there is a  
reasonable basis (in law and fact) to proceed against NBD if there are no opinions concerning  
NBD's services?

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

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

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

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

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

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

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

7 In line with the statutory provisions of N.R.S. 11.259, the Nevada Supreme Court, in *Otak*  
8 announced that per N.R.S. 11.259, the District Court lacks discretion if the Plaintiff fails to  
9 comply with any of the requirements stated in N.R.S. 11.259 and dismissal is mandatory. Indeed,  
10 the *Otak* Court specifically stated, “shall dismiss” is clear and unambiguous, we must give effect to  
11 that meaning and will not consider outside sources beyond that statute.” *Otak*, 127 Nev. at 598,  
12 260 P.3d at 411 (citing, *City of Reno v. Citizens for Cold Springs*, 126 Nev. —, —, 236 P.3d  
13 10, 16 (2010) (quoting, *NAIW v. Nevada Self-Insurers Association*, 126 Nev. —, —, 225  
14 P.3d 1265, 1271 (2010)); see also, N.R.S. 0.025(1)(d) and *SNEA v. Daines*, 108 Nev. 15, 19, 824  
15 P.2d 276, 278 (1992). The *Otak* Court further held that any failure to comply cannot be cured by  
16 amendment because the pleading is void ab initio<sup>6</sup> (void) and therefore, does not legally exist. *Id.*  
17 at 127 Nev. at 599, 260 P.3d at 411.

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

21 V.

## 22 CONCLUSION

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

27  
28 <sup>6</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)).

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

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

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

8 DATED this 5<sup>th</sup> day of August, 2019.

9 WEIL & DRAGE, APC

10 */s/ John T. Wendland*

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

JOHN T. WENDLAND, ESQ.

(Nevada Bar No. 7207)

ANTHONY D. PLATT, ESQ.

(Nevada Bar No. 9652)

2500 Anthem Village Drive

Henderson, NV 89052

Attorneys for Defendant,

NEVADA BY DESIGN, LLC D/B/A NEVADA

BY DESIGN ENGINEERING CONSULTANTS

**CERTIFICATE OF SERVICE**

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

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

*/s/ Joanna Medina*

\_\_\_\_\_  
Joanna Medina, an Employee of  
WEIL & DRAGE, APC

# **Exhibit A**

# **Exhibit A**

Electronically Filed  
7/11/2019 4:35 PM  
Steven D. Grierson  
CLERK OF THE COURT



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

Justin L. Carley, Esq.  
Nevada Bar No. 9994  
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*Attorneys for the City of North Las Vegas*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

City of North Las Vegas,  
  
Plaintiff,  
  
vs.

CASE NO.:  
  
DEPT. NO.:

**COMPLAINT**

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

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.

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

Snell & Wilmer

LLP  
LAW OFFICES  
3883 HOWARD HUGHES PARKWAY, SUITE 1100  
LAS VEGAS, NEVADA 89169  
(702) 784-5200

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.

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.

### III. CLAIMS FOR RELIEF

#### First Claim for Relief

##### *Breach of Contract (The Design Agreement)*

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

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

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

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

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

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

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

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

#### Second Claim for Relief

##### *Breach of Contract (The Construction Contract)*

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

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

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

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





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

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

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

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

10                                   Seventh Claim for Relief

11                                   *Claim on Payment Bond*

12                                   *Against the Guarantee Company and P & W*

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

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

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

21           105. Through the Payment Bond, the Guarantee Company agreed that upon the failure of  
22 Richardson Construction to pay for any materials, equipment, or other supplies for the Project as  
23 stated in the Construction Contract, the Guarantee Company would pay the City up to an amount  
24 equal to the full penal sum of the Payment Bond.

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

26           107. 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, with payments  
28 outstanding to adequately complete the work performed.

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

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

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

10 **Eighth Claim for Relief**

11 ***Claim on Guarantee Bond***

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

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

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

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

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

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

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

25 117. Defendants' breaches triggered the Guarantee Company's obligation under the  
26 Performance Bond and is now liable to the City for all damages flowing from Defendants' breaches  
27 of the Construction Contract.  
28

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

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

7 **PRAYER FOR RELIEF**

8 WHEREFORE, the City prays for relief as follows:

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

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

12 **ON THE SIXTH CLAIM FOR RELIEF**

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

15 **ON THE SEVENTH CLAIM FOR RELIEF**

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

18 **ON THE EIGHTH CLAIM FOR RELIEF**

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

21  
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28

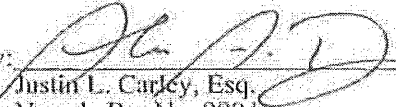
ON ALL CLAIMS FOR RELIEF

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

Dated: July 11, 2019

SNELL & WILMER L.L.P.

By:

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

*Attorneys for the City of North Las Vegas*

**AFFIDAVIT OF ALEEM A. DHALLA, ESQ.**

STATE OF NEVADA            )  
  ) 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

Snell & Wilmer

LAW OFFICES  
1883 HOWARD STREET, SUITE 1100  
LAS VEGAS, NEVADA 89169  
(702) 384-5200

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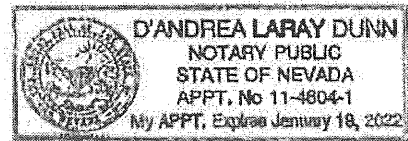
e. A statement that the expert has concluded that there is a reasonable basis for filing the action (Ex. 7).

  
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 4**

(2)

20090713-0000778

Fee: \$15.00

N/C Fee: \$0.00

07/13/2009

08:13:23

T20090716

Requestor:

NORTH LAS VEGAS CITY

Debbie Conway

JRV

Clark County Recorder Pgs: 2

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

NOTICE is hereby given that:

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

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

3. The names and addresses of the transferors of the undersigned owner: (to be shown if the under-signed is a successor in interest of the owner who caused the improvement to be constructed, etc.)

4. A work of improvement on the property hereinafter described was completed on

March 17, 2009

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

Richardson Construction, Inc.

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

The Fire Station #53 Project includes construction of a 15,000 square foot building with 4 apparatus bays, 14 dorms, kitchen, training, exercise and locker rooms, emergency generator, paved parking lot, landscaping, and associated onsite and offsite improvements. The station is located on a City-owned parcel at 2800 West Gowan Road, east of Simmons Street.

# **Exhibit C**

# **Exhibit C**

## AB421

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

Summary:

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

Title:

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

Introduction Date:

Monday, March 25, 2019

Fiscal Notes:

Effect on Local Government: No.

Effect on the State: No.

Digest:

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

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

Primary Sponsor

Assembly Committee on Judiciary

## Most Recent History Action

Chapter 361.  
(See full list below)

## Upcoming Hearings

*None scheduled*

## Past Hearings

Meeting Video Link	Committee	Date	Time
<a href="#">View archived video</a>	Assembly Judiciary	Mar 25, 2019	8:30
<a href="#">View archived video</a>	Assembly Judiciary	Apr 09, 2019	8:00
<a href="#">View archived video</a>	Assembly Judiciary (Work Session)	Apr 12, 2019	8:00
<a href="#">View archived video</a>	Senate Judiciary	May 15, 2019	8:00
<a href="#">View archived video</a>	Senate Judiciary (Work Session)	May 17, 2019	8:00

## Final Passage Votes

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

Conference Committees

*None scheduled*

Bill Text

As Introduced Reprint 1 Reprint 2 Reprint 3 As Enrolled

Adopted Amendments

Amendment 640 Amendment 808 Amendment 963

Bill History ☐ Sort Descending

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

# Bills Signed by the Governor

80th (2019) Session

Order By Chapter | Order By Bill

...

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

# **Exhibit D**

# **Exhibit D**

**AFFIDAVIT OF ALEEM A. DHALLA, ESQ.**

STATE OF NEVADA            )  
  ) ss.  
COUNTY OF CLARK         )

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

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

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

3. I make this affidavit pursuant to NRS 11.258.

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

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

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

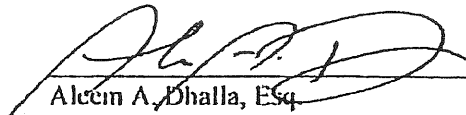
- a. A resume of the expert consulted in this matter, Edred T. Marsh, P.E. of American Geotechnical Inc (Ex. 6);
- b. A statement that the expert is experienced in each discipline which is the subject of the report, specifically in the fields of geotechnical, civil, and forensic engineering (Ex. 7);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

Snell & Wilmer

LAW OFFICES  
1883 HOWARD HUGHES PARKWAY, SUITE 1100  
LAS VEGAS, NEVADA 89169  
(702) 784-3500

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

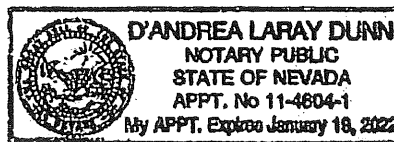
  
Alceen A. Dhalla, Esq.

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 E**

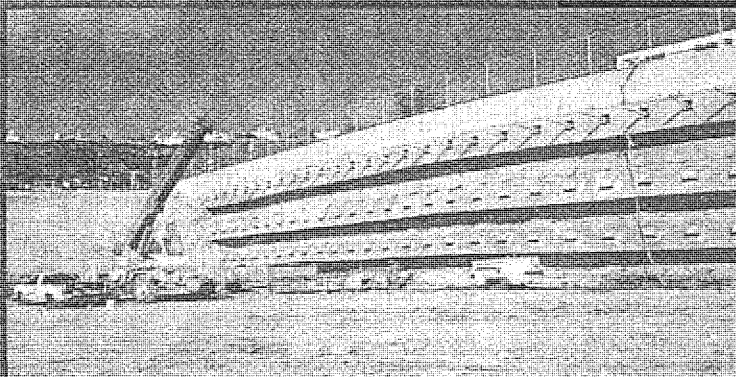
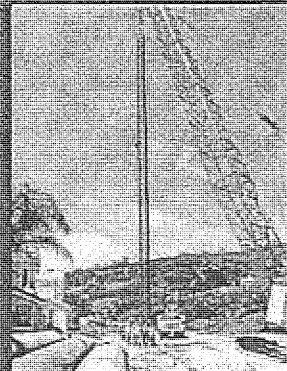
# **Exhibit E**

# GEOTECHNICAL INVESTIGATION

## FIRE STATION 53

2804 W. Gowan Road  
North Las Vegas, Nevada

December 11, 2017  
FN 40779-01



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

2640 Financial Court  
Suite A  
San Diego, CA 92117

3100 Fite Circle  
Suite 103  
Sacramento, CA 95827

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



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

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

PET.APP.002772



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

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:

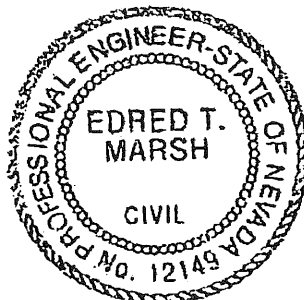
In accordance with your authorization, American Geotechnical has performed a geotechnical investigation of the site. The purpose of this investigation was to evaluate the site geotechnical conditions and to determine the probable cause(s) of the existing distress to the building and surrounding appurtenances 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



Alva (Arumugam) Alvappillai  
Principal Engineer

AA/ETM: km

Distribution: Mr. Dale Daffern

*Via E-Mail Only*

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

**PET.APP.002773**

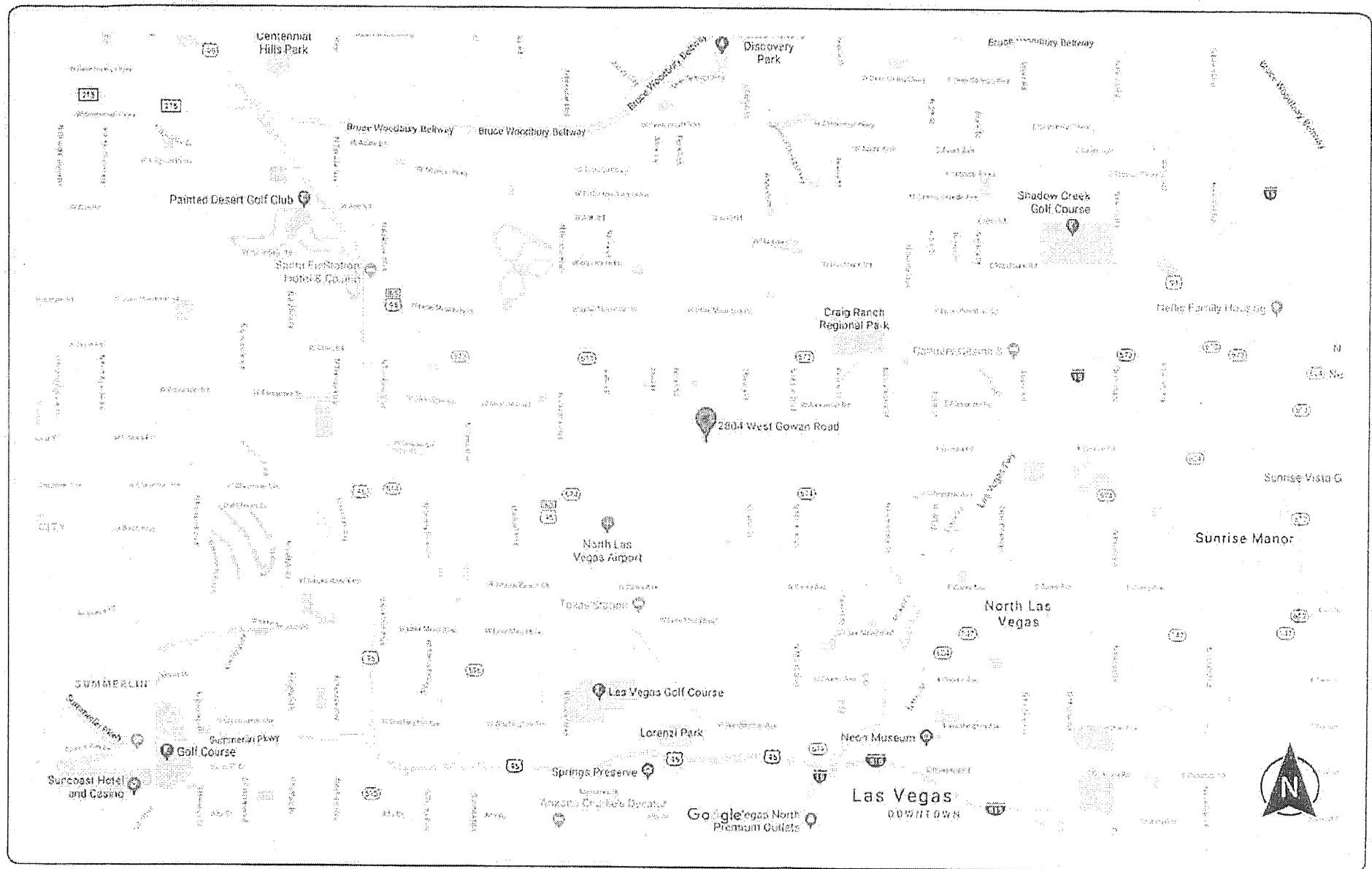
## 1.0 SCOPE OF WORK

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

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

## 2.0 SITE DESCRIPTION AND HISTORY

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



**AMERICAN GEOTECHNICAL, INC.**

22725 Old Canal Road, Yorba Linda, CA 92887

☎ (714) 685-3900 ☎ (714) 685-3909

www.amgt.com

TITLE:

**SITE LOCATION MAP**

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

SCALE:

**N.T.S**

DATE:

**DEC 2017**

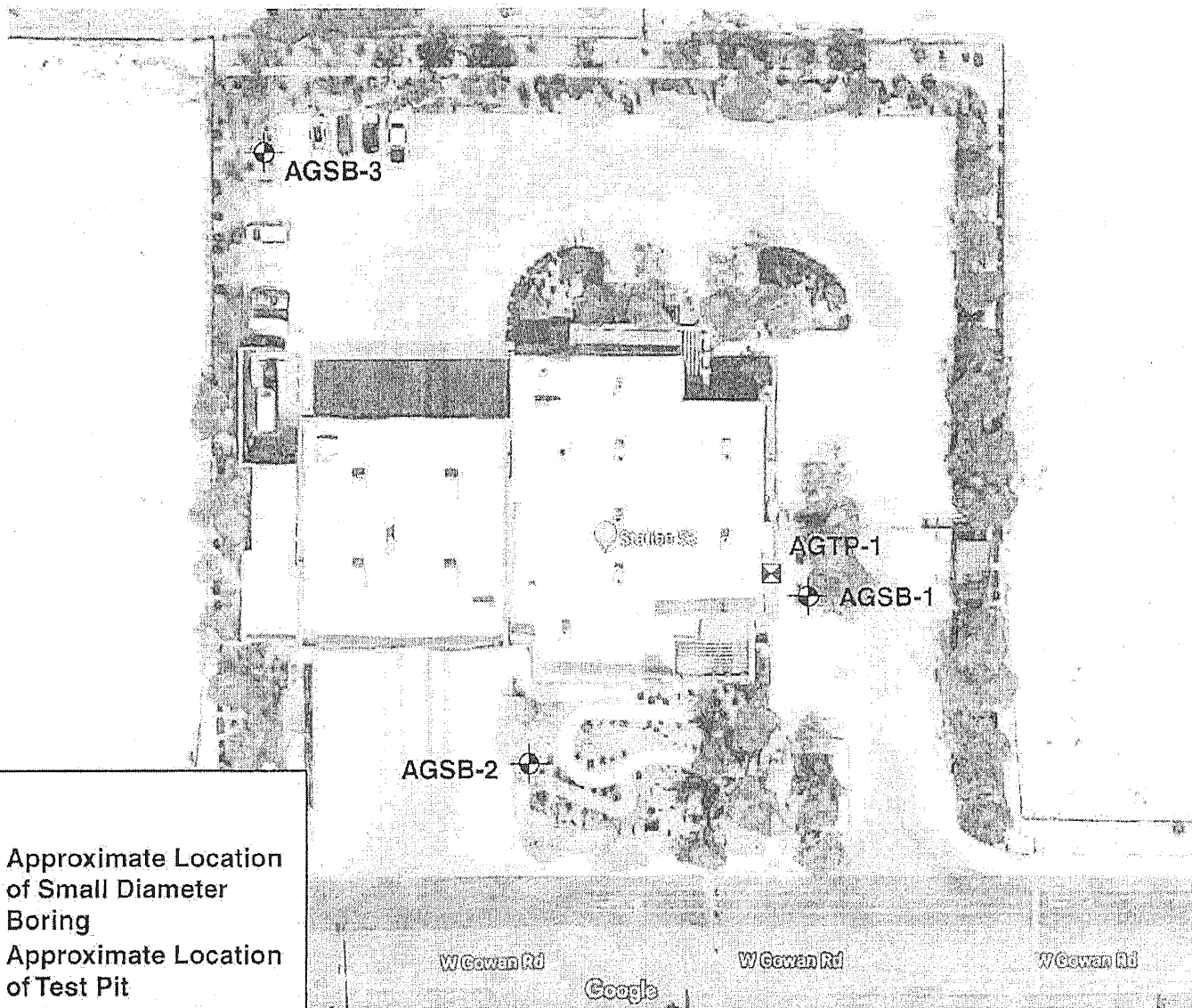
FILE NO.:

**40779-01**



PLATE

**1**

**PET.APP.002775**



# LEGEND

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



**AMERICAN GEOTECHNICAL, INC.**

22725 Old Canal Road, Yorba Linda, CA 92887

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

www.amgt.com

TITLE:

**Aerial View/Test Location Map**

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

SCALE:

**N.T.S**

DATE:

**DEC 2017**

FILE NO.:

**40779-01**

PLATE

**2**

**PET.APP.002776**

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.

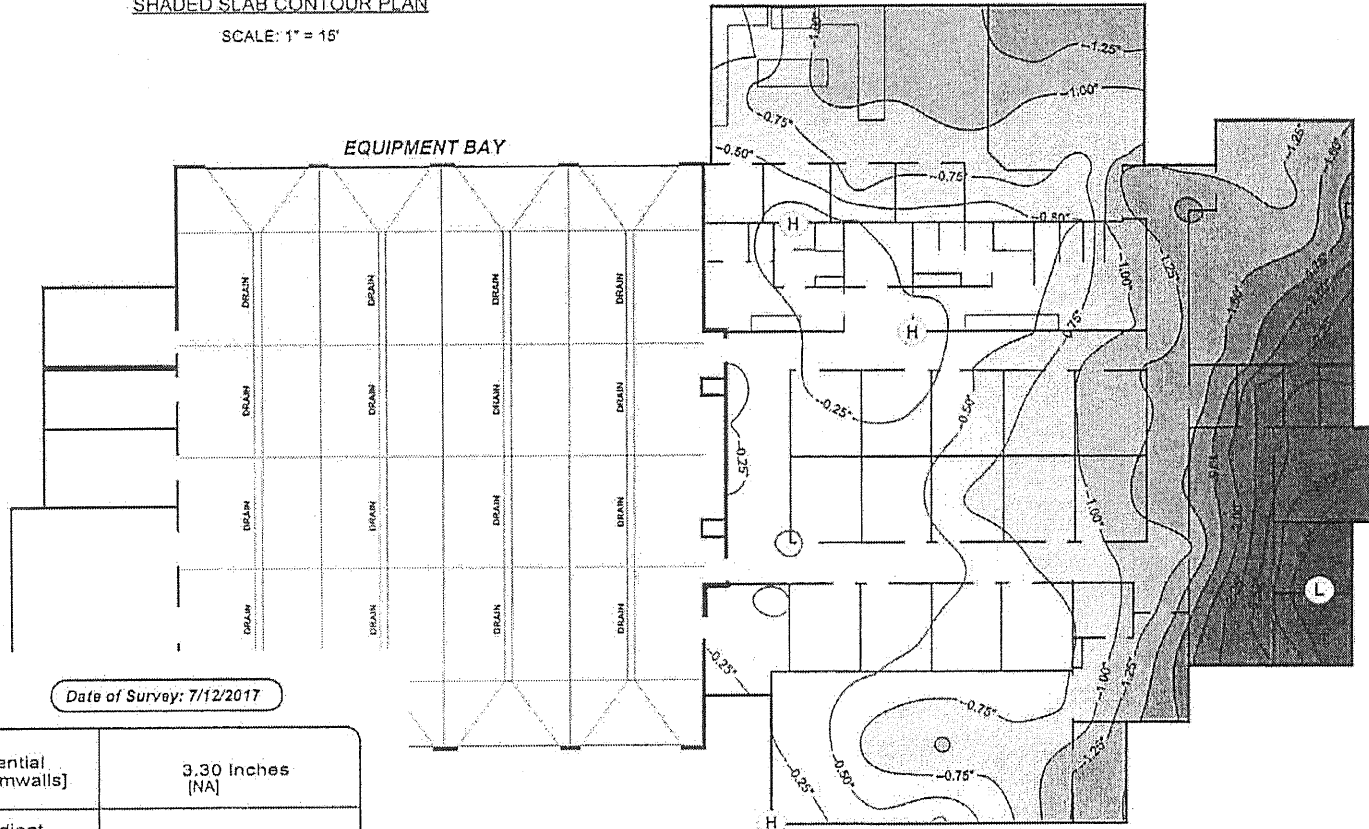
Representative samples of subsurface materials were collected and forwarded to the laboratory for the purpose of estimating material properties for the use in subsequent engineering evaluations. The approximate locations of the test pit and borings are shown on Plate 2. Detailed logs are presented in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

# SHADED SLAB CONTOUR PLAN

SCALE: 1" = 15'



EQUIPMENT BAY



## LEGEND

Date of Survey: 7/12/2017

Overall Differential (with garage stemwalls)	3.30 Inches [NA]
Steepest Gradient Over 15 Feet	1:97 (1.85")
— 1.5" — 7.5	Contours are of relative elevation in inches Survey Point / Relative elevation
(L)	Low Point
(H)	High Point
[Shaded Box]	Areas that exceeds 1/300 ratio
[Shaded Box]	Areas that exceeds 1/240 ratio



American  
Geotechnical Inc.  
(800)275-4436

MANOMETER SURVEY  
FIRE STATION #53

F.N. 40779.01  
Fire Station #53

PLATE 3

## 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.

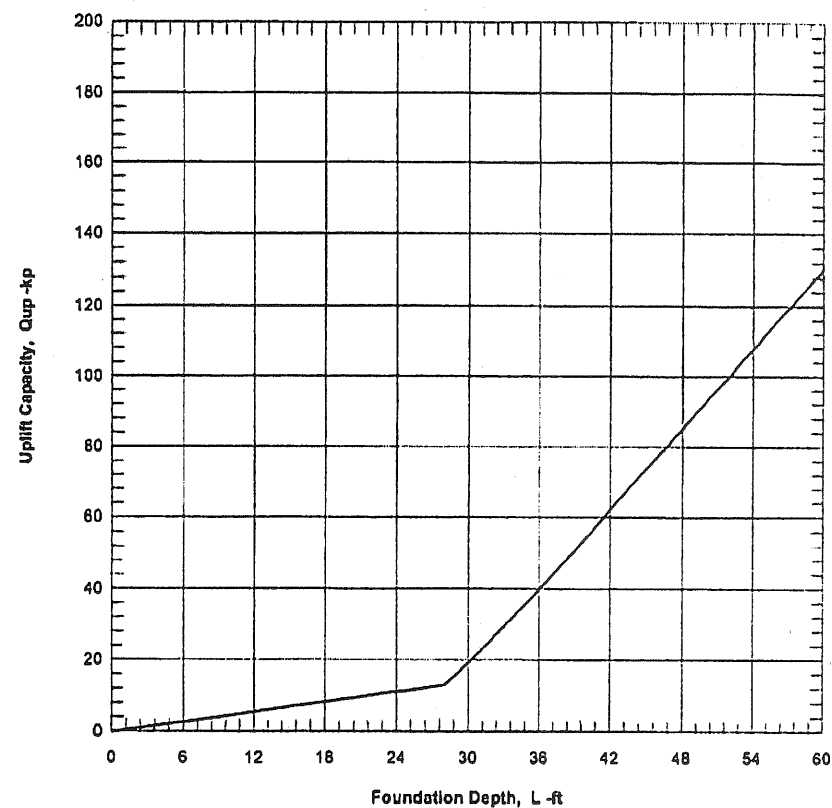
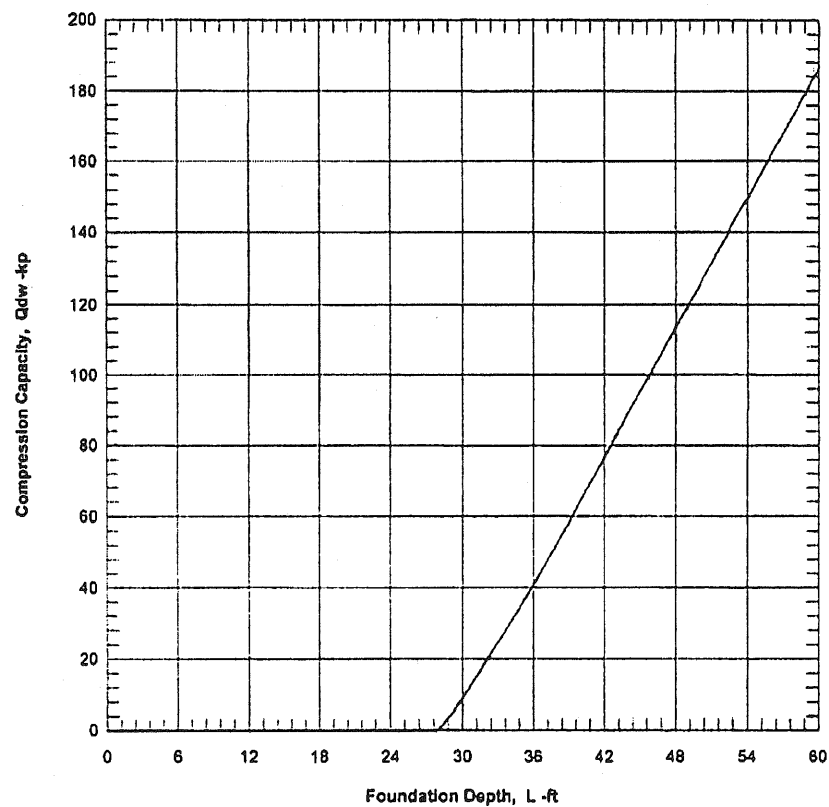
A minimum pile diameter of 2 feet is recommended for the underpinning. The pile spacing should be at least three times the pile diameter. Vertical pile capacity for an isolated, 2-foot diameter friction pile is presented on Plate 4. Capacities for other pile sizes can be determined in direct proportion 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  
PET.APP.002782**

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

#### **9.0 CONCRETE**

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

#### **10.0 CORROSION**

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

#### 11.0 REMARKS

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

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

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

# **Exhibit F**

# **Exhibit F**

**DECLARATION OF EDRED T. MARSH, P.E.**

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

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

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

Dated: July 3rd, 2019.



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Edred T. Marsh, P.E.

# Exhibit G

# Exhibit G

11.258

**SENATE BILL 243:** Requires an affidavit and a report in an action against certain design professionals involving nonresidential construction. (BDR 2-898)  
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 19]

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. 99-58, "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. HILLERBY (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 Council Bureau. Like myself, Mr. Timothy Rowe is a partner in the firm of McDonald Carano Wilson, Limited Liability Partnership.

CHAIR AMODEI:

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 HORBFORD 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 certified 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 all 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 Horner:**

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 “C”**

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*

Electronically Filed  
8/6/2019 8:56 AM  
Steven D. Grierson  
CLERK OF THE COURT



North Las Vegas City of, Plaintiff(s)  
vs.  
Dekker/Perich/Sabatini Ltd, Defendant(s)

Case No.: A-19-798346-C

Department 8

**NOTICE OF HEARING**

Please be advised that the Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment in the above-entitled matter is set for hearing as follows:

**Date:** September 09, 2019  
**Time:** 8:30 AM  
**Location:** Phoenix Building 11th Floor 110  
Regional Justice Center  
200 Lewis Ave.  
Las Vegas, NV 89101

**NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.**

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Chaunte Pleasant  
Deputy Clerk of the Court

**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Chaunte Pleasant  
Deputy Clerk of the Court

PET.APP.002796

# **EXHIBIT “D”**



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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").

Snell & Wilmer

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## 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.

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### 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.**

6 Ex. 2 (emphasis added).

7 Importantly, the Legislature went out of its way to provide effective dates for each section  
8 of AB 421. The Legislature was perfectly capable of making the entire statute effective on a certain  
9 date. *See, e.g.*, AB 221 (2019) (“Sec. 2. This act becomes effective on July 1, 2019”). Instead, the  
10 Legislature purposely made the ten-year statute of repose effective retroactively, in contrast to other  
11 sections of the bill.<sup>3</sup> This shows that the Legislature intended for Section 7 of the bill to be effective  
12 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           **I.     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  
5                     the expert consulted by the attorney and must include, without  
6                     limitation:

7                     (a) The resume of the expert;

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

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

15                    (d) The conclusions of the expert and the basis for the  
16                    conclusions; and

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

19                    Here, the City's attorney affidavit complies with all requirements from NRS 11.258 (1) and  
20                    (3). The City's attorney swore that he reviewed the facts of the case, consulted with an expert that  
21                    he reasonably believed to be qualified, and concluded that there was a reasonable basis to file this  
22                    action. Ex 1, p. 16. The City's attorney also confirmed that he attached all the required documents  
23                    to the complaint. Ex 1, p. 16-17. Below is a side by side comparison of the statute with the  
24                    corresponding statement from the City's attorney affidavit.  
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NRS 11.258 (1)	Affidavit of Aleem A. Dhalla, Esq. <sup>4</sup>
... 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.

NRS 11.258 (3)	Affidavit of Aleem A. Dhalla, Esq. <sup>5</sup>
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  
11 separately as to each defendant in simple, concise and direct terms.

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

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

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

28 Here, the City's expert, Edred T. Marsh, P.E. of American Geotechnical Inc., is a  
*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  
17 11.258; or
  - 18 (c) Name the expert consulted in the affidavit required pursuant  
19 to subsection 1 of NRS 11.258.

20 Here, as explained above, the City filed the required attorney affidavit pursuant to NRS  
21 11.258, filed the required expert report, and named the expert in the attorney affidavit. Thus,  
22 dismissal under NRS 11.259 is not appropriate.  
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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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Aleem A. Dhalla, Esq. (NV Bar No. 14188)  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, Nevada 89169

*Attorneys for the City of North Las Vegas*

1 CERTIFICATE OF SERVICE

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

8 VIA E-MAIL

9 Jerome Jackson, Member  
10 Jackson Family Partnership LLC d/b/a  
11 Stargate Plumbing  
12 1951 Stella Lake St., Suite 1  
13 Las Vegas, Nevada 89106  
14 Telephone: (702) 648-7525  
15 Email: [stargatepl@aol.com](mailto:stargatepl@aol.com)  
16 *Pro Se*

17 Theodore Parker III, Esq.  
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20 Las Vegas, Nevada 89128  
21 [tparker@pnalaw.net](mailto:tparker@pnalaw.net)  
22 *Attorney for Defendant Richardson*  
23 *Construction, Inc.*

24 Jorge A. Ramirez, Esq.  
25 **Wilson, Elser, Moskowitz, Edelman &**  
26 **Dicker LLP**  
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28 Las Vegas, Nevada 89101  
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Jeremy R. Kilber, Esq.  
**Weil & Drage, APC**  
2500 Anthem Village Drive  
Henderson, Nevada 89052  
*Attorney for MSA Engineering Consultants*

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

26 /s/ Ruby Lengsavath  
27 An employee of SNELL & WILMER L.L.P.  
28

4825-1811-7536

# **EXHIBIT “E”**



1 **MDSM**  
2 THEODORE PARKER, III, ESQ.  
3 Nevada Bar No. 4716  
4 **PARKER, NELSON & ASSOCIATES, CHTD.**  
5 2460 Professional Court, Suite 200  
6 Las Vegas, Nevada 89128  
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10 *Attorneys for Defendants,*  
11 *Richardson Construction, Inc. and*  
12 *The Guarantee Company of North America USA*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 CITY OF NORTH LAS VEGAS,  
16  
17 Plaintiff,

18 v.

19 DEKKER/PERICH/SABATINI LTD.;  
20 RICHARDSON CONSTRUCTION, INC.;  
21 NEVADA BY DESIGN, LLC D/B/A  
22 NEVADA BY DESIGN ENGINEERING  
23 CONSULTANTS; JW ZUNINO &  
24 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

**DEFENDANTS RICHARDSON  
CONSTRUCTION, INC. AND THE  
GUARANTEE COMPANY OF NORTH  
AMERICA USA'S MOTION TO  
DISMISS**

**(HEARING REQUESTED)**

COME NOW, Defendants RICHARDSON CONSTRUCTION, INC. and THE  
GUARANTEE COMPANY OF NORTH AMERICA USA (hereinafter "Defendants"), by and  
through their attorney of record, THEODORE PARKER, III, ESQ. of the law firm of PARKER,  
NELSON & ASSOCIATES, CHTD., and hereby move this Court pursuant to NRCP 12(b)(5) to

1 dismiss Plaintiff's Complaint for failing to state a claim upon which relief can be granted.

2 This Motion is made and based upon the pleadings and papers on file herein, the points and  
3 authorities included herewith, and such oral argument as the Court may entertain at the time of the  
4 hearing of this matter.

5 DATED this 4<sup>th</sup> day of September, 2019.

6 **PARKER, NELSON & ASSOCIATES, CHTD.**

7 /s/ Theodore Parker III

8 THEODORE PARKER, III, ESQ.

9 Nevada Bar No. 4716

2460 Professional Court, Suite 200

Las Vegas, Nevada 89128

10 *Attorneys for Defendants,*

11 *Richardson Construction, Inc. and*

12 *The Guarantee Company of North America USA*

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I.**

15 **STATEMENT OF FACTS**

16 Plaintiff's Complaint identifies Richardson Construction, Inc. as a Nevada corporation  
17 conducting business in Clark County, Nevada.<sup>1</sup> Plaintiff also identifies that on January 16, 2008,  
18 the City of North Las Vegas entered into a construction contract with Richardson Construction.<sup>2</sup>  
19 Plaintiff also alleges that Richardson Construction provided three (3) bonds for the full value of the  
20 construction contract issued by The Guarantee Company and P & W Bonds, LLC.<sup>3</sup> The bonds  
21 included a performance bond, a labor and material bond, and a guarantee bond.<sup>4</sup>

22 On or about March 5, 2008, the City issued its notice to proceed. A certificate of occupancy  
23

24 \_\_\_\_\_  
25 <sup>1</sup> See Complaint at pp. 2 ¶3.

26 <sup>2</sup> *Id.* at pp. 5 ¶38.

27 <sup>3</sup> *Id.* at pp. 6 ¶41.

28 <sup>4</sup> *Id.* at pp. 6 ¶42.

1 was issued on the project on February 25, 2009.<sup>5</sup> The notice of completion was recorded on July 13,  
2 2009.<sup>6</sup>

3 NRCP 12(b)(5) provides:

4 (b) Every defense to a claim for relief in any pleading must be  
5 asserted in the responsive pleading if one is required. But a party may  
6 assert the following defenses by motion:

7 ...

8 (5) failure to state a claim upon which relief can be granted;

9 Plaintiff has brought the following claims for relief against these Defendants: (1) Breach of  
10 Contract (The Design Agreement); (2) Breach of Contract (The Construction Contract); (3) Breach  
11 of the Covenant of Good Faith and Fair Dealing; (4) Negligence; (5) Breach of Implied Warranty;  
12 (6) Claim on Performance Bond; (7) Claim on Payment Bond; and (8) Claim on Guarantee Bond.  
13 The statute of limitations has run on each of the above-referenced claims for relief. NRS 11.190  
14 provides the periods of limitations applicable to the Plaintiff's claims for relief. Plaintiff's claims  
15 for relief for Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing, as well  
16 as the Bond claims are all governed by NRS 11.190(1) which is for six (6) years. Plaintiff's claim  
17 for Negligence is governed by NRS 11.190(3)(c), which allows for three (3) years within which time  
18 the action should be brought.

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27 <sup>5</sup> *Id.* at pp. 6 ¶43 and ¶44.

28 <sup>6</sup> *Id.* at pp. 6 ¶45.

Given the allegations contained in Plaintiff's Complaint, Plaintiff's claims for relief are all barred by the above-referenced periods of limitation under NRS 11.190. As a result, Plaintiff does not present a claim upon which relief can be granted against these Defendants. Therefore, Defendants request that Plaintiff's Complaint be dismissed in its entirety.

DATED this 4<sup>th</sup> day of September, 2019.

Respectfully submitted,

**PARKER, NELSON & ASSOCIATES, CHTD.**

/s/ Theodore Parker III

THEODORE PARKER, III, ESQ.

Nevada Bar No. 4716

2460 Professional Court, Suite 200

Las Vegas, Nevada 89128

*Attorneys for Defendants,*

*Richardson Construction, Inc. and*

*The Guarantee Company of North America USA*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of the Law Offices of PARKER, NELSON & ASSOCIATES, CHTD., and that on this 4<sup>th</sup> day of September, 2019 and pursuant to NRCP 5(b), I served a true and correct copy of the foregoing **DEFENDANTS RICHARDSON CONSTRUCTION, INC. AND THE GUARANTEE COMPANY OF NORTH AMERICA USA'S MOTION TO DISMISS** on the party(s) set forth below by:

- ☐ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Las Vegas, NV, postage prepaid, following ordinary business practices.
- ☐ Facsimile transmission, pursuant to the amendment to the Eighth Judicial District Court Rule 7.26, by faxing a true and correct copy of the same to each party addressed as follows:
- ☐ By E-mail: by electronic mail delivering the document(s) listed above to the e-mail address(es) set forth below on this date before 5:00 p.m.
- ☒ By EFC: by electronic filing and service with the Court delivering the document(s) listed above via E-file & E-serve (Odyssey) filing system.

Party	Attorney	E-Mail
Plaintiff	Justin L. Carley, Esq. Aleem A. Dhalla, Esq. SNELL & WILMER L.L.P. 3883 Howard Hughes Parkway, Suite 1100 Las Vegas, NV 89169 (702) 784-5200 Fax: (702) 784-5252	<a href="mailto:jcarley@swlaw.com">jcarley@swlaw.com</a> <a href="mailto:adhalla@swlaw.com">adhalla@swlaw.com</a>
Defendant, Jackson Family Partnership LLC d/b/a Stargate Plumbing	Richard L. Peel, Esq. Ronald J. Cox, Esq. PEEL BRIMLEY LLP 3333 E. Serene Avenue, Suite 200 Henderson, NV 89074-6571 (702) 990-7272 Fax: (702) 990-7273	<a href="mailto:rpeel@peelbrimley.com">rpeel@peelbrimley.com</a> <a href="mailto:rcox@peelbrimley.com">rcox@peelbrimley.com</a>
Defendant, Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants	John T. Wendland, Esq. Anthony D. Platt, Esq. WEIL & DRAGE, APC 2500 Anthem Village Drive Henderson, NV 89052 (702) 314-1905 Fax: (702) 314-1909	<a href="mailto:jwendland@weildrage.com">jwendland@weildrage.com</a> <a href="mailto:aplatt@weildrage.com">aplatt@weildrage.com</a>

Party	Attorney	E-Mail
Defendant, Dekker/Perich/Sabatini, Ltd.	John T. Wendland, Esq. Jeremy R. Kilber, Esq. WEIL & DRAGE, APC 2500 Anthem Village Drive Henderson, NV 89052 (702) 314-1905 Fax: (702) 314-1909	<a href="mailto:jwendland@weildrage.com">jwendland@weildrage.com</a> <a href="mailto:jkilber@weildrage.com">jkilber@weildrage.com</a>
Defendant, Melroy Engineering, Inc. d/b/a MSA Engineering Consultants	Jeremy R. Kilber, Esq. WEIL & DRAGE, APC 2500 Anthem Village Drive Henderson, NV 89052 (702) 314-1905 Fax: (702) 314-1909	<a href="mailto:jkilber@weildrage.com">jkilber@weildrage.com</a>
Defendants, P & W Bonds, LLC and Paffenbarger & Walden, LLC	Charles W. Bennion, Esq. ELLSWORTH & BENNION, CHTD. 777 N. Rainbow Blvd., Suite 270 Las Vegas, NV 89107 (702) 658-6100 Fax: (702) 658-2502  Patrick F. Welch, Esq. JENNINGS STROUSS & SALMON, PLC One East Washington Street, Suite 1900 Phoenix, AZ 85004-2554 (602) 262-5847 Fax: (602) 495-2781	<a href="mailto:charles@silverstatelaw.com">charles@silverstatelaw.com</a>          <a href="mailto:pwelch@jsslaw.com">pwelch@jsslaw.com</a>

/s/ Eloisa Nuñez

An employee of PARKER, NELSON & ASSOCIATES CHTD.

# EXHIBIT “F”

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*

Electronically Filed  
9/6/2019 9:30 AM  
Steven D. Grierson  
CLERK OF THE COURT



North Las Vegas City of, Plaintiff(s)  
vs.  
Dekker/Perich/Sabatini Ltd, Defendant(s)

Case No.: A-19-798346-C

Department 8

**NOTICE OF HEARING**

Please be advised that the Defendants Richardson Construction, Inc. and The Guarantee Company of North America USA s Motion to Dismiss in the above-entitled matter is set for hearing as follows:

**Date:** October 21, 2019

**Time:** 8:30 AM

**Location:** RJC Courtroom 11B  
Regional Justice Center  
200 Lewis Ave.  
Las Vegas, NV 89101

**NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.**

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Joshua Raak  
Deputy Clerk of the Court

**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Joshua Raak  
Deputy Clerk of the Court

PET.APP.002824

# **EXHIBIT “G”**

[Skip to Main Content](#) [Logout My Account](#) [Search Menu](#) [New District Civil/Criminal Search](#) [Refine Search](#) [Back](#) [Location : District Court Civil/Criminal](#) [Help](#)

**REGISTER OF ACTIONS****CASE NO. A-19-798346-C**

North Las Vegas City of, Plaintiff(s) vs. Dekker/Perich/Sabatini Ltd,  
Defendant(s)

§  
§  
§  
§  
§  
§  
§

Case Type: **Building and Construction**  
Date Filed: **07/11/2019**  
Location: **Department 8**  
Cross-Reference Case Number: **A798346**

**PARTY INFORMATION**

		<b>Lead Attorneys</b>
Defendant	Avery Atlantic LLC	
Defendant	Big C LLC	
Defendant	Dekker/Perich/Sabatini Ltd	<b>John T. Wendland</b> <i>Retained</i> 7023141905(W)
Defendant	Jackson Family Partnership LLC <i>Doing Business As</i> Stargate Plumbing	<b>Shannon G. Splaine</b> <i>Retained</i> 7022571997(W)
Defendant	JW Zunino & Associates LLC	<b>Dylan P. Todd</b> <i>Retained</i> 702-827-1511(W)
Defendant	Melroy Engineering Inc <i>Doing Business As</i> MSA Engineering Consultants	<b>Jeremy R Kilber, ESQ</b> <i>Retained</i> 702-314-1905(W)
Defendant	Nevada by Design LLC <i>Doing Business As</i> Nevada by Design Engineering Consultants	<b>John T. Wendland</b> <i>Retained</i> 7023141905(W)
Defendant	Ninyo & Moore Geotechnical Consultants	<b>Jorge A. Ramirez</b> <i>Retained</i> 702-727-1400(W)
Defendant	Ron Hanlon Masonry LLC	
Plaintiff	North Las Vegas City of	<b>Richard C. Gordon</b> <i>Retained</i> 7027845252(W)

**EVENTS & ORDERS OF THE COURT****DISPOSITIONS**

09/11/2019 **Order of Dismissal Without Prejudice** (Judicial Officer: Vacant, DC 8)  
Debtors: O'Connor Construction Management Inc (Defendant)  
Creditors: North Las Vegas City of (Plaintiff)  
Judgment: 09/11/2019, Docketed: 09/12/2019

**PET.APP.002826**

**10/15/2019 Order of Dismissal With Prejudice** (Judicial Officer: Atkin, Trevor)  
 Debtors: North Las Vegas City of (Plaintiff)  
 Creditors: Richardson Construction Inc (Defendant), Nevada by Design LLC (Defendant), Guarantee Company of North America USA (Defendant), P & W Bonds LLC (Defendant), Paffenbarger & Walden LLC (Defendant)  
 Judgment: 10/15/2019, Docketed: 10/16/2019

**OTHER EVENTS AND HEARINGS**

07/11/2019 **Complaint**  
*Complaint*

07/11/2019 **Initial Appearance Fee Disclosure**  
*Initial Appearance Fee Disclosure*

07/19/2019 **Summons Electronically Issued - Service Pending**  
*Summons - Civil*

07/19/2019 **Summons Electronically Issued - Service Pending**  
*Summons - Civil*

07/19/2019 **Summons Electronically Issued - Service Pending**  
*Summons - Civil*

07/19/2019 **Summons Electronically Issued - Service Pending**  
*Summons - Civil*

07/19/2019 **Summons Electronically Issued - Service Pending**  
*Summons - Civil*

07/19/2019 **Summons Electronically Issued - Service Pending**  
*Summons - Civil*

07/19/2019 **Summons Electronically Issued - Service Pending**  
*Summons - Civil*

07/19/2019 **Summons Electronically Issued - Service Pending**  
*Summons - Civil*

07/19/2019 **Summons Electronically Issued - Service Pending**  
*Summons - Civil*

07/19/2019 **Summons Electronically Issued - Service Pending**  
*Summons - Civil*

07/19/2019 **Summons Electronically Issued - Service Pending**  
*Summons - Civil*

07/19/2019 **Summons Electronically Issued - Service Pending**  
*Summons - Civil*

07/22/2019 **Request for Exemption From Arbitration**  
*Request for Exemption from Arbitration*

07/31/2019 **Motion to Dismiss**  
*(8/27/19 Withdrawn) Motion to Dismiss*

07/31/2019 **Clerk's Notice of Hearing**  
*Notice of Hearing*

08/05/2019 **Initial Appearance Fee Disclosure**  
*Initial Appearance Fee Disclosure*

08/05/2019 **Motion for Summary Judgment**  
*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 **Clerk's Notice of Hearing**  
*Notice of Hearing*

08/06/2019 **Affidavit of Service**  
*Affidavit/Declaration of Service - Dekker/Perich/Sabatini Ltd.*

08/06/2019 **Affidavit of Service**  
*Affidavit/Declaration of Service - Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants*

08/06/2019 **Affidavit of Service**  
*Affidavit/Declaration of Service - Jackson Family Partnership LLC d/b/a Stargate Plumbing*

08/06/2019 **Affidavit of Service**  
*Affidavit/Declaration of Service - JW Zunino & Associates, LLC*

08/06/2019 **Affidavit of Service**  
*Affidavit/Declaration of Service - Melroy Engineering, Inc. d/b/a MSA Engineering Consultants*

08/06/2019 **Affidavit of Service**  
*Affidavit/Declaration of Service - Ninyo & Moore, Geotechnical Consultants*

08/06/2019 **Affidavit of Service**  
*Affidavit/Declaration of Service - O'Connor Construction Management, Inc.*

08/06/2019 **Affidavit of Service**  
*Affidavit/Declaration of Service - Richardson Construction, Inc.*

08/06/2019 **Affidavit of Service**  
*Affidavit/Declaration of Service - Paffenbarger & Walden L.L.C.*

08/06/2019 **Proof of Service**  
*Proof of Service - The Guarantee Company of North America USA*

08/06/2019 **Initial Appearance Fee Disclosure**  
*Initial Appearance Fee Disclosure*

08/06/2019 **Joinder to Motion For Summary Judgment**  
*Defendant Dekker/Perich/Sabatini, LTD.'s Joinder to Defendant Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants' Motion to Dismiss or, In the Alternative, Motion for Summary Judgment*

08/06/2019 **Motion to Dismiss**  
*Defendant Dekker/Perich/Sabatini, LTD.'s Motion to Dismiss*

08/06/2019 **Clerk's Notice of Hearing**  
*Notice of Hearing*

08/08/2019 **Initial Appearance Fee Disclosure**  
*Initial Appearance Fee Disclosure*

08/08/2019 **Notice of Appearance**  
*Notice of Appearance of Counsel*

08/08/2019 **Joinder**  
*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*

08/15/2019 **Motion to Strike**  
*Plaintiff's Motion to Strike and Opposition to Defendant Jackson Family Partnership LLC d/b/a Stargate Plumbing's Motion to Dismiss*

08/16/2019 **Clerk's Notice of Hearing**  
*Notice of Hearing*

PET.APP.002827

08/20/2019 **Opposition to Motion**  
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 Judgement

08/20/2019 **Appendix**  
Appendix of Exhibits to 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 Judgement

08/20/2019 **Opposition**  
Plaintiffs Opposition to Defendant Dekker/Perich/Sabatini Ltd.'s Motion to Dismiss

08/20/2019 **Appendix**  
Appendix of Exhibits to Plaintiffs Opposition to Defendant Dekker/Perich/Sabatini Ltd.'s Motion to Dismiss

08/23/2019 **Joinder To Motion**  
Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants Motion to Dismiss or, in the Alternative, Motion for Summary Judgement

08/23/2019 **Initial Appearance Fee Disclosure**  
Initial Appearance Fee Disclosure

08/23/2019 **Joinder To Motion**  
Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants Motion to Dismiss or, in the Alternative, Motion for Summary Judgement

08/23/2019 **Disclosure Statement**  
Ninyo & Moore, Geotechnical Consultants' NRCP 7.1 Disclosure Statement

08/23/2019 **Notice of Appearance**  
Notice of Appearance

08/23/2019 **Joinder**  
Jackson Family Partnership LLC dba Stargate Plumbing's Joinder To Nevada By Design, LLC dba Nevada By Design Engineering Consultants Motion To Dismiss Or, In The Alternative, Motion For Summary Judgment

08/24/2019 **Clerk's Notice of Hearing**  
Notice of Hearing

08/27/2019 **Notice of Withdrawal of Motion**  
Notice of Withdrawal of Motion

08/28/2019 **Reply to Opposition**  
Dekker/Perich/Sabatini, Ltd.'s Reply to Plaintiff's Opposition to Its Motion to Dismiss

08/28/2019 **Reply to Opposition**  
Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultant's Reply to Plaintiff's Opposition to Motion to Dismiss or, in the Alternative, Motion for Summary Judgment

08/30/2019 **Filing Fee Remittance**  
Filing Fee Remittance

08/30/2019 **Initial Appearance Fee Disclosure**  
Fee Disclosure

08/30/2019 **Motion to Dismiss**  
Defendants Paffenbarger & Walden, LLC and P & W Bonds, LLC's Motion to Dismiss

08/30/2019 **Filing Fee Remittance**  
Filing fee for Ninyo & Moore's Joinder to Nevada by Design's Motion for Summary Judgment

09/04/2019 **Clerk's Notice of Hearing**  
Notice of Hearing

09/04/2019 **Motion to Dismiss**  
Defendants Richardson Construction, Inc. and The Guarantee Company of North America USA s Motion to Dismiss

09/04/2019 **Initial Appearance Fee Disclosure**  
Initial Appearance Fee Disclosure (NRS Chapter 19)

09/06/2019 **Clerk's Notice of Hearing**  
Notice of Hearing

09/06/2019 **Joinder To Motion**  
Ninyo & Moore, Geotechnical Consultants' Joinder to Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants Motion to Dismiss or, in the Alternative, Motion for Summary Judgment

09/06/2019 **Notice of Rescheduling of Hearing**  
Notice of Rescheduling Motions to Dismiss and Joinders

09/06/2019 **Clerk's Notice of Hearing**  
Notice of Hearing

09/09/2019 **CANCELED Motion to Dismiss (8:30 AM)** (Judicial Officer Bonaventure, Joseph T.)  
Vacated - per Law Clerk  
Defendant Jackson Family Partnership LLC's Motion to Dismiss  
09/03/2019 Reset by Court to 09/09/2019

09/09/2019 **CANCELED Motion to Strike (8:30 AM)** (Judicial Officer Bonaventure, Joseph T.)  
Vacated - per Law Clerk  
Plaintiff's Motion to Strike and Opposition to Defendant Jackson Family Partnership LLC d/b/a Stargate Plumbing's Motion to Dismiss  
09/18/2019 Reset by Court to 09/09/2019

09/10/2019 **Association of Counsel**  
Association of Counsel for Defendant Jackson Family Partnership LLC dba Stargate Plumbing

09/11/2019 **Stipulation and Order for Dismissal Without Prejudice**  
Stipulation and Order to Dismiss O'Connor Construction Management Inc. Without Prejudice

09/12/2019 **Notice of Entry**  
Notice of Entry of Stipulation and Order to Dismiss O'Connor Construction Management Inc. Without Prejudice

09/13/2019 **Opposition**  
Plaintiff's Opposition to Defendants Paffenbarger & Walden, LLC and P & W Bonds, LLC's Motion to Dismiss

09/13/2019 **Joinder To Motion**  
Defendants Paffenbarger & Walden, LLC's and P & W Bonds, LLC's Limited Joinder in Nevada By Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment

09/16/2019 **Opposition to Motion**  
Plaintiff's Opposition to Defendants Richardson Construction, Inc.'s and The Guarantee Company of North America USA's Motion to Dismiss

09/18/2019 **Notice of Association of Counsel**  
2019.09.18 Notice of Association of Counsel for Defendant Jackson Family Partnership, LLC . dba Stargate Plumbing's

09/18/2019 **Motion**  
Defendant 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

**PET.APP.002828**

09/20/2019 **Receipt of Copy**  
Receipt of Copy

09/20/2019 **Reply in Support**  
Defendants Paffenbarger & Walden, LLC's and P&W Bonds, LLC's Reply in Support of Their Motion to Dismiss

09/23/2019 **Reply in Support**  
Defendants Richardson Construction, Inc. and The Guarantee Company of North America USA s Reply in Support of Motion to Dismiss

09/26/2019 **Opposition to Motion**  
Plaintiff's 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

09/26/2019 **Reply**  
Plaintiff's 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

09/27/2019 **Motion (9:30 AM) (Judicial Officer Cherry, Michael A.)**  
Defendant 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  
Parties Present  
Minutes  
Result: Matter Continued

09/27/2019 **Reply**  
Plaintiff's 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

09/27/2019 **Notice**  
Notice of Disassociation of Counsel

09/30/2019 **Motion to Dismiss (10:30 AM) (Judicial Officer Atkin, Trevor)**  
Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment  
09/09/2019 Reset by Court to 10/21/2019  
10/21/2019 Reset by Court to 09/30/2019  
Result: Granted

09/30/2019 **Motion to Dismiss (10:30 AM) (Judicial Officer Atkin, Trevor)**  
Defendant Dekker/Perich/Sabatini, LTD.'s Motion to Dismiss  
09/09/2019 Reset by Court to 10/21/2019  
10/21/2019 Reset by Court to 09/30/2019  
Result: Granted

09/30/2019 **Joinder (10:30 AM) (Judicial Officer Atkin, Trevor)**  
Defendant Dekker/Perich/Sabatini, LTD.'s Joinder to Defendant Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants' Motion to Dismiss or, In the Alternative, Motion for Summary Judgment  
09/09/2019 Reset by Court to 10/21/2019  
10/21/2019 Reset by Court to 09/30/2019  
Result: Granted

09/30/2019 **Joinder (10:30 AM) (Judicial Officer Atkin, Trevor)**  
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  
09/09/2019 Reset by Court to 10/21/2019  
10/21/2019 Reset by Court to 09/30/2019  
Result: Granted

09/30/2019 **Joinder (10:30 AM) (Judicial Officer Atkin, Trevor)**  
Defendants Ninyo & Moore, Geotechnical Consultants' Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants Motion to Dismiss or, in the Alternative, Motion for Summary Judgment  
09/09/2019 Reset by Court to 10/21/2019  
10/21/2019 Reset by Court to 09/30/2019  
Result: Granted

09/30/2019 **Joinder (10:30 AM) (Judicial Officer Atkin, Trevor)**  
Jackson Family Partnership LLC dba Stargate Plumbing's Joinder to Nevada By Design, LLC dba Nevada by Design Engineering Consultants Motion to Dismiss or, in the Alternative, Motion for Summary Judgment  
09/09/2019 Reset by Court to 10/21/2019  
10/21/2019 Reset by Court to 09/30/2019  
Result: Granted

09/30/2019 **Motion to Dismiss (10:30 AM) (Judicial Officer Atkin, Trevor)**  
Defendants Paffenbarger & Walden, LLC and P & W Bonds, LLC's Motion to Dismiss  
10/01/2019 Reset by Court to 10/21/2019  
10/21/2019 Reset by Court to 09/30/2019  
Result: Granted

09/30/2019 **Motion to Dismiss (10:30 AM) (Judicial Officer Atkin, Trevor)**  
Defendants Richardson Construction, Inc. and The Guarantee Company of North America USA's Motion to Dismiss  
10/21/2019 Reset by Court to 09/30/2019  
Result: Granted

09/30/2019 **Joinder (10:30 AM) (Judicial Officer Atkin, Trevor)**  
Ninyo & Moore, Geotechnical Consultants' Joinder to Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants Motion to Dismiss or, in the Alternative, Motion for Summary Judgment  
10/21/2019 Reset by Court to 09/30/2019  
Result: Granted

09/30/2019 **Joinder (10:30 AM) (Judicial Officer Atkin, Trevor)**  
Defendants Paffenbarger & Walden, LLC's and P & W Bonds, LLC's Limited Joinder in Nevada By Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment  
10/21/2019 Reset by Court to 09/30/2019

PET.APP.002829

Result: **Granted**

09/30/2019 **Administrative Reassignment - Judicial Officer Change**  
From Vacant DC8 to Judge Trevor L. Atkin

09/30/2019 **All Pending Motions (10:30 AM)** (Judicial Officer Atkin, Trevor)  
Parties Present  
Minutes

Result: Matter Heard

09/30/2019 **Joinder**  
Defendants 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

09/30/2019 **Joinder To Motion**  
Defendant JW Zunino & Associates LLC's Joinder to Defendant Nevada by Design LLC dba Nevada by Design Engineering Consultants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment

09/30/2019 **Initial Appearance Fee Disclosure**  
JW Zunino & Associates LLC's Initial Appearance Fee Disclosure

09/30/2019 **Motion (8:30 AM)** (Judicial Officer Atkin, Trevor)  
Defendant 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  
Parties Present  
Minutes

Result: **Granted**

10/10/2019 **Recorders Transcript of Hearing**  
Recorders Transcript of Hearing Re: All Pending Motions, September 30, 2019

10/15/2019 **Order Granting**  
Order Granting Defendant 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 OST

10/15/2019 **Order Granting**  
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

10/17/2019 **Notice of Entry of Order**  
Notice of Entry of Order

10/17/2019 **Notice of Entry of Order**  
Notice of Entry of Order

10/21/2019 **CANCELED Motion to Dismiss (8:30 AM)** (Judicial Officer Atkin, Trevor)  
Vacated - Duplicate Entry  
Defendants Richardson Construction Inc and the Guarantee Company of North America USA Motion to Dismiss

11/13/2019 **Motion to Amend Judgment**  
Motion to Alter Judgment

11/13/2019 **Clerk's Notice of Hearing**  
Notice of Hearing

11/20/2019 **Substitution of Attorney**  
Substitution of Attorneys for Defendant Jackson Family Partnership LLC dba Stargate Plumbing

11/20/2019 **Notice of Change of Address**  
Notice of Change of Address

11/20/2019 **Notice of Change of Address**  
Notice of Change of Address

11/20/2019 **Notice of Change of Address**  
Notice of Change of Address

11/25/2019 **Opposition to Motion**  
JW Zunino & Associates LLC's Opposition to Plaintiff's Motion to Alter Judgment

11/26/2019 **Opposition to Motion**  
Defendant Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultant's Opposition to Motion to Alter Judgment

11/26/2019 **Joinder to Opposition to Motion**  
Defendant Dekker/Perich/Sabatini, Ltd.'s Joinder to Defendant 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

11/26/2019 **Joinder to Opposition to Motion**  
Defendant Dekker/Perich/Sabatini, Ltd.'s Joinder to Defendant J.W. Zunino & Associates, LLC's Opposition to Plaintiff's Motion to Alter

11/26/2019 **Joinder to Opposition to Motion**  
Defendant Nevada by Design d/b/a Nevada by Design Engineering Consultants' Joinder to Defendant J.W. Zunino & Associates, LLC's Opposition to Plaintiff's Motion to Alter

11/27/2019 **Joinder to Opposition to Motion**  
Defendant JW Zunino & Associates LLC's Joinder to Defendant Nevada by Design LLC, d/b/a Nevada By Design Engineering Consultants' Opposition to Motion to Alter Judgment

12/17/2019 **Motion to Amend Judgment (9:00 AM)** (Judicial Officer Atkin, Trevor)  
Plaintiff's Motion to Alter Judgment

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**FINANCIAL INFORMATION**


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<b>Defendant Dekker/Perich/Sabatini Ltd</b>		
08/06/2019	Transaction Assessment	423.00
08/06/2019	Efile Payment	423.00
	<b>Balance Due as of 11/27/2019</b>	<b>0.00</b>
08/06/2019	Transaction Assessment	423.00
08/06/2019	Efile Payment	(423.00)
	Receipt # 2019-47987-CCCLK	Dekker/Perich/Sabatini Ltd

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**Defendant Jackson Family Partnership LLC**
**PET.APP.002830**

Total Financial Assessment	423.00
Total Payments and Credits	423.00
<b>Balance Due as of 11/27/2019</b>	<b>0.00</b>

07/31/2019	Transaction Assessment		223.00
07/31/2019	Payment (Window)	Receipt # 2019-46638-CCCLK	Jackson Family Partnership LLC (223.00)
08/30/2019	Transaction Assessment		200.00
08/30/2019	Efile Payment	Receipt # 2019-53393-CCCLK	Jackson Family Partnership LLC (200.00)

**Defendant JW Zunino & Associates LLC**

Total Financial Assessment	423.00
Total Payments and Credits	0.00
<b>Balance Due as of 11/27/2019</b>	<b>423.00</b>

10/01/2019	Transaction Assessment		223.00
10/01/2019	Transaction Assessment		200.00

**Defendant Melroy Engineering Inc**

Total Financial Assessment	423.00
Total Payments and Credits	423.00
<b>Balance Due as of 11/27/2019</b>	<b>0.00</b>

08/08/2019	Transaction Assessment		423.00
08/08/2019	Efile Payment	Receipt # 2019-48560-CCCLK	Melroy Engineering Inc (423.00)

**Defendant Nevada by Design LLC**

Total Financial Assessment	423.00
Total Payments and Credits	423.00
<b>Balance Due as of 11/27/2019</b>	<b>0.00</b>

08/05/2019	Transaction Assessment		423.00
08/05/2019	Efile Payment	Receipt # 2019-47678-CCCLK	Nevada by Design LLC (423.00)

**Defendant Ninyo & Moore Geotechnical Consultants**

Total Financial Assessment	423.00
Total Payments and Credits	423.00
<b>Balance Due as of 11/27/2019</b>	<b>0.00</b>

09/03/2019	Transaction Assessment		423.00
09/03/2019	Efile Payment	Receipt # 2019-53679-CCCLK	Ninyo & Moore Geotechnical Consultants (423.00)

**Defendant Paffenbarger & Walden LLC**

Total Financial Assessment	453.00
Total Payments and Credits	0.00
<b>Balance Due as of 11/27/2019</b>	<b>453.00</b>

09/04/2019	Transaction Assessment		253.00
09/16/2019	Transaction Assessment		200.00

**Defendant Richardson Construction Inc**

Total Financial Assessment	453.00
Total Payments and Credits	253.00
<b>Balance Due as of 11/27/2019</b>	<b>200.00</b>

09/04/2019	Transaction Assessment		253.00
09/04/2019	Efile Payment	Receipt # 2019-54213-CCCLK	Richardson Construction Inc (253.00)
09/30/2019	Transaction Assessment		200.00

**Plaintiff North Las Vegas City of**

Total Financial Assessment	270.00
Total Payments and Credits	270.00
<b>Balance Due as of 11/27/2019</b>	<b>0.00</b>

07/11/2019	Transaction Assessment		270.00
07/11/2019	Efile Payment	Receipt # 2019-42414-CCCLK	City of North Las Vegas (270.00)

# **EXHIBIT “H”**

## John T. Wendland

---

**From:** Carley, Justin <jcarley@swlaw.com>  
**Sent:** Tuesday, September 10, 2019 4:04 PM  
**To:** John T. Wendland; 'Welch, Patrick F.'; 'Ronnie Cox'; Dhalla, Aleem; Jeremy Kilber; 'Ramirez, Jorge'; 'tparker@pnalaw.net'; 'charles@silverstatelaw.com'; 'Kahn, David'  
**Cc:** Joanna Medina; Sharp, Deborah L.  
**Subject:** RE: City of North Las Vegas v. Dekker/Perich/Sabatini, Ltd.; et al./ Rescheduling of Hearing on NV by Design Motion

We are unavailable for the last two weeks of September. It's unfortunate that the Court rescheduled the hearings to a date you can't make work, but our schedules are just as hectic. We are fine with the current hearing date (Oct. 21) or almost anything in October with a few exceptions. We will try our best to accommodate you, we just can't make September work.

-Justin Carley  
(702) 784-5250

**From:** John T. Wendland <jwendland@weiltdrager.com>  
**Sent:** Tuesday, September 10, 2019 10:28 AM  
**To:** 'Welch, Patrick F.' <PWelch@jsslaw.com>; Carley, Justin <jcarley@swlaw.com>; 'Ronnie Cox' <rcox@peelbrimley.com>; Dhalla, Aleem <adhalla@swlaw.com>; Jeremy Kilber <jkilber@weiltdrager.com>; 'Ramirez, Jorge' <Jorge.Ramirez@wilsonelser.com>; 'tparker@pnalaw.net' <tparker@pnalaw.net>; 'charles@silverstatelaw.com' <charles@silverstatelaw.com>; 'Kahn, David' <David.Kahn@wilsonelser.com>  
**Cc:** Joanna Medina <jmedina@weiltdrager.com>; Sharp, Deborah L. <DSharp@jsslaw.com>  
**Subject:** RE: City of North Las Vegas v. Dekker/Perich/Sabatini, Ltd.; et al./ Rescheduling of Hearing on NV by Design Motion  
**Importance:** High

[EXTERNAL]

---

Justin: Just following up if you can provide any additional dates in September or not. If not, we will need to seek relief from the court. Let me know.

*John T. Wendland, Esq.*  
Partner  
WEIL & DRAGE, APC  
(702) 314-1905, Ext. 419 (Nevada)  
(602) 971-0159 (Arizona)  
Licensed in Nevada & Arizona

---

**From:** Welch, Patrick F. [mailto:PWelch@jsslaw.com]  
**Sent:** Monday, September 9, 2019 5:07 PM  
**To:** John T. Wendland; 'Carley, Justin'; 'Ronnie Cox'; Dhalla, Aleem; Jeremy Kilber; 'Ramirez, Jorge'; 'tparker@pnalaw.net'; 'charles@silverstatelaw.com'; 'Kahn, David'  
**Cc:** Joanna Medina; Sharp, Deborah L.  
**Subject:** RE: City of North Las Vegas v. Dekker/Perich/Sabatini, Ltd.; et al./ Rescheduling of Hearing on NV by Design Motion

# **EXHIBIT “I”**

ORIGINAL

Electronically Filed  
9/18/2019 3:07 PM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

MOT  
JOHN T. WENDLAND, ESQ.  
(Nevada Bar No. 7207)  
ANTHONY D. PLATT, ESQ.  
(Nevada Bar No. 9652)  
WEIL & DRAGE, APC  
2500 Anthem Village Drive  
Henderson, NV 89052  
(702) 314-1905 • Fax (702) 314-1909  
[jwendland@weildrage.com](mailto:jwendland@weildrage.com)  
[aplatt@weildrage.com](mailto:aplatt@weildrage.com)  
Attorneys for Defendant,  
NEVADA BY DESIGN, LLC d/b/a  
NEVADA BY DESIGN ENGINEERING CONSULTANTS

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]

DFFENDANT 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*

Hearing Date: 9/27/19

Hearing Time: 9:30 A.M.

*pw*

ORIGINAL

DEFENDANT 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

Pursuant to Eighth Judicial District Court ("EJDCR") Rule 2.26, the instant Motion represents the first request to change the date of the hearing (presently scheduled to October 21, 2019) on NEVADA BY DESIGN, LLC d/b/a NEVADA BY DESIGN ENGINEERING CONSULTANTS' ("NBD") Motion to Dismiss or, in the alternative, Motion for Summary Judgment (hereinafter collectively, the "Motions").

COMES NOW NBD, by and through its attorneys of record, the law firm of WEIL & DRAGE, APC, and pursuant to EJDCR 2.26, hereby respectfully requests that the hearing on NBD's Motions be changed from the current hearing date of October 21, 2019 to the Court's first available hearing date in September, 2019. The hearing on these Motions was initially scheduled for September 9, 2019. On September 6, 2019, the Court continued the hearing to October 21, 2019. Following an inquiry on the reason for the move, counsel for NBD tried to secure consent from counsels for all parties to re-set the hearing in September, 2019 as it would place all parties in the same exact position they occupied on September 9, 2019 and avoid impacting or causing additional arguments and briefing on these fully briefed Motions. Unfortunately, counsel for Plaintiff declined to consent to have NBD's Motions heard in September, 2019 (all other counsels agreed).

NBD's Motion to Change the time for Hearing is supported by the attached Declaration of John T. Wendland, the memorandum of points and authorities, all papers and pleadings on file

///

///

///

1 herein and any oral argument the Court may require.

2 DATED this 16<sup>th</sup> day of September, 2019.

3  
4 WEIL & DRAGE, APC

5 */s/ John T. Wendland*

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

JOHN T. WENDLAND, ESQ.

(Nevada Bar No. 7207)

7 ANTHONY D. PLATT, ESQ.

8 (Nevada Bar No. 9652)

2500 Anthem Village Drive

9 Henderson, NV 89052

Attorneys for Defendant,

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

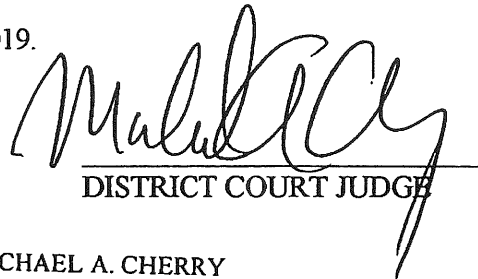
11 BY DESIGN ENGINEERING CONSULTANTS

**ORDER SHORTENING TIME**

TO: ALL PARTIES AND TO THEIR RESPECTIVE COUNSEL OF RECORD:

PLEASE TAKE NOTICE that good cause appearing and Pursuant to EJD CR 2.26, therefore, it is hereby ORDERED by the Court that the time and date for the hearing on DFEENDANT 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 shall be shortened and will be heard before the above-entitled Court on the 27<sup>th</sup> day of September, 2019, at the hour of 9:30 A.m., or as soon thereafter as counsel may be heard.

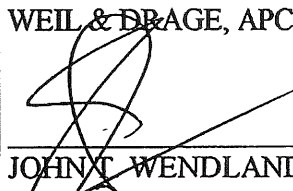
DATED this 17<sup>th</sup> day of September, 2019.

  
DISTRICT COURT JUDGE

MICHAEL A. CHERRY  
SENIOR DISTRICT COURT JUDGE

Respectfully Submitted By:

WEIL & DRAGE, APC

  
JOHN T. WENDLAND, ESQ.  
(Nevada Bar No. 7207)  
ANTHONY D. PLATT, ESQ.  
(Nevada Bar No. 9652)

2500 Anthem Village Drive  
Henderson, NV 89052  
Attorneys for Defendant,  
NEVADA BY DESIGN, LLC d/b/a  
NEVADA BY DESIGN ENGINEERING CONSULTANTS

**DECLARATION OF JOHN T. WENDLAND, ESQ. IN SUPPORT OF MOTION TO  
CHANGE DATE OF HEARING ON ORDER SHORTENING TIME PURSUANT TO  
E.J.D.C.R. 2.26**

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

1. I am counsel of record for Defendant NBD in the above entitled action;

2. On August 5, 2019, NBD filed its Motion to Dismiss or in the Alternative, its Motion for Summary Judgment (hereinafter, the "Motions") against Plaintiff North Las Vegas' ("Plaintiff") Complaint. The Motions argued in part that Plaintiff's Complaint was untimely filed in NRS 11.202 six (6) year statute of repose, rendering said pleading a fugitive document. The Motions were duly served on counsel for Plaintiff via eFileNV and all parties in the action at the time.

3. On August 20, 2019, Plaintiff filed its Opposition to NBD's Motions.

4. On August 28, 2019, NBD filed its Reply to Plaintiff's Opposition. Accordingly, as of August 28, 2019, all substantive pleadings were filed with the Court ready for hearing.

5. The Court set the hearing on NBD's Motions for September 9, 2019. *See*, a true and correct copy of the Notice of Hearing attached to this Motion as Ex. A.

6. No party in this action objected to the September 9, 2019, hearing date.

7. On September 6, 2019, while preparing for the hearing, NBD's counsel learned that the Court rescheduled the hearing on its Motions to October 21st, 2019. *See*, a true and correct copy of the Notice of Rescheduling of the Hearing attached hereto as Ex. B.

8. Unfortunately, the rescheduled hearing date conflicts with a complex AAA arbitration hearing (Frank v. Moser, AAA Case No. 01-18-0003-4590) that counsel for NBD must appear at on October 21, 2019. Accordingly, all counsels for NBD will also be working on the AAA matter on October 21, 2019 and throughout the month of October 2019.

9. Furthermore, a core argument in NBD's Motions pertains to the statute of repose under NRS 11.202. *See*, Motions. Those issues were fully briefed and ready for the Court to decide as of late August 2019. *See*, court docket. Unfortunately, the continuance of the hearing to October 21, 2019 may inadvertently impact one or more of the arguments in the Motions and may require additional supplemental briefing that would not be necessary if the hearing is held in September 2019.

10. Additionally, maintaining the current hearing date of these Motions (October 21, 2019) would mean that the hearing would not occur until nearly three (3) months after the Motions were first filed and nearly two (2) months after the pleadings and issues were fully briefed. As a

{01613267;3}

1 final point, re-scheduling the hearing to the Court's first available date in September, 2019 does not  
2 change any of the fully briefed arguments; does not prejudice any party (matter explained further  
3 below) and would place the parties in the exact same position they were in if the September 9, 2019  
4 hearing had proceeded.

5 11. Counsel for NBD notified counsels for all parties about re-scheduling the NBD's  
6 Motions from October 21, 2019 to a date in September, 2019. Counsels for all parties, save for  
7 Plaintiff's counsel (and at present, no response from Mr. Parker, counsel for Richardson  
8 Construction), represented that they are available to appear at a hearing in September, 2019. *See*,  
9 true and correct copies of email communications from counsels for the other parties collectively  
10 attached hereto as Ex. C. Furthermore, counsel for Defendants Paffenbarger & Walden, LLC &  
11 P&W Bonds (collectively hereinafter, "P&W"), the party that filed the latest motion scheduled to  
12 be heard on October 21, 2019, represented that not only is he available, his motion involves issues  
13 outside of NBD's Motions and he had no concerns with proceeding with a hearing on NBD's  
14 Motions in September, 2019. *Id.*

15 12. Unfortunately, after a follow up inquiry, counsel for Plaintiff, Mr. Carley,  
16 represented that his schedule is hectic and he could not "make September work." *See*, a true and  
17 correct email from Mr. Carley attached hereto as Ex. D. He stated the October 21<sup>st</sup> date worked  
18 for his schedule as well as other dates in October, 2019. *Id.*

19 13. Counsel for NBD has examined the webpage of Mr. Carley's firm, The Law Offices  
20 of Snell & Wilmer ("S&W") and attached hereto, is a true and correct copy taken from S&W's  
21 website by Declarant representing that its Nevada office has approximately fifty (50) lawyers. *See*,  
22 a true and correct copy from webpage taken on September 11, 2019 (at underline inserted for  
23 clarity on the source) attached hereto as Ex. E. While NBD's counsel is appreciative and  
24 understanding of scheduling conflicts, with approximately fifty (50) lawyers, S&W has the ability to  
25 send counsel to a September, 2019 hearing even if Mr. Carley and/or his associate is/are unable to  
26 attend. By comparison, NBD's attorneys who are physically in the Nevada office (two lawyers)  
27 number far less than S&W's 50 lawyers. All of NBD's attorneys will be working on the Frank v.  
28 Moser action.

14 14. Given that the October 21, 2019 hearing creates an actual conflict to NBD's  
15 counsel; given the potential impact to the Motions if heard after October 1, 2019 which may  
16 require further briefing of issues solely arising from the rescheduling of NBD's Motions; and the  
17 fact that Plaintiff's counsels should be able to send an attorney for a hearing in September, 2019,  
18 NBD respectfully requests that the Court re-set the hearing of its pending Motions to a date in  
19 September, 2019.

20 15. NBD respectfully contends that good cause exists to hear these Motions in  
21 September, 2019 (NBD's counsel is available any date) and this request is made in good faith and is  
22 not for the purposes of harassment or delay.

23 ///

24 ///

1 16. Accordingly, NBD respectfully requests that the hearings on its Motions be re-  
2 scheduled to the Court's first available date in September, 2019.

3 FURTHER DECLARANT SAYETH NAUGHT

4 DATED this 16<sup>th</sup> day of September, 2019.

5  
6 By:   
7 John T. Wendland

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 I.

10 **PROCEDURAL ISSUES/LEGAL ARGUMENT**

11 This action arises out of Plaintiff's Complaint filed against NBD and other parties  
12 concerning alleged settlement and expansive soils at a fire station. Plaintiff filed its Complaint on  
13 August 5, 2019 despite the project being substantially completed in July 11, 2009. As the  
14 Complaint is in clear violation of NRS 11.202's six (6) year statute of repose, NBD filed its Motion  
15 to Dismiss or in the alternative, its Motion for Summary Judgment (collectively, the "Motions").  
16 The Court set the hearing on these Motions for September 9, 2019. On September 6, 2019, the  
17 Court re-scheduled these Motions to October 21, 2019. Unfortunately, the new hearing date  
18 conflicts with a complex American Arbitration Association ("AAA") hearing that counsel for NBD  
19 had scheduled for over a year. Moreover, the only other attorney physically in NBD's Nevada  
20 office is also involved in this AAA action.

21 Furthermore, a core argument in NBD's Motions is the application of the statute of repose  
22 that existed on July 11, 2019, when Plaintiff filed its Complaint. Under the six (6) year repose, the  
23 Complaint is untimely and automatically void. Plaintiff's argument is that a new statute of repose  
24 of ten (10) years was passed by the Nevada Legislature (AB 421), which Plaintiff alleges allowed it  
25 to file the Complaint pursuant to a ten (10) year statute of repose. These arguments were fully  
26 briefed in the submitted papers and the parties (in particular, NBD) were ready for the September  
27 9, 2019.

1 On September 6, 2019, the Court re-scheduled NBD's Motions to October 21, 2109. The  
2 rescheduling of the Motions may impact one or more arguments; create potential new  
3 arguments/issues, and/or require additional/supplemental briefing that would not have existed if the  
4 Motions were heard on September 9, 2019.

5 NBD is aware that new parties, Defendants P&W recently filed a separate motion to dismiss  
6 on other legal and factual issues. P&W's motion was scheduled on October 21, 2019. Counsel for  
7 P&W has reviewed NBD's Motions and represented that he has no issues with these Motions being  
8 heard in September 2019.

9 Aside from one other attorney (Mr. Parker who has not responded), all other parties, save  
10 Plaintiff, have stipulated to have the Court hear NBD's Motions in September 2019 as originally  
11 scheduled. Plaintiff's counsel has declined to stipulate, citing scheduling conflicts in September  
12 2019. However, as shown from S&W's own website page, there are at least fifty (50) lawyers in  
13 S&W's Nevada office and it is difficult to believe that S&W could not send an attorney to argue if  
14 the hearing is scheduled in September 2019.

15 The papers have been fully briefed and the parties were ready to argue at the September 9,  
16 2019 hearing. Moving the hearing from October 21, 2019 to a date in September 2019 will not  
17 prejudice any party and it would put the parties in the same position they were in on September 6,  
18 2019, when the court moved the hearing, with no impact or change to any argument that the Court  
19 would have heard on September 9, 2019. Therefore, the prejudice to NBD and the potential of  
20 impacting/complicating the issues presently before the Court (plus judicial efficiency being impacted  
21 by more briefing on new issues created solely from the re-scheduling of the Motions), significantly  
22 outweighs any scheduling issues Plaintiff's counsel may have. This request is made pursuant to  
23 E.J.D.C.R. 2.26 which states:

24 **Rule 2.26. Shortening time.** Ex parte motions to shorten time may not be granted  
25 except upon an unsworn declaration under penalty of perjury or affidavit of counsel  
26 describing the circumstances claimed to constitute good cause and justify shortening of  
27 time. If a motion to shorten time is granted, it must be served upon all parties promptly. An  
28 order which shortens the notice of a hearing to less than 10 days may not be served by  
mail. In no event may the notice of the hearing of a motion be shortened to less than 1 full  
judicial day. A courtesy copy shall be delivered by the movant to the appropriate

1 department, if a motion is filed on an order shortening time and noticed on less than 10  
2 days' notice.

3 II.

4 CONCLUSION

5 For said reasons, NBD respectfully requests that the Court shorten the hearing date on its  
6 Motions from October 21, 2019 to the Court's first available date in September, 2019. There is  
7 little to no prejudice to Plaintiff's counsel and would allow the Court to hear the pleadings which  
8 have been fully briefed and prepared for decision. Additionally, the P&W motion to dismiss  
9 presently scheduled for October 21, 2019 involves separate issues and facts unique to P&W, and  
10 P&W consented to having its motion heard separately.

11 Maintaining the October 21, 2019 would prejudice NBD as it could impact the decision on  
12 the Motions; create new arguments and additional briefing caused by the rescheduling of the  
13 hearing. Finally, returning the parties to their position if the hearing proceeded on September 9,  
14 2019 is fair and equitable.

15 DATED this 16<sup>th</sup> day of September, 2019.

16 WEIL & DRAGE, APC

17 /s/ John T. Wendland

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

19 JOHN T. WENDLAND, ESQ.

20 (Nevada Bar No. 7207)

21 ANTHONY D. PLATT, ESQ.

22 (Nevada Bar No. 9652)

23 2500 Anthem Village Drive

24 Henderson, NV 89052

25 Attorneys for Defendant,

26 NEVADA BY DESIGN, LLC d/b/a

27 NEVADA BY DESIGN ENGINEERING

28 CONSULTANTS

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 18<sup>th</sup> day of September, 2019, service of the foregoing  
DEFENDANT 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 was  
made this date by electronically serving a true and correct copy of the same, through Clark County  
Odyssey eFileNV, to the following parties:

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

John T. Wendland, Esq.  
Jeremy R. Kilber, Esq.  
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Henderson, NV 89052  
Attorneys for Defendant,  
DEKKER/PERICH/SABATINI, LTD.

Jeremy R. Kilber, Esq.  
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Henderson, NV 89052  
Attorney for Defendant,  
MSA ENGINEERING CONSULTANTS

Jorge A. Ramirez, Esq.  
Jonathan C. Pattillo, Esq.  
WILSON ELSEER MOSKOWITZ EDELMAN &  
DICKER, LLP  
300 S. 4<sup>th</sup> Street, 11<sup>th</sup> Floor  
Las Vegas, NV 89101  
Attorneys for Defendant,  
NINYO & MOORE GEOTECHNICAL  
CONSULTANTS

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Ronald J. Cox, Esq.  
PEEL BRIMLEY, LLP  
3333 E. Serene Avenue, Suite 200  
Henderson, NV 89074  
Attorneys for Defendant,  
JACKSON FAMILY PARTNERSHIP LLC  
dba STARGATE PLUMBING

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LINCOLN, GUSTAFSON & CERCOS, LLP  
3960 Howard Hughes Parkway, Suite 200  
Las Vegas, NV 89169  
Co-Counsel for Defendant,  
JACKSON FAMILY PARTNERSHIP LLC  
dba STARGATE PLUMBING

Patrick F. Welch, Esq.  
JENNINGS STROUSS & SALMON, P.L.C.  
One East Washington Street, Suite 1900  
Phoenix, AZ 85004-2554  
Attorneys for Defendants,  
PAFFENBARGER & WALDEN LLC and  
P & W BONDS LLC

Theodore Parker, III, Esq.  
PARKER, NELSON & ASSOCIATES, CHTD.  
2460 Professional Court, Suite 200  
Las Vegas, NV 89128  
Attorney for Defendants,  
RICHARDSON CONSTRUCTION, INC. and  
GUARANTEE COMPANY OF NORTH  
AMERICA USA

1 Charles W. Bennion, Esq.  
2 ELLSWORTH & BENNION, CHTD.  
3 777 N. Rainbow Boulevard, Suite 270  
4 Las Vegas, NV 89107  
5 Attorneys for Defendants,  
6 PAFFENBARGER & WALDEN LLC and  
7 P & W BONDS LLC

*/s/ Joanna Medina*

Joanna Medina, an Employee of  
WEIL & DRAGE, APC

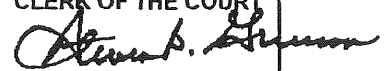
# **Exhibit A**

# **Exhibit A**

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*

Electronically Filed  
8/6/2019 8:56 AM  
Steven D. Grierson  
CLERK OF THE COURT



North Las Vegas City of, Plaintiff(s)

Case No.: A-19-798346-C

vs.

Dekker/Perich/Sabatini Ltd, Defendant(s)

Department 8

**NOTICE OF HEARING**

Please be advised that the Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment in the above-entitled matter is set for hearing as follows:

**Date:** September 09, 2019

**Time:** 8:30 AM

**Location:** Phoenix Building 11th Floor 110  
Regional Justice Center  
200 Lewis Ave.  
Las Vegas, NV 89101

**NOTE:** Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Chaunte Pleasant  
Deputy Clerk of the Court

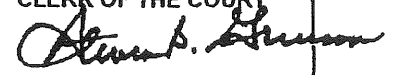
**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Chaunte Pleasant  
Deputy Clerk of the Court

# **Exhibit B**

# **Exhibit B**




DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*

NORTH LAS VEGAS CITY OF, PLAINTIFF(S) VS. DEKKER/PERICH/SABATINI LTD, DEFENDANT(S)	CASE NO: A-19-798346-C  DEPARTMENT 8
--	--

NOTICE OF RESCHEDULING MOTIONS TO DISMISS AND JOINDERS

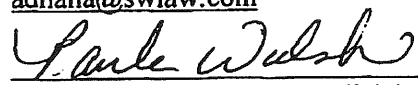
Please be advised that the date and time of all Motions to Dismiss and Joinders presently set in the above matter have been rescheduled to October 21, 2019, at 8:30 a.m.

By:   
Paula Walsh  
Judicial Executive Assistant  
to Judge DC 8 Vacant  
Department 8

Certificate of Service

I hereby certify that on the date filed, a copy of this Order was electronically served on all parties registered through the Eighth Judicial District Court EFP system, or emailed or mailed to any party or attorney not registered with the EFT system.

[icarley@swlaw.com](mailto:icarley@swlaw.com)  
[adhalla@swlaw.com](mailto:adhalla@swlaw.com)

  
PAULA WALSH, Temp Judicial Assistant

# **Exhibit C**

# **Exhibit C**

## John T. Wendland

---

**From:** Welch, Patrick F. <PWelch@jsslaw.com>  
**Sent:** Monday, September 9, 2019 5:07 PM  
**To:** John T. Wendland; 'Carley, Justin'; 'Ronnie Cox'; Dhalla, Aleem; Jeremy Kilber; 'Ramirez, Jorge'; 'tparker@pnalaw.net'; 'charles@silverstatelaw.com'; 'Kahn, David'  
**Cc:** Joanna Medina; Sharp, Deborah L.  
**Subject:** RE: City of North Las Vegas v. Dekker/Perich/Sabatini, Ltd.; et al./ Rescheduling of Hearing on NV by Design Motion

All:

I am available on Sept. 17-19 or Sept. 24-26 for a hearing on Nevada by Design's motion. I am unavailable the first two weeks of October as I will be in Mexico for a conference followed by vacation. I am available in October beginning on October 17<sup>th</sup>.

Prior to my e-mail response this morning, I had not had a chance to review Nevada by Design's motion to dismiss. The issues raised in that motion are unrelated to those raised in P&W's motion; therefore, I have no objection to the hearing of Nevada by Design's motion being set in September. Moreover, I can appear telephonically at the hearing on Nevada by Design's motion.

Best regards,  
Patrick

**From:** John T. Wendland [mailto:jwendland@weiltdrager.com]  
**Sent:** Monday, September 09, 2019 1:32 PM  
**To:** 'Carley, Justin'; Welch, Patrick F.; 'Ronnie Cox'; Dhalla, Aleem; Jeremy Kilber; 'Ramirez, Jorge'; 'tparker@pnalaw.net'; 'charles@silverstatelaw.com'; 'Kahn, David'  
**Cc:** Joanna Medina  
**Subject:** RE: City of North Las Vegas v. Dekker/Perich/Sabatini, Ltd.; et al./ Rescheduling of Hearing on NV by Design Motion

This message originated outside of Jennings Strouss.

---

Justin:

We filed our motion on August 5<sup>th</sup>, the briefing has been long done, and frankly the motion should have been heard and decided today. As you know, the court unilaterally moved the hearing to a date almost two months away without any advance notice, and without confirming our availability. Regarding your call, I don't know who you spoke with, but we have a significant arbitration that will require preparation in early October, as the arbitration is set to take place at the time of the rescheduled hearing.

As the hearing was moved without our knowledge and consent, we simply cannot accommodate it. To this end, we requested the hearing be set to accommodate our conflicts in October. The Court proposed 5 days in September that it can hear our motions. The September dates are reasonable based on when the motion was filed, and the fact that the hearing was originally set for today. We see no reason the motion cannot be heard in September and disagree with the October dates.

With respect to the later filed motions submitted by parties asserting defenses unrelated to those raised in our motions, they have no bearing on what date should be set for our motions. As those motions address issues different from those addressed in our motions, we fail to see how there is any efficiency in trying to find a date

## John T. Wendland

---

**From:** Ramirez, Jorge <Jorge.Ramirez@wilsonelser.com>  
**Sent:** Monday, September 9, 2019 10:27 AM  
**To:** John T. Wendland; 'adhalla@swlaw.com'; Jeremy Kilber; 'rcox@peelbrimley.com'; 'tparker@pnalaw.net'; 'pwelch@jsslw.com'; 'charles@silverstatelaw.com'; Kahn, David  
**Cc:** Joanna Medina  
**Subject:** RE: City of North Las Vegas v. Dekker/Perich/Sabatini, Ltd.; et al./ Rescheduling of Hearing on NV by Design Motion

**Follow Up Flag:** Moved to Worldox (Client Matters\2022\197\01612907.MSG)

Hi All,

We can be available any of those dates. Just let us know when we should schedule it.

Thanks,

Jorge

Jorge Ramirez  
Attorney at Law  
Wilson Elser Moskowitz Edelman & Dicker LLP  
300 South 4th Street - 11th Floor  
Las Vegas, NV 89101-6014  
702.727.1270 (Direct)  
702.354.6005 (Cell)  
702.727.1400 (Main)  
702.727.1401 (Fax)  
[jorge.ramirez@wilsonelser.com](mailto:jorge.ramirez@wilsonelser.com)

---

**From:** John T. Wendland [<mailto:jwendland@weildrage.com>]  
**Sent:** Monday, September 09, 2019 9:40 AM  
**To:** 'adhalla@swlaw.com' <[adhalla@swlaw.com](mailto:adhalla@swlaw.com)>; Jeremy Kilber <[jkilber@weildrage.com](mailto:jkilber@weildrage.com)>; Ramirez, Jorge <[Jorge.Ramirez@wilsonelser.com](mailto:Jorge.Ramirez@wilsonelser.com)>; 'rcox@peelbrimley.com' <[rcox@peelbrimley.com](mailto:rcox@peelbrimley.com)>; 'tparker@pnalaw.net' <[tparker@pnalaw.net](mailto:tparker@pnalaw.net)>; 'pwelch@jsslw.com' <[pwelch@jsslw.com](mailto:pwelch@jsslw.com)>; 'charles@silverstatelaw.com' <[charles@silverstatelaw.com](mailto:charles@silverstatelaw.com)>; Kahn, David <[David.Kahn@wilsonelser.com](mailto:David.Kahn@wilsonelser.com)>  
**Cc:** Joanna Medina <[jmedina@weildrage.com](mailto:jmedina@weildrage.com)>  
**Subject:** RE: City of North Las Vegas v. Dekker/Perich/Sabatini, Ltd.; et al./ Rescheduling of Hearing on NV by Design Motion  
**Importance:** High

Correction September 23-24<sup>th</sup>.

*John T. Wendland, Esq.*  
Partner  
WEIL & DRAGE, APC  
(702) 314-1905, Ext. 419 (Nevada)  
(602) 971-0159 (Arizona)  
Licensed in Nevada & Arizona

---

**From:** John T. Wendland  
**Sent:** Monday, September 9, 2019 9:38 AM  
**To:** 'adhalla@swlaw.com'; Jeremy Kilber; 'Ramirez, Jorge'; 'rcox@peelbrimley.com'; [tparker@pnalaw.net](mailto:tparker@pnalaw.net); 'pwelch@jsslaw.com'; [charles@silverstatelaw.com](mailto:charles@silverstatelaw.com); Kahn, David  
**Cc:** Joanna Medina  
**Subject:** City of North Las Vegas v. Dekker/Perich/Sabatini, Ltd.; et al./ Rescheduling of Hearing on NV by Design Motion  
**Importance:** High

Good Morning counsels;

Late on Friday, we were notified that the hearing on Nevada By Design's Motion to Dismiss/MSJ was unilaterally moved into October, 2019. The moving of the hearing created a scheduling conflict with our office as we are involved in a complex arbitration hearing during the new hearing date. The Court has graciously provided new alternative hearing dates to accommodate our availability and has requested that we notify you of these for the hearing:

September 16-19 at 9:00 am

September 24-26 at 9:00 am

Please let us know which of the following dates will work for your schedule and we can notify the court of same.

Thank you,

*John T. Wendland, Esq.*  
Partner  
WEIL & DRAGE, APC  
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(602) 971-0159 (Arizona)  
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[jwendland@weildrage.com](mailto:jwendland@weildrage.com)

---

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(949) 837-8200 phone  
(949) 837-9300 fax

2500 Anthem Village Drive  
Henderson, NV 89052  
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(602) 971-0159 phone



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For further information about Wilson, Elser, Moskowitz, Edelman & Dicker LLP, please see our website at [www.wilsonelser.com](http://www.wilsonelser.com) or refer to any of our offices.

Thank you.

-Patrick

**From:** Ronnie Cox [mailto:[rcox@peelbrimley.com](mailto:rcox@peelbrimley.com)]

**Sent:** Monday, September 09, 2019 9:49 AM

**To:** John T. Wendland; 'adhalla@swlaw.com'; Jeremy Kilber; 'Ramirez, Jorge'; 'tparker@pnalaw.net'; Welch, Patrick F.; 'charles@silverstatelaw.com'; 'Kahn, David'

**Cc:** Joanna Medina; Ronnie Cox

**Subject:** RE: City of North Las Vegas v. Dekker/Perich/Sabatini, Ltd.; et al./ Rescheduling of Hearing on NV by Design Motion

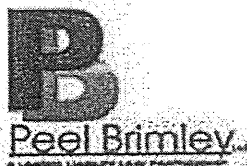
This message originated outside of Jennings Strouss.

Good morning,

We are available on the 19<sup>th</sup>, 23<sup>rd</sup> and 24<sup>th</sup>.

Sincerely,

Ronald J. Cox, Esq.  
Partner



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NEVADA OFFICE PHONE: (702) 990-7272

NEVADA OFFICE FAX: (702) 990-7273

WASHINGTON OFFICE: 1215 Fourth Avenue - Suite 1235 - Seattle - Washington - 98161

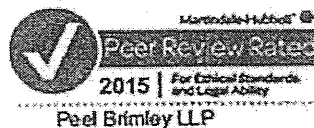
WASHINGTON OFFICE PHONE: (206) 770-3339

WASHINGTON OFFICE FAX: (702) 990-7273

[rcox@peelbrimley.com](mailto:rcox@peelbrimley.com)

MOBILE: (702) 630-5402

URL [www.peelbrimley.com](http://www.peelbrimley.com)



*(Attorneys licensed to practice in: Nevada • Washington • California • Utah • Arizona • Hawaii • North Dakota • US Court of Federal Claims)*

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# Exhibit D

# Exhibit D

## John T. Wendland

---

**From:** Carley, Justin <jcarley@swlaw.com>  
**Sent:** Tuesday, September 10, 2019 4:04 PM  
**To:** John T. Wendland; 'Welch, Patrick F.'; 'Ronnie Cox'; Dhalla, Aleem; Jeremy Kilber; 'Ramirez, Jorge'; 'tparker@pnalaw.net'; 'charles@silverstatelaw.com'; 'Kahn, David'  
**Cc:** Joanna Medina; Sharp, Deborah L.  
**Subject:** RE: City of North Las Vegas v. Dekker/Perich/Sabatini, Ltd.; et al./ Rescheduling of Hearing on NV by Design Motion

We are unavailable for the last two weeks of September. It's unfortunate that the Court rescheduled the hearings to a date you can't make work, but our schedules are just as hectic. We are fine with the current hearing date (Oct. 21) or almost anything in October with a few exceptions. We will try our best to accommodate you, we just can't make September work.

-Justin Carley  
(702) 784-5250

**From:** John T. Wendland <jwendland@weildrage.com>  
**Sent:** Tuesday, September 10, 2019 10:28 AM  
**To:** 'Welch, Patrick F.' <PWelch@jsslw.com>; Carley, Justin <jcarley@swlaw.com>; 'Ronnie Cox' <rcox@peelbrimley.com>; Dhalla, Aleem <adhalla@swlaw.com>; Jeremy Kilber <jkilber@weildrage.com>; 'Ramirez, Jorge' <Jorge.Ramirez@wilsonelser.com>; 'tparker@pnalaw.net' <tparker@pnalaw.net>; 'charles@silverstatelaw.com' <charles@silverstatelaw.com>; 'Kahn, David' <David.Kahn@wilsonelser.com>  
**Cc:** Joanna Medina <jmedina@weildrage.com>; Sharp, Deborah L. <DSharp@jsslw.com>  
**Subject:** RE: City of North Las Vegas v. Dekker/Perich/Sabatini, Ltd.; et al./ Rescheduling of Hearing on NV by Design Motion  
**Importance:** High

[EXTERNAL]

---

Justin: Just following up if you can provide any additional dates in September or not. If not, we will need to seek relief from the court. Let me know.

*John T. Wendland, Esq.*  
Partner  
WEIL & DRAGE, APC  
(702) 314-1905, Ext. 419 (Nevada)  
(602) 971-0159 (Arizona)  
Licensed in Nevada & Arizona

---

**From:** Welch, Patrick F. [mailto:PWelch@jsslw.com]  
**Sent:** Monday, September 9, 2019 5:07 PM  
**To:** John T. Wendland; 'Carley, Justin'; 'Ronnie Cox'; Dhalla, Aleem; Jeremy Kilber; 'Ramirez, Jorge'; 'tparker@pnalaw.net'; 'charles@silverstatelaw.com'; 'Kahn, David'  
**Cc:** Joanna Medina; Sharp, Deborah L.  
**Subject:** RE: City of North Las Vegas v. Dekker/Perich/Sabatini, Ltd.; et al./ Rescheduling of Hearing on NV by Design Motion

# **Exhibit E**

# **Exhibit E**

# Las Vegas Law Offices of Snell & Wilmer

Hughes Center  
3883 Howard Hughes Parkway  
Suite 1100  
Las Vegas, NV 89169-5958

P 702.784.5200

F 702.784.5252

CONTACT US

MAP













Offices • Las Vegas

Located at the Hughes Center, Snell & Wilmer's Las Vegas law office sits in the heart of the city's business sector and is our fastest growing office. Opened in April 2001, our Las Vegas office has approximately 50 attorneys who offer a comprehensive range of transactional, regulatory and litigation services. For a full list of our areas of practice, please see our Services page.

Attorneys in our Las Vegas office hold leadership positions within the firm and in the Las Vegas, Nevada, American and Federal bar associations. Our Las Vegas attorneys are recurrently recognized for their achievements and dedication to their clients and have been named as Mountain States Super Lawyers, The Best Lawyers in America®, Best Corporate Lawyers in Nevada by Corporate Counsel Magazine, Chambers USA: America's Leading Lawyers for Business® and Lawdragon's 500 Leading Lawyers in America. Our attorneys also value commitment to civil service and have held high positions in many sectors of government.

Our Las Vegas law office deeply values our firm's commitment to community involvement, industry service and leadership. The office was given a Legal Aid Center of Southern Nevada Lied Award for most Pro Bono hours served in 2012, was named "Law Firm of the Year" by the Las Vegas Chapter of the National Bar Association in 2011 and earned the Diversity in Action Award by In Business Las Vegas in 2009. Through charitable and firm-sponsored events and outreach, the office has also provided countless hours and resources to organizations such as Aid for AIDS of Nevada, Communities in School and S.A.F.E. House.

## Las Vegas Attorneys & Professionals

Name	Title	Phone	vCard
 <u>Michael S. Alires</u>	Associate	702.784.5279	
 <u>Bradley Austin</u>	Associate	702.784.5247	
 <u>Brian L. Blaylock</u>	Associate	702.784.5355	
 <u>V.R. Bohman</u>	Associate	702.784.5282	
 <u>Patrick G. Byrne</u>	Partner	702.784.5201	
 <u>Justin L. Carley</u>	Partner	702.784.5250	

PET.APP.002860

# **EXHIBIT “J”**

JEAN A. WEIL (Ret.)  
CHRISTINE E. DRAGE\*  
JACQUELINE C. PONS-BUNNEY†††  
JOHN T. WENDLAND††  
PETER L. STACY\*\*  
JENIFER J. BRANNEN\*\*  
BRIAN P. ROTELIUK†††  
JIHAN MURAD♦††  
JEREMY R. KILBER  
SHEILA K. McDONALD\*\*  
MARK E. PETERSEN\*\*  
GEOFFREY CRISP\*

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MARTHA L. BRINGARD†††  
S. BRADLEY HART\*\*  
SARAH A. PERRY†††  
ANTHONY D. PLATT\*  
LEILA SADEGHI\*\*  
TYLER S. SANDERS\*\*  
GEOFFREY T. SAWYER\*\*  
CHARLES K. STEC\*\*

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[www.weildrage.com](http://www.weildrage.com)

\* Also Admitted in California  
\*\* Only Admitted in California  
† Also Admitted in Colorado  
†† Also Admitted in Arizona  
††† Admitted in California and  
Arizona  
♦ Admitted in California and  
Illinois

September 20, 2019

**VIA E-SERVICE**

**ALL COUNSEL**

Re: *City of North Las Vegas vs. Dekker/Perich/Sabatini, Ltd.; et al.*  
Case No.: A-19-798346-C  
Our Client: Nevada By Design, LLC dba Nevada By Design Engineering  
Consultants  
Our File No.: 2022.197

Dear Counsels:

Following clarification from the Court clerk, please be advised that the Court will hear 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 at the September 27, 2019 hearing. Counsels for all interested parties to said motion, are expected to appear and argue their respective positions on same.

Thank you for your time and attention.

Very truly yours,

WEIL & DRAGE, APC

/s/ *John T. Wendland*

John T. Wendland, Esq.

JTW: jym

cc: Eighth Judicial District Court, Dept. 8

# **EXHIBIT “K”**



1 **RPLY**

2 JOHN T. WENDLAND, ESQ.

3 (Nevada Bar No. 7207)

4 ANTHONY D. PLATT, ESQ.

5 (Nevada Bar No. 9652)

6 WEIL & DRAGE, APC

7 2500 Anthem Village Drive

8 Henderson, NV 89052

9 (702) 314-1905 • Fax (702) 314-1909

10 [jwendland@weildrage.com](mailto:jwendland@weildrage.com)

11 [aplatt@weildrage.com](mailto:aplatt@weildrage.com)

12 Attorneys for Defendant,

13 NEVADA BY DESIGN, LLC d/b/a

14 NEVADA BY DESIGN ENGINEERING CONSULTANTS

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 CITY OF NORTH LAS VEGAS,

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

18 Plaintiff,

) DEPT. NO.: VIII

19 vs.

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

) **NEVADA BY DESIGN**

) **ENGINEERING CONSULTANTS'**

) **REPLY TO PLAINTIFF'S LIMITED**

) **OPPOSITION TO MOTION TO**

) **CHANGE DATE OF HEARING**

20 DEKKER/PERICH/SABATINI LTD.;

21 RICHARDSON CONSTRUCTION, INC.;

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

23 DESIGN ENGINEERING CONSULTANTS; JW

24 ZUNINO & ASSOCIATES, LLC; MELROY

25 ENGINEERING, INC. D/B/A MSA

26 ENGINEERING CONSULTANTS; O'CONNOR

27 CONSTRUCTION MANAGEMENT INC.; NINYO

28 & MOORE, GEOTECHNICAL CONSULTANTS;

JACKSON FAMILY PARTNERSHIP LLC D/B/A

STARGATE PLUMBING; AVERY ATLANTIC,

LLC; BIG C LLC; RON HANLON MASONRY,

LLC; THE GUARANTEE COMPANY OF NORTH

AMERICA USA; P & W BONDS, LLC;

PAFFENBARGER & WALDEN, LLC; DOES I

through X, inclusive; and ROE CORPORATIONS I

through X, inclusive,

) Hearing Date: 09/27/19

Defendants.

) Hearing Time: 9:30 a.m.

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NEVADA BY DESIGN, LLC d/b/a  
NEVADA BY DESIGN ENGINEERING CONSULTANTS' REPLY TO PLAINTIFF'S  
LIMITED OPPOSITION TO MOTION TO CHANGE DATE OF HEARING

As correctly stated by Plaintiff City of North Las Vegas ("Plaintiff"), the Court has the power to control its own calendar. *See*, EDCR 1.90(b); *see also*, Limited Opp. at Pg. 4: Lines 4-5. Here, the Court previously moved the hearing on Nevada By Design's Motion to Dismiss/Motion for Summary Judgment from September 9, 2019 to October 21, 2019 on September 6, 2019. This change prejudiced NBD as it conflicted with a pending AAA action and potentially created new issues that did not exist if NBD's Motion was heard on September 9, 2019.

After a failed attempt to secure consent from all counsels to move the hearing to the Court's available dates in September 2019<sup>1</sup>. NBD's prejudice was based on two factors: (1) A scheduling conflict with a AAA matter; (2) the change in the position of the parties after the pleadings were fully briefed and ready for decision; and (3) the potential that one or more arguments in the underlying motion may be impacted and require additional briefing and consideration solely based on the hearing moving past October 1, 2019. *See*, NBD's Motion to Change.

The relief requested was a date in September 2019 which was reasonable, as the matter was previously scheduled for a hearing in September 9<sup>th</sup>, 2019; fully briefed and all interested parties were ready for oral argument. Requesting a date in September 2019 did not result in any prejudice to Plaintiff, as the issues were ready for oral argument and counsel for Plaintiff is from a firm with at least fifty (50) lawyers.

The Court set the hearing for September 27, 2019. Following clarification on what would be heard on September 27, 2019, counsel for NBD conveyed to counsels for all parties the information that the Court would be considering the arguments in NBD's Motion to Dismiss/Motion for Summary Judgment. Thus, Plaintiff's counsel had this information for over a week and on the eve of the hearing has filed a Limited Opposition.

---

<sup>1</sup> Plaintiff apparently fails to understand that the motion to move the hearing seeks a date in September 2019 which is September 27, 2019 or another date in September.

1 Plaintiff's Limited Opposition does not dispute (at all) the second reason for which NBD  
2 requested a hearing in September 2019. Therefore, under EDCR 2.20, NBD's justifications to  
3 move the hearing for reasons other than a scheduling conflict, is unopposed and should be deemed  
4 good cause for the requested relief. EDCR 2.26.

5 Turning to the core arguments in the Opposition, Plaintiff clearly does not want the  
6 hearing in September 2019 as the only dates offered are in October or November 2019. While  
7 those dates could resolve the first factor presented, a hearing in October or November 2019 would  
8 still prejudice NBD for the other factors. Ultimately, the requested relief was not to move the  
9 October 21, 2019 hearing but rather to move the hearing to a date in September 2019. See,  
10 Motion to Move. This point seems to be completely ignored by Plaintiff.

11 Ultimately, there does not appear to be unfair prejudice to Plaintiff's counsel. Counsel has  
12 a number of other well qualified attorneys to appear and argue against NBD's Motions. Counsel  
13 also had a week to prepare for the September 27, 2019 hearing including any arguments on the  
14 underlying NBD's Motions. These issues were fully briefed, the Motions filed for a couple of  
15 months now and the parties should be placed in the same position they were on September 9,  
16 2019.

17 For said reasons, NBD respectfully requests that the Motion to Change the Hearing Date to  
18 a date in September 2019 be granted (if it has not been granted under EDCR 2.26) and that the  
19 Court hear the underlying Motion on September 27, 2019.

20 DATED this 26<sup>th</sup> day of September, 2019.

21 WEIL & DRAGE, APC

22 /s/ John T. Wendland

23 By:

JOHN T. WENDLAND, ESQ.

(Nevada Bar No. 7207)

ANTHONY D. PLATT, ESQ.

(Nevada Bar No. 9652)

2500 Anthem Village Drive

Henderson, NV 89052

Attorneys for Defendant,

NEVADA BY DESIGN, LLC D/B/A NEVADA

BY DESIGN ENGINEERING CONSULTANTS

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 26<sup>th</sup> day of September, 2019, service of the foregoing **NEVADA BY DESIGN, LLC d/b/a NEVADA BY DESIGN ENGINEERING CONSULTANTS' REPLY TO PLAINTIFF'S LIMITED OPPOSITION TO MOTION TO CHANGE DATE OF HEARING** is and was made this date by electronically serving a true and correct copy of the same, through Clark County Odyssey eFileNV, to the following parties:

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

John T. Wendland, Esq.  
Jeremy R. Kilber, Esq.  
WEIL & DRAGE, APC  
2500 Anthem Village Drive  
Henderson, NV 89052  
Attorneys for Defendant,  
DEKKER/PERICH/SABATINI, LTD.

Jeremy R. Kilber, Esq.  
WEIL & DRAGE, APC  
2500 Anthem Village Drive  
Henderson, NV 89052  
Attorney for Defendant,  
MSA ENGINEERING CONSULTANTS

Jorge A. Ramirez, Esq.  
Jonathan C. Pattillo, Esq.  
WILSON ELSEER MOSKOWITZ EDELMAN &  
DICKER, LLP  
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Attorney for Defendants,  
RICHARDSON CONSTRUCTION, INC. and  
GUARANTEE COMPANY OF NORTH  
AMERICA USA

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Attorneys for Defendants,  
PAFFENBARGER & WALDEN LLC and  
P & W BONDS LLC

*/s/ Joanna Medina*

\_\_\_\_\_  
Joanna Medina, an Employee of  
WEIL & DRAGE, APC

# **EXHIBIT “L”**

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## REGISTER OF ACTIONS

CASE No. A-19-798346-C

North Las Vegas City of, Plaintiff(s) vs. Dekker/Perich/Sabatini Ltd,  
Defendant(s)

§  
§  
§  
§  
§  
§

Case Type: Building and Construction

Date Filed: 07/11/2019

Location: Department 8

Cross-Reference Case Number: A798346

### PARTY INFORMATION

	Lead Attorneys
Defendant Avery Atlantic LLC	
Defendant Big C LLC	
Defendant Dekker/Perich/Sabatini Ltd	John T. Wendland Retained 7023141905(W)
Defendant Jackson Family Partnership LLC Doing Business As Stargate Plumbing	Shannon G. Splaine Retained 7022571997(W)
Defendant JW Zunino & Associates LLC	Dylan P. Todd Retained 702-827-1511(W)
Defendant Melroy Engineering Inc Doing Business As MSA Engineering Consultants	Jeremy R Kilber, ESQ Retained 702-314-1905(W)
Defendant Nevada by Design LLC Doing Business As Nevada by Design Engineering Consultants	John T. Wendland Retained 7023141905(W)
Defendant Ninyo & Moore Geotechnical Consultants	Jorge A. Ramirez Retained 702-727-1400(W)
Defendant Ron Hanlon Masonry LLC	
Plaintiff North Las Vegas City of	Richard C. Gordon Retained 7027845252(W)

### EVENTS & ORDERS OF THE COURT

09/30/2019 Motion (8:30 AM) (Judicial Officer Atkin, Trevor)

Defendant 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

**PET.APP.002870**

**Minutes**

09/30/2019 8:30 AM

- Patrick Welch present via CourtCall. Arguments by counsel. COURT FINDS based on the change in the statute and the time, good cause shown. COURT ORDERED, Defendant 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 is GRANTED. Court will hear the motions this morning. 9/30/19 10:30 a.m. ALL PENDING MOTIONS

**Parties Present**[Return to Register of Actions](#)

# **EXHIBIT “M”**

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Location : District Court Civil/Criminal [Help](#)

## REGISTER OF ACTIONS

CASE No. A-19-798346-C

North Las Vegas City of, Plaintiff(s) vs. Dekker/Perich/Sabatini Ltd,  
Defendant(s)

§  
§  
§  
§  
§  
§

Case Type: **Building and Construction**

Date Filed: **07/11/2019**

Location: **Department 8**

Cross-Reference Case Number: **A798346**

### PARTY INFORMATION

		Lead Attorneys
Defendant	Avery Atlantic LLC	
Defendant	Big C LLC	
Defendant	Dekker/Perich/Sabatini Ltd	John T. Wendland <i>Retained</i> 7023141905(W)
Defendant	Jackson Family Partnership LLC <i>Doing Business As</i> Stargate Plumbing	Shannon G. Splaine <i>Retained</i> 7022571997(W)
Defendant	JW Zunino & Associates LLC	Dylan P. Todd <i>Retained</i> 702-827-1511(W)
Defendant	Melroy Engineering Inc <i>Doing Business As</i> MSA Engineering Consultants	Jeremy R Kilber, ESQ <i>Retained</i> 702-314-1905(W)
Defendant	Nevada by Design LLC <i>Doing Business As</i> Nevada by Design Engineering Consultants	John T. Wendland <i>Retained</i> 7023141905(W)
Defendant	Ninyo & Moore Geotechnical Consultants	Jorge A. Ramirez <i>Retained</i> 702-727-1400(W)
Defendant	Ron Hanlon Masonry LLC	
Plaintiff	North Las Vegas City of	Richard C. Gordon <i>Retained</i> 7027845252(W)

### EVENTS & ORDERS OF THE COURT

09/30/2019 | All Pending Motions (10:30 AM) (Judicial Officer Atkin, Trevor)

Minutes

PET.APP.002873

09/30/2019 10:30 AM

- Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment ... Defendant Dekker/Perich/Sabatini, LTD.'s Joinder to Defendant Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants' Motion to Dismiss or, In the Alternative, Motion for Summary Judgment ... 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 ... Defendants Ninyo & Moore, Geotechnical Consultants' Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants Motion to Dismiss or, in the Alternative, Motion for Summary Judgment ... Jackson Family Partnership LLC dba Stargate Plumbing's Joinder to Nevada By Design, LLC dba Nevada by Design Engineering Consultants Motion to Dismiss or, in the Alternative, Motion for Summary Judgment ... Ninyo & Moore, Geotechnical Consultants' Joinder to Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants Motion to Dismiss or, in the Alternative, Motion for Summary Judgment ... Defendant Dekker/Perich/Sabatini, LTD.'s Motion to Dismiss ... Defendants Paffenbarger & Walden, LLC's and P & W Bonds, LLC's Limited Joinder in Nevada By Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment ... Defendants Richardson Construction, Inc. and The Guarantee Company of North America USA's Motion to Dismiss ... Defendants Paffenbarger & Walden, LLC and P & W Bonds, LLC's Motion to Dismiss Patrick Welch present via CourtCall. Arguments by counsel. Plaintiff stated by proceeding now The City is not waiving its right to object. Court so noted. Arguments by counsel regarding the statute of repose; and, the design professional (NRS 11.258) statute. Based on the current statute of repose both as to the time of the filing of the complaint and today's date, COURT ORDERS, Motions to Dismiss; and, Joinders GRANTED. FURTHER COURT FINDS NRS 11.258 portion is a MOOT point based this Court's ruling. Mr. Wendland to prepare the order within 10 days have opposing counsel review as to form and content and distribute a filed copy to all parties involved in this matter.

[Parties Present](#)[Return to Register of Actions](#)

# **EXHIBIT “N”**



1 **JOIN**  
2 **THEODORE PARKER, III, ESQ.**  
3 **Nevada Bar No. 4716**  
4 **PARKER, NELSON & ASSOCIATES, CHTD.**  
5 **2460 Professional Court, Suite 200**  
6 **Las Vegas, Nevada 89128**  
7 **Telephone: (702) 868-8000**  
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9 **Email: tparker@pnalaw.net**

10 *Attorneys for Defendants,*  
11 *Richardson Construction, Inc. and*  
12 *The Guarantee Company of North America USA*

13 **DISTRICT COURT**  
14  
15 **CLARK COUNTY, NEVADA**

16 **CITY OF NORTH LAS VEGAS,**  
17  
18 **Plaintiff,**

19 **v.**

20 **DEKKER/PERICH/SABATINI LTD.;**  
21 **RICHARDSON CONSTRUCTION, INC.;**  
22 **NEVADA BY DESIGN, LLC D/B/A**  
23 **NEVADA BY DESIGN ENGINEERING**  
24 **CONSULTANTS; JW ZUNINO &**  
25 **ASSOCIATES, LLC; MELROY**  
26 **ENGINEERING, INC. D/B/A MSA**  
27 **ENGINEERING CONSULTANTS;**  
28 **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**

**DEFENDANTS 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**

COME NOW, Defendants, RICHARDSON CONSTRUCTION, INC. and THE  
GUARANTEE COMPANY OF NORTH AMERICA USA (hereinafter collectively referred to as  
"Defendants"), by and through their attorney of record, THEODORE PARKER, III, ESQ. of the law  
firm of PARKER, NELSON & ASSOCIATES, CHTD., and hereby join in Defendant, NEVADA

1 BY DESIGN, LLC d/b/a NEVADA BY DESIGN ENGINEERING CONSULTANTS' (hereinafter  
2 "NBD") Motion to Dismiss or, in the Alternative, Motion for Summary Judgment, electronically  
3 filed on August 5, 2019.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 Defendants state that the claims raised by Plaintiff, CITY OF NORTH LAS VEGAS,  
6 (hereinafter "Plaintiff") are time barred pursuant to N.R.S. 11.202. Accordingly, any dismissal of  
7 the claims and Complaint against NBD would also apply to Defendants, as Plaintiff's claims and  
8 Complaint against Defendants are also time barred under the six (6) year statute of repose in N.R.S.  
9 11.202 for the reasons stated in NBD's Motion(s). Defendants hereby incorporate by reference as  
10 though fully stated herein all factual allegations, law, and arguments raised in their Motion to  
11 Dismiss electronically filed on September 4, 2019, as though fully stated therein.

12 DATED this 30<sup>th</sup> day of September, 2019.

13 **PARKER, NELSON & ASSOCIATES, CHTD.**

14 /s/ Theodore Parker III  
15 THEODORE PARKER, III, ESQ.  
16 Nevada Bar No. 4716  
17 2460 Professional Court, Suite 200  
18 Las Vegas, Nevada 89128

19 *Attorneys for Defendants,*  
20 *Richardson Construction, Inc. and*  
21 *The Guarantee Company of North America USA*  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of the Law Offices of PARKER, NELSON & ASSOCIATES, CHTD., and that on this 30<sup>th</sup> day of September, 2019 and pursuant to NRCP 5(b), I served a true and correct copy of the foregoing **DEFENDANTS 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** on the party(s) set forth below by:

- ☐ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Las Vegas, NV, postage prepaid, following ordinary business practices.
- ☐ Facsimile transmission, pursuant to the amendment to the Eighth Judicial District Court Rule 7.26, by faxing a true and correct copy of the same to each party addressed as follows:
- ☐ By E-mail: by electronic mail delivering the document(s) listed above to the e-mail address(es) set forth below on this date before 5:00 p.m.
- ☒ By EFC: by electronic filing and service with the Court delivering the document(s) listed above via E-file & E-serve (Odyssey) filing system.

Party	Attorney	E-Mail
Plaintiff	Justin L. Carley, Esq. Aleem A. Dhalla, Esq. SNELL & WILMER L.L.P. 3883 Howard Hughes Parkway, Suite 1100 Las Vegas, NV 89169 (702) 784-5200 Fax: (702) 784-5252	<a href="mailto:jcarley@swlaw.com">jcarley@swlaw.com</a> <a href="mailto:adhalla@swlaw.com">adhalla@swlaw.com</a>
Defendant, Jackson Family Partnership LLC d/b/a Stargate Plumbing	Richard L. Peel, Esq. Ronald J. Cox, Esq. PEEL BRIMLEY LLP 3333 E. Serene Avenue, Suite 200 Henderson, NV 89074-6571 (702) 990-7272 Fax: (702) 990-7273	<a href="mailto:rpeel@peelbrimley.com">rpeel@peelbrimley.com</a> <a href="mailto:rcox@peelbrimley.com">rcox@peelbrimley.com</a>
	Shannon G. Splaine, Esq. LINCOLN GUSTAFSON & CERCOS, LLP 3960 Howard Hughes Parkway, Suite 200 Las Vegas, NV 89169 (702) 257-1997 Fax: (702) 257-2203	<a href="mailto:ssplaine@lgclawoffice.com">ssplaine@lgclawoffice.com</a>

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Defendant, Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants	John T. Wendland, Esq. Anthony D. Platt, Esq. WEIL & DRAGE, APC 2500 Anthem Village Drive Henderson, NV 89052 (702) 314-1905 Fax: (702) 314-1909	<a href="mailto:jwendland@weildrage.com">jwendland@weildrage.com</a> <a href="mailto:aplatt@weildrage.com">aplatt@weildrage.com</a>
Defendant, Dekker/Perich/Sabatini, Ltd.	John T. Wendland, Esq. Jeremy R. Kilber, Esq. WEIL & DRAGE, APC 2500 Anthem Village Drive Henderson, NV 89052 (702) 314-1905 Fax: (702) 314-1909	<a href="mailto:jwendland@weildrage.com">jwendland@weildrage.com</a> <a href="mailto:jkilber@weildrage.com">jkilber@weildrage.com</a>
Defendant, Melroy Engineering, Inc. d/b/a MSA Engineering Consultants	Jeremy R. Kilber, Esq. WEIL & DRAGE, APC 2500 Anthem Village Drive Henderson, NV 89052 (702) 314-1905 Fax: (702) 314-1909	<a href="mailto:jkilber@weildrage.com">jkilber@weildrage.com</a>
Defendant, Ninyo & Moore, Geotechnical Consultants	Jorge A. Ramirez, Esq. Jonathan C. Pattillo, Esq. WILSON ELSE MOSKOWITZ EDELMAN & DICKER LLP 300 S. Fourth Street, 11th Floor Las Vegas, NV 89101-6014 (702) 727-1400 Fax: (702) 727-1401	<a href="mailto:Jorge.Ramirez@wilsonelser.com">Jorge.Ramirez@wilsonelser.com</a> <a href="mailto:Jonathan.Pattillo@wilsonelser.com">Jonathan.Pattillo@wilsonelser.com</a>
Defendants, P & W Bonds, LLC and Paffenbarger & Walden, LLC	Charles W. Bennion, Esq. ELLSWORTH & BENNION, CHTD. 777 N. Rainbow Blvd., Suite 270 Las Vegas, NV 89107 (702) 658-6100 Fax: (702) 658-2502	<a href="mailto:charles@silverstatelaw.com">charles@silverstatelaw.com</a>

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Party	Attorney	E-Mail
	Patrick F. Welch, Esq. JENNINGS STROUSS & SALMON, PLC One East Washington Street, Suite 1900 Phoenix, AZ 85004-2554 (602) 262-5847 Fax: (602) 495-2781	<a href="mailto:pwelch@jsslaw.com">pwelch@jsslaw.com</a>

/s/ Eloisa Nuñez  
An employee of PARKER, NELSON & ASSOCIATES CHTD.

# **EXHIBIT “O”**



1 **NEOJ**  
2 JOHN T. WENDLAND, ESQ.  
3 (Nevada Bar No. 7207)  
4 ANTHONY D. PLATT, ESQ.  
5 (Nevada Bar No. 9652)  
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11 [aplatt@weildrage.com](mailto:aplatt@weildrage.com)  
12 Attorneys for Defendant,  
13 NEVADA BY DESIGN, LLC D/B/A NEVADA  
14 BY DESIGN ENGINEERING CONSULTANTS

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 CITY OF NORTH LAS VEGAS, ) CASE NO.: A-19-798346-C

18 Plaintiff, ) DEPT. NO.: VIII

19 vs. )

20 DEKKER/PERICH/SABATINI LTD.; ) **NOTICE OF ENTRY OF ORDER**

21 RICHARDSON CONSTRUCTION, INC.; )

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

23 DESIGN ENGINEERING CONSULTANTS; JW )

24 ZUNINO & ASSOCIATES, LLC; MELROY )

25 ENGINEERING, INC. D/B/A MSA )

26 ENGINEERING CONSULTANTS; O'CONNOR )

27 CONSTRUCTION MANAGEMENT INC.; NINYO )

28 & MOORE, GEOTECHNICAL CONSULTANTS; )

JACKSON FAMILY PARTNERSHIP LLC D/B/A )

STARGATE PLUMBING; AVERY ATLANTIC, )

LLC; BIG C LLC; RON HANLON MASONRY, )

LLC; THE GUARANTEE COMPANY OF NORTH )

AMERICA USA; P & W BONDS, LLC; )

PAFFENBARGER & WALDEN, LLC; DOES I )

through X, inclusive; and ROE CORPORATIONS I )

through X, inclusive, )

Defendants. )

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**NOTICE OF ENTRY OF ORDER**

NOTICE IS HEREBY GIVEN that the ORDER GRANTING DEFENDANT 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 was entered in the above-captioned matter on the 15<sup>th</sup> day of October, 2019. A copy of said ORDER is attached hereto.

DATED this 17<sup>th</sup> day of October, 2019.

WEIL & DRAGE, APC

*/s/ John T. Wendland*

By: \_\_\_\_\_  
JOHN T. WENDLAND, ESQ.  
(Nevada Bar No. 7207)  
ANTHONY D. PLATT, ESQ.  
(Nevada Bar No. 9652)  
2500 Anthem Village Drive  
Henderson, NV 89052  
Attorneys for Defendant,  
NEVADA BY DESIGN, LLC D/B/A NEVADA  
BY DESIGN ENGINEERING CONSULTANTS

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 17<sup>th</sup> day of October, 2019, service of the foregoing  
**NOTICE OF ENTRY OF ORDER** was made this date by electronically serving a true and  
correct copy of the same, through Clark County Odyssey eFileNV, to the following parties:

Aleem A. Dhalla, Esq.  
SNELL & WILMER L.L.P.  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, NV 89169  
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DEKKER/PERICH/SABATINI, LTD.

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MSA ENGINEERING CONSULTANTS

Jorge A. Ramirez, Esq.  
Jonathan C. Pattillo, Esq.  
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dba STARGATE PLUMBING

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JACKSON FAMILY PARTNERSHIP LLC  
dba STARGATE PLUMBING

Theodore Parker, III, Esq.  
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2460 Professional Court, Suite 200  
Las Vegas, NV 89128  
Attorney for Defendants,  
RICHARDSON CONSTRUCTION, INC. and  
GUARANTEE COMPANY OF NORTH  
AMERICA USA

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Charles W. Bennion, Esq.  
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P & W BONDS LLC

Patrick F. Welch, Esq.  
JENNINGS STROUSS & SALMON, P.L.C.  
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PAFFENBARGER & WALDEN LLC and  
P & W BONDS LLC

*/s/ Joanna Medina*

Joanna Medina, an Employee of  
WEIL & DRAGE, APC

ORIGINAL

Electronically Filed  
10/15/2019 2:57 PM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

ORDG  
JOHN T. WENDLAND, ESQ.  
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Attorneys for Defendant,  
NEVADA BY DESIGN, LLC d/b/a  
NEVADA BY DESIGN ENGINEERING CONSULTANTS

DISTRICT COURT  
CLARK COUNTY, NEVADA

CITY OF NORTH LAS VEGAS,  
  
Plaintiff,

CASE NO.: A-19-798346-C

DEPT. NO.: VIII

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.

ORDER GRANTING DEFENDANT  
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

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IT IS SO ORDERED.

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WEIL & DRAGE, APC

(Nevada Bar No. 7207)

(Nevada Bar No. 9652)

Henderson, NV 89052

jwendland@weildrage.com

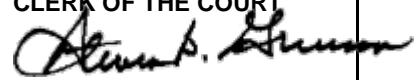
Attorneys for Defendant,

NEVADA BY DESIGN ENGINEERING

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**EXHIBIT 34**  
**PETITIONERS' APPENDIX**

**EXHIBIT 34**  
**PETITIONERS' APPENDIX**



JORGE A. RAMIREZ, ESQ.  
Nevada Bar No. 6787  
JONATHAN C. PATTILLO, ESQ.  
Nevada Bar No. 13929  
300 South Fourth Street, 11<sup>th</sup> Floor  
Las Vegas, Nevada 89101-6014  
[Jorge.Ramirez@wilsonelser.com](mailto:Jorge.Ramirez@wilsonelser.com)  
[Jonathan.Pattillo@wilsonelser.com](mailto:Jonathan.Pattillo@wilsonelser.com)  
Tel: (702) 727-1400/Fax: (702) 727-1401  
Attorneys for Ninyo & Moore, Geotechnical  
Consultants

**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 ENGINEER  
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

**Joinder to Nevada By Design, LLC d/b/a  
Nevada By Design Engineer Consultants'  
Opposition to Plaintiff's Motion to Alter  
Judgment**

Defendant, NINYO & MOORE, GEOTECHNICAL CONSULTANTS ("N&M"), by and through its attorneys of record, the law offices of WILSON, ELSER, MOSKOWITZ, EDELMAN, & DICKER, LLP, hereby joins in Nevada By Design LLC's ("NBD") Opposition to Plaintiff's Motion to Alter Judgment. This Joinder incorporates and asserts all the arguments contained in NBD's

1 opposition with regards to the procedural properness of a motion to alter apply to N&M as well.  
2 Plaintiff's original complaint is terminated and cannot be revived.

3 DATED this 2<sup>nd</sup> day of December, 2019.

4 WILSON ELSEER MOSKOWITZ  
5 EDELMAN & DICKER LLP

6 /s/ Jorge A. Ramirez

7 JORGE A. RAMIREZ, ESQ.

8 Nevada Bar No. 6787

9 JONATHAN C. PATTILLO, ESQ.

10 Nevada Bar No. 13929

11 300 South Fourth Street, 11<sup>th</sup> Floor

12 Las Vegas, Nevada 89101-6014

13 Tel: (702) 727-1400/Fax: (702) 727-1401

14 Attorneys for Ninyo & Moore, Geotechnical  
15 Consultants  
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1 **CERTIFICATE OF SERVICE**

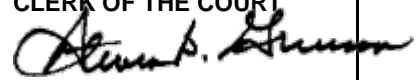
2 Pursuant to NRCP 5, I certify that I am an employee of Wilson Elser Moskowitz Edelman &  
3 Dicker LLP, and that on December 2, 2019, I served **Ninyo & Moore, Geotechnical Consultants’**  
4 **Joinder to Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants’ Motion**  
5 **To Dismiss Or, In The Alternative, Motion For Summary Judgment** as follows:  
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- 7 ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed  
8 envelope upon which first class postage was prepaid in Las Vegas, Nevada;  
9 ☒ via electronic means by operation of the Court’s electronic filing system, upon each  
10 party in this case who is registered as an electronic case filing user with the Clerk;  
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12 BY: /s/Annemarie Gourley  
13 An Employee of  
14 WILSON ELSEER MOSKOWITZ EDELMAN & DICKER LLP  
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**EXHIBIT 35**  
**PETITIONERS' APPENDIX**

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[Jonathan.Pattillo@wilsonelser.com](mailto:Jonathan.Pattillo@wilsonelser.com)  
Tel: (702) 727-1400/Fax: (702) 727-1401  
Attorneys for Ninyo & Moore, Geotechnical  
Consultants

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

CITY OF NORTH LAS VEGAS,

Plaintiff,

vs.

DEKKER/PERICH/SABATINI LTD.;  
RICHARDSON CONTRUCTION, INC.;  
NEVADA BY DESIGN, LLC D/B/A  
NEVADA BY DESIGN ENGINEER  
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

**Joinder to JW Zunino & Associates, LLC's  
Opposition to Plaintiff's Motion to Alter  
Judgment**

Defendant, NINYO & MOORE, GEOTECHNICAL CONSULTANTS ("N&M"), by and  
through its attorneys of record, the law offices of WILSON, ELSER, MOSKOWITZ, EDELMAN, &  
DICKER, LLP, hereby joins in JW Zunino & Associates LLC's ("JWZ") Opposition to Plaintiff's  
Motion to Alter Judgment. This Joinder incorporates and asserts all the arguments contained in JWZ's

1 opposition with regards to Plaintiffs attempt to revive a dismissed Complaint. N&M obtained a  
2 dismissal of Plaintiff's Complaint and Plaintiff now improperly is attempting to raise a dismissed  
3 Claim against N&M. Further, this Joinder is made and based upon the pleadings and papers on file  
4 herein and on any arguments made by counsel at the time of the hearing on this matter that the Court  
5 may allow. In addition to the factual and legal arguments made by JWZ, N&M adds that any  
6 opposition made by JWZ also applies to N&M.

7 DATED this 2<sup>nd</sup> day of December, 2019.

8 WILSON ELSEER MOSKOWITZ  
9 EDELMAN & DICKER LLP

10 /s/ Jorge A. Ramirez

11 JORGE A. RAMIREZ, ESQ.

12 Nevada Bar No. 6787

13 JONATHAN C. PATTILLO, ESQ.

14 Nevada Bar No. 13929

15 300 South Fourth Street, 11<sup>th</sup> Floor

16 Las Vegas, Nevada 89101-6014

17 Tel: (702) 727-1400/Fax: (702) 727-1401

18 Attorneys for Ninyo & Moore, Geotechnical  
19 Consultants  
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5, I certify that I am an employee of Wilson Elser Moskowitz Edelman &  
3 Dicker LLP, and that on December 2, 2019, I served **Ninyo & Moore, Geotechnical Consultants’**  
4 **Joinder to Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants’ Motion**  
5 **To Dismiss Or, In The Alternative, Motion For Summary Judgment** as follows:  
6

- 7 ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed  
8 envelope upon which first class postage was prepaid in Las Vegas, Nevada;  
9 ☒ via electronic means by operation of the Court’s electronic filing system, upon each  
10 party in this case who is registered as an electronic case filing user with the Clerk;  
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12 BY: /s/Annemarie Gourley  
13 An Employee of  
14 WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP  
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