Case No. _____

In the

Supreme Court

of the

State of Nevada

Electronically Filed
Jul 15 2020 11:00 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 19

Docket 81459 Document 2020-25991

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CHRONOLOGICAL INDEX - APPENDIX OF EXHIBITS

Exhibit:	Volume:	Bates: PET.APP.	Date:	Description:
47	19	003091 – 003108	07/11/2019	Exhibit A – City of North Las Vegas' Complaint
	19	003110 – 003111	07/11/019	Exhibit B – Affidavit of Aleema A. Dhalla, Esq.
	19	003112 – 003115	1988 - Present	Exhibit C – American Geotechnical Inc's Resume of Edred T. Marsh, Principal Geotechnical Engineer
	19	003116 – 003123	03/23/2007	Exhibit D – Legislative History of 11.258 Senate Bill 243
	19	003124 – 003137	12/11/2017	Exhibit E – American Geotechnical Inc's Geotechnical Investigation
	19	003138 – 003139	07/03/2019	Exhibit F – Declaration of Edred T. Marsh, P.E.
48	**19**	**003140 – 003146**	**02/04/2020 3:09 PM**	**Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Joinder to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Motion to Dismiss on Order Shortening Time**
49	**19**	**003147 – 003154**	**02/04/2020 3:11 PM**	**Dekker/Perich/Sabatini, Ltd.'s Joinder to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Motion to Dismiss on Order Shortening Time**
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**
51	**19**	**003167 – 003174**	**02/07/2020 3:36 PM**	**Ninyo & Moore, Geotechnical Consultants' Joinder to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Motion to Dismiss on Order Shortening Time**
	19	003175 – 003240	08/29/2007	Exhibit A – Ninyo & Moore's Geotechnical Evaluation
	19	003241 – 003254	12/11/2017	Exhibit B – American Geotechnical Inc's Geotechnical Investigation

52	**19**	**003255 – 003272**	**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**
53	**19**	**003273 – 003285**	**02/18/2020 3:00 PM**	**Dekker/Perich/Sabatini, Ltd.'s Reply to City of North Las Vegas' Opposition to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' and Joinders to Motion to Dismiss on Order Shortening Time**
	19	003286 – 003287	07/03/2019	Exhibit A – Declaration of Edred T. Marsh, P.E.
	19	003288 – 003294	07/11/2019	Exhibit B – City of North Las Vegas' Complaint

ALPHABETICAL INDEX - APPENDIX OF EXHIBITS

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

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

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

	15	002449 – 002455	09/30/2019	Exhibit 3 - Order Granting Nevada by Design, LLC d/b/a Nevada By Design Engineering Consultants' Motion to Change Date
	15	002456 – 002471	2019	Exhibit 4 - Assembly Bill 421 – 80th Session 2019
	16	002472 – 002504	05/15/2019	Exhibit 5 - Minutes of the Senate Committee on Judiciary – Eightieth Session
	16	002505 – 002510	09/30/2019	Exhibit 6 - 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	Exhibit 7 - JW Zunino & Associates LLC's Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment
6	**6**	**000821 – 000826**	**08/15/2019 5:02 PM**	**City of North Las Vegas' Motion to Strike and Opposition to Jackson Family Partnership LLC d/b/a Stargate Plumbing's Motion to Dismiss**
	6	000827 – 000828	08/06/2019	Exhibit 1 – Affidavit/Declaration of Service to Jackson Family Partnership LLC d/b/a Stargate Plumbing
62	**20**	**003467 – 003470**	**04/02/2020 4:21 PM**	**City of North Las Vegas' Notice of Entry of Decision and Order Denying Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Motion to Dismiss**
	20	003471 – 003480	04/02/2020	Exhibit 1 - Order Denying Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Motion to Dismiss
66	**21**	**003589 – 003592**	**05/05/2020 3:48 PM**	**City of North Las Vegas' Notice of Entry of Decision and Order Denying Richardson Construction, Inc. and The Guarantee Company of North America USA's Motion to Dismiss / Motion for Summary Judgment Based on Laches and All Joinders**
	21	003593 – 003597	05/05/2020	Exhibit 1 – 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	Exhibit 1 – 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 – 003272**	**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	Exhibit 1 – Email re Proposed Order Denying MSA's Motion to Dismiss on NRS 11.258
	20	003416 – 003425	Undated	Exhibit 2 – Order Denying Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Motion to Dismiss
	20	003426 – 003428	03/16/2020	Exhibit 3 – Email re Request to Withdraw Motion for Clarification on Order Shortening Time Without Prejudice
7	**6**	**000829 – 000846**	**08/20/2019 1:24 PM**	**City of North Las Vegas' Opposition to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultant's Motion to Dismiss or, in the Alternative, Motion for Summary Judgement**
45	**18**	**003047 – 003063**	**12/19/2019 4:59 PM**	**City of North Las Vegas' Reply in Support of Its Motion to Alter Judgment**

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

28	**16**	**002651 – 002660**	**11/26/2019 12:28 PM**	**Dekker/Perich/Sabatini, Ltd.'s Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Opposition to Motion to Alter Judgment; Opposition by Incorporation and Request to Reset Prior Motion to Dismiss**
	16	002659 – 002664	10/15/2019	Exhibit 1 – 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	Exhibit 2 – Dekker/Perich/Sabatini, Ltd.'s Motion to Dismiss
4	**6**	**000721 – 000735**	**08/06/2019 2:44 PM**	**Dekker/Perich/Sabatini, Ltd.'s Motion to Dismiss**
	6	000734 – 000751	07/11/2019	Exhibit A – City of North Las Vegas' Complaint
	6	000752 – 000786	02/07/2007	Exhibit B – City of North Las Vegas' Complaint Exhibit 1 – Professional Architectural Services Agreement
	6	000787 – 000789	07/11/2019	Exhibit C – Affidavit of Aleema A. Dhalla, Esq.
	6	000790 – 000793	1988 – Present	Exhibit D – American Geotechnical, Inc.'s Resume of Edred T. Marsh, Principal Geotechnical Engineer
	6	000794 – 000801	03/23/2007	Exhibit E - Excerpts from Legislative History of N.R.S. 11.258
	6	000802 – 000803	07/03/2019	Exhibit F – Declaration of Edred T. Marsh, P.E.
	6	000804 – 000817	12/11/2017	Exhibit G - American Geotechnical, Inc's Geotechnical Investigation
13	**14**	**002219 – 002232**	**08/28/2019 8:48 AM**	**Dekker/Perich/Sabatini, Ltd.'s Reply to City of North Las Vegas' Opposition to Its Motion to Dismiss**
53	**19**	**003273 – 003285**	**02/18/2020 3:00 PM**	**Dekker/Perich/Sabatini, Ltd.'s Reply to City of North Las Vegas' Opposition to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' and Joinders to Motion to Dismiss on Order Shortening Time**
	19	003286 – 003287	07/03/2019	Exhibit A – Declaration of Edred T. Marsh, P.E.

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

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

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

55	**20**	**003308 – 003318**	**02/18/2020 5:02 PM**	**Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Reply to City of North Las Vegas' Opposition to Its Motion to Dismiss**
	20	003319 – 003325	02/12/2020	Exhibit 1 – 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	Exhibit A – City of North Las Vegas' Complaint
	20	003348 – 003353	N/A	Exhibit B – Michael Panish Expert Witness & Consultants Construction Systems Curriculum Vitae
	20	003354 – 003361	03/23/2007	Exhibit C - 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	Exhibit 1 – Stipulation and Order to Dismiss Kittrell Garlock and Associates, AIA, Ltd.
30	**16**	**002682 – 002685**	**11/26/2019 12:43 PM**	**Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Joinder to JW Zunino & Associates LLC's Opposition to City of North Las Vegas' Motion to Alter**
48	**19**	**003140 – 003146**	**02/04/2020 3:09 PM**	**Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Joinder to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Motion to Dismiss on Order Shortening Time**

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

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

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

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

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

	17	002823 – 002824	09/06/2019	Exhibit F – Clerk of the Court's Notice of Hearing
	17	002825 – 002831	11/27/2019	Exhibit G – Register of Actions
	17	002832 – 002833	09/10/2019	Exhibit H – Emails re Rescheduling of Hearing
	17	002834 – 002846	09/18/2019	Exhibit I - 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	Exhibit A – Clerk of the Court's Notice of Hearing
	17	002849 – 002850	09/06/2019	Exhibit B – Court's Notice of Rescheduling Motions to Dismiss and Joinders
	17	002851 – 002856	09/09/019	Exhibit C – Emails re Rescheduling of Hearing
	17	002857 – 002858	09/10/2019	Exhibit D – Emails re Rescheduling of Hearing
	17	002859 – 002860	N/A	Exhibit E – Las Vegas Law Offices of Snell & Wilmer
	17	002861 – 002862	09/20/2019	Exhibit J – 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	Exhibit K - 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	Exhibit L – Register of Actions A-19-798346-C
	17	002872 – 002874	11/27/2019	Exhibit M – Register of Actions A-19-798346-C
	17	002875 – 002880	09/30/3019	Exhibit N – 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	Exhibit O – 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

Exhibit A

Exhibit A

Electronically Filed
7/11/2019 4:35 PM
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CLERK OF THE COURT

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

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

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

I. PARTIES, JURISDICTION, AND VENUE

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

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

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

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

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

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

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

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

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

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

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

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

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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.

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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.

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

31. According to the Ninyo & Moore report, the site was underlain by about 1.5 feet of fill over native alluvial soil. Ninyo & Moore 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.

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

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

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

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

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

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

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

39. The Construction Contract outlined Richardson Construction's scope of work to include 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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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).

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

Fourth Claim for Relief

Negligence

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

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

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

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

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

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

Fifth Claim for Relief

Breach of Implied Warranty

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

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

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

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

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

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

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

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

Sixth Claim for Relief

Claim on Performance Bond

Against the Guarantee Company and P & W

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

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

95. The Guarantee Company issued the Performance 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.

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

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

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

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99. 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.

100. 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).

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.

Seventh Claim for Relief

Claim on Payment Bond

Against the Guarantee Company and P & W

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

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

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.

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

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

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.

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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.

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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;

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ON ALL CLAIMS FOR RELIEF

1. For attorneys' fees;

2. For costs of the suit; and

3. For such other relief that this Court deems appropriate at the conclusion of this action.

Dated: July 11, 2019

SNELL & WILMER L.L.P.

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

Attorneys for the City of North Las Vegas

Snell & Wilmer L.L.P.
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LAS VEGAS, NEVADA 89169
(702) 784-5200

AFFIDAVIT OF ALEEM A. DHALLA, ESQ.

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

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

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

3. I make this affidavit pursuant to NRS 11.258.

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

   a. Have reviewed the facts of this case;

   b. Have consulted with an expert, American Geotechnical, Inc., regarding this case;

   c. Reasonably believe the expert who was consulted is knowledgeable in the relevant discipline involved in the action; and

   d. Have concluded, based on my review and consultation with the expert, that the action has a reasonable basis in law and fact.

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

   a. A resume of the expert consulted in this matter, Edred T. Marsh, P.E. of American Geotechnical Inc (Ex. 6);

   b. A statement that the expert is experienced in each discipline which is the subject of the report, specifically in the fields of geotechnical, civil, and forensic engineering (Ex. 7);

   c. A copy of each nonprivileged document reviewed by the expert in preparing the report (Exs. 2, 8, 9, 10);

   d. The conclusions of the expert and the basis for the conclusions (Ex. 5); and

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(702) 784-5200

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

Aleem A. Dhalla, Esq.

STATE OF NEVADA
COUNTY OF CLARK

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

Notary Public

D'ANDREA LARAY DUNN
NOTARY PUBLIC
STATE OF NEVADA
APPT. No 11-4604-1
My APPT. Expires January 18, 2022

Snell & Wilmer
L.L.P.
LAW OFFICES
3883 HOWARD HUGHES PARKWAY, SUITE 1100
LAS VEGAS, NEVADA 89169
(702) 784-5200

Exhibit B

Exhibit B

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 L.L.P.
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LAS VEGAS, NEVADA 89169
(702)784-5200

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

Aleem A. Dhalla, Esq.

STATE OF NEVADA
COUNTY OF CLARK

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

Notary Public

D'ANDREA LARAY DUNN
NOTARY PUBLIC
STATE OF NEVADA
APPT. No 11-4604-1
My APPT. Expires January 18, 2022

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4829-4123-9452

Exhibit C

Exhibit C

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

RESUME OF

EDRED T. MARSH

PRINCIPAL GEOTECHNICAL ENGINEER

EMPLOYMENT HISTORY

1999 - Present	Principal Geotechnical Engineer **AMERICAN GEOTECHNICAL, INC.** San Diego, California
1990 -1999	Project/Senior Engineer **AMERICAN GEOTECHNICAL, INC.** San Diego, California
1988 -1990	Staff Engineer **AMERICAN GEOTECHNICAL, INC.** San Diego, California
1988	Engineering Assistant/Laboratory Manager **AMERICAN GEOTECHNICAL, INC.** San Diego, California
1987 -1988	Student Engineer CITY OF CORONADO Coronado, California
EDUCATION	San Diego State University San Diego, CA B.S. in Civil Engineering
POST GRADUATE STUDIES	Advanced Foundation Engineering Advanced Soil Mechanics Open Channel Hydraulics Waste and Wastewater Engineering Research Project on the Effect of Partial Wetting on Compacted Fills

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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

PROFESSIONAL REGISTRATIONS

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

PROFESSIONAL AFFILIATIONS

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

PUBLICATIONS

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

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

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

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

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

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

PROFESSIONAL EXPERIENCE SUMMARY

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

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

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

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

Exhibit D

Exhibit D

11.258

SENATE BILL 243: Requires an affidavit and a report in an action against certain design professionals involving nonresidential construction. (BDR 2-895)
I disclose that I am a member of a law firm with members who are registered lobbyists and have worked on S.B. 243. I have filed a disclosure under *Nevada Revised Statute* (NRS) 281.501 which is on file with the Director of the Legislative Counsel Bureau as a public document. I further disclose that I have not accepted a gift or loan from the client of the law firm on behalf of this. I have no pecuniary interest, nor does the law firm, in the passage or failure of Senate Committee on Judiciary March 23, 2007 Page 16

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 when/if a contractor is involved in a lawsuit and there may be claims of design deficiency, these kinds of lawsuits are more difficult to settle. They often involve complex issues and problems. In some situations, S.B. 243 presents an obstacle in settling these kinds of cases.
GARY E. MILLIKEN (Associated General Contractors Las Vegas Chapter):
This legislation will significantly delay and increase costs for commercial construction and settlements or decisions as it complicates issues.
FRED L. 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.] - X
SENATOR CARE:
I am going to incorporate the disclosure I made the second week of the session which is on file with the Legislative Counsel Bureau. Like myself, Mr. Timothy Rowe is a partner in the firm of McDonald Carano Wilson, Limited Liability Partnership.
CHAIR 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 HORSFORD SECONDED THE MOTION.
THE MOTION CARRIED. (SENATORS McGINNESS AND NOLAN WERE ABSENT FOR THE VOTE.)

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

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

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

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

I am told there are 13 other states that have similar affidavit requirements with respect to design professionals and in each of those states there is no limitation between whether the affidavit applies to either residential or commercial construction projects.
If enacted, this law would merely comport the commercial actions to the same as residential actions in the State of Nevada.

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

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

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

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

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

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

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

Assemblyman Horne:
Have there been a number of these litigations?

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

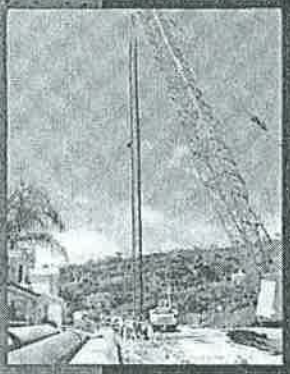
Chairman Anderson:
The people involved in this are in a relatively specialized field at the very beginning of the design phase. Do the lawsuits coming forward tend to be in this area, or are they pulled in as a result of other kinds of construction Assembly Committee on Judiciary May 14, 2007 Page 16

Exhibit E

Exhibit E

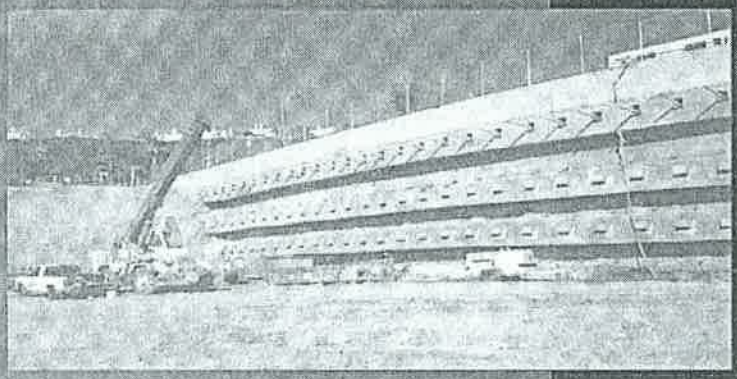
GEOTECHNICAL INVESTIGATION

FIRE STATION 53



2804 W. Gowan Road
North Las Vegas, Nevada

December 11, 2017
FN 40779-01



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American Geotechnical Inc.
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WWW.AMGT.COM

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

PROFESSIONAL ENGINEER-STATE OF NEVADA
EDRED T. MARSH
CIVIL
No. 12149

Alva (Arumugam) Alvappillai
Principal Engineer

AA/ETM: km

Distribution: Mr. Dale Daffern *Via E-Mail Only*

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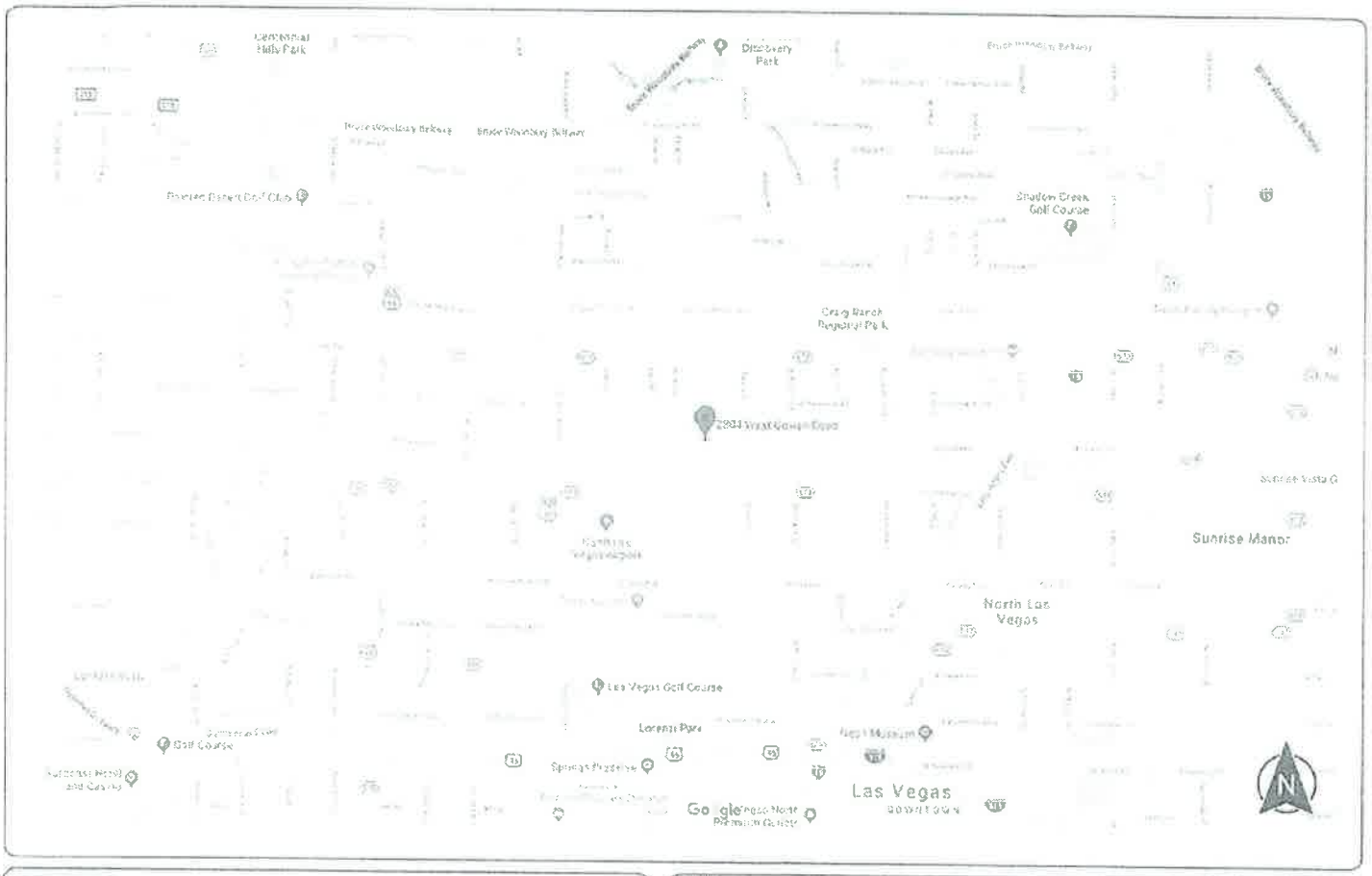
1.0 SCOPE OF WORK

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, AGSB-2 and AGSB-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**.



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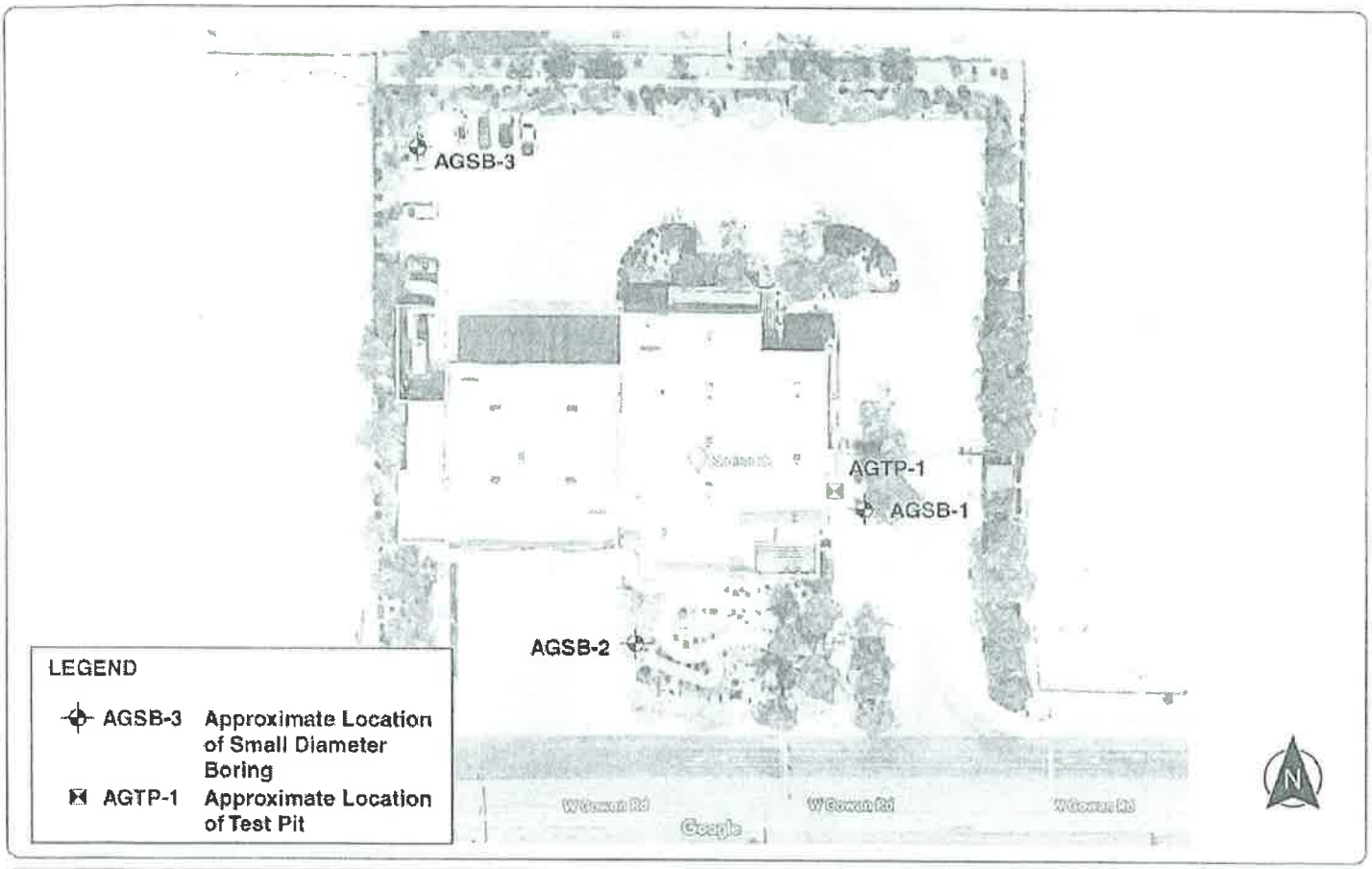
TITLE: **SITE LOCATION MAP**
2804 West Gowan Rd , N. Las Vegas, AZ

SCALE:	DATE:	FILE NO.:
N.T.S	DEC 2017	40779-01

PLATE **1**



LEGEND

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

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www.amgt.com

TITLE: Aerial View/Test Location Map
2804 West Gowan Rd., N. Las Vegas, AZ

SCALE:	DATE:	FILE NO.:
N.T.S	DEC 2017	40779-01

PLATE 2

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

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

3.0 OBSERVED DAMAGE

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

4.0 FLOOR-LEVEL SURVEY

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

Measurements were taken at close intervals and corrected for varying floor heights and thickness of floor coverings. All point readings have been based on the same datum. By evaluating the different readings, floor deformation can be easily determined by conventional contouring techniques. The attached **Plate 3** presents the results of the manometer survey. As shown, the maximum difference in elevation across the floor is approximately 3.3 inches. The contour pattern indicates a clear downward deformation of the floor toward the east side of the building. On average, most foundation systems are constructed within ½ 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 he excavation of a test pit (AGTP-1) and drilling of three small-diameter borings (AGSB-1 through AGSB-3).

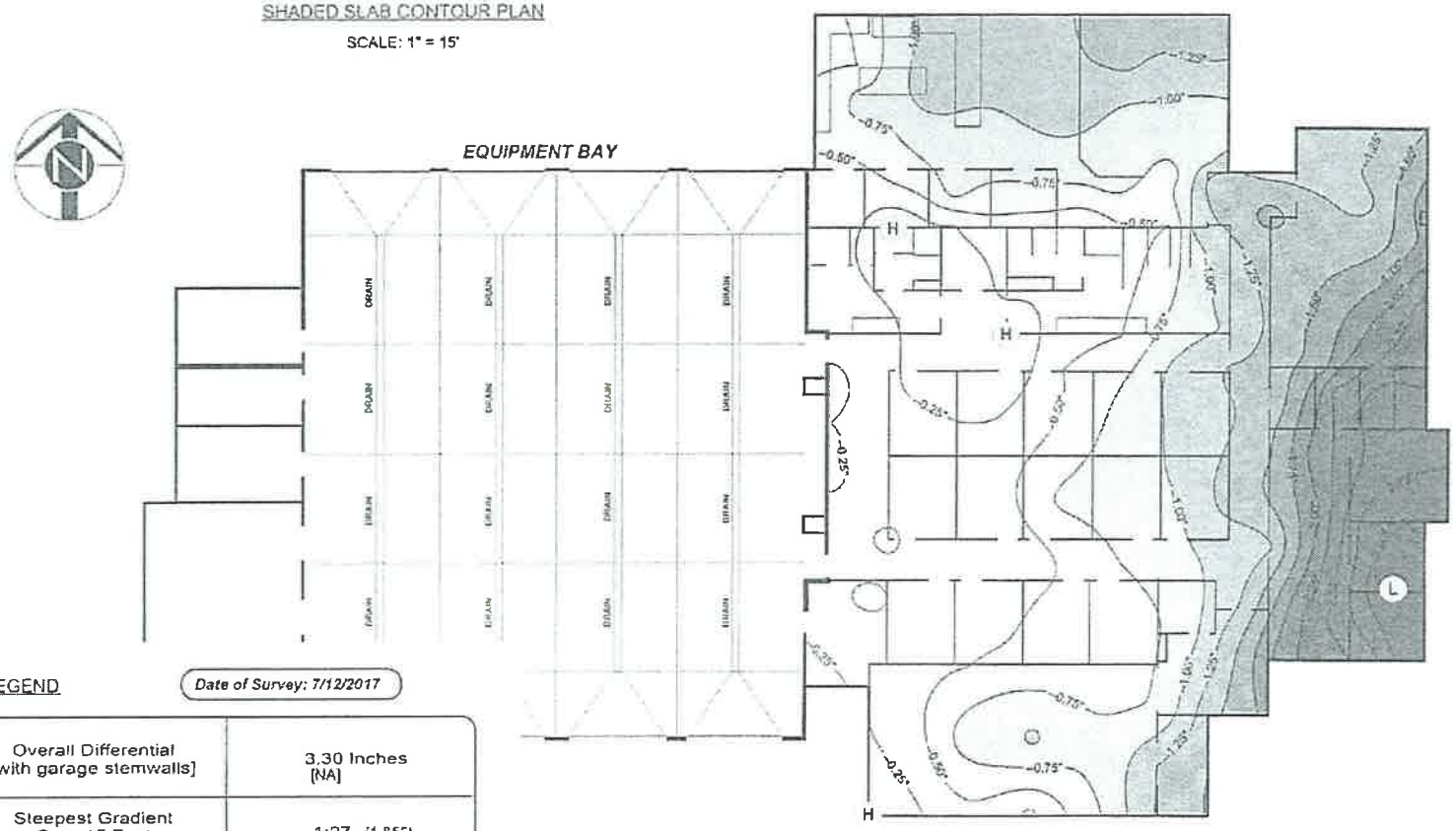
Test pit AGTP-1 was excavated on the east side of the building between the building foundation and the top of an exterior retaining wall. The excavation was terminated at 8.5 feet below ground surface at the top of a very hard and well cemented soil layer. Fill material consisting generally of a stiff 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 AGSB-1, AGSB-2 and AGSB-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 AGSB-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 AGSB-2 and AGSB-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'



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
	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.003132

6.0 LABORATORY TESTING

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

7.0 CONCLUSIONS

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

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

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

8.0 REMEDIAL RECOMMENDATIONS

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

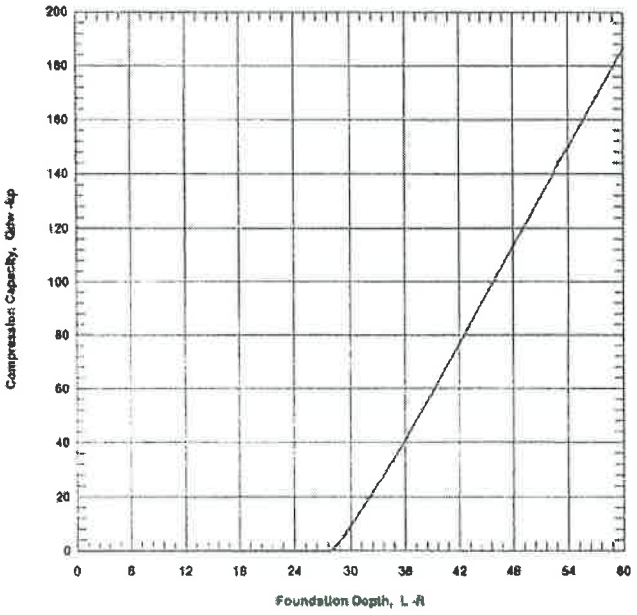
A minimum pile diameter of 2 feet is recommended for the underpinning. The pile spacing should be at least three times the pile diameter. Vertical pile capacity for an isolated, 2-foot diameter friction pile is presented on **Plate 4**. Capacities for other pile sizes can be determined in direct proportion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

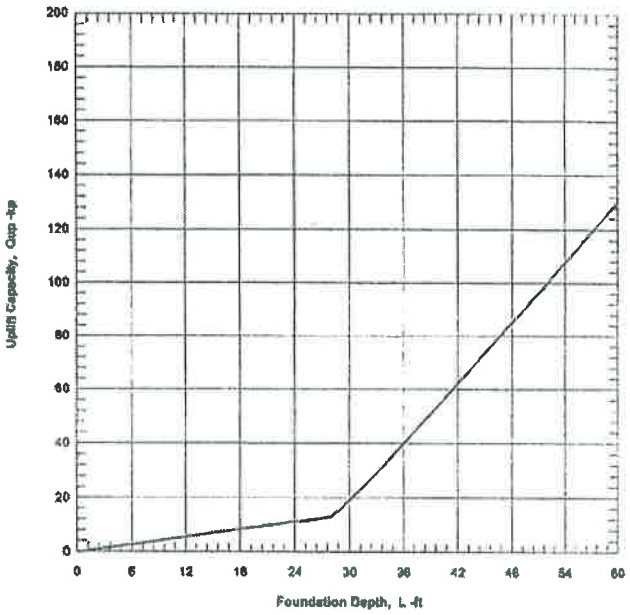
For friction piles, care should be taken to ream the pile excavation within the bearing zone in order to clean the excavation side walls of any smear resulting from drilling operations. The bottom of the excavation should be kept free of loose or sloughed material. It should be noted that hard drilling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

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

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

ALLOWABLE CAPACITY vs FOUNDATION DEPTH





AMERICAN GEOTECHNICAL

Fire Station 53
24 inch Diameter Pile

Plate 4

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

9.0 CONCRETE

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

10.0 CORROSION

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

11.0 REMARKS

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

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

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

Exhibit F

Exhibit F

DECLARATION OF EDRED T. MARSH, P.E.

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

1. I am a principal geotechnical engineer at American Geotechnical, Inc.

2. I am experienced in each discipline which is the subject of my December 11, 2017 report, specifically in the fields of geotechnical, civil, and forensic engineering.

3. My December 11, 2017 report contains my conclusions and the basis for the conclusions.

4. Based on my conclusions, there is a reasonable basis for filing this action.

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

Dated: July 3rd, 2019.

Edred T. Marsh, P.E.

EXHIBIT 48
PETITIONERS'APPENDIX

EXHIBIT 48
PETITIONERS'APPENDIX

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2/4/2020 3:09 PM
Steven D. Grierson
CLERK OF THE COURT

JMOT

JOHN T. WENDLAND, ESQ.
(Nevada Bar No. 7207)
ANTHONY D. PLATT, ESQ.
(Nevada Bar No. 9652)
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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, vs. DEKKER/PERICH/SABATINI LTD.; RICHARDSON CONSTRUCTION, INC.; NEVADA BY DESIGN, LLC D/B/A NEVADA BY DESIGN ENGINEERING CONSULTANTS; JW ZUNINO & ASSOCIATES, LLC; MELROY ENGINEERING, INC. D/B/A MSA ENGINEERING CONSULTANTS; O'CONNOR CONSTRUCTION MANAGEMENT INC.; NINYO & MOORE, GEOTECHNICAL CONSULTANTS; JACKSON FAMILY PARTNERSHIP LLC D/B/A STARGATE PLUMBING; AVERY ATLANTIC, LLC; BIG C LLC; RON HANLON MASONRY, LLC; THE GUARANTEE COMPANY OF NORTH AMERICA USA; P & W BONDS, LLC; PAFFENBARGER & WALDEN, LLC; DOES I through X, inclusive; and ROE CORPORATIONS I through X, inclusive, Defendants.	CASE NO.: A-19-798346-C DEPT. NO.: VIII **DEFENDANT NEVADA BY DESIGN, LLC D/B/A NEVADA BY DESIGN ENGINEERING CONSULTANTS' JOINDER TO DEFENDANT MELROY ENGINEERING, INC. D/B/A MSA ENGINEERING CONSULTANTS' MOTION TO DISMISS ON ORDER SHORTENING TIME** **Hearing Date: 02/20/2020** **Hearing Time: 10:00 a.m.** **Hearing Location:** **Phoenix Building, 11th Floor 110** **330 S. 3rd Street** **Las Vegas, NV 89101**

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DEFENDANT NEVADA BY DESIGN, LLC D/B/A NEVADA BY DESIGN ENGINEERING CONSULTANTS' JOINDER TO DEFENDANT MELROY ENGINEERING, INC. D/B/A MSA ENGINEERING CONSULTANTS' MOTION TO DISMISS ON ORDER SHORTENING TIME

COMES NOW, Defendant NEVADA BY DESIGN, LLC d/b/a NEVADA BY DESIGN ENGINEERING CONSULTANTS (hereinafter, "NBD"), by and through its counsel of record, the law firm of WEIL & DRAGE, APC, and hereby joins (and incorporates by reference as if fully stated herein) the relevant legal and factual arguments, the cited authority and the relief for dismissal requested by Defendant Melroy Engineering, Inc. d/b/a MSA Engineering Consultants ("MSA") in its Motion to Dismiss on Order Shortening Time. NBD also respectfully requests that the Court deem the Complaint against it void ab initio, and dismiss all charges per well-established Nevada law.

DATED this 4th day of February, 2020.

WEIL & DRAGE, APC

/s/ *John T. Wendland*

By: _____

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(Nevada Bar No. 7207)
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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF JOINDER

I.
LEGAL ARGUMENT

A. THE COURT'S GRANTING OF PLAINTIFF'S MOTION TO ALTER HAS REVIVED THE NRS 11.258 ARGUMENTS THAT IT PREVIOUSLY FOUND TO BE MOOT.

Although silent in the order granting Plaintiff's motion to alter, the altering of the prior order granting dismissal based on statute of repose revives the arguments previously raised by NBD (and others) pertaining to Plaintiff's failure to comply with NRS 11.258. At the time of the initial hearing on September 30, 2019, the Court heard, but never issued, any ruling on whether the Plaintiff's complaint, ***supported*** by a geotechnical engineer with opinions ***solely*** limited to geotechnical issues, complied with NRS 11.258 vis-à-vis NBD, a civil engineering firm. *See*, Complaint. These arguments were included as part of NBD's Motion to Dismiss filed on August 5, 2019.

In granting NBD's motion to dismiss, the Court solely focused on dismissing the complaint with prejudice based on the claims being barred under NRS 11.202. The ruling rendered the NRS 11.258 pending before the Court, moot. However, with the recent ruling on Plaintiff's motion to alter, the Court has resurrected the dismissed complaint and has placed the prior complaint filed on July 11, 2019 back "in play" for legal argument on NRS 11.258 deficiencies. Therefore, NBD respectfully states that the prior NRS 11.258 arguments submitted to the Court are no longer moot, are completely relevant and ripe for decision. NBD hereby joins in MSA's legal arguments, cited authority and request for relief.

NBD further incorporates herein as if fully stated, its NRS 11.258 arguments in its August 5, 2019 Motion and its Reply to Plaintiff's Opposition to said Motion.

B. AGI'S REPORT ALSO FAILS TO COMPLY WITH NRS 11.258(3) REQUIREMENTS

Although Mr. Marsh attests that he is a civil engineer, his retention and conclusions proffered in the attached AGI report are devoid of any opinions against NBD's services. *See*, AGI report attached to the Complaint. In fact, the report clearly states:

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> 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. *See*, AGI Report at Pg. 8.

The limited opinions and retention of AGI are the core arguments by NBD that Plaintiff failed to comply with NRS 11.258. If the report and conclusions are limited to geotechnical issues, then by extension, there are no relevant opinions as to NBD's services even if Mr. Marsh is a civil engineer. Thus, his opinions with respect to NBD fail to comply with NRS 11.258(3)(d) and his 3(e) statement irrelevant as to NBD. By extension, Mr. Dhalla's statement in the Affidavit fails to comply with NRS 11.258(1)(d), as he could not possess any reasonable basis in law and fact (if there are no opinions critical of NBD) to fulfill his obligation under NRS 11.258(4)(d).

Again, the core reason behind NRS 11.258 is to prohibit the shotgun litigation where a claimant can name and sue any party involved in a given project without any reasonable basis in law and fact. With respect to design professionals, the claimant must consult with a qualified expert and must through the consultation, the receipt of the report, relevant conclusions and statements, reach a qualified reasonably basis standard to file the Complaint. A claimant in an injury action would not consult a physical therapist to opine on the services of a neurologist. This same logic applies in these specialized trades.

C. DISMISSAL OF THE COMPLAINT AGAINST NBD IS MANDATORY

The failures stated herein, the prior incorporated Motion to Dismiss by NBD, and MSA's Motion, respectfully require this Court to dismiss the action, by finding Plaintiff's Complaint void ab initio with respect to NBD. *See*, NRS 11.259. As shown herein, Plaintiff failed to comply with NRS 11.248(1)(d), 11.258(3)(d)&(e) as Mr. Marsh has no conclusions critical of NBD (which is not even named in the AGI Report). In fact, Mr. Marsh did not even review any document from NBD and his opinions and scope were limited to a geotechnical evaluation. Therefore, the Affidavit with respect to NBD is irrelevant and non-compliant.

By failing to comply with all requirements in NRS 11.258, the Complaint against NBD is void ab initio and dismissal is mandatory (with no right to amend). *See, NRS 259(1); Otak v. Eighth Jud. Distr. Ct.*, 127 Nev. 593, 599, 260 P.3d 408, 412 (2011); *see also*, *Reif v. Aries*, 135 Nev. Adv. Op. 51, at Pg. 4 (October 10, 2019).

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II.

CONCLUSION

For the reasons stated herein, the relevant arguments in NBD's Motion to Dismiss and Reply filed in August 2019 (and incorporated herein) and MSA's Motion to Dismiss, the Complaint against NBD should be deemed void ab initio and dismissed.

DATED this 4th day of February, 2020.

WEIL & DRAGE, APC

/s/ *John T. Wendland*

By: _____

JOHN T. WENDLAND, ESQ.
(Nevada Bar No. 7207)
ANTHONY D. PLATT, ESQ.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of February, 2020, service of the foregoing **DEFENDANT NEVADA BY DESIGN, LLC D/B/A NEVADA BY DESIGN ENGINEERING CONSULTANTS' JOINDER TO DEFENDANT MELROY ENGINEERING, INC. D/B/A MSA ENGINEERING CONSULTANTS' MOTION TO DISMISS ON ORDER SHORTENING TIME** 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
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EXHIBIT 49
PETITIONERS'APPENDIX

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PETITIONERS'APPENDIX

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DISTRICT COURT

CLARK COUNTY, NEVADA

CITY OF NORTH LAS VEGAS, Plaintiff, vs. DEKKER/PERICH/SABATINI LTD.; RICHARDSON CONSTRUCTION, INC.; NEVADA BY DESIGN, LLC D/B/A NEVADA BY DESIGN ENGINEERING CONSULTANTS; JW ZUNINO & ASSOCIATES, LLC; MELROY ENGINEERING, INC. D/B/A MSA ENGINEERING CONSULTANTS; O'CONNOR CONSTRUCTION MANAGEMENT INC.; NINYO & MOORE, GEOTECHNICAL CONSULTANTS; JACKSON FAMILY PARTNERSHIP LLC D/B/A STARGATE PLUMBING; AVERY ATLANTIC, LLC; BIG C LLC; RON HANLON MASONRY, LLC; THE GUARANTEE COMPANY OF NORTH AMERICA USA; P & W BONDS, LLC; PAFFENBARGER & WALDEN, LLC; DOES I through X, inclusive; and ROE CORPORATIONS I through X, inclusive, Defendants.	CASE NO.: A-19-798346-C DEPT. NO.: VIII **DEFENDANT DEKKER/PERICH/SABATINI, LTD.'S JOINDER TO DEFENDANT MELROY ENGINEERING, INC. D/B/A MSA ENGINEERING CONSULTANTS' MOTION TO DISMISS ON ORDER SHORTENING TIME** **Hearing Date: 02/20/2020** **Hearing Time: 10:00 a.m.** **Hearing Location:** **Phoenix Building, 11th Floor 110** **330 S. 3rd Street** **Las Vegas, NV 89101**

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DEFENDANT DEKKER/PERICH/SABATINI, LTD.'S JOINDER TO DEFENDANT MELROY ENGINEERING, INC. D/B/A MSA ENGINEERING CONSULTANTS' MOTION TO DISMISS ON ORDER SHORTENING TIME

COMES NOW, Defendant DEKKER/PERICH/SABATINI, LTD. (hereinafter, "DPS"), by and through its counsel of record, the law firm of WEIL & DRAGE, APC, and hereby joins (and incorporates by reference as if fully stated herein) the relevant legal and factual arguments, the cited authority and the relief for dismissal requested by Defendant Melroy Engineering, Inc. d/b/a MSA Engineering Consultants ("MSA") in its Motion to Dismiss on Order Shortening Time. DPS also requests that the Court deem the Complaint against it void ab initio, and dismisses all charges per well-established Nevada law. DPS further adds additional arguments as part of this Joinder for the Court's consideration.

DATED this 4th day of February, 2020.

WEIL & DRAGE, APC

/s/ *John T. Wendland*

By: _____

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF JOINDER

I.
LEGAL ARGUMENT

A. THE COURT'S GRANTING OF PLAINTIFF'S MOTION TO ALTER HAS REVIVED THE NRS 11.258 ARGUMENTS THAT IT PREVIOUSLY FOUND TO BE MOOT.

Although silent in the order granting Plaintiff's motion to alter, the altering of the prior Nevada By Design ("NBD") order granting dismissal based on statute of repose revives the arguments previously raised by DPS (and others) concerning Plaintiff's failure to comply with NRS 11.258. At the time of the initial hearing on September 30, 2019, the Court heard, but never issued, any ruling on whether the Plaintiff's complaint, ***supported solely*** by a geotechnical engineer with opinions ***solely*** limited to geotechnical issues, complied with NRS 11.258 vis-à-vis DPS, an architectural firm. *See*, Complaint.

Instead, the Court, in granting NBD's motion to dismiss and dismissing the complaint with prejudice as the claims were clearly barred per NRS 11.202, deemed the NRS 11.258 arguments moot. However, with the recent ruling on Plaintiff's motion to alter, the Court has resurrected the dismissed complaint (dismissed with prejudice) and has placed the prior complaint filed on July 11, 2019 (although barred under Nevada law and maintained in violation of NRCP 11) back "in play" for legal argument on NRS 11.258 deficiencies. Therefore, the prior NRS 11.258 arguments are no longer moot, are completely relevant and DPS joins in MSA's legal arguments, cited authority and request for relief.

B. DPS IS A QUALIFIED DESIGN PROFESSIONAL INVOLVED IN A NON-RESIDENTIAL PROJECT REQUIRING PLAINTIFF TO FULLY COMPLY WITH NRS 11.258:

As argued in MSA's Motion[1] (and prior motions before the Court), the Plaintiff is obligated under Nevada statutory law to fully and completely comply ***with all provisions*** in NRS 11.258 when bringing claims against a design professional. *See*, MSA's Motion at Pg. 8. This

[1] DPS further incorporates by reference as if fully stated herein, its argument enumerated in the previously filed Motion to Dismiss filed (on August 6, 2019) and its Reply to Plaintiff's Opposition.

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means at the time of service of the first pleading in the action, Plaintiff must concurrently file, an Affidavit of Merit that complies with NRS 11.258(1)(a)-(d). The Affidavit must also attach an expert report, supporting documents and a statement from the expert per the requirements in NRS 11.258(3)(a)-(e). Full compliance is mandatory or else the Court is required to dismiss the action as against the design professional. *See*, NRS 11.259(1)(a)-(c).

In the Complaint, the Plaintiff attest that it entered into a professional architectural services agreement with DPS. *See*, Complaint at Para. 22. Plaintiff further argued that according to the professional architectural services agreement, DPS created a bid set construction documents including submittal plans and specifications to construct First Station No. 53. *Id*. at Para. 32. These statements establish that DPS is a "design professional" practicing in the field of architecture[2]. *See*, NRS 11.2565(2)(b).

As DPS is a qualified design professional, Plaintiff was required to consult with an expert in the relevant discipline (the practice of architecture and structural engineering) concerning DPS's services to secure the relevant information/knowledge to reach a reasonable basis in law and fact to bring this action against DPS. This did not occur.

Instead, Mr. Dhalla's Affidavit attests under oath that the only expert he consulted, was American Geotechnical, Inc. ("AGI"). *See*, Affidavit at Para. 4(b). Mr. Dhalla further attests (and attaches supporting documents) that AGI is an expert limited in the fields of geotechnical, civil and forensic engineering. *Id*. at Para. 5(b). Given that Plaintiff commenced an action against a slew of different design professionals, Plaintiff had the obligation to consult with the relevant, appropriate experts knowledgeable in the relevant disciplines to the parties. In the case of DPS, Plaintiff was required to consult with an architect and a structural engineer.

Mr. Marsh's curriculum vitae and statement confirm he is not an architect nor a structural engineer. *See*, **Exs. C & F** to MSA's Motion. Thus, the Affidavit fails to comply with NRS 11.258(1)(c), as the expert consulted by Plaintiff's counsel is not involved in DPS's area of

[2] DPS also provide structural design services but since Mr. Marsh is not a structural engineer, the same arguments pertain for these services.

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practice. Moreover, as attested by Plaintiff, DPS did not prepare the geotechnical engineering design, findings or report which was handled by other qualified experts. By extension, Mr. Marsh, who is not an architect or structural engineer, could not have provided Mr. Dhalla with the requisite technical opinions, conclusions and findings that would create a reasonable basis to pursue this action against DPS. Therefore, the Affidavit, with respect to DPS, fails per se to comply with NRS 11.258(1) obligations.

C. AGI'S REPORT ALSO FAILS TO COMPLY WITH NRS 11.258(3) REQUIREMENTS

Counsel for DPS has been involved in decades of construction defect cases. This is the first time, in a very long time, that we have seen a Plaintiff in a multi-discipline action attempting to use a single "jack of all trades" expert to argue NRS 11.258 compliance against multiple design professionals, engaged in multiple areas of design practice. In design professional cases involving multi-design issues, claimants attach multiple expert reports from various experts, each knowledgeable in the design discipline pertaining to a party. Here, the only report attached is AGI's geotechnical report. The only NRS 11.258 statements and expert curriculum vitae come from Mr. Marsh, an engineer, not an architect. Mr. Marsh's report clearly states that his scope of investigation was limited to geotechnical engineering matters. None of his opinions discuss DPS or any architectural design. In fact, the only conclusions provided by Mr. Marsh are solely in geotechnical matters. As such, the attached report and supporting documents, fail to comply with NRS 11.258(3) in that Mr. Marsh's resume shows he is not an architect or structural engineer; his statement of experience does not include architectural/structural design, his scope and conclusions do not include any opinions relevant to DPS and his 11.258(3)(e) statement would be wholly irrelevant to DPS. For said reasons, the attached report fails to comply with NRS 11.258(3)(a),(b),(d)&(e) with respect to DPS.

D. DISMISSAL OF THE COMPLAINT AGAINST DPS IS MANDATORY

The failures stated herein and in MSA's Motion means that the Court is legally obligated to dismiss the action by finding that the Plaintiff's Complaint is void ab initio with respect to DPS. *See*, NRS 11.259. As shown, using a "jack of all trades" expert does not comply with NRS

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11.258, as the claimant cannot consult with one expert in one area of practice and then apply his (irrelevant) conclusions to other design practices as the expert (admits) that he lacks knowledge and experience in that area of practice. Moreover, Mr. Marsh admitted his scope was to perform a geotechnical evaluation and therefore, he was not retained to even investigate DPS's scope of service. His opinions are also limited to geotechnical issues. Therefore, the failure to comply with NRS 11.258, renders the Complaint against DPS void ab initio and dismissal is mandatory (with no right to amend). *See, NRS 259(1); Otak v. Eighth Jud. Distr. Ct.*, 127 Nev. 593, 599, 260 P.3d 408, 412 (2011); *see also*, *Reif v. Aries*, 135 Nev. Adv. Op. 51, at Pg. 4 (October 10, 2019).

II.

CONCLUSION

For the reasons stated herein, in DPS's prior Motion to Dismiss and Reply and relevant fact/legal arguments in MSA's Motion to Dismiss, the Complaint against DPS should be deemed void ab initio and dismissed.

DATED this 4th day of February, 2020.

WEIL & DRAGE, APC

By: /s/ *John T. Wendland*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of February, 2020, service of the foregoing **DEFENDANT DEKKER/PERICH/SABATINI, LTD.'S JOINDER TO DEFENDANT MELROY ENGINEERING, INC. D/B/A MSA ENGINEERING CONSULTANTS' MOTION TO DISMISS ON ORDER SHORTENING TIME** was made this date by electronically serving a true and correct copy of the same, through Clark County Odyssey eFileNV, to the following parties:

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EXHIBIT 50
PETITIONERS'APPENDIX

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PETITIONERS'APPENDIX

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DISTRICT COURT

CLARK COUNTY, NEVADA

CITY OF NORTH LAS VEGAS,

Plaintiff,

vs.

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Defendants.

CASE NO.: A-19-798346-C

DEPT NO.: VIII

DEFENDANT JW ZUNINO & ASSOCIATES, LLC'S JOINDER TO DEFENDANT MELROY ENGINEERING, INC. D/B/A MSA ENGINEERING CONSULTANTS' MOTION TO DISMISS ON ORDER SHORTENING TIME

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/ / /

DEFENDANT JW ZUNINO & ASSOCIATES, LLC'S JOINDER TO DEFENDANT

FORAN GLENNON PALANDECH PONZI & RUDLOFF PC
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Henderson, Nevada 89052

Case Number: A-19-798346-C

MELROY ENGINEERING, INC. D/B/A MSA ENGINEERING CONSULTANTS' MOTION TO DISMISS ON ORDER SHORTENING TIME

COMES NOW Defendant JW ZUNINO & ASSOCIATES, LLC. ("JWZ"), by and through its attorneys of record, the law firm of FORAN GLENNON PALANDECH PONZI & RUDLOFF, PC, and pursuant to N.R.C.P. 12(b)(5) & 12(f), hereby joins (and incorporates by reference as if fully stated herein) the relevant legal and factual arguments, the cited authority and the relief for dismissal requested by Defendant Melroy Engineering, Inc. d/b/a MSA Engineering Consultants ("MSA") in its Motion to Dismiss on Order Shortening Time. NBD also respectfully requests that the Court deem the Complaint against it void ab initio, and dismiss all charges per well-established Nevada law.

Dated this 7th day of February 2020.

FORAN GLENNON PALANDECH PONZI & RUDLOFF PC

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF JOINDER

I. INTRODUCTION

This is an action filed by the City of North Las Vegas ("Plaintiff") against various design professionals relating to the design and construction of Fire Station 53 (the "Project") in North Las Vegas, Nevada, which was completed on July 13, 2009. Plaintiff claims that following completion of the project, it noticed various issues including wall cracks, separations, and interior slab cracking. On July 11, 2019, Plaintiff filed its complaint naming various engineers, architects and other design professionals as defendants responsible for the alleged damage to the Project. Also named as a defendant is landscape architect JW Zunino & Associates, LLC ("JWZ"). However, the only expert report attached to the complaint is a geotechnical investigation conducted by American Geotechnical, Inc. ("AGI") and Edred T. Marsh. Marsh is not a landscape architect and is not critical of JWZ in his report. Consequently, JWZ joins the motion to dismiss Plaintiff's complaint because it failed to comply with the certificate of merit statutes under NRS 11.258 and is therefore *void ab initio*.

II. RELEVANT PROCEDURAL AND FACTUAL HISTORY

Plaintiff filed its complaint on July 11, 2019. *See* Complaint. The complaint alleges that JWZ was retained as a subconsultant by architectural firm defendant DPS for work on the Project. *Id*. at ¶ 27. Plaintiff identifies JWZ as a "Design Defendant." *Id*. The complaint asserts four (4) causes of action against JWZ as a design professional defendant: 1) breach of the design agreement/contract; 2) breach of the covenant of good faith and fair dealing; 3) [professional] negligence; and 4) breach of the implied covenant of good faith and fair dealing. *Id*. at pgs. 8-11.

The complaint contains an Affidavit of Aleem A. Dhalla, Esq. alleged to be prepared in accordance with NRS 11.258. *Id*. at pg. 16-17.[1] The Affidavit states that Plaintiff consulted with the geotechnical firm AGI who is claimed to be knowledgeable in the "relevant discipline involved in the action." *Id*. at 16, ¶4. The Affidavit identifies the specific consultant from AGI as Edred T.

[1] Dhalla's Affidavit is not identified or listed as a separate exhibit but simply affixed to the complaint before the enumerated exhibits. In order to avoid confusion, JWZ will refer to all content of this exhibit by its complaint page numbers and paragraphs.

Marsh. *Id*. at 16, ¶ 5. It also identifies Marsh's resume, expert statement, and report. *Id*. The affidavit states that Marsh is experienced in each discipline which is the subject of the report, and that Marsh's specific experience is in the "fields of geotechnical, civil and forensic engineering." *Id*. at 16, ¶5(b). The Affidavit does not state that Dhalla consulted with any landscape architect regarding any claims against JWZ. *Id*. at 16-17. Dhalla likewise does not identify Marsh as an expert in landscape architecture. *Id*. at 16, ¶5.

Mr. Marsh's resume does not identify him as a landscape architect, nor does it indicate any education or professional associations in the field of landscape architecture. *See*, Marsh Resume, (attached to Complaint at Ex. 6). To the contrary, Marsh received his education in civil engineering and focuses his practice on geotechnical engineering and litigation support. *Id*. The expert report attached to the complaint is specifically identified by AGI and Marsh as a "Geotechnical Investigation." *See*, AGI Geotechnical Investigation, (attached to Complaint at Ex. 5). This report states, "American Geotechnical has performed a geotechnical investigation," and that the purpose of the investigation "was to evaluate the site geotechnical conditions." *Id*. at Ex. 5, cover page – page 1. The report goes on to state, "The intent of this report is to **advise our client on geotechnical matters** involving the proposed improvements." *Id*. at Ex. 5, page 8 (emphasis added). As outlined in the report, the only discipline addressed by AGI and Mr. Marsh is geotechnical. The report does not mention JWZ. *Id*. at Ex. 5.

III. LEGAL ARGUMENT

A. This Issue Has Not Been Determined on its Merits and Reversal of the Prior Order Dismissing This Case Makes Determination of this Issue Ripe.

Although silent in the order granting Plaintiff's motion to alter, the altering of the prior order granting dismissal based on statute of repose revives the arguments previously raised by NBD (and others) pertaining to Plaintiff's failure to comply with NRS 11.258. At the time of the initial hearing on September 30, 2019, the Court heard, but never issued, any ruling on whether the Plaintiff's complaint, supported by a geotechnical engineer with opinions solely limited to geotechnical issues, complied with NRS 11.258 vis-à-vis NBD, a civil engineering firm. See, Complaint. These arguments were included as part of NBD's Motion to Dismiss filed on August 5, 2019.

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When the Court granted the prior Motion to Dismiss, it did so specifically based on the statute of repose. Thus, the instant issue of deficiency based on NRS 11.258 was moot. Now that the Court has reversed its position on the statute of repose issue, the Court must now determine whether Plaintiff complied with NRS 11.258 regarding its claims against JWZ. Accordingly, JWZ joins in MSA's legal arguments, cited authority, and request for relief.

B. Plaintiff's Failure to Comply with NRS 11.258 Requires that the Complaint Against JWZ be Dismissed as Void *Ab Initio*

Lawsuits against design professionals relating to non-residential construction are governed by the attorney affidavit and expert report requirements of NRS 11.258. Under Nevada law, a plaintiff must file concurrently with the initial complaint an affidavit of merit in accordance with the requirements set forth in NRS 11.258(1)(a-d). In addition to the affidavit, a plaintiff must also file an expert report, supporting documents and statement as outlined in NRS 11.258(3)(a-e). The "court ***shall*** dismiss an action governed by NRS 11.258" when there is any failure to comply with the affidavit or merit or expert report requirements. *See,* NRS 11.259(1)(a-c) (emphasis added).

Plaintiff's complaint identifies JWZ as a design professional and "subconsultant" contracted by DPS relating to Fire Station 53. *See*, Complaint, ¶¶ 23, 27. DPS's subconsultants are referred to as "Design Defendants." *Id*. at ¶27. A design professional is someone who holds "a professional license or certificate issued pursuant to chapter 623 [Architecture, Interior Design and Residential Design], 623A [Landscape Architects] or 625 [Professional Engineers and Land Surveyors] of NRS or a person primarily engaged in the practice of professional engineering, land surveying, architecture or landscape architecture." NRS 11.2565(2)(b); *see also*, *In re City Center Construction v. Eighth Judicial District Court*, 129 Nev. 669, 675, 310 P.3d 574, 579 (2013). Accordingly, Plaintiff is required to fully comply with NRS 11.258 for claims against JWZ. As detailed in the sections below, the complaint against JWZ must be dismissed because Plaintiff has failed to comply with the both the requirements for affidavits of merit under NRS 11.258(1) and the expert report under NRS 11.258(3).

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1. Plaintiff's Affidavit of Merit Fails to Comply with NRS 11.258(1) Regarding Landscape Architects Such as JWZ.

NRS 11.258 states that an attorney must file and serve an affidavit of merit concurrently with the first pleading in an action initiated against a design professional. That affidavit must state that the attorney performed the following: (a) has reviewed the facts of the case; (b) has consulted with an expert; (c) reasonably believes the expert who was consulted is knowledgeable **in the relevant discipline involved in the action**; and (d) has concluded on the basis of his review and the consultation with the expert that the action has a **reasonable basis in law and fact**. *See*, NRS 11.258(1)(a-d) (emphasis added).

Here, Dhalla's Affidavit attests that he consulted with Edred T. Marsh of AGI and 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." Complaint, at 16:17-23 (emphasis added). The Affidavit does not identify Mr. Marsh as an expert in the field of architecture, landscape architecture or any other architectural field. The actual discipline of landscape architecture is not mentioned anywhere in the Affidavit.

Since JWZ was the landscape architect, Plaintiff's counsel was required to consult with an expert knowledgeable in that relevant discipline in order to comply with the Affidavit requirements of NRS 11.258(1)(c). Put simply, Dhalla needed to have consulted with a landscape architectural expert in order to pursue his claims against JWZ. JWZ is not a geotechnical engineering firm. The Affidavit makes it clear that Dhalla undertook no such consultation. *Id*. at pg.16-17.

Even a cursory reading of Marsh's resume clearly establishes that he is not a landscape architect and is therefore not knowledgeable in the relevant fields involving JWZ's services. He is unable to opine on the professional services provided by JWZ and cannot offer any opinions as to the standard of care for landscape architect services. Dhalla had no reasonable basis to represent in his Affidavit that he consulted with an expert knowledgeable about any field other than geotechnical engineering. Moreover, since neither JWZ nor its scope of work is criticized by AGI, Dhalla has no knowledge or understanding whatsoever on which to attest in his Affidavit that the claims against JWZ are reasonable based on law or fact.

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Plaintiff failed to comply with NRS 11.258(1)(c) when it refused and/or otherwise elected not to consult with a landscape architect before brining claims against JWZ. Furthermore, Mr. Dhalla was unable to conclude that he has a reasonable basis in law and fact to bring his claims against JWZ as required under NRS 11.258(1)(d). Any and all attestations in Dhalla's Affidavit relating to Marsh's opinions are strictly related to geotechnical engineering matters and are therefore entirely irrelevant as to JWZ.

As set explained in detail and set forth by Defendant MSA in its Motion to Dismiss, incorporated by reference herein,[2] the Nevada Legislature intended on mandating that a plaintiff retain independent experts who were qualified the in the applicable disciplines and professional fields to provide standard of care opinions for those specific professional fields. This is further supported by the Nevada Supreme Court's ruling in *Otak Nevada, LLC v. Eighth Judicial District Court*, where the Court explained that requiring an expert report and affidavit particularized to each party is not unreasonable as each party "must justify its claims of nonresidential construction malpractice based on that party's relationship with the defendant." 127 Nev. 593, 599, 260 P.3d 408, 412 (2011).

Marsh is not a landscape architect and is therefore unqualified to render any opinions as to JWZ's service. As a result, Dhalla's Affidavit is fatally defective and entirely irrelevant as to JWZ. The Affidavit fails as a matter of law to comply with the Affidavit of Merit requirements of both NRS 11.258(1)(c) and 11.258(1)(d). Plaintiff's Complaint must therefore be dismissed as it pertains to JWZ.

2. Mr. Marsh's Expert Report Fails to Comply with NRS 11.258(3) With Regard to Landscape Architects such as JWZ.

In addition to Affidavit of Merit, Plaintiff is also required to attach a report. NRS 11.258(3). "[T]he report must be prepared by the expert consulted by the attorney and must include, without limitation:

[2] The legislative history of NRS 11.258 has been set forth and cited in detail in MSA's Motion. For the sake of judicial economy, those citations and exhibits are incorporated by reference and will not be separately attached or cited.

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(a) The resume of the expert;

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

(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;

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

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

NRS 11.258(3) (emphasis added). The purpose of NRS 11.258 is to ensure that actions such as this one are only brought in good faith and based on competent expert opinion. *See* NRS 11.259; *see also Otak Nev., LLC v. Eighth Judicial Dist. Court*, 127 Nev. 593, 599, 260 P.3d 408, 412.*; In re CityCenter Contr. & Lien Master Litig.*, 129 Nev. 669, 678, 310 P.3d 574, 581 (2013). This advances judicial economy and prevents frivolous suits. *CityCenter*¸ 129 Nev. at 678.

As outlined above, Marsh is not a landscape architect and does not mention any knowledge in the field of landscape architecture. *See*, Complaint, at Exs. 6, 7. Instead, Marsh merely attests that he is a civil engineer. *Id.* Moreover, the report authored by Marsh is not critical of JWZ's services. The report is titled "Geotechnical Investigation" and addresses only geotechnical engineering issues. The report does not mention landscape architecture and fails to contain any mention of JWZ. *See*, AGI Report, (attached to Complaint, at Ex. 5). Instead, the report states:

> 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.

Id. at Ex. 5, page 8 (emphasis added).

This also means that Marsh's NRS 11.258(3)(e) statement is also limited to the geotechnical issues identified in the AGI Report and cannot be extended to any other discipline, such as landscape architecture. It cannot apply to any disciplines outside of geotechnical engineering, and it therefore improper and irrelevant to JWZ. Because Marsh is not an experienced landscape architect and provided conclusions related expressly and solely to geotechnical matters outside the

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scope of work JWZ, Plaintiff failed to comply with the expert requirements of NRS 11.258(3)(b-e) as they pertain to JWZ.

3. Plaintiff's Complaint as to JWZ Must be Dismissed with Prejudice

"[A] pleading filed under NRS 11.258 without the required affidavit and expert report is void ab initio and of no legal effect, [therefore] the party's failure to comply with NRS 11.258 cannot be cured by amendment." *Otak*, 127 Nev. at 599, 260 P.3d at 412. Failure to comply with all requirements of NRS 11.258(1) and (3) must result in a finding that the Complaint is void ab initio with respect to JWZ and it must be dismissed with prejudice. "**The court shall dismiss**" an action involving nonresidential construction if the plaintiff's attorney fails to comply with NRS 11.258. NRS 11.259(1) (emphasis added).

In this instant action, Plaintiff failed to provide:

1) an Affidavit of Merit that complies with the requirements of NRS 11.258(c) or (d);

2) a valid expert report from a qualified landscape architectural expert as required by NRS 11.2583(b);

3) an expert report that actually contains opinions and/or conclusions critical of JWZ; or

4) an expert statement in accordance with NRS 11.258(3)(e) that is not solely limited to geotechnical issues.

Plaintiff's failure to comply with these requirements, coupled with the fact that JWZ is neither criticized nor mentioned in any way means that Plaintiff has not satisfied its obligations pursuant to NRS 11.258(1) and NRS 11.258(3). Further, because the Complaint is void ab initio, it must be dismissed with no right to amend. *Otak v. Eighth Jud. Distr. Ct.*, 127 Nev. 593, 599, 260 P.3d 408, 412 (2011); *see also, Reif v. Aries*, 135 Nev., Adv. Op. 51, at Pg. 4 (October 10, 2019). JWZ therefore respectfully requests this Court dismiss Plaintiff's complaint with no leave to amend.

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IV. CONCLUSION

For the reasons stated herein, and in MSA's Motion to Dismiss, the Complaint against JWZ must be deemed void ab initio and dismissed with prejudice.

Dated this 7th day of February 2020.

FORAN GLENNON PALANDECH PONZI & RUDLOFF PC

By: */s/ Dylan P. Todd*
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **DEFENDANT JW ZUNINO & ASSOCIATES, LLC'S JOINDER TO DEFENDANT MELROY ENGINEERING, INC. D/B/A MSA ENGINEERING CONSULTANTS' MOTION TO DISMISS ON ORDER SHORTENING TIME** was served by the method indicated:

☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).

☐ **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.

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Dated: February 7, 2020.

/s/ Rita Tuttle
An Employee of Foran Glennon

EXHIBIT 51
PETITIONERS'APPENDIX

EXHIBIT 51
PETITIONERS'APPENDIX

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DISTRICT COURT

CLARK COUNTY, NEVADA

CITY OF NORTH LAS VEGAS,

Plaintiff,

vs.

DEKKER/PERICH/SABATINI LTD.; RICHARDSON CONTSRUCTION, 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 Defendant Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Motion To Dismiss On Order Shortening Time

Case Number: A-19-798346-C

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 MSA Engineering Consultants' ("MSA) Motion To Dismiss. This Joinder incorporates and asserts all the arguments contained in MSA's motion with regards to MSA's arguments about Plaintiff's compliance with NRS § 11.258.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

As this Court is aware, this case stems from a breach of contract and negligence case concerning alleged construction defects at the City of North Las Vegas ("City") fire station located at 2804 W. Gowan Rd, North Las Vegas, NV 89032 ("Station 53). The City alleges a number of defects in the station such as wall cracks, separations and interior slab cracking. It has brought suit against the entities allegedly responsible for the design and construction of the station. However, the City has failed in its obligation pursuant to NRS 11.258 to provide a report from an engineer attesting to the deficiencies in the work Ninyo & Moore ("N&M") allegedly did, or failed to do, that resulted in the damages it seeks. As such, the Complaint is void ab initio and should be dismissed.

II. STATEMENT OF FACTS

On February 7, 2007, the City contracted with the firm of Derich/Perichi/Sabitini Ltd. ("DPS") for the construction of Station 53. DPS was to serve as the architects for the station. DPS then contracted with N&M to evaluate the subsurface soil conditions to provide design and construction recommendations.

N&M submitted a Geotechnical Evaluation to DPS on August 29, 2007. The report listed the activities N&M performed: (*See* Exhibit "A," N&M Geotechnical Evaluation)

- Coordination and mobilization for subsurface exploration, including clearance of existing utilities at the site, which was conducted through Underground Service Alert.
- Drilling, logging, and sampling of four exploratory borings, which were advanced to depths ranging from approximately 6.5 to 16.5 feet. The borings were performed to evaluate subsurface soil conditions at the site and to obtain soil samples for laboratory testing.

- Performance of laboratory tests on selected soil samples obtained from the exploratory borings to evaluate the in-place moisture content and dry density, gradation, plasticity, consolidation characteristics, R-value, sodium content, sulfate content, sodium-sulfate content, and total salts (solubility).

N&M specifically found that the site is underlain primarily by "quaternary-age alluvium" (native soil). It performed four exploratory borings of the site to analyze the soil. N&M's conclusions were that it found no known geotechnical or geological conditions that would preclude construction of the proposed structure. However, N&M gave the following geotechnical recommendation:

> "... it is our opinion that the existing fill soils and underlying near surface alluvial (native) soils, which are moderately porous, highly gypsiferous, and ***have a high expansion potential***, are not suitable for support of the proposed structures and improvements in their present condition. ***These soils will need to be removed from structure and improvement areas and replaced with adequately compacted structural fill.*** (emphasis added).

In other words, N&M advised the City about the expansive soil in the area and recommended replacing it. N&M recommended placing structural and backfill soils in the area.

From these conclusions, DPS created the construction documents, which N&M reviewed. DPS presented its plans to the City, which held a public bidding for the project. On January 16, 2008, the City retained Richardson Construction ("Richardson") to build the station. Richardson finished construction in 2009. A certificate of occupancy was issued on February 25, 2009 and a notice of completion was recorded on July 13, 2009.

The City alleges that it began having problems sometime in 2017. The City retained American Geotechnical, Inc. ("AGI") to perform an investigation. AGI presented its report on December 13, 2017. *See* Exhibit "B," American Geotechnical's Report and Recommendations. AGI concluded that expansive soil activity was causing the stress to Station 53. ***The AGI report notes that N&M recommended that the existing fill as well as loose native soils be removed and replaced with a structural fill for the building pad.*** AGI also stated in its report that the soil underlying the site included interbedded layers of loose and stiff alluvial materials with significant clay fractions. This

type of soil had high expansive characteristics. AGI then provided a number of recommendations to remediate the problem, including replacing the existed flatwork.

A careful reading of AGI's report shows that it is missing any critique of the services or opinions provided by N&M on the project. That is because the report generated by AGI was not done in anticipation of litigation or to determine if litigation was possible against N&M. As explained below, the scope of the investigation done by AGI, two years prior to litigation being filed, cannot be used to substantiate the need for litigation against N&M. This is especially true given that the AGI report itself is not critical of N&M's design professional services, and the report only confirms what has allegedly become evident a decade after N&M conducted its analysis of Station 53.

III. LEGAL ARGUMENT

Plaintiff's Complaint refers to N&M as one of the "Design Defendants."[1] In addition to MSA's arguments, Plaintiff's Complaint and Affidavit by Aleem A. Dhalla, Esq. fail to comply with NRS § 11.258(3)(d). Mr. Dhalla's Affidavit fails to provide any conclusions by an expert on how N&M fell below any standard of care.

Mr. Dhalla's Affidavit is defective as it applies to N&M for several reasons. NRS 11.258 requires the complainant's attorney to file, when the first pleading is served, an affidavit and expert report attesting to a reasonable basis for the action.[2] First, the affidavit from Mr. Dhalla references the opinions of Edred T. Marsh, who does not provide any affidavit on how N&M's design professional services fell below the standard of care. Mr. Marsh only provides a non-compliant declaration that does not even identifies N&M by name. Second, Mr. Marsh's report does not state what action or omission by N&M led to the conditions alleged in the Complaint. Mr. Marsh's report only states: "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."[3] There are no other conclusions about how N&M's design professional services fell below the standard of care or contributed to any defects alleged in the Complaint. Third, the referenced Ninyo & Moore report stated:

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[1] *See* Plaintiff's Complaint at ¶ 27.

[2] *Converse Prof'l Group v. Eighth Judicial Dist. Group (In re CityCenter Constr.)*, 129 Nev. 669, 674, 310 P.3d 574, 578 (2013).

[3] *See* Report of Edred T. Marsh at 3., attached as Exhibit "A."

> "Based on our findings, it is our opinion that the existing fill soils and underlying near surface alluvial (native) soils, which are moderately porous, highly gypelferous and have a high expansion potential, are not suitable for support of the proposed structures and improvements in their present condition. Those soils will need to be removed from structure and improvement areas and replaced with adequately compacted structural fill."[4]

In other words, N&M identified the problem and gave its recommendations. Mr. Marsh's declaration fails to state how N&M's recommendations fell below the standard of care to give rise to any claim against N&M.

AGI's December 11, 2007 report relied upon by the City to substantiate litigation against N&M is telling of why it fails to meet the stringent standards of NRS 11.258.(3). A simple review of the introductory paragraph reveals that the "investigation" by AGI was done to "evaluate the site geotechnical conditions and to determine the probable cause(s) of the existing distress…and to provide remedial recommendations for improvement of adverse site conditions." Moreover, in the report's Scope of Work section (section 1.0, pg. 2) there is no mention that AGI was tasked to evaluate the design the professional services of N&M or to opine on any recommendations made or to determine if there is a basis to make a legal claim against any party. Instead, this section just states in the last bullet point that "[p]reparation of this report summarizing our filed investigating, findings, conclusions, and remedial recommendations." Nowhere in AGI's report does it state that Mr. Marsh has concluded that there is a reasonable basis for filing a lawsuit against N&M as required by NRS 11.258(3)(e). There is no such statement because AGI was not hired to conduct such an extensive audit of the scope of work of all the contractors and design professionals that worked on the project to determine who could be responsible for the alleged deficiencies it identified.

Clearly, Mr. Marsh's report is not what was envisioned by the Nevada Legislature when it enacted NRS 11.258(3). The report relied upon by Mr. Dhalla to substantiate the City's Complaint does not set forth a conclusion that N&M's scope of work fell below the standard of care or any basis supporting such a conclusion as is required by Nevada law. NRS 11.258(3)(d). Mr. Dhalla's Affidavit in support of the Complaint is therefore lacking any expert basis as required by Nevada law.

[4] *See* Ninyo & Moore's Report at 10, attached as Exhibit "B."

Moreover, Mr. Marsh's Declaration attached to the City's Complaint does not rectify any of the deficiencies in the report.[5] The report is woefully lacking any semblance of qualifying for what is required by NRS 11.258(3). The Nevada Legislature when enacting NRS 11.258 was very clear that an expert must review the case early on "to show merit to a claim and a reasonable basis to proceed with a suit."[6] The Nevada Legislature also envisioned that the attorney would then take the expert's report and craft the complaint against the design professional based on the errors alleged in the report instead of just submitting a boilerplate complaint with generic allegations.[7] Without a doubt, Mr. Marsh's December 11, 2017 report is wholly lacking any analysis or statements reflecting why N&M's design professional services on the project fell below the standard of care. As such, Mr. Marsh's July 3, 2019 declaration that is based on the deficient report therefore cannot substantiate the reasonableness for filing this action against N&M and the other design professionals because he never rendered such opinions in the report.

As demonstrated herein, City failed to comply with the strict requirements of NRS 11.258. Given that failure, City's Complaint is defective and is rendered void ab initio and the Court has no discretion to allow City to cure or bring the defective complaint into compliance with NRS 11.258 (as it does not legally exist). NRS 11.258; NRS 11.259; *Otak Nev., LLC v. Eighth Judicial Dist. Court*, 127 Nev. 593, 598-99, 260 P.3d 408, 411-12 (2011). City's failure to meet NRS 11.258's filing requirements require dismissal of its claim against N&M pursuant to NRS 11.259 because City's complaint is void ab initio.

. . .

. . .

[5] *See* Plaintiff's Complaint, Exhibit 7.
[6] *See* Minutes of the Senate Committee on Judiciary at 7, 74th Leg (Nev., March 23, 2007).
[7] *See* Minutes of the Assembly Committee on Judiciary at pg. 14, 74th Leg. (Nev., May 14, 2007).

IV. CONCLUSION

The points and authorities in MSA's Motion make it clear that the City's failure to strictly comply with NRS 11.258 makes the Complaint void ab initio pursuant to NRS 11.259. For these additional reasons, the Court should dismiss Plaintiff's Complaint as *void ab initio* pursuant NRS 11.259.

DATED this 7th day of February, 2020.

WILSON ELSER MOSKOWITZ
EDELMAN & DICKER LLP

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5, I certify that I am an employee of Wilson Elser Moskowitz Edelman & Dicker LLP, and that on February 7th , 2020, I served **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** as follows:

☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

☒ via electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk;

BY: */s/Annemarie Gourley*
An Employee of
WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP

EXHIBIT A

EXHIBIT A

Ninyo & Moore
Geotechnical and Environmental Sciences Consultants

GEOTECHNICAL EVALUATION
PROPOSED FIRE STATION 53
WEST GOWAN ROAD NEAR SIMMONS STREET
NORTH LAS VEGAS, NEVADA

PREPARED FOR:
Dekker/Perich/Sabatini
6860 Bermuda Drive, Suite 100
Las Vegas, Nevada 89119

PREPARED BY:
Ninyo & Moore
Geotechnical and Environmental Sciences Consultants
6700 Paradise Road, Suite E
Las Vegas, Nevada 89119

August 29, 2007
Project No. 302288001

PET.APP.003176

Geotechnical Report Checklist

Description	Page(s)
I. Project Information	
1. Project name	cover
2. Study date	cover
3. Consultant project identification number	cover
4. Company name and address, and name and phone number of who prepared the report	cover
5. Preparer's name, seal, and signature	cover letter
6. Client name	cover
II. Location and Development Description	
1. A written description of project location which includes adjacent street names	2
2. Vicinity map	Figure 1
3. Site plan	Figure 2
4. Types of structures to be constructed	2
5. Type of streets to be constructed	2
6. Anticipated approximate cut and fill depths	N/A
7. Anticipated building loads	2

Geotechnical Report Checklist

Description	Page(s)
III. Geotechnical Investigations	
1. Area or acreage	N/A
2. A site reconnaissance survey of existing surface conditions	2
3. Identification of any known or encountered geologic hazards, discuss local/regional geology	3
4. Type, description, and results of any surface geophysical surveys	N/A
5. Describe any in-situ tests conducted	Appendix B
6. Dates of investigations	3
7. Type of equipment used for field explorations	3
8. Number of borings and/or trenches	3
9. Diagram showing location of borings and/or trenching	Figure 2
10. Boring or trenching logs (continuous log): description of subsurface soils, classification of soils, identification of soil stratification zones, and approximate contact zones, including top and bottom elevations (if available), and borehole diameter	Figures A-1 through A-4
11. Location on the log of each Standard Penetration Test	Figures A-1 through A-4
12. Identify any encountered groundwater	9
13. Discuss any observed fissures, faults, or geologic hazards	5
14. Identify seismic zone	7

Geotechnical Report Checklist

Description	Page(s)
IV. Laboratory Testing	
1. Identify all tests performed, including procedures/standards used	Appendix B
2. All test results in tabular or graphical form	Figures B-1 through B-7
V. Site Preparation and Grading	
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2. Required depth of ex/overexcavation in structural and pavement areas	12
3. Required depth of ex/overexcavation in nonstructural areas	12
4. Required lateral extent of ex/overexcavation	12
5. Scarification, moisture content, compaction requirements	12
6. Structural/nonstructural fill composition: expansion, gypsum solubility, percent passing #200 sieve (min/max), maximum particle size	13
7. Placement Requirements: Lift thickness, compaction (moisture and density for both granular and clayey material)	13
8. Requirements for imported fill	14
9. Caliche Considerations: Recommendations for removal of caliche, if encountered, as well as preparation and grading recommendations and recommendations for foundations and footings on caliche	13
10. Testing During Grading - type of testing required during site preparation and grading activities	13
11. Fault/fissure mitigation	N/A

Geotechnical Report Checklist

Description	Page(s)
VI. Foundations/Retaining Walls	
1. Conventional foundations	15
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Geotechnical Report Checklist

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*The items identified in sections I. through IV. shall be provided in all geotechnical reports. Reports not containing this information will be returned for correction.

**The items identified in sections V. through X. are to be provided as appropriate for the specific project.

Ninyo & Moore
Geotechnical and Environmental Sciences Consultants

August 29, 2007
Project No. 302288001

Mr. Chris Larsen
Dekker/Perich/Sabatini
6860 Bermuda Drive, Suite 100
Las Vegas, Nevada 89119

Subject: Geotechnical Evaluation
Proposed Fire Station 53
West Gowan Road near Simmons Street
North Las Vegas, Nevada

Dear Mr. Larsen:

Transmitted herein is Ninyo & Moore's geotechnical evaluation for the proposed Fire Station 53 project to be located on West Gowan Road near Simmons Street in North Las Vegas, Nevada. The purpose of our study was to evaluate the subsurface soil conditions at the site and to provide design and construction recommendations regarding geotechnical aspects of the project. We appreciate the opportunity to be of service to you on this project.

Respectfully submitted,
NINYO & MOORE

Naik Banavathu, P.E.
Project Engineer

Eric D. Elison, P.E.
Chief Geotechnical Engineer

NB/EDE/tk

Distribution: (5) Addressee

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No. 14311
12/31/08
08/29/07

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1. INTRODUCTION

In accordance with your request, Ninyo & Moore has performed a geotechnical evaluation for the proposed Fire Station 53 project to be located on the north side of West Gowan Road east of Simmons Street in North Las Vegas, Nevada. The purpose of our study was to evaluate the subsurface soil conditions at the site and to provide design and construction recommendations regarding geotechnical aspects of the project. This report presents the findings of our subsurface explorations, results of laboratory testing, conclusions regarding the subsurface conditions at the site, and design and construction recommendations regarding the geotechnical aspects of the proposed project.

2. SCOPE OF SERVICES

The scope of our geotechnical services included the following:

- Review of pertinent background data listed in the Selected References section of this report. The data reviewed included a site plan, design codes and manuals, in-house geotechnical and soils data, and published geologic and soils information.
- Coordination and mobilization for subsurface exploration, including clearance of existing utilities at the site, which was conducted through Underground Service Alert (USA).
- Drilling, logging, and sampling of four exploratory borings, which were advanced to depths ranging from approximately 6.5 to 16.5 feet. The borings were performed to evaluate subsurface soil conditions at the site and to obtain soil samples for laboratory testing.
- Performance of laboratory tests on selected soil samples obtained from the exploratory borings to evaluate the in-place moisture content and dry density, gradation, plasticity, consolidation characteristics, R-value, sodium content, sulfate content, sodium-sulfate content, and total salts (solubility).
- Compilation of the data obtained.
- Preparation of this report presenting our findings and conclusions and recommendations regarding earthwork, design and construction of structure foundations, concrete slabs-on-grade, exterior concrete flatwork, pavement sections for on-site parking and access areas, and preliminary pavement sections for Gowan Road.

3. PROJECT DESCRIPTION

We understand that the project will include design and construction of an approximately 15,000 square foot single-story fire station building. The location of the proposed building is indicated on Figure 1. It is our understanding that the fire station will have a three bay apparatus area, training rooms, crew dorms, exercise room, and auxiliary spaces for crew support. We understand that construction of the structure will consist of concrete masonry unit (CMU) load bearing walls for the apparatus bay and light gage metal stud bearing walls for the crew support area. Column loads and wall loads for the crew support area are anticipated to be approximately 30 kips and 1,600 pounds per lineal foot (plf), respectively. Wall loads for the apparatus bay are anticipated to be approximately 4,500 plf. It is also anticipated that improvements constructed at the site will include paved parking and access areas, concrete flatwork, concrete curbs and gutters, landscape areas, and concrete masonry block screen and retaining walls. We also understand that the project will include half-street improvements along the portion of Gowan Road adjacent to the site.

4. GENERAL SITE CONDITIONS

The subject site is contained within a portion of Clark County Assessor's Parcel No. 139-08-601-007. The site is bordered by a park to the north, Gowan Road to the south, Simmons Street to the west, and undeveloped land to the east.

At the time of our field activities, the site was generally undeveloped and the ground surface was generally covered with sparse native desert vegetation. The topography of the site was slightly to moderately undulatory and generally sloped gently downward to the east. The southwest corner of the site was approximately 15 feet higher than the remaining portion of the site. The subject site was surrounded by a chain-link fence with a locked gate. No indications of underground or overhead utilities were observed at the subject site during our site reconnaissance. However, due to development in the vicinity, underground utilities should be anticipated in and around the subject site.

5. SUBSURFACE EXPLORATION AND LABORATORY TESTING

Ninyo & Moore's subsurface exploration of the site was performed on April 6, 2007. This exploration consisted of drilling, logging, and sampling of four small-diameter exploratory borings (B-1 through B-4). The borings were advanced to depths ranging from approximately 6.5 to 16.5 feet with a truck-mounted Mobile B-61 drill rig utilizing 8-inch diameter hollow-stem augers. The purposes of the exploratory borings were to generally evaluate the subsurface soil conditions at the site and to collect bulk and relatively undisturbed soil samples for laboratory testing. The boreholes were backfilled with drill cuttings after drilling operations. The approximate locations of the borings are shown on Figure 2.

Laboratory tests were performed on representative soil samples collected from the borings to evaluate in-place moisture content and dry density, gradation, plasticity, consolidation characteristics, R-value, sodium content, sulfate content, sodium-sulfate content, and total salts (solubility). Results of in-place moisture content and dry density tests are presented on the boring logs in Appendix A. The remaining laboratory test results and descriptions of the testing procedures utilized are presented in Appendix B and Appendix C.

6. GEOLOGY AND SUBSURFACE CONDITIONS

Based on the findings of our subsurface exploration and review of referenced geologic and soils information, the site is underlain primarily by Quaternary-age alluvium (native soil). Ninyo & Moore's findings regarding the geologic setting, potential geologic hazards, ground motions, subsurface soils encountered, groundwater, and liquefaction at the subject site are provided in the following sections.

6.1. Geologic Setting

The subject site is located in the northern portion of the Las Vegas Valley, which lies in the southwestern portion of the Great Basin, within the Basin and Range physiographic province. The Las Vegas Valley is a naturally formed structural basin as a result of block faulting, a fundamental characteristic of the Basin and Range physiographic province.

The Las Vegas Valley extends in a northwest-southeast direction and drains generally toward the southeast through the Las Vegas Wash into Lake Mead. Surrounding the alluvium-filled Valley are relatively steep mountain ranges. These ranges are the Spring Mountains to the west; the Desert, Sheep, and Las Vegas ranges to the north; the McCullough Range to the south; and Sunrise Mountain and Frenchman Mountain to the east.

The Las Vegas Valley is underlain by Proterozoic igneous and metamorphic basement rock, which is overlain by thick Paleozoic and Mesozoic sedimentary rock, and Tertiary volcanic rock. The floor of the Las Vegas Valley is filled with coalescing Tertiary and Quaternary alluvial, aeolian, and playa deposits surrounded by more steeply sloping alluvial aprons comprised primarily of poorly sorted gravel and sand deposits with cobbles and boulders. The sediments can be up to approximately 5,000 feet thick in some parts of the Las Vegas Valley.

6.2. Potential Geologic Hazards

Ninyo & Moore's geotechnical study of the project site included an evaluation of the possible presence of geologic hazards, such as faults and ground fissures in the site area. This evaluation included visual observation of the site for indications of adverse geologic features and review of published geologic and soils maps and literature, and other data listed in the Selected References section of this report. Referenced geologic data were also reviewed to evaluate seismic activity levels, and associated potential earthquake hazards, for faults in the site vicinity. It should be noted that the fault seismic activity levels provided in this section were obtained/interpreted primarily from United States Geological Survey (USGS, 2007b) data.

Based on our field observations and review of referenced data, no faults extend through the project site. Review of referenced geologic data indicates that the nearest active fault (i.e., a fault that has experienced ground surface rupture within the past 11,000 years) to the site is the Black Hills fault. The Frenchman Mountain fault and the Eglington fault, which are considered potentially active (i.e., faults that have been experienced ground surface rupture

within the past 1.6 million years) are also located in the site vicinity. The distances from the site to these active and potentially active faults are provided on Table 1. Fissure zones were measured approximately 3,000 feet from the subject site.

Review of referenced geologic data also indicates that the site is located near an unnamed Las Vegas Valley fault. The distance from the site to this fault is provided on Table 1. Referenced USGS data indicate that this fault is of uncertain origin and that its seismic activity level has not been established. Further, there is some controversy among geologists as to the origin of this geologic feature, and other similar features in Las Vegas Valley, which have been previously referred to as "compaction faults". Differing proposed origins for these faults include:

- Differential consolidation or compaction over time of the thick alluvial and lakebed sediments in Las Vegas Valley.
- Tectonic factors associated with faults that may extend into the basement bedrock beneath the Valley's sediment.
- A combination of differential consolidation and tectonic factors.

Table 1 – Faults in Site Vicinity

Fault Name	Seismic Activity Level *	Approximate Distance From Project Site to Fault (miles)
Black Hills fault	Active	22
Eglington fault	Potentially Active	2
Frenchman Mountain fault	Potentially Active	9
Las Vegas Valley fault (unnamed fault)	Not Established	<1
* From United States Geological Survey (USGS, 2006) data.		

Ground fissures, generally believed to be caused by erosion, and differential stress resulting from regional subsidence due primarily to withdrawal of groundwater, are known to occur near faults in Las Vegas Valley. Review of referenced geologic data does not indicate the presence of ground fissures at the project site and no ground fissures were observed during

our field activities. However, it should be noted that a portion of the ground surface at the site had been disturbed/obscured by previous grading activities.

As part of this study, Ninyo & Moore evaluated whether the project site is located in a Special Geotechnical Considerations Area, as shown on the referenced Clark County Soil Guidelines Map (CCBD, 1998). This map indicates important aspects of near-surface soils in Las Vegas Valley. The following summarizes conditions in each of the areas shown on the map.

- Special Geotechnical Considerations Area - Steep Slopes (greater than 15 percent) and Shallow Bedrock.
- Special Geotechnical Considerations Area - Subsidence and 2,000-Foot Compaction or Seismic Fault Buffer Zone: Indicates areas which are considered to contain 90 percent of mapped ground fissures. These ground fissure areas extend approximately 1,000 feet to each side of faults.
- Special Geotechnical Considerations Area - Potential Drainage Areas or Recent Sediment Deposits, which may also have Solubility, Clay Swell, Corrosion, Gypsum Salt, Expansive or Hydro-collapsible Potential: Indicates areas located in the vicinity of major drainages, which may also contain potentially moisture-sensitive and corrosive soils.
- Special Geotechnical Considerations Area - Solubility, Clay Swell, Corrosion, Gypsum Salt, Expansive or Hydro-collapsible Potential: Indicates areas of potentially moisture-sensitive and corrosive soils.
- Standard Geotechnical Considerations Area - Mixed Alluvial Sand and Gravel: Indicates areas of generally coarse-grained granular soils.

Review of the Clark County Soil Guidelines Map indicates that the project site is located in a *Special Geotechnical Considerations Area - Solubility, Clay Swell, Corrosion, Gypsum Salt, Expansive or Hydro-collapsible Potential.*

The Clark County Expansive Soil Guidelines Map (Clark County Development Services Department, 2006) indicates general trends of near-surface soils in Las Vegas Valley. This map shows areas of the valley where previous geotechnical studies have indicated the presence of moderately, highly, and critically expansive soils. Based on review of the map, the subject site, project alignment is located in an area prone to critically expansive soil.

6.3. Ground Motions

Using the referenced United States Geological Survey database (USGS, 2007a), estimated maximum considered earthquake spectral response accelerations for short (0.2 second) and long (1.0 second) periods were obtained for the subject site, which is located at approximately 36.2251 degrees north latitude and -115.1795 degrees west longitude. Based on the referenced International Building Code (ICC, 2006) and subsurface soils encountered in our exploratory excavations, seismic Site Class D is appropriate for the subject site, and the parameters in the following table are characteristic of the subject site for design purposes.

Table 2 – Seismic Design Parameters

Parameters	Value		Reference (ICC, 2006)
	Short Period	Long Period	
Mapped Maximum Considered Earthquake Spectral Response Acceleration, S_S and S_1	0.55g	0.17g	Figure 1613 and referenced database (USGS, 2007a)
Site Coefficient, F_a and F_v	1.36	2.10	Table 1613.5.3
Maximum Considered Earthquake Spectral Response Acceleration Adjusted for Site Class Effects, S_{MS} and S_{M1}	0.75g	0.37g	Equation 16-37 and 16-38
Design Spectral Response Acceleration, S_{DS} and S_{D1}	0.50g	0.24g	Equation 16-39 and 16-40

6.4. Subsurface Soils Encountered

Generalized descriptions of the subsurface soils encountered in our borings are provided in the following sections.

6.4.1. Fill

Fill, up to approximately 1.5 feet thick, was encountered in one of our four exploratory borings. This fill consisted primarily of medium dense, silty gravel with sand, and clayey sand with gravel. The encountered fill was generally damp.

6.4.2. Native Soil

Native soil (alluvium) was encountered in the exploratory borings to the total depths explored (up to approximately 16.5 feet). The alluvium consisted primarily of loose to medium dense, silty and clayey sand, and stiff to very stiff, sandy lean to fat clay. The encountered soils were generally damp to moist and some of the soils were slightly cemented. Some of these native soils were slightly to highly gypsiferous. Visual observations indicated that the encountered alluvium was slightly to moderately porous in some areas.

Although not encountered in our borings at the site, cemented soils (caliche) are typically present in subsurface soils in many areas of the Las Vegas Valley. Caliche is a naturally occurring cemented soil with rock-like characteristics. The following describes typical properties of caliche encountered in southern Nevada.

- Caliche generally occurs in layers a few inches to several feet thick.
- Caliche layers can vary significantly in the thickness, degree of cementation, and hardness over short distances, and it can be discontinuous.
- Caliche varies in composition from primarily fine-grained material to primarily coarse-grained material.
- Moderately hard, moderately cemented caliche can generally be gouged with a knife with difficulty and can be broken with a few hammer blows.
- Hard to very hard, strongly cemented caliche is difficult to scratch with a knife and breaks with difficulty with repeated hammer blows.
- Considerable difficulties may be encountered in caliche removal. Rock excavation methods may be needed.

Laboratory tests were performed on selected samples of native soil obtained from the borings. The results of these tests are summarized in the following table. The results of in-place moisture content and dry density tests are also presented on the boring logs in Appendix A. Additional information regarding the laboratory test procedures and results are provided in Appendix B and Appendix C.

Table 3 – Summary of Laboratory Test Results

Test Type	Test Results	Remarks
In-Place Moisture Content	5.4 to 46.5 percent	--
In-Place Dry Density	61.7 to 108.7 pounds per cubic foot (pcf)	--
Atterberg Limits Liquid Limit Plastic Limit Plastic Index	 36 and 41 16 and 20 25 and 16	Moderate plasticity
Consolidation Expansion Potential	4.0 and 5.9 percent expansion	High expansion potential
R-Value	19	--
Sodium Sulfate Content	0.04 and 0.39 percent	Negligible to low chemical heave (salt heave) potential
Sodium Content	0.01 and 0.13 percent	--
Sulfate Content	0.34 and 0.38 percent	Severely deleterious to concrete
Total Salts (Solubility)	0.79 and 0.88 percent	Moderate solubility potential

6.5. Groundwater

Groundwater was not encountered in the exploratory borings, which were advanced to depths of up to approximately 16.5 feet. Seasonal fluctuations in groundwater levels and surface water flow may occur. These fluctuations may be due to variations in ground surface topography, subsurface geologic conditions, rainfall, irrigation, and other factors. Evaluation of factors associated with groundwater fluctuations was beyond the scope of this study.

6.6. Liquefaction

Liquefaction is a phenomenon in which loose, saturated soils lose shear strength under short-term (dynamic) loading conditions. Ground shaking of sufficient duration results in the loss of grain-to-grain contact in potentially liquefiable soils due to a rapid increase in pore water pressure, causing the soil to behave as a fluid for a short period of time. To be potentially liquefiable, a soil is typically cohesionless with a grain-size distribution generally consisting of sand and silt. It is generally loose to medium dense, saturated, and subjected to sufficient magnitude and duration of ground shaking.

Soils encountered in the exploratory borings at the site were unsaturated and consisted primarily of loose to medium dense, silty and clayey sand, and stiff to very stiff, sandy lean to fat clay.

7. FINDINGS AND CONCLUSIONS

Based on the findings of this study, there are no known geotechnical or geologic conditions that would preclude construction of the proposed project, provided the geotechnical recommendations presented herein are adequately implemented. Geotechnical design and construction considerations for the subject project include the following:

- Based on our findings, it is our opinion that the existing fill soils and underlying near-surface alluvial (native) soils, which are moderately porous, highly gypsiferous, and have a high expansion potential, are not suitable for support of the proposed structures and improvements in their present condition. These soils will need to be removed from structure and improvement areas and replaced with adequately compacted structural fill.

- Based on the results of the field and laboratory evaluations, it is our opinion that foundations for proposed structures should be founded on a zone of adequately compacted structural fill. Concrete slab-on-grade floors, pavement, exterior concrete flatwork and other improvements should also be founded on a zone of compacted structural fill.

- Soils encountered in the exploratory borings appeared to be generally suitable for use as structural fill and backfill. However, our findings indicate the presence of highly gypsiferous (potentially water-soluble) and highly expansive soil at the subject site. If encountered during grading, these soils will need to be either adequately blended or exported from the site. The excavated on-site soils may be used as structural fill and backfill provided they meet recommendations presented in Section 8.1.2.

- Chemical test results performed on selected soil samples from the exploratory borings indicate that on-site soils should be considered severely deleterious to concrete.

- Review of published geologic data and our field observations do not indicate the presence of adverse on-site geologic hazards, such as faults and ground fissures, which may affect proposed site development.

- Groundwater was not encountered in our boring, which was excavated to a depth of approximately 16.5 feet.

- In accordance with the 2006 International Building Code, the seismic parameters provided in Table 2 are characteristic of the site and should be considered in the design of proposed structures.
- Layers of cemented soils (caliche) were not encountered in our exploratory borings performed at the project site. However, due to the variable nature of caliche, caliche layers may be encountered in areas between and beyond our boring locations during earthwork operations.
- Based on the unsaturated generally fine-grained nature of the soils encountered in the exploratory borings at the site, it is our opinion that there is a low potential for liquefaction of the subsurface soils at the site.

8. RECOMMENDATIONS

The following recommendations are intended for incorporation into the design and construction of the subject project.

8.1. Earthwork

The following subsections provide recommendations for earthwork, including site grading, structural fill and backfill, import soil, and temporary excavations.

8.1.1. Site Grading

Prior to grading, proposed structure and improvement areas should be cleared of any surface obstructions, debris, organics (including vegetation), and other deleterious material. Materials generated from clearing operations should be removed from the project site and disposed of at a legal landfill site. We recommend that the full depth of on-site fill and surficial loose and/or disturbed native soils be removed from proposed structures and improvement areas, including building, block screen/retaining wall, pavement, and exterior concrete flatwork areas. These removed soils can be processed and stockpiled for later use as structural fill, if needed.

Based on the findings of our subsurface exploration and results of laboratory tests, the near-surface native soils have a high expansion potential and moderate solubility

potential, are slightly to moderately porous, and are highly gypsiferous. To reduce the potential for future soil-related movement, we recommend that near-surface native soils in areas of proposed structures and improvements be overexcavated and replaced with structural fill. Surface preparation and overexcavation should extend 5 feet beyond the exterior edges of building lines and 2 feet beyond block wall foundations, exterior concrete flatwork, and pavement areas, or to a distance that is equivalent to the depth of compacted structural fill below the structure, whichever is greater. The following table summarizes recommended overexcavation depths needed to provide an adequate layer of structural fill beneath proposed structures and improvements.

Table 4 – Summary of Recommended Structural Fill Thickness

Proposed Improvement	Recommended Structural Fill Thickness*
Building Foundations	36 inches below foundations, or 48 inches below existing grade, whichever is lower.
Floor Slabs	36 inches below supportive gravel, or 48 inches below existing grade, whichever is lower.
Retaining/Screen Wall Foundations	24 inches below foundations, or 36 inches below existing grade, whichever is lower.
Exterior Concrete Flatwork and Pavement	24 inches below supportive gravel (Type II Aggregate Base) or 24 inches below existing grade, whichever is lower.
* Structural fill thickness may include 6 inches of scarified, moisture-conditioned, and compacted native soils. Any undocumented fill and loose and/or disturbed native soils should be removed from proposed building and exterior site improvement areas.	

The geotechnical consultant should observe areas to receive fill at the time of grading to assess the suitability of the exposed material and to evaluate if removals down to more competent soils are needed. After the removals described above have been made, the exposed surface in the bottom of overexcavations should be scarified to approximately 6 inches, moisture-conditioned to generally above optimum moisture content, and re-compacted to 90 percent, as evaluated by American Society for Testing Materials (ASTM) Standard D 1557

Layers of cemented soils (caliche) were not encountered in our exploratory borings performed at the project site. However, due to the variable nature of caliche, caliche layers may be encountered in areas between and beyond our boring locations during earthwork operations. If caliche is encountered, rock excavation techniques should be anticipated during grading, trenching, and other earthwork operations. Use of heavy-duty ripping equipment, heavy-duty backhoe, headache ball, ho-ram, or rock saw should be anticipated. The contractor should be aware of the potential for (and take adequate precautions to reduce the potential for) vibrational damage to adjacent or nearby structures, and take appropriate precautions, when using heavy impact equipment or blasting during removal of caliche.

Some shrinkage should be anticipated when on-site soils are excavated, processed, and compacted. For planning purposes, an estimated shrinkage factor of approximately 25 percent may be used for soils within approximately 5 feet of the existing ground surface. Depending on finished grade elevations for the project, some importation of soils may be needed.

8.1.2. Structural Fill and Backfill

Soils used as structural fill and backfill should be placed and compacted in uniform horizontal lifts to a relative compaction of 90 percent, as evaluated by ASTM D 1557. Structural fill and backfill soils should not contain organic matter, debris, other deleterious matter or rocks and/or hard chunks larger than approximately 6 inches nominal diameter. These soils should have a low solubility potential (1.5 percent or less, as evaluated by the referenced Clark County Development Services Department, Technical Guideline TG-19-2001), and a swell potential of 12 percent or less, as evaluated by Section 1802.3.3 of the Southern Nevada Amendments t the 2006 International Building Code.

Structural fill and backfill soils should be placed and compacted at a moisture content generally above optimum moisture content. The optimal lift thickness of fill placed

during grading will depend on the type of soil and compaction equipment used, but should generally not exceed approximately 8 inches in loose thickness. Placement and compaction of structural fill should be performed in accordance with the referenced Clark County (2003) Uniform Standard Specifications for Public Works Construction (USSPWC). Grading and earthwork operations should be observed and the geotechnical consultant should test moisture and relative compaction of structural fill and backfill materials. Typically, one field test and no less than three field tests should be performed per lift for each 500 cubic yards of fill placement in structural areas. Additional field tests may also be performed in structural and non-structural areas at the discretion of the geotechnical consultant.

8.1.3. Import Soil

We recommend that import soil consist of coarse-grained (50 percent or more retained on No. 200 sieve) material with a low solubility potential (1.5 percent or less, as evaluated by the referenced Clark County Development Services Department, Technical Guideline TG-19-2001), a low sulfate content (less than 0.1 percent), and a swell potential of 12 percent or less, as evaluated by Section 1802.3.3 of the Southern Nevada Amendments to the 2006 International Building Code. Import soil should not contain organic matter, debris, other deleterious matter or rocks and/or hard chunks larger than approximately 6 inches nominal diameter. We further recommend that proposed import material be evaluated by a Ninyo & Moore representative at the borrow site for its suitability prior to importation to the project site. Import soil used as structural fill and backfill should be placed and compacted in accordance with recommendations provided in the previous section.

8.1.4. Temporary Excavations

Temporary slope surfaces should be kept moist to retard raveling and sloughing. Water should not be allowed to flow over the top of excavations in an uncontrolled manner. Stockpiled material and/or equipment should be kept back from the top of excavations a distance equivalent to the depth of the excavation or more. Workers should be protected

from falling debris, sloughing and raveling in accordance with OSHA regulations (OSHA, 2005). Temporary excavations should be observed by the geotechnical consultant so that appropriate additional recommendations may be provided based on the actual field conditions. Temporary excavations are time sensitive and failures are possible.

8.2. Structure Foundations

Structure foundations including building and screen/retaining wall foundations should be founded on a zone of adequately placed and compacted structural fill (reworked fill, native, or import soils) as indicated in section 8.1.1. Building and retaining wall foundations should be approximately 12 inches wide and should be embedded approximately 18 inches below adjacent grade. An allowable bearing pressure of 1,100 pounds per square foot (psf) may be used for conventional (isolated or continuous) footings with an embedment depth of 18 inches below adjacent grade and a width of 12 inches. This allowable value may be increased by 300 psf for each additional 1 foot of width and 700 psf for each additional 1 foot of embedment up to a value of 2,500 psf. The allowable bearing pressure may be increased by one-third for short duration loads, such as wind or seismic. Lateral resistance for footings is presented in Section 8.3. Seismic parameters for design of structures at the site are provided in Table 2 in Section 6.3 and on Figure 3 and Figure 4. Foundations should be designed and constructed in accordance with the recommendations of a qualified structural engineer.

Conventional footings should be reinforced with four No. 4 or larger steel reinforcing bars, two placed near the top and two near the bottom of the footing, and in accordance with a qualified structural engineer's recommendations. Increased reinforcement may be recommended by the structural engineer.

8.3. Lateral Earth Pressures

Retaining walls that are not restrained from movement at the top with level backfill behind the wall, may be designed using an "active" equivalent fluid unit weight of 42 pounds per cubic foot (pcf), as indicated on Figure 3. Retaining walls that are restrained from movement

at the top with level backfill behind the wall, may be designed using an "at-rest" equivalent fluid unit weight of 62 pcf, as indicated on Figure 4. These values assume compaction within about 5 feet of the wall will be accomplished with relatively light compaction equipment and that very low to low expansive backfill will be placed behind the wall. These values also assume that retaining walls will have a height of less than 10 feet.

Ninyo & Moore evaluated "active" and "at-rest" dynamic lateral earth pressures due to seismic loading based on the referenced Southern Nevada Amendments to the 2006 International Building Code (Clark County et al., 2006). Ninyo & Moore recommends that retaining walls that are not restrained from movement at the top be designed using an "active" resultant force due to seismic loading as indicated in the equation below:

$$R_{e\,(active)} = 9H^2 \text{ pounds per unit width (in feet) of wall}$$

where H = height of the wall in feet

Ninyo & Moore recommends that retaining walls that are restrained from movement at the top be designed using an "at-rest" resultant force due to seismic loading as indicated in the equation below:

$$R_{e\,(at\text{-}rest)} = 23H^2 \text{ pounds per unit width (in feet) of wall}$$

where H = height of the wall in feet

The resultant forces should be applied 0.6H above the base of the wall, as indicated on Figure 3 and Figure 4.

Retaining walls with level backfill should also be designed to resist "active" and "at-rest" surcharge pressures of 0.35q and 0.51q, respectively. The value for "q" represents the pressure induced by adjacent light loads, slab, or traffic loads plus any adjacent footing loads.

Measures should be taken so that moisture does not build up behind retaining walls. Drainage measures, as indicated on Figure 5, should include free-draining backfill material, and perforated drain pipes or weep holes lined with polyvinyl chloride (PVC) pipe. Drain pipes

should outlet away from structures, and retaining walls should be adequately waterproofed in accordance with the recommendations of the project civil engineer or architect.

For passive resistance to lateral loads, we recommend that an equivalent fluid weight of 275 pcf be used up to a value of 2,000 psf. This value assumes that the ground is horizontal for a distance of 10 feet or more, or three times the height generating the passive pressure, whichever is greater. We recommend that the upper 12 inches of soil not protected by pavement or a concrete slab be neglected when calculating passive resistance. For frictional resistance to lateral loads, we recommend that a coefficient of friction of 0.37 be used between soil and concrete. Passive and frictional resistances may be used in combination, provided the passive resistance does not exceed one-half of the total allowable resistance. The passive resistance may be increased by one-third when considering loads of short duration such as wind or seismic forces.

8.4. Settlement

Ninyo & Moore estimates that the proposed structures, designed and constructed as recommended herein, should undergo total settlement of approximately 1 inch. Differential settlement is typically limited to one-half the total amount. As discussed, relatively porous soils with a high expansion potential were encountered in our borings. If the soils below the zone of structural fill become significantly wetted, additional settlement may occur. Measures to reduce water infiltration into the subsoils is discussed in Section 8.9.

8.5. Concrete Slab-On-Grade Floors

Ninyo & Moore recommends that conventional concrete slab-on-grade floors for this project be founded on approximately 6 inches of Type II Aggregate Base (USSPWC Section 704.03.04) overlying a zone of adequately placed and compacted structural fill (reworked fill, native, or import soils) as indicated in section 8.1.1. The floor slabs should be approximately 4 inches in thickness and reinforced with No. 4 steel reinforcing bars placed at approximately 18 inches on-center both ways. Reinforcement of the slab should be placed at mid-height. We recommend that "chairs" be utilized to aid in the placement of the

reinforcement. As an alternative to slab reinforcement with No. 4 steel reinforcing bars, post-tensioned slab reinforcement, as designed by a qualified structural engineer, may be utilized. Additional geotechnical recommendations for design of post-tensioned slabs will be provided by Ninyo & Moore upon request. Type II Aggregate Base underlying concrete slab-on-grade floors should be moisture conditioned, placed, and compacted to 90 percent of the laboratory maximum dry density in accordance with ASTM D 1557.

As a means to reduce shrinkage cracks, we recommend that the conventional slabs-on-grade be provided with control joints at intervals of no more than approximately 15 feet each way. Floor slab reinforcement and joint spacing should be in accordance with the recommendations provided by a qualified structural engineer. Greater slab reinforcement and reduced control joint spacing may be recommended by the structural engineer.

Ninyo & Moore recommends that a vapor retarder be provided by a relatively impervious membrane placed beneath slab-on-grade floors, particularly in areas where moisture-sensitive flooring is planned. The membrane should consist of visqueen 10 mils in thickness, or equivalent. The visqueen may overlie or underlie the previously described compacted Type II Aggregate Base material. If the visqueen overlies the base material, it should be covered with approximately 2 inches of moist sand (not saturated) to help reduce the potential for puncture during construction and to aid in concrete curing.

8.6. Exterior Concrete Flatwork and Curbs and Gutters

Exterior concrete flatwork, such as walkways and other slabs, should be approximately 4 inches in thickness and founded on approximately 6 inches of Type II Aggregate Base overlying a zone of adequately placed and compacted structural fill (reworked fill, native, or import soils) as indicated in section 8.1.1. It is suggested that to reduce the potential for shrinkage cracks, exterior concrete flatwork should be constructed with control joints spaced approximately 5 feet apart for walkways and approximately 10 feet on-center each way for larger slabs. Crack control joint spacing should be in accordance with recommendations of a

qualified structural engineer. Reduced joint spacing may be recommended by the structural engineer.

Structural fill and Type II Aggregate Base beneath flatwork should be moisture-conditioned, placed, and compacted to 90 percent relative compaction. Concrete walkways and other exterior slabs should be approximately 4 inches thick. To reduce the potential for shrinkage cracks, exterior concrete slabs should be constructed with control joints spaced approximately 5 feet apart for walkways and approximately 10 feet on-center each way for larger slabs. Crack control joint spacing should be in accordance with recommendations of a qualified structural engineer. Reduced joint spacing may be recommended by the structural engineer.

Formation of shrinkage cracks in concrete slabs, and other cracks due to minor soil movement, may be further reduced by utilizing steel reinforcement, such as welded wire mesh. However, due to the inherent difficulty in positioning welded wire mesh in the middle of concrete slabs, other crack control methods should be considered, such as placement in the concrete of No. 3 steel reinforcing bars at approximately 18 inches on-center each way. Reinforcement of the slabs should be placed at approximately mid-height in the concrete utilizing "chairs."

Concrete curbs and gutters should be constructed in accordance with recommendations of the project civil engineer. The referenced Clark County Uniform Standard Drawings for Public Works Construction Off-Site Improvements (USDPWC) also provides design specifications for curbs and gutters. Recommendations regarding concrete utilized in construction of proposed improvements are provided in Section 8.8.1.

8.7. Pavement Sections

The following subsections provide pavement sections for on-site parking and access areas, and off-site half-street improvements along portions of Gowan Road adjacent to the subject site.

8.7.1. On-Site Parking and Access Areas

To form a basis for design of flexible pavement for on-site paved parking and access areas, we have assumed the following:

- An Equivalent Single Axial Load (ESAL) value of 2,960, based on Traffic Index (TI) = 4.5 for automobile traffic; an ESAL value of 15,950, based on TI = 5.5 for delivery truck traffic; and an ESAL value of 64,920, based on TI = 6.5 for heavy duty truck traffic areas are applicable.
- 80 percent reliability.
- 0.45 standard deviation.
- 4.2 initial serviceability.
- 2.5 terminal serviceability.
- Resilient Modulus (M_R) of 3,500 psi for an R-value of 10 (based on soil classification).

Using these values, structural numbers were calculated using design procedures in accordance with the American Association of State Highway and Transportation Officials method of designing flexible pavement (AASHTO, 1993). The following table presents the recommended structural pavement sections placed over structural fill for on-site parking and access areas:

Table 5 – Pavement Sections for On-Site Parking and Access Areas

Traffic Type	Design ESAL	Pavement ($a_{asphalt}$ = 0.35) Asphalt Thickness (Inches)	Base (a_{base} = 0.12) Type II Base Thickness (Inches)	Recompacted Subgrade Thickness (Inches)*	Structural Number Provided	Structural Number Needed
Automobile	2,960	3.0	5.0	24	1.65	1.63
Delivery Truck	15,950	3.5	8.0	24	2.18	2.17
Heavy Duty Truck	62,920	4.0	12.0	24	2.84	2.73

*Recompacted subgrade below pavement sections may include 6 inches of scarified native soil compacted to 95 percent relative compaction (as evaluated by ASTM D 1557).

If the assumed traffic or design ESAL values are not considered appropriate, this office should be notified. In providing these recommendations for pavement sections, we have assumed that asphalt concrete will be mixed and placed in accordance with Section 401 of the referenced Clark County Uniform Standard Specifications for Public Works' Construction, Off-Site Improvements (USSPWC). We have also assumed that Type II Aggregate Base will conform to Section 704.03.04 of the USSPWC. Type II Aggregate Base materials should be placed and compacted to 95 percent relative compaction (as evaluated by ASTM D 1557) in accordance with Section 302 of the USSPWC.

Ninyo & Moore recommends that Portland cement concrete pavement be utilized in trash dumpster and other heavy traffic areas. Our experience indicates that truck traffic and heavy traffic can significantly shorten the useful life of asphalt concrete sections. We recommend that, in dumpster approach and other heavy traffic areas, 600 pounds per square inch (psi) flexural strength Portland cement concrete, 7 inches thick, be placed over 6 inches of compacted Type II Aggregate Base over 12 inches of adequately placed and compacted structural fill. We also recommend that a qualified structural engineer be consulted for appropriate concrete reinforcement in truck traffic areas.

We recommend that mix designs be made for the asphalt concrete and Portland cement concrete by an engineering company specializing in this type of work. In addition, paving operations should be observed and tested by a qualified testing laboratory.

Adequate surface drainage should be provided to reduce ponding and infiltration of water into the pavement and subgrade materials. We suggest that the paved areas have a surface gradient of 1 percent or more. In addition, surface runoff from surrounding areas should be intercepted, collected, and not permitted to flow onto the pavement or infiltrate the base and subgrade. We recommend that perimeter swales, edge drains, curbs and gutters, or combination of these drainage devices, be constructed to reduce the adverse effects of surface water runoff.

8.7.2. Gowan Road

Based on information provided by City of North Las Vegas personnel, the two-way average daily traffic (ADT) along Gowan Road in the year 2005 is 7,000 vehicles per day (vpd). We have assumed that Gowan Road will be a two-lane facility in each direction with a 20-year design life (through the year 2027). In order to evaluate design Equivalent Single Axle Load (ESAL) values for Gowan Road, traffic distribution, ESAL factors, and growth rate provided by City of North Vegas personnel were used. Preliminary pavement section calculations are also provided in Appendix D.

To form a basis for design of flexible pavement for off-site half-street improvements along portions of Gowan Road adjacent to the subject site, we have assumed the following:

- Gowan Road has a right-of-way (ROW) width of approximately 80 feet and is considered a major collector.
- 80 percent reliability.
- 0.45 standard deviation.
- 4.2 initial serviceability.
- 2.5 terminal serviceability.
- An annual growth rate of 5 percent through the year 2027.
- Resilient Modulus (M_R) of 8,100 psi for an R-value of 19 (based on laboratory test results).

Using these values, a structural number associated with the Gowan Road was calculated using design procedures in accordance with the American Association of State Highway and Transportation Officials method of designing flexible pavement (AASHTO, 1993). The following table presents the recommended structural pavement section placed over structural fill for off-site half-street improvements.

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Table 6 – Preliminary Pavement Sections for Gowan Road

Location	Design ESAL	Pavement ($a_{asphalt}$ = 0.35)	Base (a_{base} = 0.12)	Recompacted Subgrade	Structural Number Provided	Structural Number Needed
		Asphalt Thickness (Inches)	Type II Base Thickness (Inches)	Thickness (Inches)*		
Gowan Road	2,014,200	7.0	16.0	8.0	4.37	4.29

*Recompacted subgrade below pavement sections may include 6 inches of scarified native soil compacted to 90 percent relative compaction (as evaluated by ASTM D 1557).

The pavement section for Gowan Road should be considered preliminary. The City of North Las Vegas will require that the pavement section be re-evaluated once the roadway is graded to expose native subgrade. Additional reevaluation tests will need to be performed and the pavement section recalculated.

If the assumed traffic or design ESAL values are not considered appropriate, this office should be notified. In providing the recommendations for pavement section, we have assumed that asphalt concrete will be mixed and placed in accordance with Section 401 of the referenced USSPWC. We have also assumed that Type II Aggregate Base will conform to Section 704.03.04 of the USSPWC. Type II Aggregate Base materials should be placed and compacted to 95 percent relative compaction (as evaluated by ASTM D 1557) in accordance with Section 302 of the USSPWC. Recompacted subgrade below Type II Aggregate Base should be compacted to 90 percent relative compaction (as evaluated by ASTM D 1557).

8.8. Concrete and Corrosion Considerations

The corrosion potential of on-site soils to concrete was evaluated in the laboratory using representative samples obtained from the exploratory excavations. Laboratory testing was performed to assess the effects of sulfate content on concrete and buried metal. Results of these tests are presented in Appendix C. Recommendations regarding concrete to be utilized in construction of proposed improvements and for buried metal pipes are provided in the following sections.

8.8.1. Concrete

Chemical tests performed on selected samples of on-site soil indicated sulfate contents of 0.34 and 0.38 percent by weight. Based on the following table from the International Building Code (ICC, 2006), the tested on-site soils are considered to be severely deleterious to concrete.

Table 7 – Requirements for Concrete Exposed to Sulfate-Containing Soil

Sulfate Exposure	Water-Soluble Sulfate (SO_4) in Soil, Percent by Weight	Cement Type	Maximum Water-Cementitious Materials Ratio, by Weight, Normal-Weight Aggregate Concrete[a]	Minimum f'_c, Normal Weight and Lightweight Aggregate Concrete in MPa
Negligible	0.00 - 0.10	--	--	--
Moderate[b]	0.10 - 0.20	II, IP(MS), IS (MS), P(MS), I(PM)(MS), I(SM)(MS)	0.50	4,000 psi
Severe	0.20 - 2.00	V	0.45	4,500 psi
Very severe	Over 2.00	V plus pozzolan[c]	0.45	4,500 psi

a A lower water-cementitious materials ratio or higher strength may be required for low permeability or for protection against corrosion of embedded items or freezing and thawing (Table 1904.2.2).
b Seawater.
c Pozzolan that has been determined by test or service record to improve sulfate resistance when used in concrete containing Type V cement.

We recommend that on-site concrete in contact with on-site soils, along with subsurface walls up to 12 inches above finished grade, contain Type V cement with a water-cement ratio of 0.45 by weight and a design compressive strength of 4,500 psi. In addition, it is recommended that reinforcing bars within placed within cast-in-place concrete, which is in contact with the soil, be covered by approximately 3 inches or more of concrete. Concrete should be placed with an approximately 4-inch slump and good densification procedures should be used during placement to reduce possible honeycombing. The slump should be tested at the site by the geotechnical consultant. Structural concrete should be placed in accordance with the referenced American Concrete Institute (ACI, 2005) and project specifications. We also suggest that concrete masonry unit (CMU) blocks, if utilized for the project, be constructed with Type V cement.

8.8.2. Buried Metal Pipes

We recommend that corrosion reduction methods be implemented for this project for buried metal pipes. These corrosion reduction methods may include utilization of protective coatings, pipe sleeving, and/or appropriate cathodic protection, as recommended by a qualified corrosion engineer. Where permitted by local building codes, the use of PVC pipes should also be considered.

8.9. Moisture Infiltration Reduction and Surface Drainage

Infiltration of water into subsurface soils can lead to soil movement and associated distress, and chemically and physically related deterioration of concrete structures. To reduce the potential for infiltration of moisture into subsurface soils at the site, we recommend the following:

- Positive drainage should be established and maintained away from proposed buildings. Positive drainage may be established by providing a surface gradient away from buildings of 5 percent for a distance of 10 feet away from the structure's perimeter.

- Adequate surface drainage should be provided to channel surface water away from on-site structures and to a suitable outlet such as a drainage channel or storm drain. Adequate surface drainage may be enhanced by utilization of graded swales, area drains, and other drainage devices. Surface runoff should not be allowed to pond near structures.

- Roof drain downspouts should be tightlined to an appropriate outlet such as a storm drain or the street. If tightlining of the downspouts is not practicable, they should discharge 5 feet away from the buildings or onto flatwork that slopes away from the structures. Downspouts should not be allowed to discharge onto the ground surface adjacent to the building foundations.

- Ninyo & Moore recommends that low-water use (desert-type) landscaping be utilized on site, particularly within 5 feet of buildings and exterior site improvements, including areas of concrete flatwork and masonry block walls.

- Utility line trenches within the building pads, including 5 feet beyond the building edges, should be backfilled with on-site derived soil or an equivalent in gradation import. To reduce the potential for migration of subsurface water beneath the buildings, granular clean soils should not be used as trench backfill.

9. OBSERVATION AND TESTING

The geotechnical consultant should perform appropriate observation and testing services during grading and construction operations. These services should include evaluation of subgrade conditions where soil removals are performed and observation and testing services during placement of concrete, mortar, grout, asphalt concrete, and steel reinforcement. The geotechnical consultant should evaluate the depth of removal of soft, loose, or otherwise unsuitable soils, as well as observe and test the placement and compaction of structural fill and backfill soils.

The recommendations provided in this report are based on the assumption that Ninyo & Moore will provide geotechnical observation and testing services during construction. In the event that it is decided not to utilize the services of Ninyo & Moore during construction, we request that the selected consultant provide the client with a letter (with a copy to Ninyo & Moore) indicating that they fully understand Ninyo & Moore's recommendations, and that they are in full agreement with the design parameters and recommendations contained in this report.

10. PLAN REVIEW

The recommendations presented in this report are based on information for the proposed project as provided by the client, and on the findings of our geotechnical evaluation. When completed, project plans and specifications should be reviewed by the geotechnical consultant prior to submitting the plans and specifications for bid. Additional field exploration and laboratory testing may be needed upon review of the final project design plans.

11. PRE-CONSTRUCTION MEETING

We recommend that a pre-construction meeting be held. The owner or the owner's representative, the architect, the civil engineer, the geotechnical consultant, and the contractor should be in attendance to discuss the plans and the project.

12. LIMITATIONS

The field evaluation, laboratory testing, and geotechnical analyses presented in this geotechnical report have been conducted in general accordance with current practice and the standard of care exercised by geotechnical consultants performing similar tasks in the project area. No warranty, expressed or implied, is made regarding the conclusions, recommendations, and opinions presented in this report. There is no evaluation detailed enough to reveal every subsurface condition. Variations may exist and conditions not observed or described in this report may be encountered during construction. Uncertainties relative to subsurface conditions can be reduced through additional subsurface exploration. Additional subsurface evaluation will be performed upon request. Please also note that our evaluation was limited to assessment of the geotechnical aspects of the project, and did not include evaluation of structural issues, environmental concerns, or the presence of hazardous materials.

This document is intended to be used only in its entirety. No portion of the document, by itself, is designed to completely represent any aspect of the project described herein. Ninyo & Moore should be contacted if the reader requires additional information or has questions regarding the content, interpretations presented, or completeness of this document.

This report is intended for design purposes only. It does not provide sufficient data to prepare an accurate bid by contractors. It is suggested that the bidders and their geotechnical consultant perform an independent evaluation of the subsurface conditions in the project areas. The independent evaluations may include, but not be limited to, review of other geotechnical reports prepared for the adjacent areas, site reconnaissance, and additional exploration and laboratory testing.

Our conclusions, recommendations, and opinions are based on an analysis of the observed site conditions. If geotechnical conditions different from those described in this report are encountered, our office should be notified and additional recommendations, if warranted, will be provided upon request. It should be understood that the conditions of a site could change with time as a result of natural processes or the activities of man at the subject site or nearby sites. In addition, changes to the applicable laws, regulations, codes, and standards of practice may occur

due to government action or the broadening of knowledge. The findings of this report may, therefore, be invalidated over time, in part or in whole, by changes over which Ninyo & Moore has no control.

This report is intended exclusively for use by the client. Any use or reuse of the findings, conclusions, and/or recommendations of this report by parties other than the client is undertaken at said parties' sole risk.

13. SELECTED REFERENCES

American Association of State Highway and Transportation Officials (AASHTO), 1993, AASHTO Guide for Design of Pavement Structures: Fourth Edition, Volume 1 and Volume 2.

American Concrete Institute (ACI), 2005, ACI Manual of Concrete Practice.

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dePolo, C.M., Bell, J.W., Boron, S., Slemmons, D.B., and Werle, J.L., 2006, Latest Quaternary Fault Movement along the Las Vegas Valley Fault System, Clark County, Nevada: dated May.

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Ninyo & Moore proprietary in-house data.

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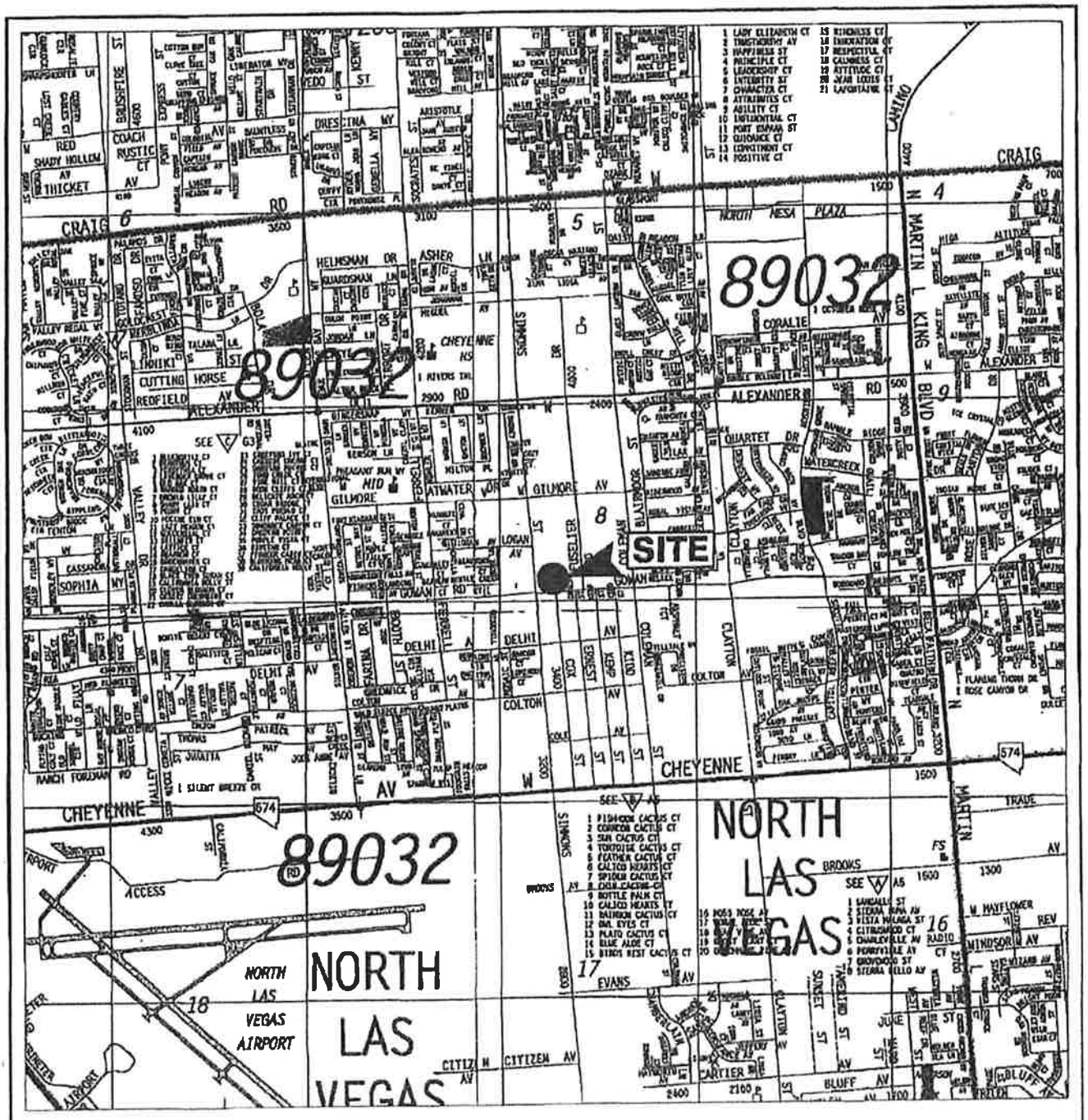
United States Geological Survey (USGS), 2007b, Quaternary Faults and Fold Database of the United States: http://earthquakes.usgs.gov/qfaults/.

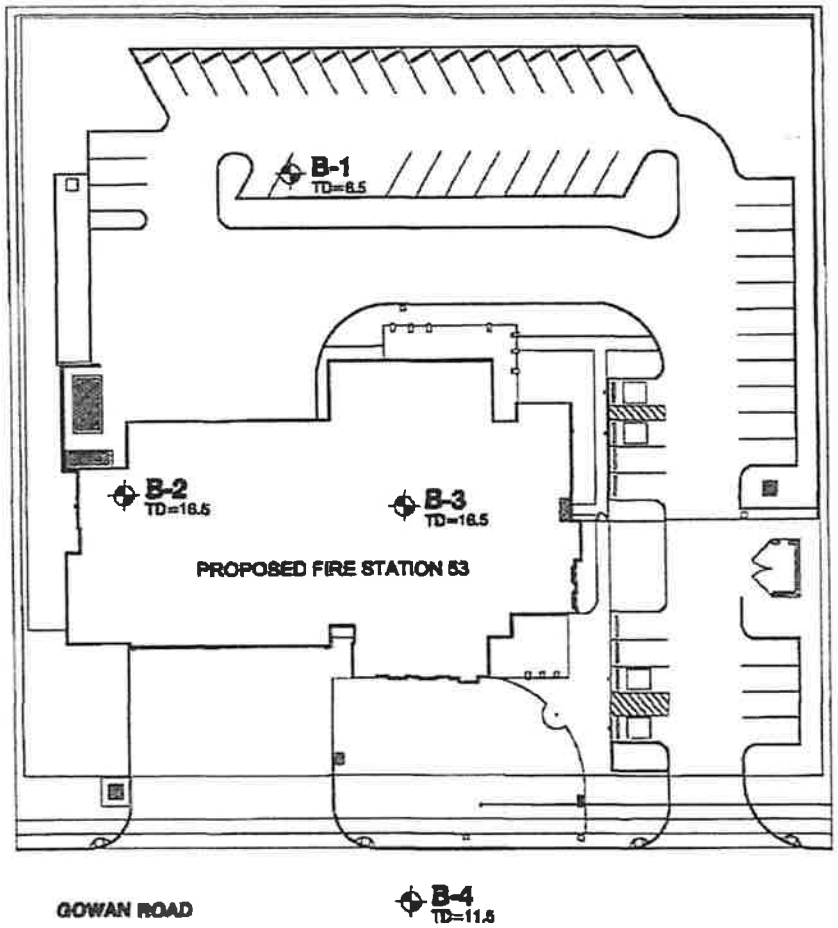
AERIAL PHOTOGRAPHS				
Source	**Date**	**Flight**	**Numbers**	**Scale**
USGS	5/18/65	GS-VBFN	1-84 through 1-86	1:22,000



REFERENCE: 2006 THOMAS GUIDE FOR LAS VEGAS & CLARK COUNTY, STREET GUIDE AND DIRECTORY
NOTE: DIMENSIONS, DIRECTIONS, AND LOCATIONS ARE APPROXIMATE.

Ninyo & Moore	SITE LOCATION	FIGURE
PROJECT NO. / DATE	PROPOSED FIRE STATION 63 WEST GOWAN ROAD NEAR SIMMONS STREET NORTH LAS VEGAS, NEVADA	1
302288001 / 8/07		

PET.APP.003216



LEGEND

B-4 TD=11.5 Approximate location of exploratory boring. TD indicates total depth of exploratory boring, in feet.

REFERENCE: Dekker/Perich/Sabatini, 2007, Site Plan, CNLV Fire Station 53, W. Gowan Road Near Simmons Street, North Las Vegas, Nevada; dated April 13.

NOTE: Dimensions, directions, and locations are approximate.

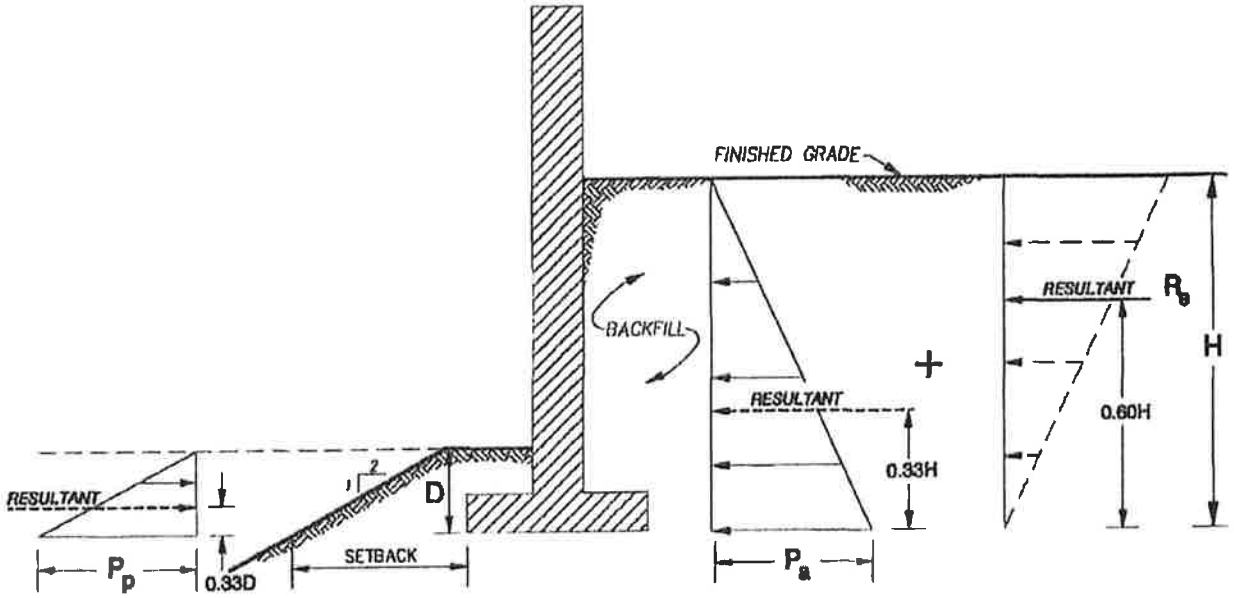
N

SCALE

0 60 120 FEET

Ninyo & Moore	EXPLORATORY BORING LOCATIONS	FIGURE
PROJECT NO. 302258001 / DATE 8/07	PROPOSED FIRE STATION 53 WEST GOWAN ROAD NEAR SIMMONS STREET NORTH LAS VEGAS, NEVADA	2

PET.APP.003217



PASSIVE PRESSURE

ACTIVE PRESSURE

DYNAMIC PRESSURE

NOTES:

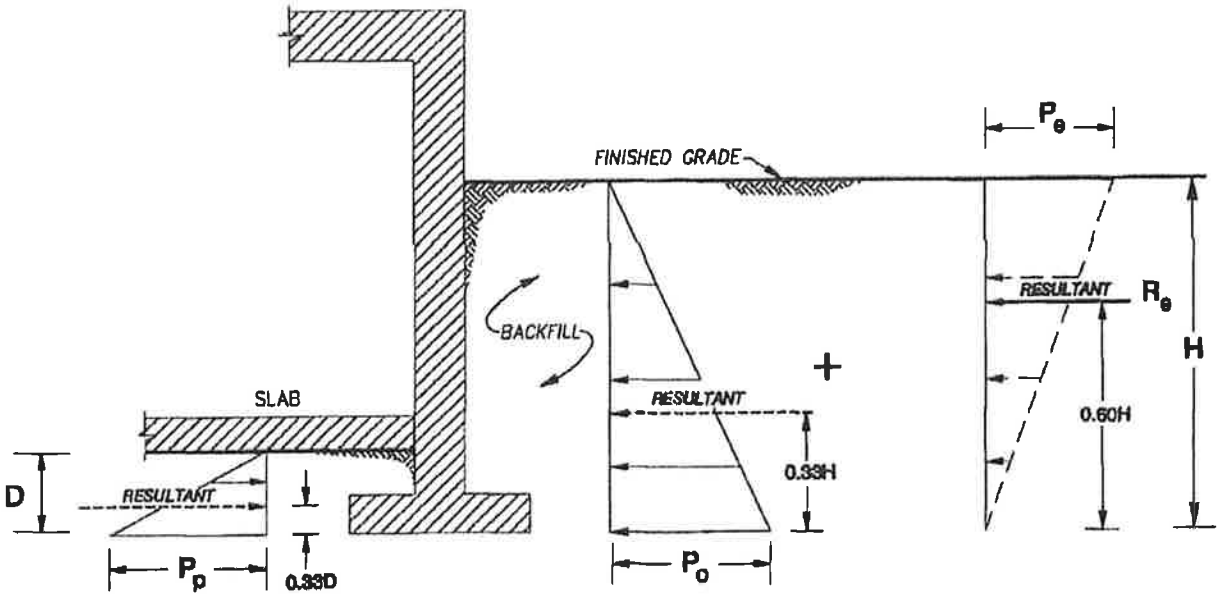
1. ASSUMES NO HYDROSTATIC PRESSURE BUILD-UP BEHIND THE RETAINING WALL
2. ASSUMES LEVEL, GRANULAR BACKFILL MATERIALS
3. DRAINS AS RECOMMENDED IN THE RETAINING WALL DRAINAGE DETAIL SHOULD BE INSTALLED BEHIND THE RETAINING WALL
4. DYNAMIC LATERAL EARTH PRESSURE RESULTANT IS BASED ON THE REFERENCED SOUTHERN NEVADA AMENDMENTS TO THE 2006 IBC (CLARK COUNTY ET AL., 2008)
5. SURCHARGE PRESSURES CAUSED BY VEHICLES OR NEARBY STRUCTURES ARE NOT INCLUDED
6. H AND D ARE IN FEET
7. SETBACK SHOULD BE IN ACCORDANCE WITH SECTION 1806.3 OF THE 2006 IBC

RECOMMENDED GEOTECHNICAL DESIGN PARAMETERS

Lateral Earth Pressure	Equivalent Fluid Pressure (pef/ft)
P_a	42H
P_p	280D
Resultant	Force Per Unit Width of Wall (lbs/ft)
R_e	$9H^2$

NOT TO SCALE

Ninyo & Moore		LATERAL EARTH PRESSURES FOR YIELDING RETAINING WALLS	FIGURE
PROJECT NO.	DATE	PROPOSED FIRE STATION 53 WEST GOWAN ROAD NEAR SIMMONS STREET NORTH LAS VEGAS, NEVADA	3
302288001	6/07		



NOTES:

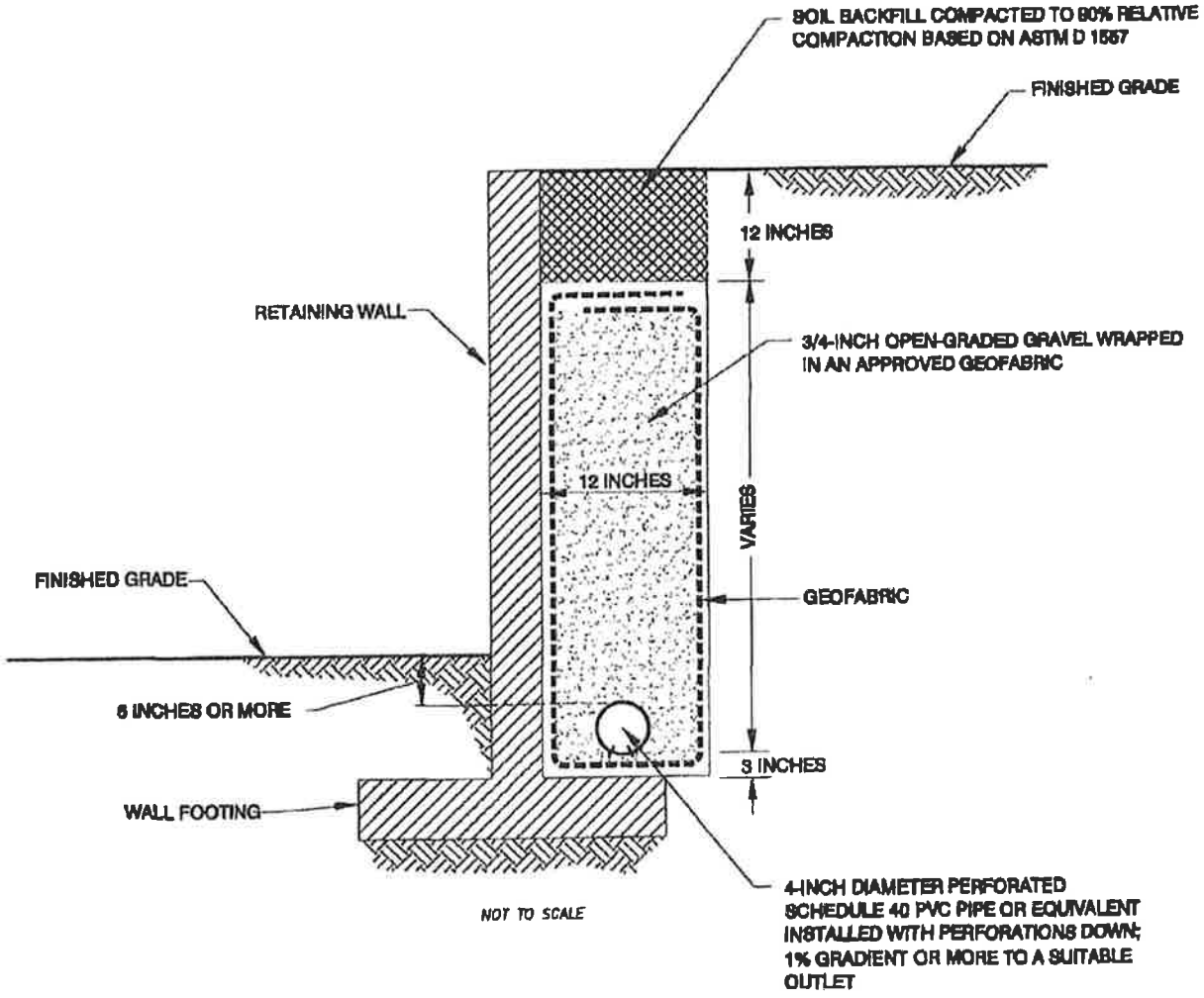
1. ASSUMES NO HYDROSTATIC PRESSURE BUILD-UP BEHIND THE RETAINING WALL
2. ASSUMES LEVEL, GRANULAR BACKFILL MATERIALS
3. DRAINS AS RECOMMENDED IN THE RETAINING WALL DRAINAGE DETAIL SHOULD BE INSTALLED BEHIND THE RETAINING WALL
4. DYNAMIC LATERAL EARTH PRESSURE RESULTANT IS BASED ON THE REFERENCED SOUTHERN NEVADA AMENDMENTS TO THE 2006 IBC (CLARK COUNTY ET AL., 2006)
5. SURCHARGE PRESSURES CAUSED BY VEHICLES OR NEARBY STRUCTURES ARE NOT INCLUDED
6. H AND D ARE IN FEET

RECOMMENDED GEOTECHNICAL DESIGN PARAMETERS

Lateral Earth Pressure	Equivalent Fluid Pressure (pcf/ft)
P_o	62H
P_p	280D
Resultant	Force Per Unit Width of Wall (lbs/ft)
R_e	23H[a]

NOT TO SCALE

Ninyo & Moore		LATERAL EARTH PRESSURES FOR RESTRAINED RETAINING WALLS	FIGURE
PROJECT NO.	DATE	PROPOSED FIRE STATION 53 WEST GOWAN ROAD NEAR SIMMONS STREET NORTH LAS VEGAS, NEVADA	4
302268001	6/07		



NOTES: AS AN ALTERNATIVE, AN APPROVED GEOCOMPOSITE DRAIN SYSTEM MAY BE USED.

AS AN ALTERNATIVE TO USE OF 4" DIAMETER PVC BACKDRAINAGE PIPES, WEEP HOLES CAN BE CORED THROUGH THE WALL AND LINED WITH PVC PIPE. WEEP HOLES SHOULD BE 3" DIAMETER AND PLACED APPROXIMATELY 3" ABOVE THE LOWEST ADJACENT FINISHED GRADE AT APPROXIMATELY 10' ON-CENTER.

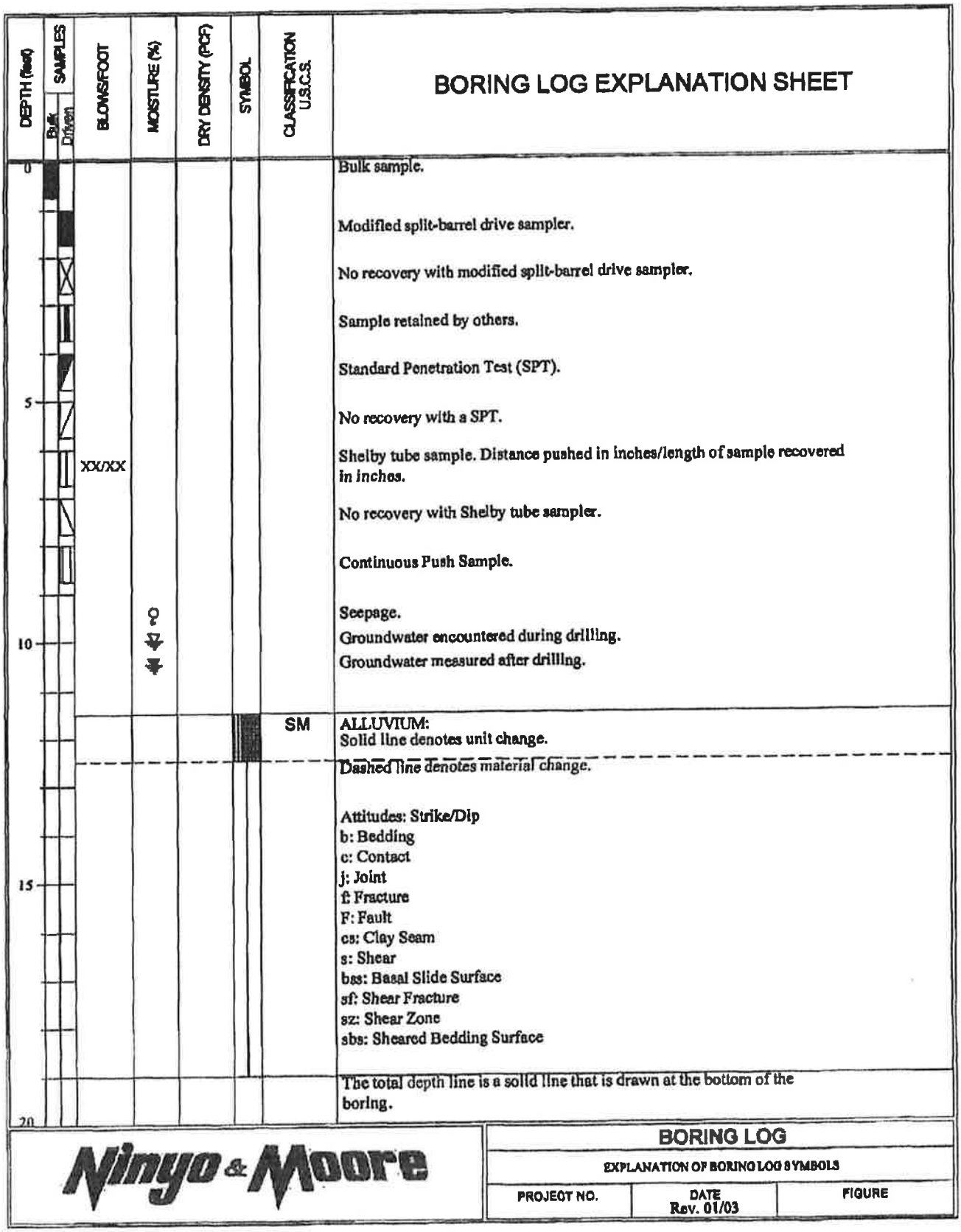
Ninyo & Moore	RETAINING WALL DRAINAGE DETAIL	FIGURE
PROJECT NO. / DATE	PROPOSED FIRE STATION 53 WEST GOWAN ROAD NEAR SIMMONS STREET NORTH LAS VEGAS, NEVADA	5
302288001 / 8/07		

APPENDIX A

EXPLORATORY BORING LOGS

Field Procedure for the Collection of Disturbed Samples
Bulk samples of representative earth materials were obtained from the exploratory excavations. The samples were bagged and transported to the laboratory for testing.

Field Procedure for the Collection of Relatively Undisturbed Samples
Relatively undisturbed soil samples were obtained in the field using a modified split-barrel drive sampler. The sampler, with an external diameter of 3.0 inches, was lined with 1-inch long, thin brass rings with inside diameters of approximately 2.4 inches. The sample barrel was driven into the ground with the weight of a hammer or the kelly bar of the drill rig in general accordance with ASTM D 3550-01. The driving weight was permitted to fall freely. The approximate length of the fall, the weight of the hammer or bar, and the number of blows per foot of driving are presented on the boring logs as an index to the relative resistance of the materials sampled. The samples were removed from the sample barrel in the brass rings, sealed, and transported to the laboratory for testing.


DEPTH (feet)
SAMPLES
Bulk
Driven
BLOWS/FOOT
MOISTURE (%)
DRY DENSITY (PCF)
SYMBOL
CLASSIFICATION U.S.C.S.
BORING LOG EXPLANATION SHEET
0
5
10
15
20
XX/XX
SM
Bulk sample.
Modified split-barrel drive sampler.
No recovery with modified split-barrel drive sampler.
Sample retained by others.
Standard Penetration Test (SPT).
No recovery with a SPT.
Shelby tube sample. Distance pushed in inches/length of sample recovered in inches.
No recovery with Shelby tube sampler.
Continuous Push Sample.
Seepage.
Groundwater encountered during drilling.
Groundwater measured after drilling.
ALLUVIUM:
Solid line denotes unit change.
Dashed line denotes material change.
Attitudes: Strike/Dip
b: Bedding
c: Contact
j: Joint
f: Fracture
F: Fault
cs: Clay Seam
s: Shear
bss: Basal Slide Surface
sf: Shear Fracture
sz: Shear Zone
sbs: Sheared Bedding Surface
The total depth line is a solid line that is drawn at the bottom of the boring.
Ninyo & Moore
BORING LOG
EXPLANATION OF BORING LOG SYMBOLS
PROJECT NO.
DATE
Rev. 01/03
FIGURE

U.S.C.S. METHOD OF SOIL CLASSIFICATION

MAJOR DIVISIONS		SYMBOL	TYPICAL NAMES
COARSE-GRAINED SOILS (More than 1/2 of soil >No. 200 sieve size)	GRAVELS (More than 1/2 of coarse fraction > No. 4 sieve size)	GW	Well graded gravels or gravel-sand mixtures little or no fines
		GP	Poorly graded gravels or gravel-sand mixtures, little or no fines
		GM	Silty gravels, gravel-sand-silt mixtures
		GC	Clayey gravels, gravel-sand-clay mixtures
	SANDS (More than 1/2 of coarse fraction <No. 4 sieve size)	SW	Well graded sands or gravelly sands, little or no fines
		SP	Poorly graded sands or gravelly sands, little or no fines
		SM	Silty sands, sand-silt mixtures
		SC	Clayey sands, sand-clay mixtures
FINE-GRAINED SOILS (More than 1/2 of soil <No. 200 sieve size)	SILTS & CLAYS Liquid Limit <50	ML	Inorganic silts and very fine sands, rock flour, silty or clayey fine sands or clayey silts with slight plasticity
		CL	Inorganic clays of low to medium plasticity, gravelly clays, sandy clays, silty clays, lean clays
		OL	Organic silts and organic silty clays of low plasticity
	SILTS & CLAYS Liquid Limit >50	MH	Inorganic silts, micaceous or diatomaceous fine sandy or silty soils, elastic silts
		CH	Inorganic clays of high plasticity, fat clays
		OH	Organic clays of medium to high plasticity, organic silty clays, organic silts
HIGHLY ORGANIC SOILS		Pt	Peat and other highly organic soils

GRAIN SIZE CHART		
CLASSIFICATION	RANGE OF GRAIN SIZES	
	U.S. Standard Sieve Size	Grain Size in Millimeters
BOULDERS	Above 12"	Above 305
COBBLES	12" to 3"	305 to 76.2
GRAVEL	3" to No. 4	76.2 to 4.76
Coarse	3" to 3/4"	76.2 to 19.1
Fine	3/4" to No. 4	19.1 to 4.76
SAND	No. 4 to No. 200	4.76 to 0.074
Coarse	No. 4 to No. 10	4.76 to 2.00
Medium	No. 10 to No. 40	2.00 to 0.420
Fine	No. 40 to No. 200	0.420 to 0.074
SILT & CLAY	Below No. 200	Below 0.074

Hardness of Caliche*	
Descriptive Term	Characteristics
Moderately Hard	Can be scratched with a knife with light to moderate pressure; breaks with moderate hammer blow.
Hard	Can be scratched with a knife with difficulty; can be broken with heavy hammer blow.
Very Hard	Cannot be scratched with a knife; can only be broken with repeated heavy hammer blows.
* Rock-like cemented soil	

Ninyo & Moore

SOIL CLASSIFICATION

CLASSIFICATION CHART_NEW.doc

DATE DRILLED 4/06/07 BORING NO. B-1

GROUND ELEVATION Not measured SHEET 1 OF 1

METHOD OF DRILLING Mobile B-61 HDX hollow-stem auger drill rig

DRIVE WEIGHT 140 lbs. (auto trip hammer) DROP 30"

SAMPLED BY DJF LOGGED BY DJF REVIEWED BY EDB

DEPTH (feet)	SAMPLES Bulk	SAMPLES Driven	BLOWS	MOISTURE (%)	DRY DENSITY (PCF)	SYMBOL	CLASSIFICATION U.S.C.S.	DESCRIPTION/INTERPRETATION
0							SC	NATIVE SOIL: Light tannish gray to light brown, damp, medium dense, clayey SAND; trace rootlets; few gravel.
5			9/6" 9/6" 8/6"	6.9	92.4		CL	Light gray to brown, damp, very stiff, sandy lean CLAY; slightly gypsiferous; slightly cemented.
10								Total depth = 6.5 feet. Groundwater not encountered during drilling. Backfilled on 4/06/07. NOTE: Groundwater, though not encountered at the time of drilling, may rise to a higher level due to seasonal variations in precipitation and several other factors as discussed in the report.
15								
20								

Ninyo & Moore

BORING LOG

PROPOSED FIRE STATION 53, WEST GOWAN ROAD NEAR SIMMONS STREET
NORTH LAS VEGAS, NEVADA

PROJECT NO.	DATE	FIGURE
302288001	8/07	A-1

DATE DRILLED 4/06/07 BORING NO. B-2

GROUND ELEVATION Not measured SHEET 1 OF 1

METHOD OF DRILLING Mobile B-61 HDX hollow-stem auger drill rig

DRIVE WEIGHT 140 lbs. (auto trip hammer) DROP 30"

SAMPLED BY DJF LOGGED BY DJF REVIEWED BY EDB

DEPTH (feet)	SAMPLES Bulk	SAMPLES Driven	BLOWS	MOISTURE (%)	DRY DENSITY (PCF)	SYMBOL	CLASSIFICATION U.S.C.S.	DESCRIPTION/INTERPRETATION
0							SC	NATIVE SOIL: Light brown, damp, medium dense, clayey SAND.
			4/6" 5/6" 10/6"	44.3	63.8		CH	Brown, moist, very stiff, sandy fat CLAY; highly gypsiferous.
5			2/6" 3/6" 10/6"	17.8	72.8		SM	Brown, damp, loose, silty SAND; trace clay; few gravel.
10			2/6" 5/6" 9/6"	33.2	67.0		CL	Light brown to reddish brown, moist, very stiff, sandy lean CLAY; trace rootlets; moderately porous.
15			4/6" 15/6" 9/6"	5.4	108.7			Light brown, damp; no rootlets.
20								Total depth = 16.5 feet. Groundwater not encountered during drilling. Backfilled on 4/06/07. NOTE: Groundwater, though not encountered at the time of drilling, may rise to a higher level due to seasonal variations in precipitation and several other factors as discussed in the report.

Ninyo & Moore

BORING LOG

PROPOSED FIRE STATION 53, WEST GOWAN ROAD NEAR SIMMONS STREET
NORTH LAS VEGAS, NEVADA

PROJECT NO.	DATE	FIGURE
302288001	8/07	A-2

DATE DRILLED 4/06/07 BORING NO. B-3

GROUND ELEVATION Not measured SHEET 1 OF 1

METHOD OF DRILLING Mobile B-61 HDX hollow-stem auger drill rig

DRIVE WEIGHT 140 lbs. (auto trip hammer) DROP 30"

SAMPLED BY DJF LOGGED BY DJF REVIEWED BY EDE

DEPTH (feet)	SAMPLES: Bulk	SAMPLES: Driven	BLOWS	MOISTURE (%)	DRY DENSITY (PCF)	SYMBOL	CLASSIFICATION U.S.C.S.	DESCRIPTION/INTERPRETATION
0							SM	NATIVE SOIL: Light brown, damp, medium dense, silty SAND; trace clay; trace gravel.
							CL	Light brown, moist, very stiff, sandy lean CLAY with gravel.
5		■	10/6" 9/6" 10/6"	12.5	93.6		SC	Light brown, damp, medium dense, clayey SAND; trace gravel. Moderately gypsiferous; slightly cemented.
10		■	4/6" 6/6" 21/6"	12.8	99.4		CL	Light gray to reddish brown, damp, very stiff, sandy lean CLAY; slightly cemented; slightly porous.
15		■	8/6" 9/6" 10/6"	19.1	84.3			Total depth = 16.5 feet. Groundwater not encountered during drilling. Backfilled on 4/06/07. NOTE: Groundwater, though not encountered at the time of drilling, may rise to a higher level due to seasonal variations in precipitation and several other factors as discussed in the report.
20								

Ninyo & Moore

BORING LOG

PROPOSED FIRE STATION 53, WEST GOWAN ROAD NEAR SIMMONS STREET
NORTH LAS VEGAS, NEVADA

PROJECT NO.	DATE	FIGURE
302288001	8/07	A-3

DATE DRILLED 4/06/07 BORING NO. B-4

GROUND ELEVATION Not measured SHEET 1 OF 1

METHOD OF DRILLING Mobile B-61 HDX hollow-stem auger drill rig

DRIVE WEIGHT 140 lbs. (auto trip hammer) DROP 30"

SAMPLED BY DJF LOGGED BY DJF REVIEWED BY EDB

DEPTH (feet)	SAMPLES Bulk	SAMPLES Driven	BLOWS	MOISTURE (%)	DRY DENSITY (PCF)	SYMBOL	CLASSIFICATION U.S.C.S.	DESCRIPTION/INTERPRETATION
0							GM	FILL: Grayish brown, damp, medium dense, silty GRAVEL with sand.
							SC	Light brown, damp, medium dense, clayey SAND with gravel.
							SC	NATIVE SOIL: Brown, damp to moist, very loose, clayey SAND; little gravel.
5			3/6" 2/6" 2/6"	24.4	72.5			Moist; slightly gypsiferous.
10			4/6" 3/6" 6/6"	46.5	61.7		CL	Brown, moist, stiff, sandy lean CLAY; moderately porous.
								Total depth = 11.5 feet. Groundwater not encountered during drilling. Backfilled on 4/16/07. NOTE: Groundwater, though not encountered at the time of drilling, may rise to a higher level due to seasonal variations in precipitation and several other factors as discussed in the report.
15								
20								

Ninyo & Moore

BORING LOG

PROPOSED FIRE STATION 53, WEST GOWAN ROAD NEAR SIMMONS STREET
NORTH LAS VEGAS, NEVADA

PROJECT NO.	DATE	FIGURE
302288001	5/07	A-4

APPENDIX B

LABORATORY TESTING

Classification
Soils were visually and texturally classified in accordance with the Unified Soil Classification System (USCS) in general accordance with ASTM D 2488-00. Soil classifications are indicated on the logs of the exploratory excavations in Appendix A.

In-Place Moisture and Density
The moisture content and dry density of relatively undisturbed samples obtained from the exploratory excavations were evaluated in general accordance with ASTM D 2937-04. The test results are presented on the logs of the exploratory excavations in Appendix A.

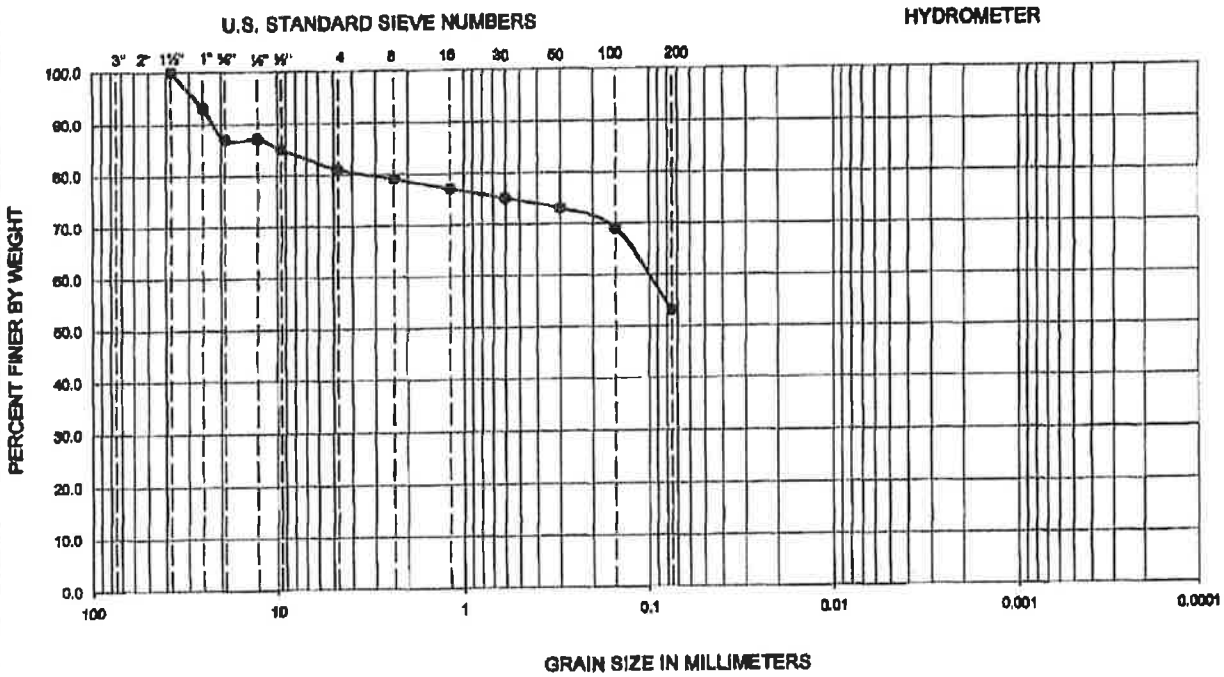
Gradation Analysis
Gradation analysis tests were performed on selected representative soil samples in general accordance with ASTM D 422-63 (02). The grain-size distribution curves are shown on Figure B-1 and Figure B-2. These test results were utilized in evaluating the soil classifications in accordance with the USCS.

Atterberg Limits
Tests were performed on selected representative soil samples to evaluate the liquid limit, plastic limit, and plasticity index in general accordance with ASTM D 4318-05. These test results were utilized to evaluate the soil classification in accordance with the USCS. The test results and classifications are shown on Figure B-3.

Consolidation
Consolidation tests were performed on selected relatively undisturbed soil samples in general accordance with ASTM D 2435-04. The samples were inundated during testing to represent adverse field conditions. The percent of consolidation for each load cycle was recorded as a ratio of the amount of vertical compression to the original height of the sample. The consolidation test results are summarized graphically on Figure B-4 and Figure B-5 and the expansion/collapse potential results are summarized on Figure B-6.

R-Value
The resistance value, or R-value, for site soils was evaluated in general accordance with ASTM D 2844-01. The sample was prepared and evaluated for exudation pressure and expansion pressure. The equilibrium R-value is reported as the lesser, or more conservative, of the two calculated results. The test result is shown on Figure B-7.

GRAVEL		SAND			FINES	
Coarse	Fine	Coarse	Medium	Fine	SILT	CLAY



Symbol	Sample Location	Depth (ft)	Liquid Limit	Plastic Limit	Plasticity Index	D_{10}	D_{30}	D_{60}	C_u	C_c	Passing No. 200 (%)	U.S.C.S
●	B-3	2.0-3.0	41	16	25	--	--	--	--	--	53	CL

PERFORMED IN GENERAL ACCORDANCE WITH ASTM D 422-63 (02)

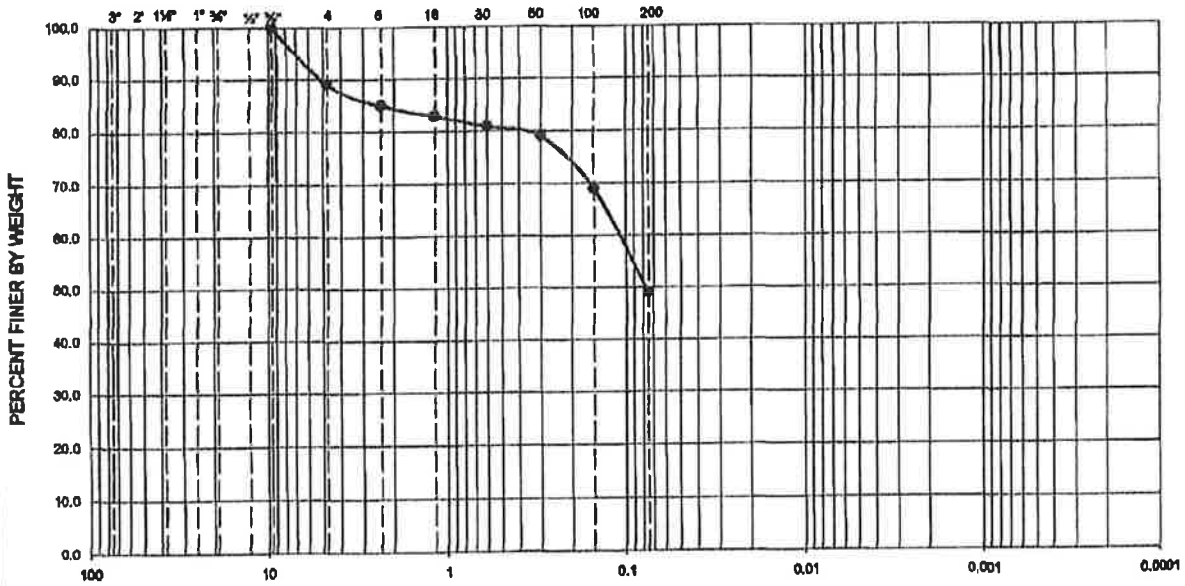
Ninyo & Moore		GRADATION TEST RESULTS	FIGURE
PROJECT NO.	DATE	PROPOSED FIRE STATION 53 WEST GOWAN ROAD NEAR SIMMONS STREET NORTH LAS VEGAS, NEVADA	B-1
302288001	8/07		

SIEVE w No 53-3@2.0-3.0.xls

GRAVEL		SAND			FINES	
Coarse	Fine	Coarse	Medium	Fine	SILT	CLAY

U.S. STANDARD SIEVE NUMBERS

HYDROMETER



Symbol	Sample Location	Depth (ft)	Liquid Limit	Plastic Limit	Plasticity Index	D_{10}	D_{30}	D_{60}	C_u	C_c	Passing No. 200 (%)	U.S.C.S
●	B-4	2.0-5.0	36	20	16	--	--	--	--	--	49	SC

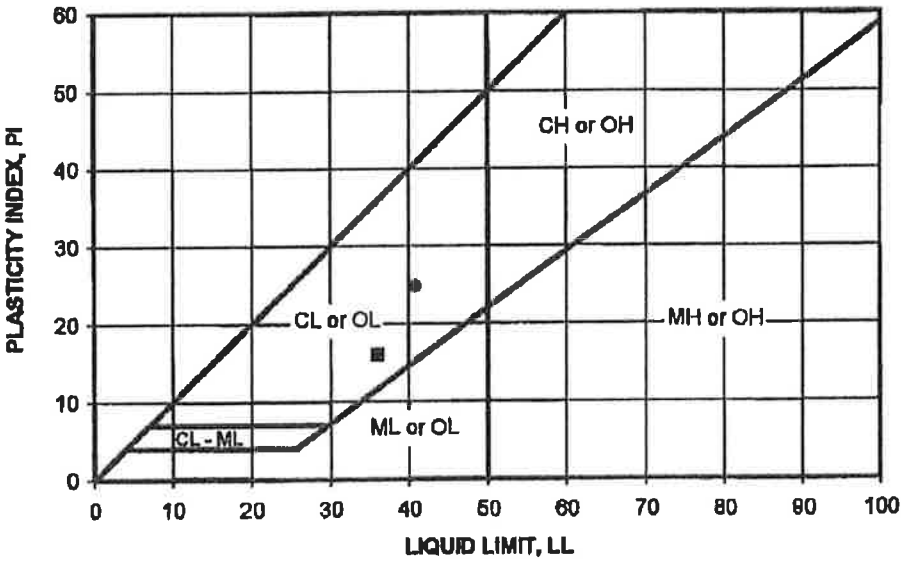
PERFORMED IN GENERAL ACCORDANCE WITH ASTM D 422-63 (02)

Ninyo & Moore	GRADATION TEST RESULTS	FIGURE
PROJECT NO. 302288001 / DATE 8/07	PROPOSED FIRE STATION 53 WEST GOWAN ROAD NEAR SIMMONS STREET NORTH LAS VEGAS, NEVADA	B-2

SIEVE w No B5-4@2.0-5.0.xls

SYMBOL	LOCATION	DEPTH (FT)	LIQUID LIMIT, LL	PLASTIC LIMIT, PL	PLASTICITY INDEX, PI	USCS CLASSIFICATION (Fraction Finer Than No. 40 Sieve)	USCS (Entire Sample)
●	B-3	2.0-3.0	41	16	25	CL	CL
■	B-4	2.0-5.0	36	20	16	CL	SC

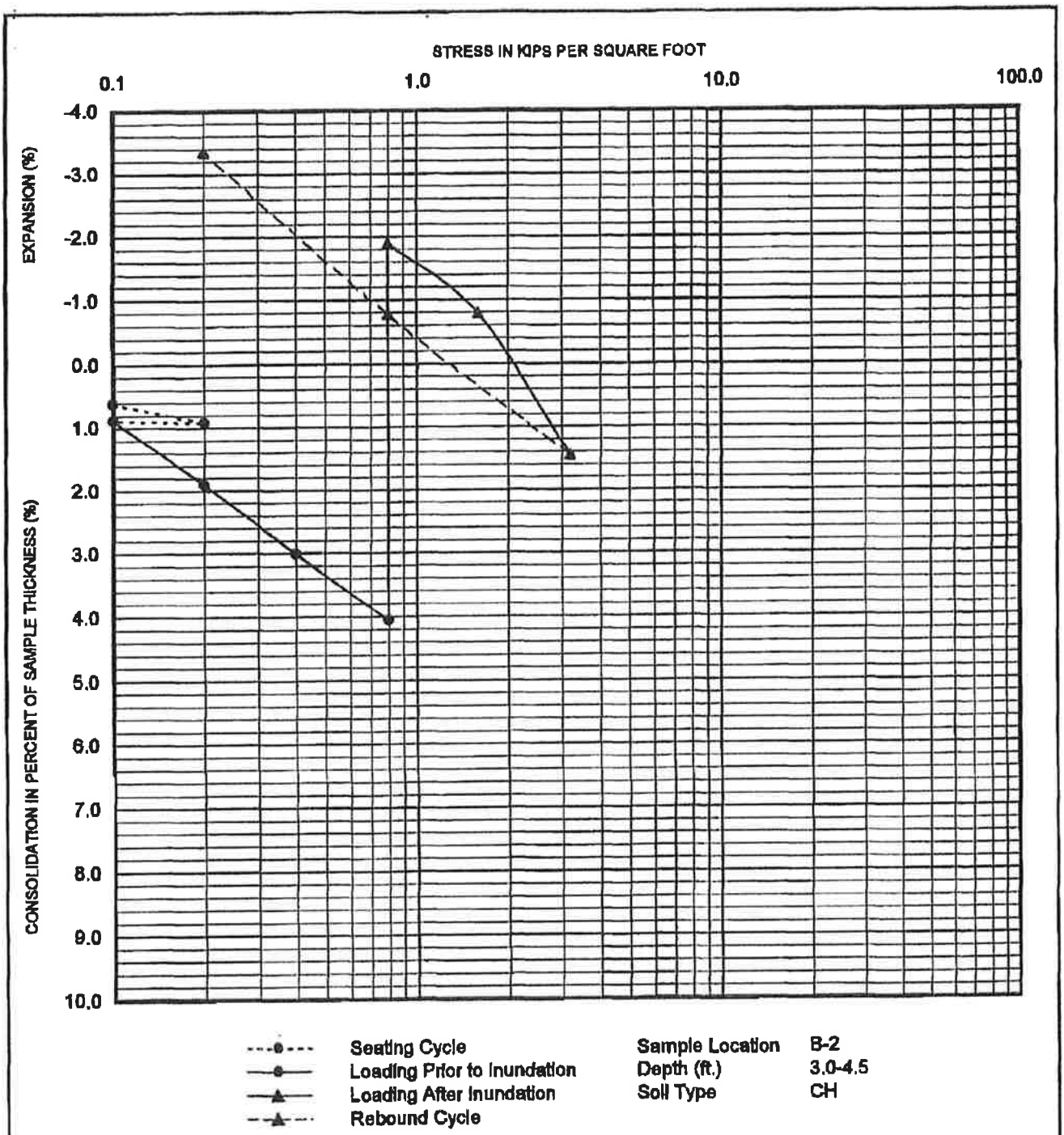
NP - Indicates Non-Plastic



PERFORMED IN GENERAL ACCORDANCE WITH ASTM D 4318-05

Ninyo & Moore	ATTERBERG LIMITS TEST RESULTS	FIGURE
PROJECT NO. 302288001 / DATE 8/07	PROPOSED FIRE STATION 53 WEST GOWAN ROAD NEAR SIMMONS STREET NORTH LAS VEGAS, NEVADA	B-3

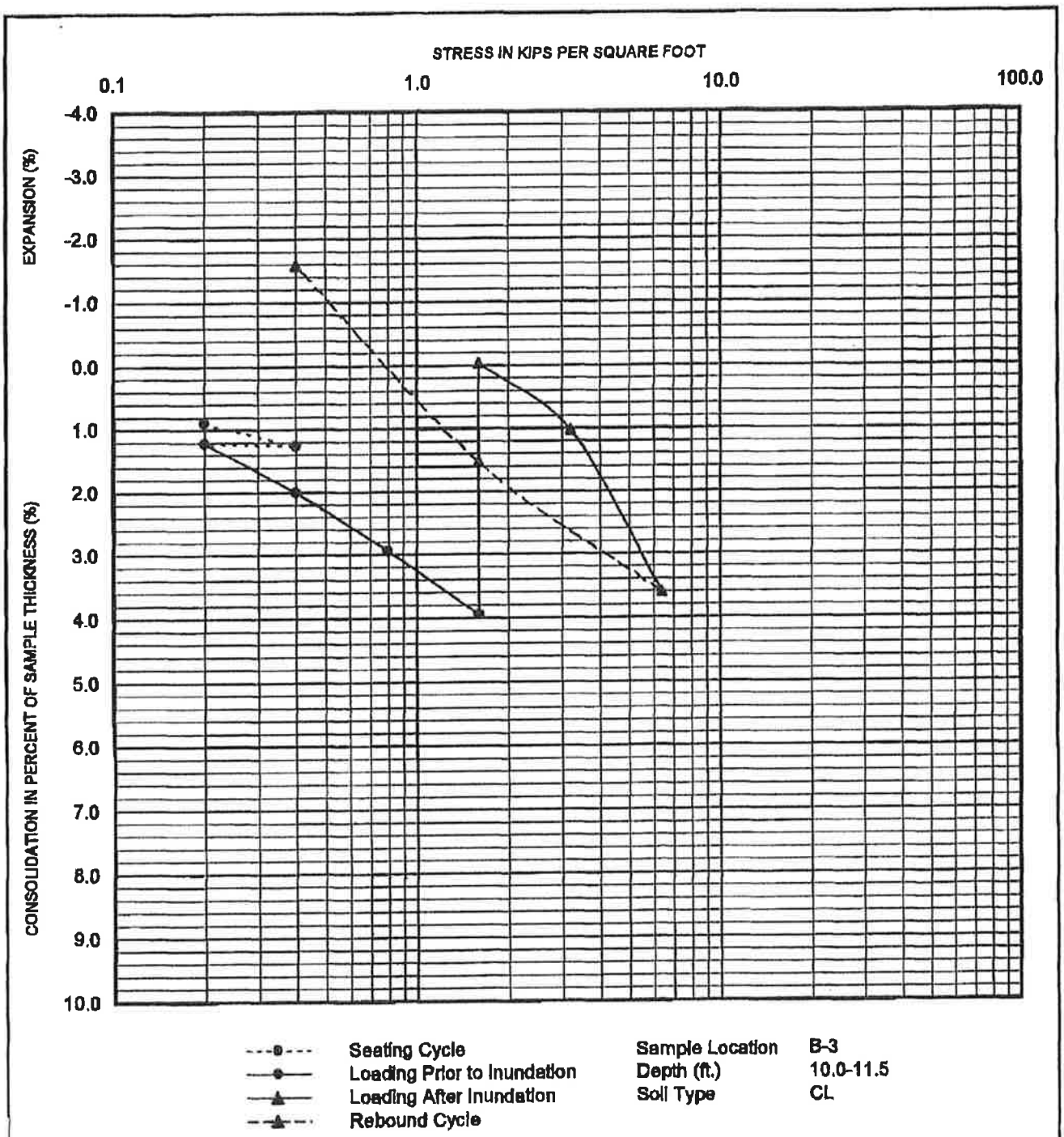
ATTB-3.AB-4.ai



PERFORMED IN GENERAL ACCORDANCE WITH ASTM D 2435-04

Ninyo & Moore	CONSOLIDATION TEST RESULTS	FIGURE
PROJECT NO. 302288001	DATE 8/07	PROPOSED FIRE STATION 63 WEST GOWAN ROAD NEAR SIMMONS STREET NORTH LAS VEGAS, NEVADA	B-4

302288001 CN B-2@3.0.ai



PERFORMED IN GENERAL ACCORDANCE WITH ASTM D 2435-04

Ninyo & Moore	CONSOLIDATION TEST RESULTS	FIGURE
PROJECT NO. 302288001 / DATE 8/07	PROPOSED FIRE STATION 53 WEST GOWAN ROAD NEAR SIMMONS STREET NORTH LAS VEGAS, NEVADA	B-5

302288001 CN B-3@10.0.ai

SAMPLE LOCATION	DEPTH (FT)	IN-PLACE MOISTURE CONTENT (%)	IN-PLACE DRY DENSITY (PCF)	FINAL MOISTURE CONTENT (%)	SURCHARGE (PSF)	EXPANSION POTENTIAL (%)	COLLAPSE POTENTIAL (%)
B-2	3.0-4.5	42.3	64.5	61.8	800	5.9	–
B-3	10.0-11.5	29.3	83.1	39.1	1600	4.0	–

PERFORMED IN GENERAL ACCORDANCE WITH ASTM D 2435-04

Ninyo & Moore	EXPANSION/COLLAPSE POTENTIAL TEST RESULTS	FIGURE
PROJECT NO. 302255001 / DATE 8/07	PROPOSED FIRE STATION 53 WEST GOWAN ROAD NEAR SIMMONS STREET NORTH LAS VEGAS, NEVADA	B-6

302255001 Expansion-Collapse - B-6.xls

SAMPLE LOCATION	SAMPLE DEPTH (FT)	SOIL TYPE	R-VALUE
B-4	2.0-5.0	SC	19

PERFORMED IN GENERAL ACCORDANCE WITH ASTM D 2844-01

Ninyo & Moore		R-VALUE TEST RESULTS	FIGURE
PROJECT	DATE	PROPOSED FIRE STATION 53 WEST GOWAN ROAD NEAR SIMMONS STREET NORTH LAS VEGAS, NEVADA	B-7
302288001	8/07		

302288001 RV - B-7.ai

APPENDIX C

CHEMICAL TEST RESULTS

The results of chemical tests performed are provided in this appendix.

SilverState
Analytical Laboratories

LABORATORY REPORT

DATE: April 23, 2007

REPORT NUMBER: 07-1159

CLIENT: Ninyo & Moore
6700 Paradise Road, Suite E
Las Vegas, NV 89119

PAGE: 1 of 1

CLIENT PROJECT: 302288001

CLIENT PO #:

ANALYST: SW

Sampled By: Client
Date Sampled: --
Time Sampled: --

Date Received: 04/20/07
Time Received: 1655

Sample ID: B-1 @ 1.0-4.0

Analysis	Result	Unit	Method
Sodium	0.01	%	ASTM D2791
Sulfate	0.34	%	SM 4500 E
Sodium Sulfate	0.04	%	Calculation
Total Salts (Solubility)	0.79	%	EPA 160.1

Sample ID: B-3 @ 2.0-3.0

Analysis	Result	Unit	Method
Sodium	0.13	%	ASTM D2791
Sulfate	0.38	%	SM 4500 E
Sodium Sulfate	0.39	%	Calculation
Total Salts (Solubility)	0.88	%	EPA 160.1

NOTES: The results for each constituent denote the percentage (%) for that particular element which is soluble in a 1:5 (soil to water) extraction ratio and corrected for dilution. To calculate from a % to a concentration, multiply the % by 10,000 to obtain ppm. This conversion is only a rough number due to atomic weights.

REVIEWED BY:

Ronald W. Winter
Laboratory Director

5070 South Arville Street, Suite 6 Las Vegas, NV 89118
Tel: 702-873-4478 Fax: 702-873-7967 www.ssalabs.com

APPENDIX D

FLEXIBLE PAVEMENT SECTION CALCULATIONS

TRAFFIC CALCULATIONS

Ninyo & Moore

Project Name: Proposed Fire Station 53
Project Number: 302288001
Date: 08/08/07
Calculations by: NB
Case: Gowen Road

ESAL Calculation

Equations: $ESAL_i = (ADT_i)(365)\{[(1+G_i)^t-1]/G_i\}(f_d)(P_i)(f_i)$

$ESAL_T = \Sigma\ ESAL_i$

Design Life, t = 20 years

Average Daily Traffic, ADT_i = 3,860 vehicles

Growth, G_i = 5 percent

Design Lane Factor, f_d = 0.8

Truck Category	Percent, P_i	Average Daily Traffic	Truck Factors, f_i	$ESAL_i$
Passenger Cars	93.83	34,895,244	0.0008	27,916
Trucks 39' or less	4.58	1,706,934	0.5796	989,339
Trucks 49' or Longer	1.79	667,120	1.4944	996,945

check: 100.00

Total Equivalent Single Axle Load, $ESAL_T$ = 2,014,200

Reviewed by:_____
Date:_____

AASHTO FLEXIBLE PAVEMENT CALCULATIONS

Ninyo & Moore

Project Name: Proposed Fire Station 53
Project Number: 302288001
Date: 08/08/07
Calculations by: NB
Case: Gowan Road

Structural Number Calculation

Equations: $\log(W_{18}) = Z_R S_o + 9.36\log(SN+1) - 0.20 + \log[\{(P_o - P_t)/(4.3-1.5)\}/\{0.40 + (1094/(SN+1)^{5.19})\}] + 2.32\log(M_R) - 8.07$

$M_R = 145(10)^{\{(0.0147R)+1.23\}}$ (USSPWC Method)

Design ESAL, W_{18}	=	2,014,200	Equivalent TI = 9.8
Reliability, R	=	80	
Std. Normal Deviation, Z_R	=	-0.841	
Standard Deviation, S_o	=	0.45	
Initial Serviceability, P_o	=	4.2	
Terminal Serviceability, P_t	=	2.5	
Subgrade R-Value, R	=	19	
Resilient Modulus, M_R	=	4,700	psi
Structural Number, SN	=	4.29	(use Solver in Tools menu or iterate SN until target approaches 1.000)
target	=	1.000	

Structural Number (Design), SN_D = 4.29

Pavement Section Calculations

Equations: $SN_P = (a_a)(D_a) + (a_b)(D_b) + (a_s)(D_s)$

$SN_P \geq SN_D$

Asphalt Layer Coefficient, a_a	=	0.35			
Base Layer Coefficient, a_b	=	0.12			
Subbase Layer Coefficient, a_s	=	0.11			
Asphalt Concrete Thickness, D_a	=	7	in.		
Base Thickness, D_b	=	16	in.		
Subbase Thickness, D_s	=	0	in.		
Structural Fill Thickness, D_{sf}	=	8	in.	**Asphalt Concrete Thickness, D_a =**	7 in.
Structural Number (Provided), SN_P	=	4.37	OKAY	**Base Thickness, D_b =**	16 in.
Structural Number (Design), SN_D	=	4.29		**Subbase Thickness, D_s =**	0 in.
				Structural Fill Thickness, D_{sf} =	8 in.

Reviewed by:_____
Date:_____

EXHIBIT B

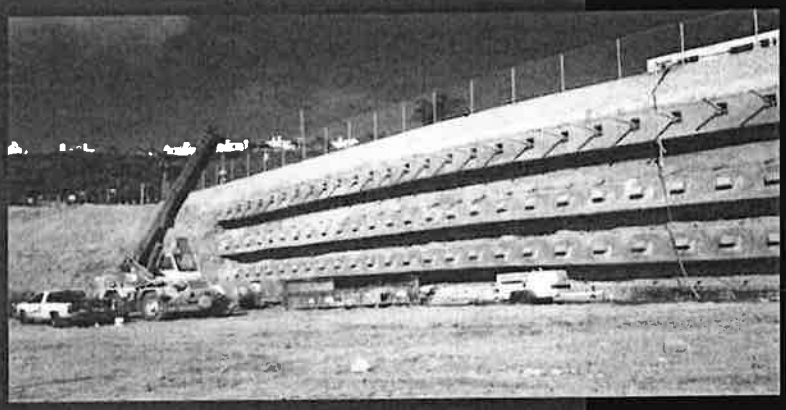
EXHIBIT B

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

PET.APP.003242

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:

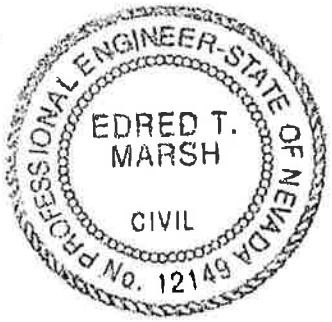
In accordance with your authorization, American Geotechnical has performed a geotechnical investigation of the site. The purpose of this investigation was to evaluate the site geotechnical conditions and to determine the probable cause(s) of the existing distress to the building and surrounding appurtenances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

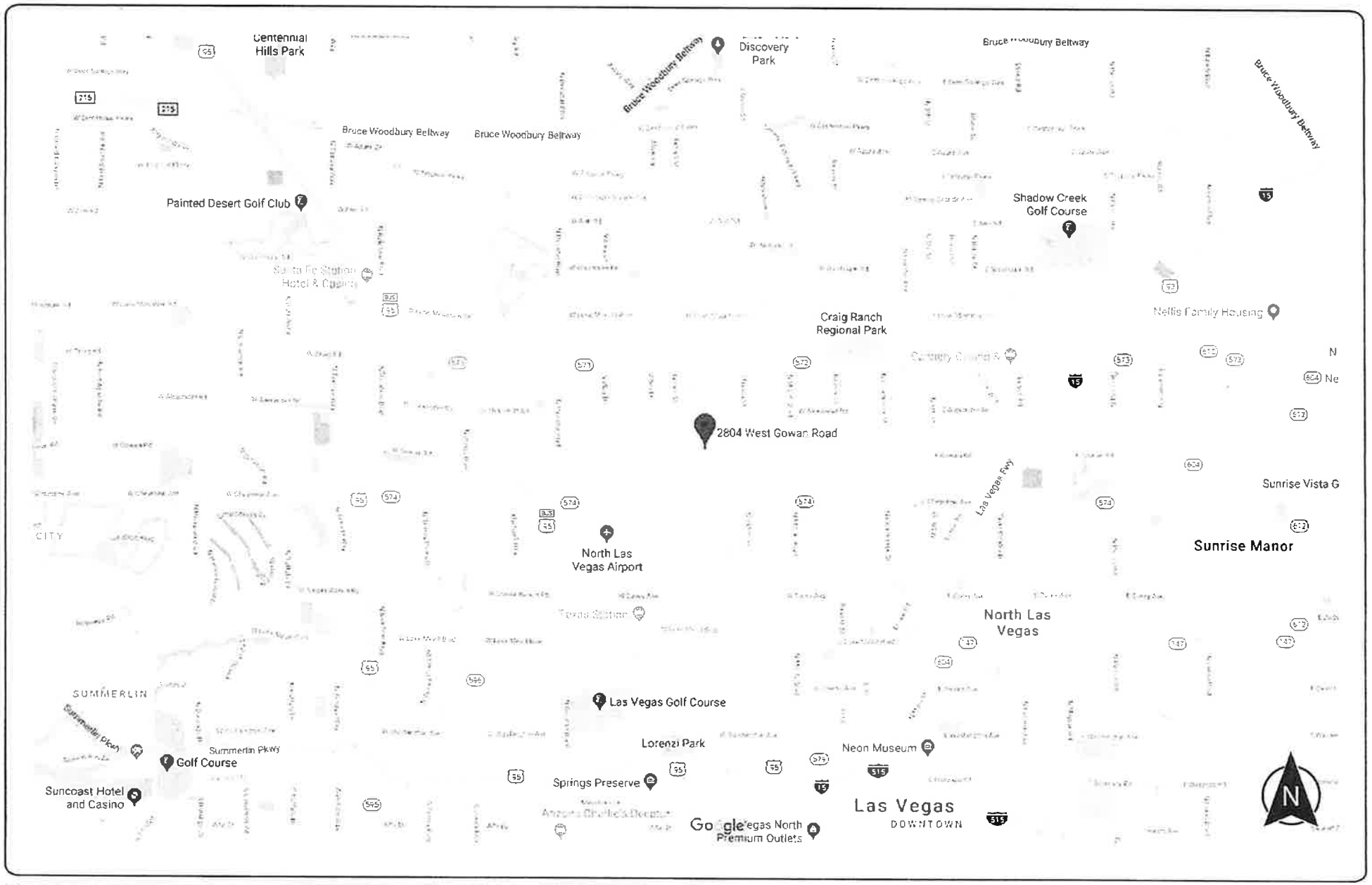
1.0 SCOPE OF WORK

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, AGSB-2 and AGSB-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.

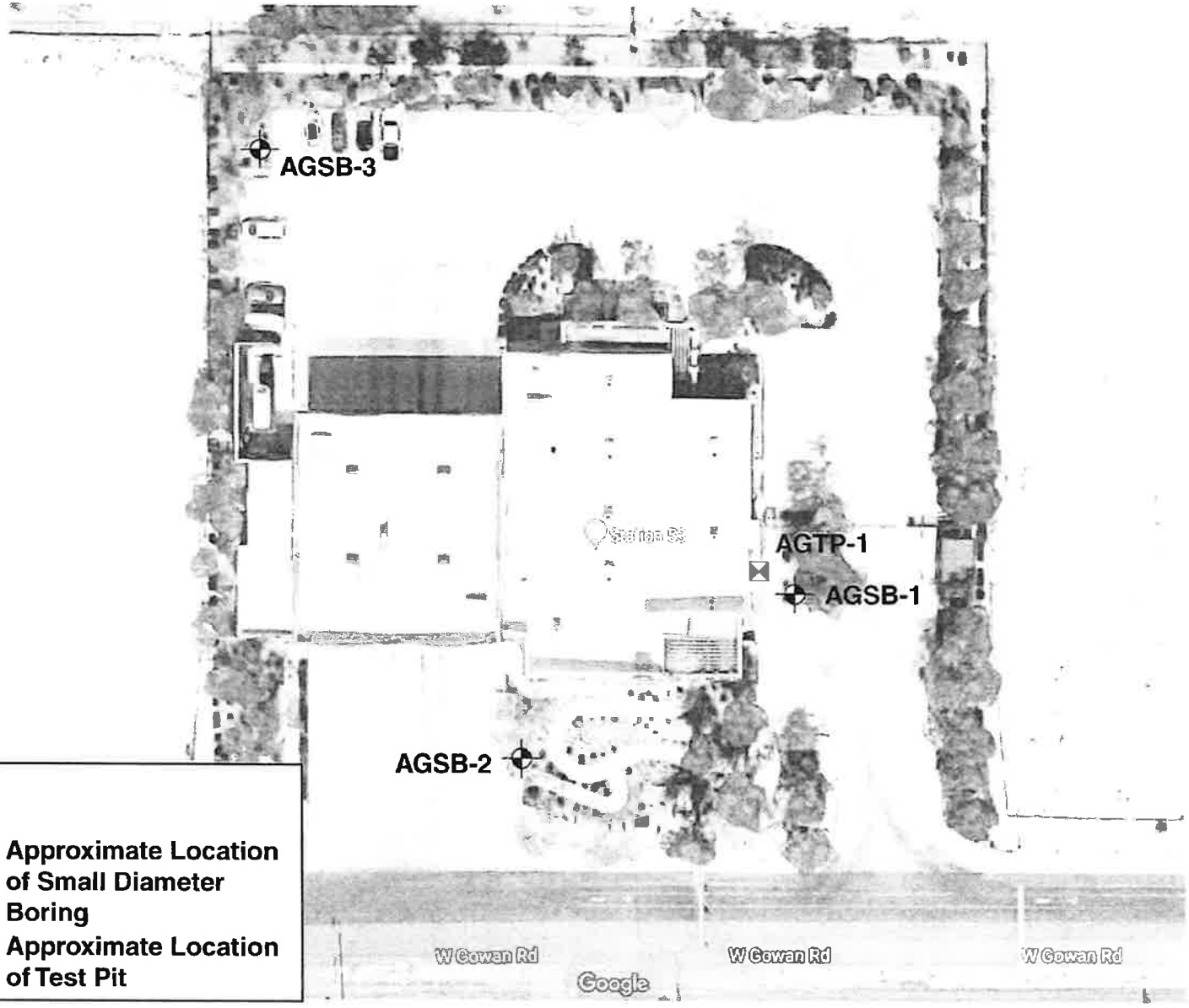
2.0 SITE DESCRIPTION AND HISTORY

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		PLATE **1**
SCALE: **N.T.S**	DATE: **DEC 2017**	FILE NO.: **40779-01**



LEGEND

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

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www.amgt.com

TITLE:		
Aerial View/Test Location Map		
2804 West Gowan Rd., N. Las Vegas, AZ		
SCALE:	DATE:	FILE NO.:
N.T.S	DEC 2017	40779-01

PLATE **2**

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

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

3.0 OBSERVED DAMAGE

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

4.0 FLOOR-LEVEL SURVEY

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

Measurements were taken at close intervals and corrected for varying floor heights and thickness of floor coverings. All point readings have been based on the same datum. By evaluating the different readings, floor deformation can be easily determined by conventional contouring techniques. The attached **Plate 3** presents the results of the manometer survey. As shown, the maximum difference in elevation across the floor is approximately 3.3 inches. The contour pattern indicates a clear downward deformation of the floor toward the east side of the building. On average, most foundation systems are constructed within ½ 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 he excavation of a test pit (AGTP-1) and drilling of three small-diameter borings (AGSB-1 through AGSB-3).

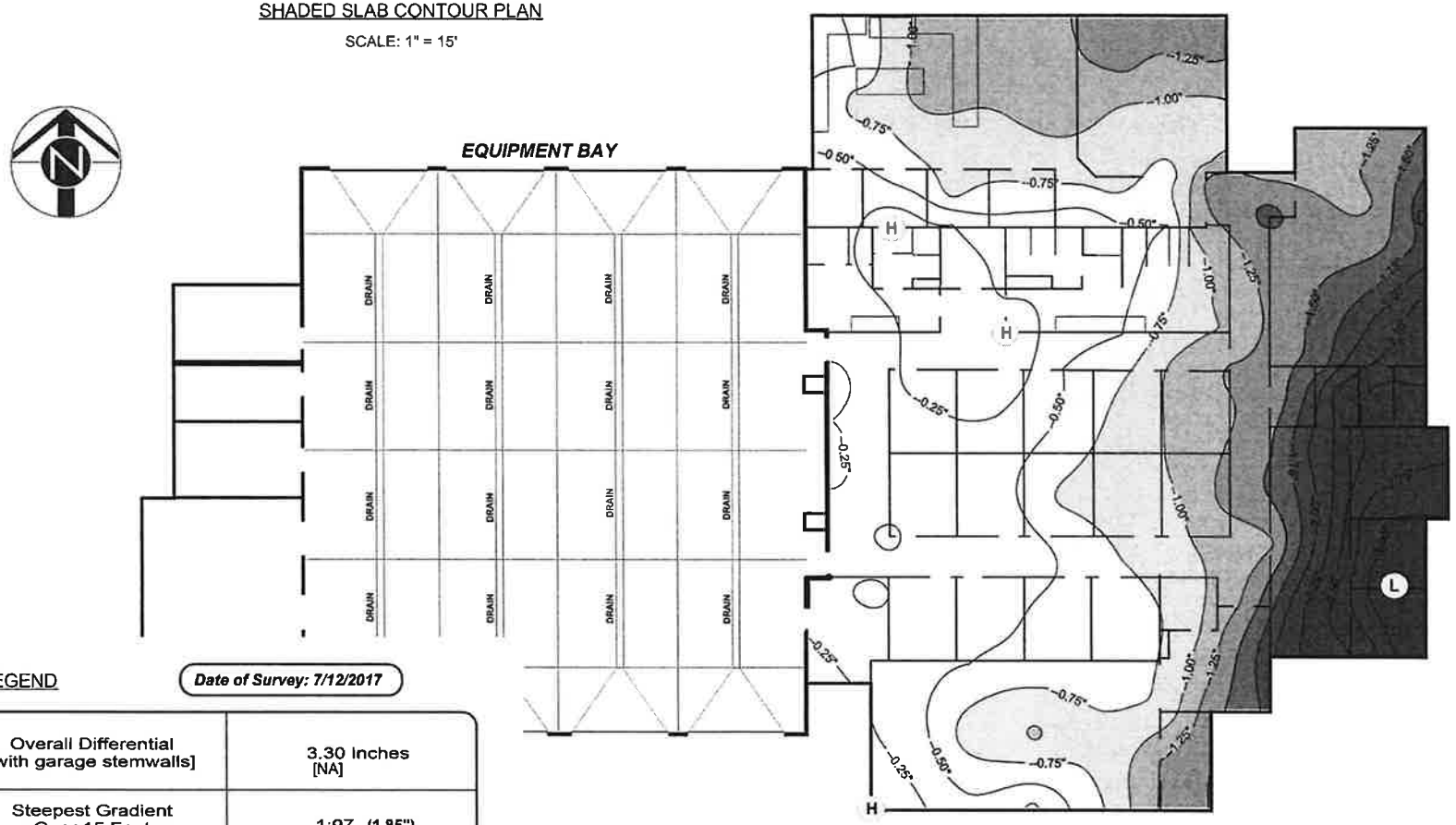
Test pit AGTP-1 was excavated on the east side of the building between the building foundation and the top of an exterior retaining wall. The excavation was terminated at 8.5 feet below ground surface at the top of a very hard and well cemented soil layer. Fill material consisting generally of a stiff 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 AGSB-1, AGSB-2 and AGSB-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 AGSB-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 AGSB-2 and AGSB-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'



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")
1.6" / 7.5	Contours are of relative elevation in inches Survey Point / Relative elevation
L	Low Point
H	High Point
	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

6.0 LABORATORY TESTING

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

7.0 CONCLUSIONS

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

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

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

8.0 REMEDIAL RECOMMENDATIONS

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

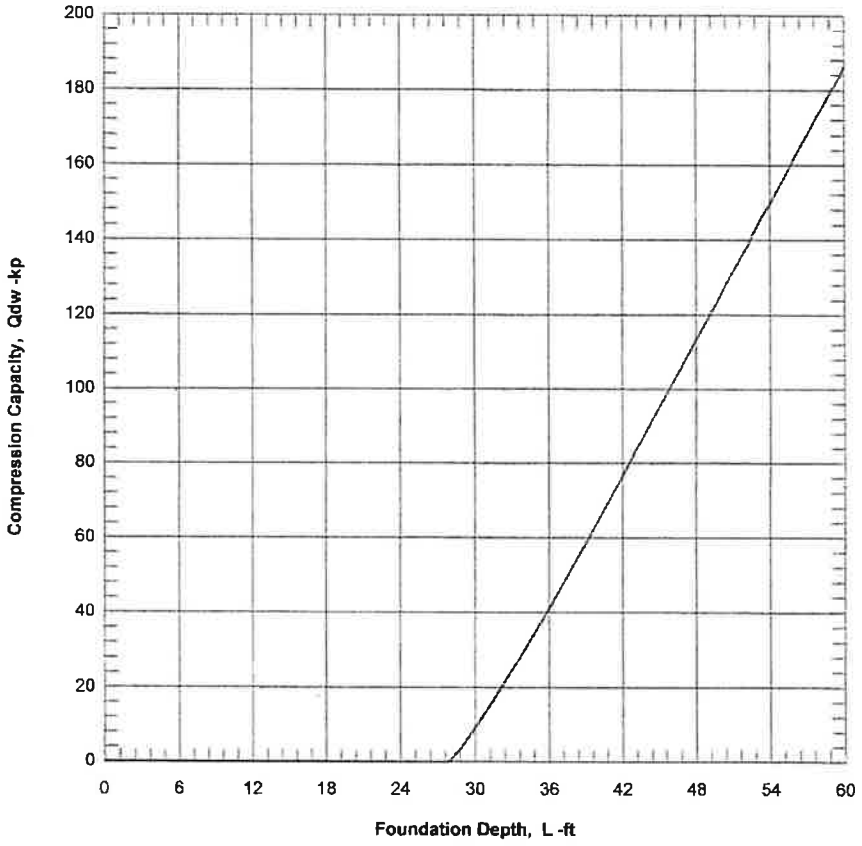
A minimum pile diameter of 2 feet is recommended for the underpinning. The pile spacing should be at least three times the pile diameter. Vertical pile capacity for an isolated, 2-foot diameter friction pile is presented on **Plate 4**. Capacities for other pile sizes can be determined in direct proportion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

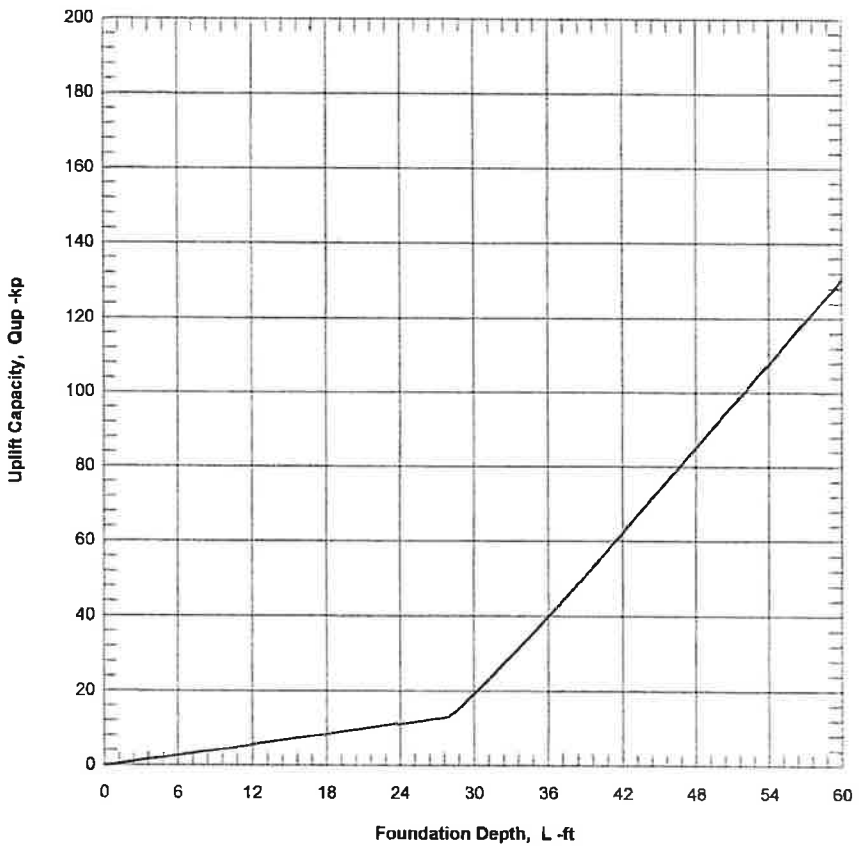
For friction piles, care should be taken to ream the pile excavation within the bearing zone in order to clean the excavation side walls of any smear resulting from drilling operations. The bottom of the excavation should be kept free of loose or sloughed material. It should be noted that hard drilling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

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

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

ALLOWABLE CAPACITY vs FOUNDATION DEPTH





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

9.0 CONCRETE

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

10.0 CORROSION

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

11.0 REMARKS

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

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

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

EXHIBIT 52
PETITIONERS'APPENDIX

EXHIBIT 52
PETITIONERS'APPENDIX

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Attorneys for the City of North Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

City of North Las Vegas,

Plaintiff,

vs.

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

Defendants.

CASE NO.: A-19-798346-C

DEPT. NO.: VIII

THE CITY'S OPPOSITION TO DEFENDANT MELROY ENGINEERING, INC. D/B/A MSA ENGINEERING CONSULTANTS' AND JOINDERS MOTION TO DISMISS ON ORDER SHORTENING TIME

The City of North Las Vegas ("**City**") opposes Defendant Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' ("**MSA**") motion to dismiss on order shortening time ("**Motion**"), as well as all joinders ("**Joinders**") submitted by Dekker/Perich/Sabatini Ltd. ("**Dekker**"), Nevada By Design, LLC ("**NBD**"), Ninyo & Moore, Geotechnical Consultants ("**Ninyo**"), and JW Zunino & Associates, LLC ("**JW**" and together with MSA, Dekker, NBD, and MSA, "**Movants**").

Snell & Wilmer L.L.P. LAW OFFICES 3883 Howard Hughes Parkway, Suite 1100 Las Vegas, Nevada 89169 702.784.5200

Case Number: A-19-798346-C

I. INTRODUCTION

The City of North Las Vegas fully complied with NRS 11.258. To argue otherwise, MSA[1] and the other Movants attempt to add requirements to the statute that are simply not contained in it. For the second time, Movants ask this Court to ignore the plain and unambiguous language of Nevada law in a manufactured attempt to escape liability before discovery has even begun. By selectively quoting NRS 11.258, relying on irrelevant legislative history, and confusing the requirements of NRS 11.258 with the affidavit requirement in medical malpractice cases, Movants improperly seek to dismiss the City's claims and permanently bar the pending lawsuit as to certain defendants. In short, Movants would require the City to prove its *entire* case with expert evidence at the time it filed the complaint—before a single deposition has been taken and before a single document has been produced by any defendant in this litigation. Unfortunately for the Movants, this is not Nevada law. Before commencing an action against a design professional, the statute requires that the attorney (1) consult with an expert; (2) attach the required attorney affidavit with the complaint; and (3) attach the expert's report along with the documents reviewed by the expert. The City did exactly that, complying strictly with the unambiguous, plain language of NRS 11.258.

It is beyond dispute that Fire Station 53 is sinking and will cost millions of dollars to repair. It is also beyond dispute that some or all the defendants are liable for this damage. Defendants—not the taxpayers of North Las Vegas—should be held responsible for the necessary repairs. It is premature to dismiss any party from this case until discovery is conducted and the investigation and full extent of the damages to Fire Station 53 are ascertained. In opposing this Motion, the City asks the Court to put an end to defendants' serial motions to dismiss and allow this case to finally proceed in earnest with needed fact discovery.

[1] The City notes that MSA unjustifiably sought for this Motion to be heard on an order shortening time. In his affidavit, MSA's counsel asserted that it "has appellate rights arising from the Court decision to amend its Order dismissing Plaintiff's Complaint pursuant to NRS 11.202." Mot. 4: 21–24. On that basis, MSA asked for this Motion to be heard on an order shorting time so MSA could bring its appeal based on the Court's denial of this Motion together with its ruling on the statute of repose issue. However, MSA does not have an automatic right to appeal the denial of a motion to dismiss, as it is not a final judgment. *See* NRAP 3A(b). Moreover, any relief MSA chooses to seek via writ relief to the appellate courts does not require this Motion to be heard on an order shortening time, burdening the Court and the City.

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Movants make two erroneous arguments in their briefs. First, Movants argue that the City's expert is not qualified to offer his opinion as to them, arguing that the statute requires the City's expert to be knowledgeable in the precise discipline or sub-specialty as each design defendant. MSA argues that the City's expert is not a mechanical, electrical, and plumbing engineer; Dekker argues that the City's expert is not an architect and structural engineer; JW argues that the City's expert is not a landscape architect.[2] This simply is not required by Nevada law. NRS 11.258(1) requires that the City's attorney submit an affidavit with its complaint stating that he "[h]as consulted with an expert" and that he "[r]easonably believes the expert who was consulted is knowledgeable in the relevant discipline involved in the action." NRS 11.258(3) also requires the expert to submit his report and a separate statement that he "is experienced in each discipline *which is the subject of the report*." (emphasis added). The City precisely followed the language of the statute. The damage to the Property and its foundation stem from geotechnical issues and a geotechnical investigation was required. As such, the City hired a geotechnical engineer who evaluated the Property and created a report. Then with its complaint, both the City's attorney and its expert submitted statements to fulfill the specific requirements of Nevada law. Moreover, the statute defines the term expert as "a person who is licensed in a state to engage in the practice of *professional engineering*, land surveying, architecture *or* landscape architecture." NRS 11.258 (6) (emphasis added). The City's expert is a professional engineer, specializing in geotechnical, civil, and forensic engineering.[3] Movants ask the Court to expand the requirements of the statute beyond its plain language and to an absurd degree. Moreover, they fail to cite any case law to support this proposition.

Second, Movants erroneously argue that the City's expert report must opine as to the scope of work of each design defendant and explain how each breached its standard of care as a designer. This supposed requirement again is not contained in the statute, nor is this interpretation supported by case law. Movants thus ask the Court to expand NRS 11.258 to require the City to proffer multiple experts opining as to the standard of care for each design defendant in its complaint. They

[2] NBD does not make this argument, as NBD concedes that the City's expert is a civil engineer. Similarly, Ninyo does not make this argument, as both it and the City's expert specialize in geotechnical engineering.

[3] Compl. p. 16–17, 271–73, 275.

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would have the City prove its entire case—with experts—at the time it filed its complaint. This is well beyond the requirements contained in NRS 11.258. In short, Movants ask the Court again to act as a super–legislature adding provisions to Nevada law that the legislature chose to exclude. As it did before, the Court should reject such promptings and apply the law as written.

II. RELEVANT FACTS

This case concerns the deficient construction of Fire Station 53 in North Las Vegas ("Project"). Compl. ¶¶ 22–23. The City retained 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 Dekker and its subconsultants. *Id.* ¶¶ 24–25. Dekker contracted with several subconsultants on the Project, including MSA, NBD, JW, and Ninyo. *Id.* ¶ 27.

Following completion of the design phase, the City awarded the Project to Richardson Construction, Inc. ("Richardson Construction"). *Id.* ¶¶ 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. *Id.* ¶ 39. Richardson Construction subcontracted several companies to perform portions of its scope of work. *Id.* ¶ 40.

The Project reached substantial completion on July 13, 2009 when the notice of completion was recorded. *Id.* ¶ 45 & p. 133. After the Project was completed, the City noticed distress to the building including wall cracks and separations, and interior slab cracking. *Id.* ¶ 46. The City retained Edred T. Marsh, P.E. of American Geotechnical, Inc. ("American Geotechnical") to perform a geotechnical investigation of the site. *Id.* ¶ 47. The purpose of this investigation was to evaluate the site geotechnical conditions and to determine the probable cause of the distress to the building and surrounding appurtenances. *Id.* ¶ 47. Mr. Marsh concluded that the distress to Fire Station 53 and surrounding appurtenant structures was due to a combination of excessive

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differential settlement and expansive soil activity. *Id.* ¶ 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. *Id.* ¶ 52.

III. PROCEDURAL HISTORY

A. Earlier Filings

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* Compl., filed July 11, 2019. NBD filed a motion to dismiss on August 5, 2019, arguing for dismissal based on the statute of repose and NRS 11.258 requirements. *See* NBD motion to dismiss, filed August 5, 2019. Dekker, MSA, Ninyo, and JW filed joinders to NBD's motion to dismiss with respect to its statute of repose argument only. *See* Dekker and MSA joinders, filed August 8, 2019; Ninyo joinder, filed August 23, 2019; JW's joinder, filed September 30, 2019.

On September 27, 2019, the Court heard NBD's Motion to change hearing date on its Motion on an order shortening time ("Motion to Change Date"). The Court continued the hearing on the Motion to Change Date to September 30, 2019. At the September 30 hearing, the Court granted the Motion to Change Date and shortened time on the underlying Motion to that same morning. *See* Order Granting Motion to Change Date, Ex 3. The Court then granted NBD's Motion as to the statute of repose. The Order was entered on October 17, 2019. *See* October 17th Order.

On November 11, 2019, the City filed a motion to alter judgement, asking the Court to vacate its October 17th Order because, among other reasons, the ten-year statute of repose applied. After the motion was fully briefed, the Court heard oral argument on January 21, 2020 and took the matter under advisement. On January 23, 2020, the Court issued a decision and order granting the City's motion to alter judgment, thereby vacating its October 17th Order and denying defendant's motion to dismiss based on the statute of repose. *See* January 23rd Order.

B. Present Motion and Joinders

On February 4, 2020, MSA filed a motion to dismiss, arguing the City's complaint violated NRS 11.258's expert requirement. *See* MSA's Motion, filed on February 4, 2020. Dekker, NBD,

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Ninyo, and JW joined. *See* Dekker joinder, filed on February 4, 2020; NBD joinder, filed on February 4, 2020; Ninyo joinder, filed on February 7, 2020; JW joinder, filed on February 7, 2020.

IV. LEGAL STANDARD

"Nevada has not adopted the federal 'plausibility' pleading standard." *McGowen, Tr. of McGowen & Fowler, PLLC v. Second Judicial Dist. Court*, 134 Nev. Adv. Op. 89, 432 P.3d 220, 225 (2018) 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

The Court should deny the Motion and its joinders because the City complied with NRS 11.258. Moreover, the Motion is procedurally proper under NRCP 12 as to Dekker and NBD only, and is procedurally improper as to MSA, Ninyo, and JW.

A. The City complied with NRS 11.258.

The City properly and timely filed an attorney affidavit with its complaint that complies with NRS 11.258. *See* Compl. p. 16–17. NRS 11.258 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, along with documents reviewed by the expert. The City did so. Now, Movants—by selectively quoting the statute, relying on irrelevant legislative history, and confusing the requirements of NRS 11.258 with the affidavit requirement

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in medical malpractice cases—attempt to improperly impute additional requirements into NRS 11.258 that are not contained in the statute.[4]

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

1. The City's attorney affidavit satisfies NRS 11.258.

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

> 1. Except as otherwise provided in subsection 2, in an action involving nonresidential construction, 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:
>
> (a) Has reviewed the facts of the case;
>
> (b) Has consulted with an expert;
>
> (c) Reasonably believes 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.

[4] MSA even goes as far as to define the word "the" in its Motion in an attempt to add additional requirements simply not found in the statute. Motion 12:19, n. 6.

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Additionally, NRS 11.258(3) requires that:

> 3. 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:
>
> (a) The resume of the expert;
>
> (b) A statement that the expert is experienced in each discipline which is the subject of the report;
>
> (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;
>
> (d) The conclusions of the expert and the basis for the conclusions; and
>
> (e) A statement that the expert has concluded that there is a reasonable basis for filing the action.

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

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NRS 11.258 (1)	Affidavit of Aleem A. Dhalla, Esq.[5]
... 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.[6]
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).

[5] Compl. p. 16–17.
[6] Compl. p. 16–17.

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Movants appear to confuse the NRS 11.258 requirements with the affidavit of merit requirement in medical malpractice cases, which are simply not applicable to the pending action. Specifically, NRS 41A.071 requires that an affidavit submitted with the complaint state as follows:

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

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

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

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

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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. Compl. p. 16–17, 271–73, 275. Thus, Mr. Marsh qualifies as an expert under the NRS 11.258 (6) definition. Additionally, he was qualified to create his report. According to the American Society of Civil Engineers, "Geotechnical engineering utilizes the disciplines of rock and soil mechanics to investigate subsurface and geologic conditions. These investigations are used to design, build foundations, earth structures, and pavement sub-grades."[7] Both the City's attorney and Mr. Marsh provided a statement that Mr. Marsh is "experienced in each discipline which is the subject of the report" as required by the statute. Further, Mr. Marsh's resume, attached to the Complaint, shows that he is a professional engineer well qualified in many disciplines, including geotechnical, civil, and forensic engineering.

Interestingly, Movants attempt to improperly expand the expert qualification requirements of NRS 11.258. Movants argue that "Mr. Dhalla was required to consult with an expert "knowledgeable in the relevant discipline," which required consultation with a MEP engineer." Mot. 10:2–4. The various Movants change this to apply to them; MSA argues that the City's expert is not a mechanical, electrical, and plumbing engineer; Dekker argues that the City's expert is not an architect and structural engineer; JW argues that the City's expert is not a landscape architect. In short, each defendant argues that the statute requires a highly specialized expert as to each of their respective fields, although the relevant issue affecting the Property is geotechnical. In short, Movants' argument is not based on the plain reading of the statute, which, as explained above, requires the City's expert to simply be a professional engineer experienced in each discipline *which is the subject of the report*.

Movant only cites one case, which does not support its faulty reading of the statute. *See Otak Nevada, LLC v. Eighth Jud. District Ct.*, 127 Nev. 593, 599, 260 P.3d 408, 412 (2011).[8] Contrary to Movants' argument, however, *Otak Nevada* does not require the City's expert to be experienced in the design professional fields of each defendant. In *Otak Nevada*, a defendant, the

[7] https://www.asce.org/geotechnical-engineering/geotechnical-engineering/

[8] In its reply to its original motion to dismiss, Dekker improperly cited to *Otak Nevada* to support its argument that the City was required to procure multiple separate expert reports with its complaint.

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general contractor, attempted to use another party's expert report already filed in the case to support its third-party complaint. *Id.* The *Otak Nevada* court found that this violated NRS 11.258, as each party was required to consult with an expert and supply a supporting affidavit and report; the Court *did not* require the expert to be experienced in all design professional fields, nor did it require claimant's expert to be experienced in the exact same fields as each defendant. *Id.*

In short, the City was not required to provide an expert "in all design professional fields" as Movants argue. While the City anticipates that it may require additional experts later in this litigation, depending on what is found in discovery, requiring the City to include expert reports from multiple sub-fields at this point would be impracticable and is not what the statute requires. Based on the NRS 11.258 (6) definition, the City's expert is qualified under the statute.

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

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

Here, the City fully complied with the only statute that applies. The City attached an expert report with its complaint along with a statement from its expert that he concluded there was a reasonable basis for filing the action. Compl. p. 135–269, 275. The City attached the report of its expert, Mr. Marsh, which it hired to perform a geotechnical investigation of the site. *Id.* 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. Compl. ¶ 47. 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. Compl. ¶ 49. Marsh concluded that settlement of the building occurred as a result of stresses from the weight of the structure and self-

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weight of the earth materials and was aggravated by introduction of water to the subsoil. Compl. ¶ 52. The expert's report is extremely detailed and provides the technical basis for his conclusion.

Movants seek to expand the requirements of NRS 11.258, this time by arguing that the City's expert was required to individually name each design professional who might later be determined to be at fault. This is incorrect. A plain reading of the statute does not require this, and Movants do not cite any cases or authorities to support this requirement. In *Otak Nevada*, as explained above, the court held that one party could not use another party's expert to support its third-party complaint; the Court *did not* require a party to file a separate report against each defendant or require the expert to name each defendant specifically.[9]

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

4. Movants' reliance on legislative history is improper and unpersuasive.

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

Here, the requirements of NRS 11.258 are clear and unambiguous, so the Court does not need to delve into the legislative history. While Movants offer legislative history, they fail to cite

[9] While the *Otak Nevada* court reviewed NRS 41A.071's mandatory language requirement to 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.

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to any ambiguity in the relevant statute. Indeed, they cannot because the statute is clear on its face. NRS 11.258 provides a list of requirements for the content of an attorney affidavit and expert report, with which the City complied. Importantly, Movants do not argue that the statute is ambiguous. Instead, Movants seek to use legislative history to expand the unambiguous, plain meaning of NRS 11.258, while being unable to point to any specific ambiguity that would require the Court to evaluate materials outside of the statute. Because the statute is unambiguous, that is improper here.

Even if the Court reviews the legislative history for NRS 11.258, it does not support Movant's expansive interpretation. While the Movants emphasizes select phrases from the legislative history, none aids their argument. The legislative history does not show that the Legislature intended to require claimant's expert to be qualified "in all design professional fields" as Movants argue. Moreover, the legislative history does not show that a claimant's expert is required to name the particular defendant in his report or provide specific conclusions regarding each defendant, as Movants suggest. In short, the Legislature did not intend the statute to be a highly-prohibitive bar to bringing a claim; instead, the statute was meant to require claimants to have an expert evaluate their claims to curtail frivolous claims and to accelerate the process.

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

5. Dismissal under NRS 11.259 is not appropriate.

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

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

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

B. The Motion is procedurally improper.

The Motion is procedurally proper under NRCP 12 as to Dekker and NBD only, and is procedurally improper as to MSA, Ninyo, and JW. NRCP 12(g)(2) prohibits successive motions to dismiss. The rule states that "a party that makes a motion under this rule **must not make another motion under this rule** raising a defense or objection that was available to the party but omitted from its earlier motion."[10] NRCP 12(g)(2). Additionally, after a court denies a pending motion to dismiss, a party's "responsive pleading must be served within 14 days after notice of the court's action." NRCP 12(a)(3).

Here, only Dekker and NBD made NRS 11.258 arguments in their first motions to dismiss. MSA, Ninyo, and JW did not, only joining NBD's motion to dismiss as to the statute of repose argument. Thus, after the Court entered its January 23rd Order, MSA, Ninyo, and JW were required to answer within 14 days, or by February 6, 2020. They failed to do so, and instead MSA filed the instant Motion, to which Ninyo and JW joined. MSA, Ninyo, and JW waived their ability to file a Rule 12 motion and are required to respond. Note that the City does not argue that these three defendants waived the argument, but rather their motion is not proper under Rule 12. MSA, Ninyo, and JW's failure to timely answer has already and continues to delay this case.

[10] The rule notes an exception for motions filed pursuant to NRCP 12(h)(2) which are in inapplicable here.

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VI. CONCLUSION

The City complied strictly to the unambiguous, plain language of NRS 11.258. To require more would not only go beyond the language of the statute, but it would also unjustifiably require the City to prove its entire case with the filing of its complaint in contravention of Nevada law. For these reasons, the Court should deny the pending Motion and joinders.

Dated: February 17, 2020.

SNELL & WILMER L.L.P.

By: 

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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **THE CITY'S OPPOSITION TO DEFENDANT MELROY ENGINEERING, INC. D/B/A MSA ENGINEERING CONSULTANTS' MOTION TO DISMISS ON ORDER SHORTENING TIME** by method indicated below:

☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).

☐ **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 SUBMISSION:** submitted to the above-entitled Court for electronic filing and 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.

and addressed to the following:

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Dated: February 17, 2020.

/s/ D'Andrea Dunn
An employee of SNELL & WILMER L.L.P.

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EXHIBIT 53
PETITIONERS'APPENDIX

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PETITIONERS'APPENDIX

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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 **DEKKER/PERICH/SABATINI, LTD.'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT MELROY ENGINEERING, INC. D/B/A MSA ENGINEERING CONSULTANTS' AND JOINDERS TO MOTION TO DISMISS ON ORDER SHORTENING TIME** Hearing Date: 02/20/20 Hearing Time: 10:00 a.m.

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DEKKER/PERICH/SABATINI, LTD.'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT MELROY ENGINEERING, INC. D/B/A MSA ENGINEERING CONSULTANTS' AND JOINDERS TO MOTION TO DISMISS ON ORDER SHORTENING TIME

COMES NOW Defendant, DEKKER/PERICH/SABATINI, LTD. ("DPS"), by and through its counsel of record, the law firm of WEIL & DRAGE, APC, and hereby files its Reply to Plaintiff CITY OF NORTH LAS VEGAS' (the "City" or "Plaintiff") Opposition to MELROY ENGINEERING, INC.'S ("MSA") Motion to Dismiss and all Joinders On Order Shortening Time.

This Reply is made and based upon the attached Memorandum of Points and Authorities submitted herein, all pleadings and papers filed herein, and any oral argument at the time of hearing on this matter.

DATED this 18th day of February, 2020.

WEIL & DRAGE, APC

By: */s/ John T. Wendland*
_____
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REPLY MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

As detailed in MSA's Motion to Dismiss and the various joinders, the City's certificate of merit violates NRS 11.258 as it seeks to cut corners in compliance through the use of a geotechnical engineer as a "jack of all trades" expert whose unqualified (as to DPS's services) and limited (only raising geotechnical issues) opinions are somehow relevant to DPS, the architect and structural engineer. The City takes the position that each design professional defendant provided the exact same services as every other design professional involved in the project and based thereon, this single expert is enough to the comply with NRS 11.258. As the law firm specializing in design professional representation, with years of experience dealing with exact same situations as this Court finds itself, we can attest that the City's approach is wholly incorrect and contrary to every other action involving multi-disciplinary design cases. The simple fact is that the City with respect to DPS, failed to consult with an architect and structural engineering expert and also the sole expert consulted, provided opinions that are limited to geotechnical issues with no opinions relevant to DPS's services and design. Thus, the City has failed to comply with NRS 11.258(1)(c)(d) & (3)(b)(d) & (e).

II.

LEGAL ARGUMENT

A. The Opposition Fails to Establish That Mr. Marsh Is Qualified to Opine on DPS's Services Which the City Placed Into Issue in This Action:

The Opposition argues that its attorney's affidavit complies with "all requirements" from NRS 11.258(1) &(3). *See*, Opp. at Pg. 8. The City even offers a self-serving matrix as support for this argument. *Id*. at Pg. 9. However, while the City attempts to convince this Court of compliance, the City cannot escape the undisputed fact that Mr. Marsh's area of expertise does not

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Include the professional practices of architecture and structural engineer[1]. Even Mr. Marsh admits that he is not an expert in these areas of practice. *See, Marsh's Declaration attached hereto as* ***Ex. A***. The fact that Mr. Marsh is not an architect or a structural engineer is significance[2] as it contradicts the City's stated position that it complied with NRS 11.258(1)(c) ("[r]easonably believes the expert who was consulted is knowledgeable in the relevant discipline involved in the action;") and 1(d) ("[h]as concluded on the basis of the review and the consultation with the expert that the action has a reasonable basis in law and fact").

First, any opinion that Mr. Marsh provided about NRS 11.258 compliance as against DPS, is irrelevant. This is because Mr. Marsh is not knowledgeable, licensed and/or experienced in DPS's areas of practice. If he was an expert in these design professions, his resume and his 11.258(3)(b) statement would include such information; it does not. The Opposition argues that per the plain language in NRS 11.258, the City does not have to consult with experts specific to DPS's area of practice and that a single expert, in an unrelated area of practice, is enough to comply with NRS 11.258. This is because the City claims that the issues in this case are only geotechnical issues and Mr. Marsh is a geotechnical engineer. *Id*. at Pg. 3: Lines 9-13. **However**, this position is contradicted by the City's allegations in the Complaint.

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[1] **NRS 623.017 "Architect" defined.** "Architect" means any person who engages in the practice of architecture and holds a certificate of registration issued by the Board. Mr. Marsh is not an architect as he does not hold a certificate of registration from the Board of Architecture.

Moreover, while Mr. Marsh is an engineer, he must be qualified in each engineering discipline (of which there are multiple disciplines as shown in MSA's Motion to Dismiss.

NRS 625.520 Unlawful practice of engineering: Penalty; order to cease and desist; injunctive relief.
1. Except as otherwise provided in subsection 4, it is unlawful for:
(b) Any professional engineer to practice or offer to practice a discipline of professional engineering in which the Board has not qualified him or her.

Allowing Mr. Marsh to opine on areas outside of his qualifications would be tantamount to sanctioning a violation of law under NRS Chapters 623 & 625.

[2] If Mr. Marsh's qualifications are immaterial, then what is the point of requiring his resume and to review his qualifications as part of NRS 11.258 analysis.

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As the master of its claims, the City establishes the claims and issues that are relevant and names the parties relevant to these claims. It is the City which selected and decided to name various design professionals to this action. By naming and asserting claims against its services, the City put into issue, DPS's area of practice in architecture and structural engineering as shown from the following excerpts from the Complaint:

First Claim for Relief:

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.

Third Claim for Relief:

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

Fourth Claim for Relief:

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

Fifth Claim for Relief:

90. ***Defendants failed to perform the work on the Project with care, skill, reasonable expediency, and faithfulness, and in a workmanlike manner*** as would be expected for this type of work. *Relevant Excerpts are attached hereto as* ***Ex. B*** (emphasis added).

The City's Prayer of Relief further states:

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)…*Id*. at Prayer.

As shown, the Complaint itself is not limited to geotechnical engineering issues only. Rather, the City has named parties and has argued that each of the named parties, through their separate professional services, caused or contributed to the claimed damages. As the City chose to name parties outside of geotechnical engineering, it is the City's obligation to consult with experts

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in each design professional's area of specialty in order to comply with NRS 11.258(1)(c). By extension, how would the City's attorney attest per NRS 11.258(1)(d) that he or she concluded per their review of the facts and consultation with the expert that the action (as it pertains to DPS) has a reasonable basis in law[3] and fact if the attorney only consulted with a single expert in one area of design specialty on an action involving allegations concerning multiple design disciplines. The simple answer is that the attorney is unable to reach such a conclusion for all areas outside of geotechnical engineering and by extension, fails to comply with NRS 11.258(1)(c)&(d).

B. The Opposition Fails to Establish that Mr. Marsh Offered Any Opinions Critical of DPS

In addition to Mr. Marsh being an unqualified expert in the relevant disciplines against DPS, his report fails to include any opinions critical of DPS. As stated in NRS 11.258, the City's attorney (under NRS 11.258(1)(d)) and Mr. Marsh (under NRS 11.258(3)(e)) both are required to present statements of compliance based on a reasonable belief. Here, if the only expert consulted offers no opinions critical of DPS, then there is absolutely no reasonable basis for the City's attorney and its expert to conclude that the action, involving DPS's services (which Plaintiff put into issue in the Complaint), has a reasonable basis in fact and law (City's attorney) and a reasonable basis for filing the action (Mr. Marsh). The City's Opposition attempts to disguise this failure by arguing that the certificate of merit is different than the certificate of merit for medical malpractice actions. This is a smokescreen from the clear failures herein.

In other design professional actions involving multi-disciplinary issues, counsels for the plaintiffs typically retain multiple experts and produce a certificate of merit identifying each design professional that they named as the basis for compliance against that professional. Counsel for DPS has never seen in years, a situation where a single Court accepted the City's position of

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[3] By attesting that it has a reasonable basis in "law" and "fact" the City's attorney is stating under oath that he has a reasonable basis for concluding that DPS violated the applicable standard of care. To prove the standard of care, the City must have an expert to attest to this argument (unless the City's attorney is an architect and/or structural engineer which is not established). *See*, *Boesiger v. Desert Appraisals, LLC*, 135 Nev. 192, 195, 444 P.3d 436, 439 (2019) (*citing*, *Daniel, Mann, Johnson & Mendenhall v. Hilton Hotels, Corp.*, 98 Nev. 113, 115, 642 P.2d 1086, 1087 (1982) (when an alleged harm occurs from conduct that is not within the common knowledge of a lay person, the applicable standard of care must be established by relevant expert testimony)).

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using a single expert to opine on services provided by different design professionals. In the *Otak v. Eighth Judicial Distr. Ct.*, the Supreme Court held that the language "shall" required a "duty to act" and is therefore mandatory compliance. 127 Nev. 593, 598, 260 P.3d 408, 411 (2011) *abrogated on other grounds by Reif v. Aries*, 449 P.3d 1253 (2019). The District Court has no discretion. *Id*. In the *Otak* matter, the Supreme Court also held that each party filing a claim against the defendant Otak in said action, was required to file their own expert report and attorney affidavit and that the District Court erred in allowing Pacificap Properties Group, LLC (and others) to rely on a separate expert report and affidavit submitted by Pacificap Construction Services, LLC. *Id*. at 127 Nev. at 600; 260 P.3d at 412. The *Otak* Court held (*citing to Washoe Medical Center v. Second Judicial Distr. Ct.*, 122 Nev. 1298, 1303, 148 P.3d 790, 793 (2006)):

> Requiring each party to file a separate expert report and attorney affidavit **that are particularized to that party's claims** is not an unreasonable requirement, as each party must justify its claims of nonresidential construction malpractice based on that party's relationship with the defendant. (Emphasis added).

The Otak Court also held:

> Our decision also comported with "'the underlying purpose of …[NRS 41A.071], which is to ensure that such action be brought in good faith based [on] competent expert opinion.'" *Id.* at 127 Nev. 599, 260 P.3d at 412.

> Our analysis in *Washoe Medical* and *Fierle* is equally applicable to the instant case, and thus we now extend our analysis in those cases to cases that are governed by NRS 11.258. *Id*.

Despite the City attempting to argue that DPS is seeking to expand NRS 11.258 to specific provisions in NRS 41A.071, the *Otak* Court made it clear that it was relying on the analysis from cases analyzing NRS 41A.071 to be applicable to NRS 11.258. Specifically, the sections concerning a good faith basis based on competent expert opinion.

Here, by logical extension, if the *Otak* Court requires each party to submit their own affidavit and expert report particularized to that party's claims, to establish good faith supported by competent expert opinions, then the reverse would also apply when a single claimant asserts multiple claims against different design professionals. This means that the City is required to submit multiple reports for each design professional (outside of geotechnical engineering) and the

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City's attorney must attest in an affidavit that each report serves as a reasonable basis in law and fact for the action. NRS 11.258(1)(d). However, as admitted by the Opposition, this did not occur.

Here, Mr. Marsh's conclusions are limited to geotechnical engineering matters and there is nothing expressing any opinion or conclusion critical of DPS's design and services. This is despite the Complaint asserting failures by DPS as shown herein. *See*, **Ex. B**. While the City attempts to limit the holding in *Otak*, the logical legal conclusions therein mandate compliance establishing the particular elements of each party's claims. In this case, the claims asserted include claims against the architectural and structural engineering services of DPS. However, nothing in Mr. Marsh's report and his conclusions include any opinion/conclusion critical of DPS's design and services. The Opposition also fails to establish the existence of any such conclusions and simply argues that a jack of all trades experts is all that is required. Given these admissions, DPS concludes that Mr. Marsh's report is devoid of any opinions relevant to its services despite the allegations raised by the City and by extension, the City has failed to comply with NRS 11.258(1)(d) & (3)(b),(d) & (e) as it relates to DPS. If there are no relevant "conclusions" from the only expert retained by the City, then by extension, neither the City's attorney nor Mr. Marsh can reach any reasonable basis in law and fact (attorney) or reasonable basis for filing (Mr. Marsh).

C. If the Court Finds Any Ambiguity Then It Can Look to Legislative History:

As the Court is well versed, if a statute is clear on its face, then the Court is not to look beyond its plain language. *Washoe Medical Center*, 122 Nev. at 1302, 148 P.3d at 792-93. If the statute is susceptible to more than one interpretation, then the Court can look to legislative history and then consider the policy and spirit of the law to avoid an interpretation that leads to an absurd result. *Id.* (*citing, City Plan Dev. v. State, Labor Comm'r*, 121 Nev. 419, 435, 117 P.3d 182, 192 (2005)). Here, DPS's argument is that the City failed to consult with an expert in the practice of architecture and structural engineering. Moreover, the expert consulted did not proffer opinions critical of DPS. Accordingly, there is no reasonable basis for NRS 11.258(1)(d) & (3)(e)

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compliance if there are no opinions relevant to DPS made by the sole expert whose expertise is outside of DPS's areas of practice.

As further support, MSA (and by extension, DPS), included the legislative history of NRS 11.258. See, Pgs. 10-11 of MSA's Motion. In its Opposition, the City only provides generalized arguments without any direct citations or quotes to the legislative history to support the argument that NRS 11.258 was never intended by the Legislature to require an expert in all design professional fields. *See*, Opp. at Pg. 14. However, taking the statements from the Legislative History cited by MSA, it is clear that the enactment of NRS 11.258 was intended to provide merit to the claims and a reasonable basis for commencing an action against the design professional. The suit must be supported by competent evidence and most importantly, must be supported by expert opinions as to the standard of care and skill by members of the same profession. *See*, MSA Motion at Pg. 11: Lines 8-12. If the City could avoid retaining experts in all claimed professional services and can solely rely on a single purpose expert with no qualifications in DPS's services (despite the Complaint alleging claims directly against DPS's services), then the entire reason for NRS 11.258 would be eviscerated and an absurd result would arise.

As such, if the Court finds there is ambiguity in NRS 11.258, the Legislative History supports DPS's position.

D. Dismissal Is Required

The City seems to be picking and choosing which provisions in NRS 11.258 must be followed and which provisions do not need to be followed. NRS 11.259 clearly states that dismissal is mandatory if any portion of the City's Affidavit fails to comply with NRS 11.258(1) and/or the City fails to file a report required under NRS 11.258(3). There is no discretion for the Court and the Court is required to dismiss the Complaint as to DPS.

As discussed at length above, the City failed to provide an affidavit of merit regarding the design disciplines of architecture, structural engineering, civil engineering, MEP engineering based on its expert with whom the City's counsel consulted, lacking the required knowledge and experience in said design disciplines. In fact, as admitted in the Complaint and in Mr. Marsh's report, the investigation solely focuses on geotechnical matters (this is despite the Complaint

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alleging that DPS is independently responsible for the City's claims for its own services provided). Thus, as the City's counsel's affidavit of merit utterly failed to address the merit of the City's claims against DPS, based on its expert not being qualified to offer opinions on these design disciplines (and the scope being limited to geotechnical matters), the City's action against DPS is and was void *ab initio*, and must be dismissed pursuant to NRS 11.259 (the City failed to comply with NRS 11.258(1)(b), (c)&(d), as well as NRS 11.258(3)(b), (d) & (e)); *see also*, NRS 11.259 & *Otak*, 127 Nev. at 598-99, 260 P.3d at 411-412.

III.

CONCLUSION

The City sued several design professionals practicing in multiple design disciplines, including architecture, structural engineering, civil engineering, MEP engineering. In similar multi-discipline cases, the claimants have attached affidavits and expert reports from separate experts addressing their respective areas of practice. Unlike these other cases, the City elected to attach one report from one expert specializing in geotechnical engineering. The expert offered his report, resume and a declaration expressly limiting his areas of specialty. Those areas are outside of the scope of work of DPS.

Rather than follow the language and the intent behind NRS 11.258, the City has elected to engage in a practice of cutting corners through the use of a single "jack of all trades." While even admitting in its Opposition that other experts are or may be necessary (*see*, Pg. 12:lines 6-10 of the Opp.), the City is trying to disguise its failures by attempting to interject its own opinions and conclusions as to what the statute at issue is saying, even though the language contradicts its position. In fact, the expert report on which the entire NRS 11.258 Affidavit is based upon is limited to one professional discipline. There are zero opinions from Mr. Marsh as to DPS and other consultants (civil engineering, MEP engineering, structural engineering). Given the absence of reports, affidavits and opinions from these separate experts, the City has failed to comply with NRS 11.258, as it lacks any reasonable basis for proceeding against DPS.

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For said reasons, DPS is entitled to dismissal under NRS 11.259.

DATED this 18th day of February, 2020.

WEIL & DRAGE, APC

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

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of February, 2020, service of the foregoing **DEKKER/PERICH/SABATINI, LTD.'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT MELROY ENGINEERING, INC. D/B/A MSA ENGINEERING CONSULTANTS' AND JOINDERS TO MOTION TO DISMISS ON ORDER SHORTENING TIME** was made this date by electronically serving a true and correct copy of the same, through Clark County Odyssey eFileNV, to the following parties:

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Exhibit A

Exhibit A

DECLARATION OF EDRED T. MARSH, P.E.

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

1. I am a principal geotechnical engineer at American Geotechnical, Inc.

2. I am experienced in each discipline which is the subject of my December 11, 2017 report, specifically in the fields of geotechnical, civil, and forensic engineering.

3. My December 11, 2017 report contains my conclusions and the basis for the conclusions.

4. Based on my conclusions, there is a reasonable basis for filing this action.

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

Dated: July 3rd, 2019.

Edred T. Marsh, P.E.

Exhibit B

Exhibit B

Electronically Filed
7/11/2019 4:35 PM
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CASE NO: A-19-798346-C
Department 8

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

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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.

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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).

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

Fourth Claim for Relief

Negligence

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

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

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

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

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

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

Fifth Claim for Relief

Breach of Implied Warranty

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

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

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

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

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

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

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

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

Sixth Claim for Relief

Claim on Performance Bond

Against the Guarantee Company and P & W

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

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

95. The Guarantee Company issued the Performance 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.

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

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

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

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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 L.L.P.
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