

IN THE SUPREME COURT OF THE STATE OF NEVADA

DESERT VALLEY CONTRACTING,
INC., a Nevada corporation,

Appellant,

vs.

IN-LO PROPERTIES, a Nevada limited
liability company; EUGENE INOSE, an
individual; JEFFREY LOUIE, an
individual; DOES 1 through 10; and ROE
ENTITIES 1 through 10,

Respondents.

Case No.: 83338

District Court No. A-16-73435-1-C

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Clerk of Supreme Court

APPEAL

From the Eighth Judicial District Court,
The Honorable Joe Hardy Presiding

RESPONDENT'S ANSWERING BRIEF APPENDIX

Volume I

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ALPHABETICAL INDEX TO PETITIONER'S APPENDIX

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the law firm of Holley Driggs, and that on this 23rd day of February, 2022, the above and foregoing **RESPONDENT’S ANSWERING BRIEF APPENDIX, Volume I** was e-filed and e-served on all registered parties to the Supreme Court E-Flex system and with the Clerk of Court.

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/s/ Sandy Sell
an employee of Holley Driggs

IN THE SUPREME COURT OF THE STATE OF NEVADA

DESERT VALLEY CONTRACTING, INC. a | CASE NO. 79751
Nevada corporation,

Appellant,

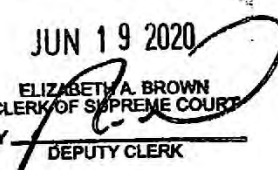
vs.

IN-LO PROPERTIES, a Nevada limited
liability company; EUGENE INOSE, an
individual; JEFFREY LOUIE, an individual;
DOES 1 through 10; and ROE ENTITIES 1
through 10,

Respondents,

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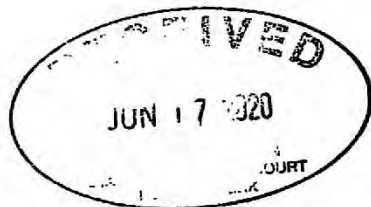
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

APPEAL

From the Eight Judicial District Court, Department XV
The Honorable Joe Hardy, District Judge
District Court Case No. A-16-734351-C

APPELLANTS' OPENING BRIEF

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NRAP 26.1 DISCLOSURE

Pursuant to NRAP 26.1, the undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed:

Desert Valley Contracting, Inc. has no parent company and no publicly listed company owns 10% or more of the Appellant's stock.

This representation is made in order that the judges of this court may evaluate possible disqualification or recusal.

DATED this 12th day of June 2020.

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APPELLANT'S STATEMENT REGARDING ROUTING

Pursuant to NRAP 28(a)(5), Appellant states that this case is an Appeal from a Judgment, exclusive of interest, attorney's fees and costs, of less than Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00) and is appropriate for the Court of Appeals. NRAP 17(b)(5).

JURISDICTIONAL STATEMENT

This Court has jurisdiction under NRAP 3A(b)(1) because the district court entered judgment on all claims against Appellant following a Bench Trial held on April 8, 9, 10, and 11, 2019, June 19, 20 and 21, 2019, and July 24, 2019. Notice of Entry of Findings of Fact and Conclusions of Law was entered on September 4, 2019. Appellant filed a timely notice of appeal on September 30, 2019. see NRAP 4(a)(6).

STATEMENT OF ISSUES PRESENTED

A. Whether the District Court abused its Discretion when it found that DESERT VALLEY CONTRACTING INC.'s (hereinafter known as "DVC") contract was ambiguous.

B. Whether the District Court was in error when it ruled that DVC failed to meet its burden of proof regarding their damages resulting from EUGENE INOSE and IN-LO PROPERTIES' (hereinafter collectively known as INOSE) Breach of Contract.

C. Whether the District Court was in error regarding its Conclusions of Law determining that DVC had breached their Contract with INOSE.

STATEMENT OF ISSUES PRESENTED

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- B. Whether the District Court was in error when it ruled that DVC failed to meet its burden of proof regarding their damages resulting from EUGENE INOSE and IN-LO PROPERTIES' (hereinafter collectively known as "INOSE") Breach of Contract.
- C. Whether the District Court was in error regarding its Conclusions of Law determining that DVC had breached their Contract with INOSE.

STATEMENT OF THE CASE

This matter involves contract interpretation, breach of contract, and damages. The Respondent, EUGENE INOSE and IN-LO PROPERTIES (hereinafter collectively known as "INOSE") built a custom residential home located at 587 Saint Croix Street, Henderson, Nevada 89012 (APN: 178-27-114-001) (hereinafter "Subject Property").

In early August 2014, the Subject Property sustained substantial water damage due to a burst pipe. Appellant DVC preformed the reconstruction of the property. This matter involves contract interpretation, breach of contract, and damages that stem from the work performed by DVC. On March 31, 2016, DVC filed a Complaint alleging, Breach of Contract, Breach of Covenant of Good Faith and Fair Dealing, Unjust Enrichment, and Intentional Interference with Contract (Appendix, Volume I, Exhibit 1, JNT000001-JNT000019). On June 7, INOSE filed an Answer and Counter-Claim alleging Breach of Contract, Breach of Covenant of Good Faith and Fair Dealing, Unjust Enrichment, and Intentional Interference with Prospective Economic Advantage (Appendix, Volume I, Exhibit 2, JNT000020-JNT000047). On July 8, 2016, DVC filed its Answer to INOSE'S Counterclaim (Appendix, Volume I, Exhibit 3, JNT000048-JNT000019). On August 8, 2016, Defendant IN-LO PROPERTIES filed an Answer to DVC's Complaint. (Appendix, Volume I, Exhibit 4, JNT000066-JNT000084).

A Bench Trial held on April 8, 9, 10, and 11, 2019, June 19, 20 and 21, 2019, and July 24, 2019. On July 24, 2019, the Court rendered its verdict wherein the Court did not award damages to either party. The Notice of Entry of Findings of Fact and Conclusions of Law was filed on September 4, 2019. DVC filed a timely Notice of Appeal on September 30, 2019. INOSE had previously sent DVC an Offer of Judgment in the amount of Fifty Thousand Dollars and Zero Cents (\$50,000.00). Therefore, on November 18, 2019, the Court Granted INOSE's Motion for Attorney's Fees and Costs based on the Courts award of no damages.

STATEMENT OF FACTS

On or about 2006, INOSE began building the subject property through various subcontractors (Appendix, Volume I, Exhibit 5, Trial Testimony Day One, Page 7-10, JNT000091-JNT000094). In early August 2014, the Subject Property sustained substantial water damage due to a burst pipe. At the time, INOSE did not reside at the Subject Property, so the leak remained undetected for an unknown amount of time. Once the leak and damage were detected, an agent of INOSE contacted ServPro of Henderson, to begin the clean-up of the extensive water damage. (Appendix, Volume I, Exhibit 5, Trial Testimony Day One, Page 10-12, JNT000091-JNT000097). ServPro of Henderson is not a party to the litigation. ServPro of Henderson is a separate entity that is not affiliated with DVC (Appendix Volume V, Trial Testimony Day Five, Page 48, line 16-18, JNT000708). ServPro of

Henderson conducted the initial demolition of the water damaged property. The Court heard testimony that ServPro of Henderson damaged and misplaced items during the initial demolition. (Appendix, Volume V, Exhibit 9, Trial Testimony Day Five, Page 48, Lines 13-21, JNT000708). The Court heard testimony that ServPro of Henderson damaged driveway concrete with its equipment. (Appendix, Volume V, Exhibit 9, Trial Testimony Day Five, Page 83, JNT000743). Notwithstanding INOSE's failure to distinguish between the two companies, no testimony has been put forward that showed that DVC damaged or misplaced items.

Thereafter, ServPro of Henderson referred INOSE to DVC. After DVC and INOSE made contact, Mr. Inose and DVC's Employee Daniel Merritt met at the property and discussed the restoration of the property. (Appendix, Volume V, Exhibit 9, Trial Testimony Day Five, Page 104, JNT000764). Thereafter, on August 24, 2014, DVC, and INOSE, entered into a Contract wherein DVC would complete perform and rebuild of the Subject Property. The Contract stated specifically that;

"The undersigned hereby transfers, assigns and convey to Contractor his/her/their right...to the insurance proceeds...The undersigned agrees to immediately endorse and tender all drafts as produced to the Contractor. The undersigned further agrees to authorize Desert Valley Contracting Inc. to sign on their behalf and/or deposit all insurance checks that are issued to pay for the services performed pursuant to the contract".

(Appendix, Volume VII, Exhibit 12, JNT001137-JNT001138).

INOSE never endorsed or tendered the drafts he received from his insurance company, FIREMANS FUND, to DVC as required by the Contract. INOSE also never allowed DVC to sign on INOSE's behalf or deposit the insurance checks themselves (Appendix, Volume V, Exhibit 9, page 106, Lines 12-17, JNT000767). INOSE never relinquished control of the purse strings for this project. The documents show that INOSE doled out payments to DVC over the course of a year, from September 2014 to September 2015. (Appendix, Volume VII, Exhibit 13, JNT001153-1155,1156)

The Contract contemplates that work may be performed outside the scope of the Insurance Claim. The Contract states that all uninsured work, including uninsured code-upgrade work, or any form of work not covered under Owner's Insurance Policy would be the responsibility of INOSE as signatory of the contract.

The Undersigned also agrees to and understands the General Conditions stated below. Contractor agrees to perform the insured work as approved by the Insurance Company and accept insurance proceeds, as payment for the uninsured work. Any uninsured work, which includes, but is not limited to, code-upgrade work, asbestos removal or any other form of work not covered under Owner's insurance policy shall be paid by insurance. (Appendix, Volume VII, Exhibit 12, JNT001138).

The contract also states in multiple places that if the contractor is forced to bring suit the prevailing party would be entitled to attorney's fees and the legal interest rate of Prime Plus Two (2) points. The contract further states that requests for additional work must be in writing so that they can be added to the Scope of

Work. The contract does not state that these change orders need to be signed by DVC to be added to the Scope of Work. (Appendix, Volume VII, Exhibit 12, JNT001138).

In September of 2014, DVC began reconstruction of the Subject Property. During the demolition and reconstruction of the house, revised budgets were presented to INOSE'S insurance company, FIREMAN'S FUND (Appendix, Volume VII, Exhibit 14, page 4, and 7, JNT001164, 1167). During the performance of the Contract, INOSE chose to have several upgrades in materials and work added onto the Contract's scope of work, which increased the original Contract's scope of work and cost. The Court heard testimony regarding the upgraded wine room, the upgrades to the pool area, and Master Bathroom (Appendix, Volume VI, Exhibit 10, Trial Testimony Day 6, pages 48-51, JNT000891-JNT000894). Additionally, other uncontrollable delays bedeviled the reconstruction. Italian Marble had to be imported from Tuscany and was not available for Three (3) months while it was held up in customs due to a dock workers labor dispute. (Appendix, Volume VI, Exhibit 9, Trial Testimony Day 5, Page 181, lines 23-25, JNT000841).

Mr. Inose received constant updates from Rob Ramirez regarding the project. (Appendix, Volume VII, Exhibit 6, page 76, lines 5-9, JNT000284). INOSE also spoke with the Sub-Contractors directly (Appendix Volume VII, Exhibit 14, page 14, JNT001174). The court found that INOSE was aware of the Change Orders for the project as well (Appendix, Volume VII, Exhibit 14, page 6, JNT001166).

Against the advice of DVC, INOSE closed out the claim following the production of this estimate and prior to the project being completed. (Appendix, Volume VII, Exhibit 14, page 7, JNT001167). Then, in October 2015, DVC could no longer abide by INOSE's demands for the upgrades and changes that were exceeding the insurance proceeds that were designated for reconstruction, not remodeling and updating the property. (Appendix, Volume VII, Exhibit 12, JNT001137-JNT001138).

On December 7, 2015 INOSE sent DVC correspondence terminating its contract. (Appendix, Volume VI, Exhibit 10, Trial Testimony, Page 144 Lines 14-20 JNT000987). The Contract states that should the Client (INOSE) terminate the Contractor (DVC) after the work has begun, INOSE is responsible for any fees and costs plus the profit DVC would have made had INOSE not repudiated the Contract. (Appendix, Volume VII, Exhibit 12, JNT001137-JNT001138). To date, INOSE has not paid that amount and DVC filed this action on March 31, 2016.

SUMMARY OF THE ARGUMENTS

A. The District Court abused their discretion when they ruled that the Contract between DVC and INOSE was ambiguous because of a scrivener's error. The party's clear intent was that DVC was the Contractor in the Contract and INOSE was the Client.

The contract is referring to the liability the Client would incur if they repudiated the contract. INOSE testified himself that is his understanding of the contract. The Contract then refers to fees and costs the Client would incur if the Client repudiated the Contract. Immediately following the is the error appears stating that the Client is entitled to the Profit they would have received had Client not repudiated the contract. Nevada recognizes Scrivener's Error, the insertion of Client in this portion of the Contract is clearly an error. Any interpretation that paints INOSE as the one who was entitled to the profit if he repudiates the contract is an unreasonable and nonsensical interpretation.

B. DVC proved damages of, at least, Eighty-Nine Thousand, One Hundred Ninety-Seven Dollars and Fifty Eight cents (\$89,197.58). DVC has costs in the amount of One Hundred, Twelve Thousand, Four Hundred, Fifty-One Dollars and Eight Cents (\$1,012,451.08). DVC provided unrefuted testimony that the standard for the construction industry is a Twenty (20%) profit. The Twenty (20%) profit would be an additional Two Hundred, Two Thousand, Four Hundred Ninety Dollars and Twenty One Cents (\$202,490.21). Therefore, DVC is entitled to a total of One Million, Two Hundred Fourteen Thousand, Nine Hundred Forty-One Dollars and Thirty Cents (\$1,214,941.30) from INOSE at the time INOSE repudiated the Contract. DVC was paid at total of One Million, One Hundred, Twenty-Five Thousand, Seven Hundred Forty-Three Dollars and Seventy-Two Cents,

(\$1,125,734.89) from INOSE. Therefore, there is a Eighty-Nine Thousand, One Hundred Ninety-Seven Dollars and Fifty-Eight cents (\$89,197.58) deficient between the amount DVC was paid and the amount they are due under the contract.

C. The Conclusions of Law adopted by the Court under INOSE'S Breach of Contract action are inconsistent with the facts and evidence presented and must be overruled. INOSE cannot show damages by DVC to the subject property by what may have been done versus other parties. Furthermore, INOSE limited the Insurance proceeds available to himself and DVC by closing out the insurance claim prematurely, against the wishes of DVC. The Court found that INOSE was aware of change orders, but then alleges DVC did not get approval from INOSE. INOSE also had control over the Insurance proceeds, in violation of the Contract, but the Court inexplicably holds DVC responsible for not paying the Sub-contractors timely. INOSE terminated DVC from the project and then the court curiously finds DVC in breach for not completing the project. These Conclusions of Law are clearly in error and should be reversed.

ARGUMENT

I. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT RULED THAT THE APPELLANT'S CONTRACT WAS AMBIGUOUS

A. Standard Of Review

"An abuse of discretion is a plain error, discretion exercised to an end not justified by the evidence, a judgment that is clearly against the logic and effect of

the facts as are found.” *Rabkin v. Oregon Health Sciences Univ.*, 350 F.3d 967, 977 (9th Cir. 2003) (citation and internal quotation marks omitted); *In re Korean Air Lines Co., Ltd.*, 642 F.3d 685, 698 n.11 (9th Cir. 2011). When a district court “exercises its discretion in clear disregard of the guiding legal principles, this action may constitute an abuse of discretion.” *Cole-Monahan v. Salvo*, No. 62849, 2014 WL 5686290, at *1 (Nev. Nov. 3, 2014). Furthermore, “a court may not award attorney’s fees unless authorized by statute, rule or contract.” *State, Dep’t of Human Res. v. Fowler*, 109 Nev. 782, 784, 858 P.2d 375, 376 (1993). A court abuses its discretion when it does not apply the correct law or rests its decision on a clearly erroneous finding of a material fact. *Jeff D. v. Otter*, 643 f.3d 278 (9th Cir. 2011) (citing 362 F.3d 1254, 1257 (9th Cir. 2004)). When determining if the district court abused its discretion, this court examines whether the decision was supported by substantial evidence and guided by applicable legal principles. *Kwist v. Chang*, 127 Nev. 1152, 373 P.3d 933 (2011); *Franklin v. Bartsas Realty, Inc.*, 95 Nev. 559, 562–63, 598 P.2d 1147, 1149 (1979).

B. The Parties Entered Into A Valid Contract

There is no dispute that Desert Valley Contracting, LLC and Eugene Inose entered into a valid agreement on August 24, 2014. (See Appendix Volume VII, Exhibit 12, Trial Exhibit 560, JNT001137-JNT001138). The contract States that,

“Should client terminate the Contractors after work has begun, but not completed in full, the Client shall be responsible for any and all fees

and costs associated with the work performed, plus the profit the client would have made on the job had Client not repudiated the contract.”
The Court found that a valid contract existed between the parties.

(Appendix, Volume VII, Exhibit 14, Finding of Fact and Conclusions of Law, Page 11, JNT001173)

C. Intent of the Parties Was Clear by Their Actions and Any Interpretation That Respondent is the “Client” is an Abuse of Discretion.

The Doctrine of Scrivener’s Error is well established Nevada Law. “It is undisputed that our courts will reform contracts and deeds in accordance with the true intention of the parties thereto, when their intention has been frustrated by a mistake.” *Ruhling v. Hackett*, 1 Nev. 360; *Holman v. Vieira*, 53 Nev. 337, 300 P. 946. The Doctrine of Scrivener’s error is a legal principle which permits a typographical error in a written contract to be corrected by parol evidence if the evidence is clear, convincing, and precise. The contract law doctrine of scrivener’s error or mutual mistake allows a court of equity to reform a contract if a written agreement does not reflect the clear intent of the parties due to a drafting error. 27 RICHARD A. LORD, WILLISTON ON CONTRACTS § 70:93 (4th ed.)

In this matter, the August 24, 2014 contract created between DVC and INOSE contained an error. The document states that in the event the Client repudiated the contract after work has begun on the project that, “the Client shall be responsible for any and all fees and costs associated with the work performed, plus the profit that the *Client* (italics added) would have made on the job had Client not repudiated the

contract.” Here, clearly the document should state that, “the Client shall be responsible for any and all fees and costs associated with the work performed, plus the profit the Contractor would have made on the job had Client not repudiated the contract.” Clients and/or homeowners do not make a profit from the Contractor for a restoration of the Client’s property of their property. The only sensible was to interpret that provision is that it is an error and that the word Contractor should be substituted for client were indicated above.

INOSE testified at trial that he understood the meaning of the provision. The trial testimony of INOSE is as follows;

Q. ...So it is your understanding that if you terminated them you would have been still responsible for any profit that they would have earned if you had not terminated them?

A. Yes. How I read it now, yes. And as long as the work was in good workman like manner and condition.

(Appendix Volume VII, Exhibit 5, Trial Testimony-Day One, Page 29, Line 5-9, JNT000113).

An interpretation which results in a fair and reasonable contract is preferable to one that results in a harsh and unreasonable contract. *Sterling v. Goodman*, 102 Nev. 218, 220, 719 P.2d 1262, 1263 (1986). When the provision is read as a whole and the conduct of the parties examined, it is blatantly clear that the term client should have been Contractor when referring to the profit to be made off the contract.

INOSE IN-LO PROPERTIES AND RESPONDENT COUNTER
CLAIMANT EUGENE INOSE’S FINDINGS OF FACT AND CONCLUSIONS

OF LAW (Appendix-Volume VII, Exhibit 14, page 18 JNT001179) indicate that because of the ambiguity in the contract, DVC failed to establish that is entitled to recovery any profit or overhead for amounts paid to subcontractors by INOSE for work completed after DVC left the Project. The findings under the DAMAGES heading are not particularly clear. They seem to indicate that the reason the ruling is that DVC did not prove its damages by a preponderance of the evidence is because of the error in the Contract. To the extent the Court made its decision based upon the typo on the Contract, the Court abused their discretion and should be overturned.

II. THE DISTRICT COURT WAS IN ERROR WHEN IT RULED THAT THE APPELLANT DID NOT PROVE ITS DAMAGES BY A PREPONDERANCE OF THE EVIDENCE

A. Standard Of Review

A District Court's conclusions of law are reviewed de novo. *White v. Cont'l Ins. Co.*, 119 Nev. 114, 116, 65 P.3d 1090, 1091 (2003). A district court's decision regarding the calculation of an award of damages will not be disturbed on appeal absent an abuse of discretion. *Gadbois v. Marathon Racing, Inc.*, No. 60167, 2013 WL 7156050, at *2 (Nev. Dec. 18, 2013) (quoting *Diamond Enterprises, Inc. v. Lau*, 113 Nev. 1376, 1379, 951 P.2d 73, 74 (1997)). This issue should be heard de novo because the issue at questions stems from the Court's Conclusion of Law regarding DVC's alleged failure to show by a preponderance of evidence they were damaged

by the breach and not an actual damage calculation. (Appendix Volume VII-Exhibit 14, Findings of Fact and Conclusions of Law, Page 11, JNT001172)

B. DVC Provided Clear Testimony Regarding Its Damages.

In this matter, the Parties' Contract states that if the Client terminates the contract before the work is completed, they shall be responsible for the profit the Contractor would have been made had the contract not been repudiated. INOSE provided testimony that he terminated DVC on or around December 8, 2015. (Appendix, Volume VII, Exhibit 14, Page 9, JNT001169).

Pursuant to Exhibit 274, the Job and Billing Detail, DVC's cost for the project was One Hundred, Twelve Thousand, Four Hundred, Fifty One Dollars and Eight Cents (\$1,012,451.08). (Appendix VII, Exhibit 13, JNT0001160). That means that at the time they were terminated DVC has spent One Hundred, Twelve Thousand, Four Hundred, Fifty-One Dollars and Eight Cents (\$1,012,451.08) on the project

DVC was paid approximately One Million, One Hundred, Twenty-Five Thousand, Seven Hundred Forty-Three Dollars and Seventy-Two Cents, (\$1,125,734.89) from INOSE. Both DVC and INOSE agreed upon this amount. During the testimony of Mr. Zachary, the following exchange occurred;

Q Okay. And so this -- Mr. Inose actually paid Desert Valley out approximately \$1,123,734.89. And I'm giving you that number, and I can go through all of the checks -- we did that in Exhibit 585 on one of the first days of trial with Mr. Inose.

MS. HURTIK: Do you want me to go through those, Your Honor?

THE COURT: \$1,123,000 and how much?

MS. HURTIK: \$734.89.

THE COURT: Now you don't need to. Unless you want to, but --

MS. HURTIK: No, no, no. I don't want -- as long as --

MR. BOSCHEE: That's the number I had, too, Your Honor.

THE COURT: Okay.

MS. HURTIK: Okay

(Appendix-Volume VII, Exhibit 11, Trial Testimony Day 7, page 42-43 Lines, JNT001162-63)

The owner of DVC is Dennis Zachary, who has over Thirty (30) years of experience in the construction industry. Mr. Zachary provided testimony that the Contract was to be performed on a "10 and 10" basis, meaning that DVC would earn an additional Twenty Percent (20%) over its costs on the project. The Twenty (20%) is comprised of Ten Percent (10%) to account for DVC's overhead and another Ten Percent (10%) to account for DVC's profit. INOSE did not provide any counter evidence regarding DVC's definition of costs and profit in a construction project.

The Twenty (20%) profit would be an additional Two Hundred, Two Thousand, Four Hundred Ninety Dollars and Twenty-One Cents (\$202,490.21). At a Twenty (20%) profit and overhead, DVC is entitled to a total of One Million, Two Hundred Fourteen Thousand, Nine Hundred Forty-One Dollars and Thirty Cents (\$1,214,941.30). DVC was paid at total of One Million, One Hundred, Twenty-Five Thousand, Seven Hundred Forty-Three Dollars and Seventy-Two Cents, (\$1,125,734.89).

Therefore, DVC has been damaged in the amount of approximately Eighty-Nine Thousand, One Hundred Ninety-Seven Dollars and Fifty-Eight cents (\$89,197.58) because of the termination of the contract by INOSE. Those loses stem from the termination of the Contract by INOSE. DVC was deprived of the profit they were not paid at the time Inose terminated the contract.

III. WHETHER THE DISTRICT COURT WAS IN ERROR WHEN THEY RULED THAT DESERT VALLEY CONTRACTING BREACHED THE CONTRACT

A Standard of Review

A district court's conclusions of law are reviewed de novo. *White v. Cont'l Ins. Co.*, 119 Nev. 114, 116, 65 P.3d 1090, 1091 (2003). A district court's decision regarding the calculation of an award of damages will not be disturbed on appeal absent an abuse of discretion. *Gadbois v. Marathon Racing, Inc.*, No. 60167, 2013 WL 7156050, at *2 (Nev. Dec. 18, 2013) (quoting *Diamond Enterprises, Inc. v. Lau*, 113 Nev. 1376, 1379, 951 P.2d 73, 74 (1997)). This issue should be heard de novo because the issues at question regarding DVC's alleged Breaches of the contract stem from the Court's Conclusion of Law. (Appendix Volume VII-Exhibit 14, Findings of Fact and Conclusions of Law, Page 14, JNT001175)

B. District Court is Inconsistent in Its Conclusions of Law.

In the District Court's Conclusions of Law on page 11, the Court found INOSE in breach of contract. However, according to the Court, DVC's cause of action failed because they did not prove its damages by a preponderance of the

evidence. (Appendix, Findings of Fact and Conclusions of Law, Volume VII, Exhibit 14, Page 9, JNT001169). There are no additional reasons for DVC's lack of success listed under this cause of action. However, under the Conclusions of Law for INOSE's Breach of Contract, the Court lists several reasons that DVC breached the contract (Appendix Volume VII-Exhibit 14, Findings of Fact and Conclusions of Law, Page 11, JNT001175).

C. DVC Performed the Work in Good and Workmanlike Manner.

The Conclusions of Law wrongly determined that DVC breached by not completing the work in good and workmanlike fashion, particularly by causing damage to the property unrelated to the restoration of the property. This renovation project was the result of a water leak. DVC was not the first company onsite. ServPro of Henderson was already on the scene removing property damaged by the water leak. INOSE himself could not testify as to each companies' role in the initial clean up.

Q So you arrive in Vegas and SERVPRO is out there. Do you meet them at the site?

A I met them at the house, correct.

Q Okay. And was it SERVPRO of Henderson?

A I -- I just know it was SERVPRO.

Q Okay. So at that juncture did that start -- did they have discussion with you and you have a contract that you signed with them to start general clean up?

A I don't remember any contract at this time that I signed; however, they were already starting clean up. I don't know if Rommel had signed the contract or I had signed the -- I don't know.

Q Okay. So once they had -- did they do all of the cleanup for the water intrusion?

A When you say "they" meaning SERVPRO?

Q SERVPRO.

A SERVPRO, yes. SERVPRO, as far as I know, did all the cleanup. I don't know how much Desert Valley Contracting or Contractor did and how much SERVPRO did. I'm not 100 percent sure of that.

(Appendix Volume I, Trial Testimony Day One, Page 11-12, Lines 24-16, JNT00009697)

Mr. INOSE has no idea what equipment or property was damaged by Servpro of Henderson in the initial remediation of the house versus any damage that was caused by DVC. Nor did INOSE distinguish anywork that was in poor or unworkmanlike condition at the time he terminated DVC. Finally, given INOSE the fact terminated DVC before the project was completed it would be impossible for them to do a final punchlist or construction cleaning for the project. This Conclusion of Law is not supported by the facts of the case and should be overruled.

D. DVC Did Not Breach the Contract by Failing to Complete the Scope of Work and Provide INOSE With A Fully Restored Property.

As stated above, Mr. INOSE terminated DVC before the project was completed. Therefore, they could not complete the project. It's non-sensical to hold DVC responsible for not completing a project that it was terminated from. Additionally, Paragraph 31 in the same Conclusion of Law states that INOSE paid subcontractors directly Two Hundred, Fifty-Six Thousand, Four Hundred Eighty One Dollars and Forty -Six Cents (\$256,481.46), but could not distinguish what was

an upgrade or what was paid to restore the property. INOSE failed to prove what was paid for extras and what was included in DVC's scope of work. (Appendix, Exhibit 14, Page 14-15, JNT001175-1176). INOSE received an upgraded house, not simply a "fully restored" house.

E. DVC Did Not Breach the Contract by Failing to Complete the Scope of Work Within the Confines of the Insurance Proceeds

The Insurance proceeds would have been sufficient to complete the project had INOSE not completed upgrades to the project or closed out the Insurance Claim with his Insurance Company FIREMAN'S Fund. The Court's Finding of Fact stated that Inose's testimony regarding DVC advising him to close out the Insurance claim was not credible and that INOSE took no steps to reopen the claim after there appeared to be a need to do so. The reason that insurance claims are not closed out prior to completion of work is simple, until the project is finished, contractors don't know what additional issues may arise, during construction. DVC's Owner, Mr. Dennis Zachary, summed it up perfectly;

So that's one of the reasons we do not close out claims, because you will get hit. That's why we call it a contingency fund. Every job we do, we have to go back in and turn in a supplement to the insurance company. Every fire job we build that, say, is \$300,000, you'll get a \$40- to \$50,000 change order at the end time. And the insurance companies know that's coming. So they allow ten percent, at least ten percent of the contract to be there for contingency.
(Appendix, Volume VII, Exhibit 11, Page 14, Lines 18-24, JNT001133)

DVC employee, Daniel Merritt was surprised by the Close out of the Insurance claim as well,

THE COURT: When did you, if you recall, when did you learn that the claim had been closed out?

THE WITNESS: I think it was in July. I believe it was in July when I actually learned that it had been closed out to where Fireman's sent them the last check and that was that. I believe it was July.

(Appendix Volume VI, Trial Testimony, Page 166, Line 14-19, JNT001109)

Therefore, since INOSE closed the insurance claim himself he denied DVC the opportunity to obtain additional funds to complete the project and it is inequitable to find them in breach under those circumstances.

F. DVC Did Not Fail to Pay Subcontractors In Full for Work to Be Completed.

Firstly, this Conclusion of Law is nonsensical. (Appendix-Findings of Facts and Conclusions of Law, Exhibit 14, Page 14, JNT001175). It states that DVC failed to pay the subcontractors in full for work to be completed by the subcontractors. DVC is not under an obligation to pay the subcontractors for work that has not yet been completed. Furthermore, INOSE did not forward all of the insurance proceeds to DVC, as he received them, as required by the Contract.

During testimony, Mr. Daniel Merritt, who is an employee of DVC, read the following portion of the Contract regarding insurance drafts:

Accordingly, undersigned authorize and directs their insured named below to make Desert Valley Contracting a payee to all

insurance drafts, for all insurance and work performed by contractor on the above damaged property.

The undersigned also agrees to immediately endorse and tender all drafts that produced to the contractor. The undersigned further agrees to authorized Desert Valley Contracting to sign on their behalf and deposit all insurance checks that are issued, and to pay for the services performed, pursuant to the contract.

Q. So to your knowledge, did Mr. Inose sign over the insurance checks to Desert Valley Contracting, after he entered into the contract with them?

A. When certain tasks were finished at the job, or certain contractors, subcontractors needed payment, I believe that's -- that's when they were signed over.

(Appendix Volume VI, Trial Testimony, Page 106, Line 3-18, JNT000766)

Mr. INOSE did not present any counter testimony that he was not holding onto insurance proceeds in violation of the contract. The Court itself found INOSE in Breach of Contract by failing to forward insurance proceeds as and when received to DVC (Appendix Volume VII, Exhibit 14, page 14, JNT001174). As such, DVC cannot be in breach for the reasons stated in this Conclusion of Law and the Court ruling must be overruled.

G. DVC Did Not Unilaterally Approve Change Orders

Change orders were abundant on this project. DVC employee's Rachelle Elliston and Daniel Merritt testified that Inose was aware of the Change Orders but would refuse to sign them (Appendix, Volume V, Exhibit 9, page 9, lines 17-19, JNT000712). The court found that INOSE was well aware of the Change Orders for the project as well (Appendix, Volume VII, Exhibit 14, page 6, JNT001166). The

Court's Conclusion of Law that DVC unilaterally approved change orders is contrary to the Court's stated Finding of Fact and should be overruled.

CONCLUSION

For the foregoing reasons, the judgment of the District Court should be reversed and remanded to the District Court, and DVC should be awarded Eighty-Nine Thousand, One Hundred Ninety-Seven Dollars and Fifty-Eight cents (\$89,197.58) in damages against INOSE.

Date: June 12, 2020.

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By:



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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this opening brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman and 14 point font size.

I FURTHER CERTIFY that this opening brief complies with the page or type volume limitations of NRAP 32(a)(7) because, excluding the parts of the answer exempted by NRAP 32(a)(7)(C) it is proportionally spaced, has a typeface of 14 points or more and contains 6243 words.

FINALLY, I CERTIFY that I have read this Appellant's Opening Brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be Found.

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I understand that I may be subject to sanctions in the event that the accompanying answer is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 12th day of June 2020.

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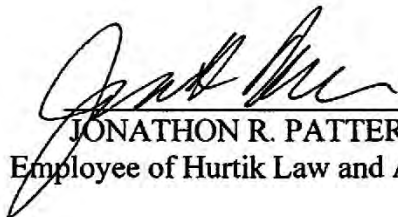
CERTIFICATE OF SERVICE

I JONATHON R. PATTERSON, HEREBY CERTIFY that I am an employee of HURTIK LAW AND ASSOCIATES, and that on the 12th day of June, 2020, I caused to be served a true and correct copy of the foregoing APPELLANT'S OPENING BRIEF by United States Mail by depositing a copy of the above-referenced document for mailing in the United States Mail, first class postage prepaid, at Las Vegas, Nevada, to the parties listed below at their last known mailing addresses, on the date above written:

Date: June 12, 2020

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JONATHON R. PATTERSON
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IN THE SUPREME COURT OF THE STATE OF NEVADA

DESERT VALLEY CONTRACTING,
INC., a Nevada corporation,

Appellant,

vs.

IN-LO PROPERTIES, a Nevada limited
liability company; EUGENE INOSE, an
individual; JEFFREY LOUIE, an
individual; DOES 1 through 10; and ROE
ENTITIES 1 through 10,

Respondents.

Case No.: 79751

District Court No. A-16-734351-C

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Jul 17 2020 02:08 p.m.

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Clerk of Supreme Court

APPEAL

From the Eighth Judicial District Court,
The Honorable Joe Hardy Presiding

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the Justices of the Court may evaluate possible disqualification or recusal.

1. Respondent In-Lo Properties is not a publicly owned entity, and no publicly-held company holds any ownership interest thereof.
2. Attorneys from the law firm of Holley Driggs have appeared for Respondent in this appeal, and in the proceedings in the district court.

Dated this 17th day of July 2020.

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ROUTING STATEMENT

Desert Valley contends that this case is presumptively routed to the Court of Appeals pursuant to NRAP 17(b)(5), which directs “[a]ppeals from a judgment, exclusive of interest, attorney fees, and costs, of \$250,000 or less in a tort case” to the Court of Appeals. NRAP 17(b)(5) (emphasis added). However, as the district court matter was not a case sounding in tort, but rather a contract dispute, NRAP 17(b)(5) is not instructive.

Instead, NRAP 17(b)(6) is informative, directing “[c]ases involving a contract dispute where the amount in controversy is less than \$75,000” to the Court of Appeals. NRAP 17(b)(6) (emphasis added). Here, the parties were engaged in a contract dispute where the amount in controversy was *more* than \$75,000, and therefore this matter is impliedly routed to the Supreme Court pursuant to NRAP 17(b)(6). *See* Appellant’s Opening Brief at 21 (“For the foregoing reasons, the judgment of the District Court should be reversed and remanded . . . and [Desert Valley] should be awarded . . . (\$89,197.58) in damages . . .”).

I. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Inose paid Desert Valley a total of \$1,125,734.89 to renovate a custom home that had been damaged by a flood. Because Desert Valley's construction costs amounted to only \$1,012,451.08, and because Desert Valley could not demonstrate that it was entitled to any additional sums under its contract with Inose, the district court held that Desert Valley failed to show by a preponderance of the evidence that it had sustained any damages—an essential element of its claims. Therefore, following a bench trial, the district court ruled in favor of Inose on Desert Valley's claims. Did the district court err?

II. STATEMENT OF THE CASE

The underlying district court proceedings from which this appeal is made was a straightforward action for breach of contract (and related equitable claims). Inose hired Appellant Desert Valley to renovate his home following a flood that left the residence uninhabitable. Throughout the project, Desert Valley worked with Inose's insurance company, Firemans' Fund, to confirm the amount of insurance proceeds that would be necessary to complete the work. However, as was demonstrated at trial, Desert Valley unilaterally approved change orders to the scope of work without Inose's authorization—and without informing Fireman's Fund of the increased costs—in breach of the contract. Desert Valley also materially breached the contract in a number of other ways, which Inose proved at trial.

Thereafter, when Inose refused to pay the balance of Desert Valley's inflated costs, Desert Valley instructed all of the subcontractors to stop work on the property. To have the work completed and to avoid having liens placed on his property, Inose hired the subcontractors directly to complete the work, ultimately paying them \$256,481.46 out of his own pocket. Despite Desert Valley's breaches, and despite the fact that Inose paid Desert Valley more than its impermissibly-inflated costs, Desert Valley initiated suit against Inose in the Eighth Judicial District Court on March 31, 2016 to recover the "profits" it believed it was entitled

to recover from Inose. In response, Inose filed its Answer and Counterclaims against Desert Valley on June 7, 2016, to recover the additional sums he was forced to pay directly to the subcontractors to complete the work on his home.

Critically, both leading up to and throughout the litigation, Desert Valley *never* provided Inose with a computation of its purported damages—because it did not sustain any. Moreover, when Desert Valley did represent its damages in response to Inose’s interrogatories and in its pretrial brief, such damages figures varied considerably. Desert Valley’s failure to provide a concrete representation of its damages was revealed at trial to have been caused by Desert Valley’s own failure to properly document its changes to the scope of work.

Following an unsuccessful settlement conference held on November 29, 2017, the parties proceeded to a seven-day bench trial that commenced on April 8, 2019 and continued on the following non-consecutive dates: April 9–11, 2019, and June 19–21, 2019. Following the bench trial, the district court entered its findings of fact and conclusions of law on September 3, 2019. The district court ruled in favor of Inose on Desert Valley’s claims, and in favor of Desert Valley on Inose’s counterclaims, holding that neither party had been able to establish its damages with any level of certainty, given Desert Valley’s failure to properly document authorized changes to the scope of work throughout the project.

Thereafter, on September 20, 2019, Inose moved for attorneys’ fees and

costs pursuant to a generous offer of judgment that Inose made to Desert Valley in May 2017, which Desert Valley rejected. The district court granted Inose’s motion for attorneys’ fees and costs on February 6, 2020. Desert Valley now appeals the district court’s findings of fact and conclusions of law, but does not challenge the district court’s award of attorneys’ fees and costs to Inose.

III. STATEMENT OF THE FACTS

a. Inose hired Desert Valley to repair water damage to Inose’s residential property

Inose¹ is the principal of In-Lo² (hereinafter collectively referred to as “Inose”), which owns the residential real property located at 587 St. Croix Street, Henderson, Nevada 89012 (the “Property”). VII APP 1162³. On or about August 2, 2014, the Property was flooded and damaged to the extent that Inose was unable to reside at the Property. *Id.* The damage was covered by Inose’s insurance policy through Fireman’s Fund Insurance Company (“Fireman’s Fund”). VII APP 1163. Inose retained Desert Valley⁴ to be the general contractor in the restoration of the Property (the “Project”). *Id.* at 1162–63.

Per the trial testimony of both Desert Valley’s owner (Dennis Zachary) and

¹ Defendant-Appellant Eugene Inose.

² Appellant In-Lo Properties.

³ Citations to Desert Valley’s Appendix will be formatted as “*Volume No. APP Bates Number*”.

⁴ Plaintiff-Appellee Desert Valley Contracting, Inc.

the lead estimator on the Project (Daniel Merritt), the Work Authorization and Contract to Perform Scope of Work (the “Contract”) between Desert Valley and Inose was prepared by Desert Valley and is a form contract utilized by Desert Valley when it performs insurance work. *Id.* at 1163. It was established at trial that the Contract was to be performed on a “10 and 10” basis, meaning that Desert Valley’s job costs would have *built into* its total an additional ten percent (10%) to account for Desert Valley’s overhead and another ten percent (10%) to account for Desert Valley’s profit when it provided its estimate to Fireman’s Fund. *Id.*

The Contract further provides, in pertinent part, as follows:

Should Client terminate the Contractor after work has begun, but not completed in full, the Client shall be responsible for any and all fees and costs associated with the work performed, plus the profit that **the client would have made** on the job had Client not repudiated the contract.⁵

Id. (citing Trial Exhibit 560, the Contract).

Per Merritt’s trial testimony, he spent a minimum of one week assessing the damage and coordinating with subcontractors and Fireman’s Fund, from which he produced an estimated job cost. *Id.* Desert Valley also began overseeing the project and engaging subcontractors to perform work on the Property. *Id.* Throughout the

⁵ Desert Valley asserts at multiple points throughout its Opening Brief that the Contract states that “INOSE is responsible for any fees and costs plus the profit DVC [*i.e.*, Desert Valley] would have made had INOSE not repudiated the Contract.” Appellant’s Opening Brief at 6. *See also id.* at 13. This is false, and an attempt to convince the Court that the Contract reads the way Desert Valley interprets it.

Project, Merritt was Inose's and the subcontractors' primary point of contact with Desert Valley. *Id.* at 1163–64.

b. Desert Valley prepared an initial bid, but then unilaterally approved cost over-runs and changes to the scope of work

An initial bid for the project was completed on or around November 17, 2014, and was provided to Fireman's Fund to coordinate an anticipated scope of work and release of insurance proceeds (the "November Bid"). *Id.* at 1164. The November Bid includes a line item total job cost of \$1,035,605.74, plus ten percent (10%) overhead in the amount of \$103,561.15, plus ten percent (10%) profit in the amount of \$103,561.15, and material sales tax of \$31,371.63, for a grand total claim of \$1,274,099.67. *Id.* (citing Trial Exhibit 266 at DVC000662).

Merritt testified at trial that there were many frivolous cost overruns on the Project; *e.g.*, an over-order of approximately eight (8) pallets of unused tile, the cost of repainting walls that were damaged during the cutting of the tiles, and items that went missing from the Project, such as a television and several Lutron switches. *Id.* at 1165. Additionally, delivery of marble flooring was delayed for several months due to customs issues and a dock workers' strike in Los Angeles, California, causing further increased costs. *Id.* (citing Trial Exhibit 475).

Despite the various cost over-runs, Desert Valley had consistently represented to Inose that Desert Valley could offset the costs of certain changes in the scope of work by removing other items that were part of the original scope of

work and that doing so would not affect the total cost of the project. *Id.* at 1165. This included, but was not limited to, the removal of the sauna which had previously been on the Property offset by an expansion and various upgrades to the wine room. *Id.*

c. Desert Valley consistently failed to obtain written and signed change orders by Inose, as required by the Contract

The Contract provides that “[i]f any requests for additional work to be performed are made during the scope of the job, all such requests **must be put in writing** so that these costs will be added to the Scope of Work.” *Id.* at 1165 (citing Trial Exhibit 560, the Contract); *Id.* at 1137–38. At trial, Zachary and each of the subcontractors testified that it is the industry standard that all change orders should be in writing, and that subcontractors would not expect to be paid for any additional work performed outside the scope of their bids unless the additional work was approved through a written, approved, and signed change order. *Id.* at 1165–66.

Zachary further testified that, without a written and signed change order, Desert Valley would not be obligated to pay subcontractors for changes to their scope of work. *Id.* at 1166. Moreover, without a written and signed change order, Desert Valley could not obligate Inose to pay for any changes to *Desert Valley’s* scope of work. *Id.* Despite Zachary’s testimony that written and signed change orders were necessary to alter the scope of work on the Project, Zachary and

Merritt confirmed at trial that Desert Valley did not obtain Inose's approval or signature on any change orders throughout the course of the Project. *Id.*

However, each of the subcontractors confirmed that they had change orders on the Project which had been provided to and approved by *Desert Valley* prior to July 3, 2015⁶, the majority of which had been approved and/or signed by Merritt. *Id.* Notably, Desert Valley did not present any change orders at trial that were approved or signed by Inose. *Id.* Moreover, Desert Valley failed to present as evidence any written communications from Desert Valley to Inose prior to October 2015 indicating the existence of change orders on the Project. *Id.*

d. The Fireman's Fund insurance claim was closed out at the amount represented by Desert Valley as the total cost of the Project

Regarding the insurance claim, the Contract further provides that the "Contractor agrees to perform the insured work as approved by the Insurance Company and accept insurance proceeds as payment for the insured work." *Id.* at 1167. Merritt testified that, throughout the course of the Project, he negotiated directly with Fireman's Fund the total amount of insurance proceeds that would be available for the scope of work on the Property based on cost estimates prepared by Desert Valley. *Id.* Indeed, on June 5, 2015, Merritt confirmed with Fireman's

⁶ This date is significant, as Desert Valley would later represent in a Waiver and Release form that there were "No change orders as of 07/03/2015." *Id.* at 1168 (citing Trial Exhibit 562, Unconditional Waiver and Release on Progress Payment). *See also infra.*

Fund that Desert Valley would be able to complete the Project for a total amount of \$1,321,133.12⁷, with “no needed change orders, and no more change orders from all of the subcontractors which had submitted their bids.” *Id.* (citing Trial Exhibit 571 at IN-LO00074). Notably, the estimate sent to Fireman’s Fund by Merritt (titled “Final Bid” with a completed date of April 27, 2015) includes work that was never completed by Desert Valley prior to the eventual termination of the Contract, such as the costly sauna bath removal. *Id.*

Because Merritt represented to Fireman’s Fund that the house would be completed with no needed change orders for \$1,321,133.12, Inose relied on this representation (and further discussions with Merritt) in closing out the insurance claim for this amount. *Id.* at 1169. This amount was confirmed in a signed Desert Valley invoice dated September 4, 2015. *Id.* at 1170. Desert Valley presented no evidence at trial that it objected to Inose’s having closed the insurance claim prior to October 2015 (months after the claim was closed). *Id.* at 1168.

Inose and Merritt testified that on or about July 3, 2015, Desert Valley provided to Inose a waiver and release (the “Waiver”) which included a notation signed by Merritt indicating “No change orders as of 07/03/2015.” *Id.* at 1168.

⁷ This figure was amended slightly in a June 19, 2015, email from Fireman’s Fund to Inose, which represented that Desert Valley had forwarded a “final estimate” of \$1,320,429.28. *Id.* at 1167 (citing Trial Exhibit 571 at IN-LO00071). The email again confirms that Desert Valley had represented that “no further billing exists beyond” the final estimate. *Id.*

(citing Trial Exhibit 562, the Waiver). The Waiver was also signed by Rachelle Elliston, Desert Valley's operations manager, and includes a handwritten notation stating "Total Contract to Complete House \$1,321,331.27⁸." *Id.* The Waiver provides in capitalized text as follows:

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

Id. at 1168.

e. After the insurance claim was closed, Desert Valley revealed a massive change order not previously authorized by Inose

Thereafter, due to mounting disagreements regarding the total Project costs (caused by Desert Valley's unilaterally approving various change orders), on November 16, 2015, Desert Valley sent a letter to all subcontractors working on the Project directing them to cease work on the Property. *Id.* (citing Trial Exhibit 567, Letter dated November 16, 2015). Then, on November 23, 2015, Merritt prepared a summary for Desert Valley's attorney of the purported differences between the initial bids of each of the subcontractors on the Project as well as Merritt's own projected costs and the actual costs for each category of work. *Id.* (citing Trial Exhibit 568, November 23, 2015 Email). Merritt forwarded this

⁸ This figure represents yet another slight alteration to the total amount, again without any corresponding change orders to justify the amendment.

summary to Inose the following day, which asserted a difference of approximately \$125,763.26 between the estimated and actual costs to complete the Project. *Id.* at 1168. The list delineates between the estimated and final costs of completion but does not specify what amounts are accounted for through written, approved, and signed change orders and what amounts are not. *Id.* at 1169 (citing Trial Exhibit 568, November 23, 2015 Email).

Merritt testified that, although he had been receiving and approving change orders throughout the course of the Project, and notwithstanding that Desert Valley had indicated to Inose in writing in July 2015 that there were no change orders and again in September 2015 that the cost to complete the house was \$1,321,331.27, Merritt always intended to prepare and submit one large master change order to Inose toward the end of the Project. *Id.* at 1169. However, no evidence was presented at trial of any written communications to Inose indicating Desert Valley's intent to compile and submit a large, master change order at the end of the Project. *Id.*

f. Inose's refusal to pay the unauthorized change order led to Desert Valley's stopping work on the Project, thereby forcing Inose to deal with and pay subcontractors directly

Because Desert Valley instructed all subcontractors to stop working on the Property, Inose terminated the Contract with Desert Valley on December 8, 2015, prior to a substantial portion of the Project being completed. *Id.* Merritt confirmed

through testimony that, at the time Desert Valley ceased working on the Property, the Project was approximately eighty-five percent (85%) complete, which rendered the Property uninhabitable. *Id.* Therefore, to have the work completed and to avoid any liens being placed on the Property, Inose was forced to engage many of the subcontractors directly to complete the work. *Id.* at 1169.

Nevertheless, Inose paid Desert Valley for the work it performed on the Property in the amount of \$1,123,734.87 throughout the course of the Project. *Id.* at 1170 (citing Trial Exhibit 585, Checks). Zachary confirmed through testimony that, in total, Desert Valley incurred costs in the amount of \$1,012,451.08. *Id.* Accordingly, Zachary and Elliston testified that Desert Valley was paid for the entirety of its costs incurred, as well as a portion of its profit and overhead. *Id.*

Beyond the sums paid to Desert Valley, Inose paid directly to subcontractors the total amount of \$256,481.46 to complete work for which Desert Valley had already been paid. *Id.* (citing Trial Exhibits 586–595). Ultimately, Inose paid Desert Valley \$1,123,734.87 to complete approximately eighty-five percent (85%) of the Project, plus an additional \$256,481.46 to subcontractors directly to finish the project, for a sum total paid by Inose of \$1,380,216.33 (after having closed out his insurance claim for only \$1,321,133.12). *Id. See also id.* at 1169.

g. Procedural History

Thereafter, on March 31, 2016, Desert Valley filed its Complaint against

Inose to recover additional sums that it believes it is due, asserting four (4) causes of action against Inose: (1) Breach of Contract, (2) Breach of the Implied Covenant of Good Faith and Fair Dealing, (3) Unjust Enrichment, and (4) Intentional Interference with Contractual Relations. I APP 1–19. In response, Inose filed its Answer and Counterclaims against Desert Valley to recover the additional sums he was forced to pay directly to the subcontractors. I APP 20–47. Accordingly, Inose asserted counterclaims for: (1) Breach of Contract, (2) Breach of the Implied Covenant of Good Faith and Fair Dealing, (3) Unjust Enrichment, and (4) Intentional Interference with Prospective Economic Advantage. *Id.*

Following a seven-day bench trial, the district court ruled in favor of Inose on each and every one of Desert Valley’s claims against him and his co-defendants, finding that, among other issues, Desert Valley had failed to demonstrate by a preponderance of the evidence that it had sustained any damages.⁹ VII APP 1171–73. Desert Valley now appeals the district court’s judgment.

IV. SUMMARY OF THE ARGUMENT

Desert Valley’s costs to renovate Inose’s home totaled \$1,012,451.08. Inose paid Desert Valley \$1,123,734.87, notwithstanding the district court’s

⁹ The district court ruled in favor of Desert Valley on Inose’s counterclaims. VII APP 1173–78. However, the district court’s ruling on those claims is not contested in this appeal.

determination that Desert Valley completed only eighty-five percent (85%) of the Project, failed to perform in a workmanlike manner, unilaterally approved change orders to the scope of work without Inose's authorization, and inflated its asserted costs with work it never performed. Nevertheless, Desert Valley challenges the district court's findings of fact and conclusions of law on three grounds. All of Desert Valley's arguments must fail.

First, Desert Valley argues that the district court should have applied the scrivener's error doctrine to a purported "typo" in the Contract to entitle Desert Valley to an additional \$89,197.58 from Inose. However, it is well-established that, where ambiguity is discerned in a contract between a sophisticated commercial venturer (such as Desert Valley) and a layperson (such as Inose), any ambiguity should be construed against the drafter—in this case, Desert Valley. Moreover, even if there were no ambiguity in the Contract, it is also well-established in Nevada that unambiguous contracts should be enforced as written. Therefore, there is simply no legal basis for Desert Valley's attempt to alter the plain meaning of the Contract that it drafted, particularly where Inose, a layperson with no experience in the construction industry, agreed to the terms of the Contract as written.

Second, Desert Valley asserts that the district court erred when it determined that Desert Valley had not proven any damages at trial. Rather, Desert Valley

submits that it was entitled to receive a total amount of \$1,214,941.30, representing its total costs on the Project plus an additional twenty percent (20%) profit. However, it is undisputed that Desert Valley failed to complete the Project, never obtained proper authorization to execute change orders to the scope of the work, included in its ledger of “costs” work that it never performed, and failed to complete the work within the confines of Inose’s insurance proceeds.

Moreover, Desert Valley should not have been permitted to present evidence of its damages at trial, as it never provided Inose with a computation of its damages, as required by NRCP 16.1. Even where it *did* provide damages figures (but never an actual computation), such figures varied both before and after the start of litigation—including the instant appeal. Desert Valley’s inability to provide a concrete representation of its damages only highlights Desert Valley’s failure to keep adequate business records of its authorized Project costs and purported “damages.” As a result, the district court was unable to discern Desert Valley’s authorized costs from the costs it incurred in violation of the Contract, and thus properly found that Desert Valley had failed to prove its damages by a preponderance of the evidence.

And finally, Desert Valley asserts that the district court erred in holding that it had breached the Contract, even though the district court ruled in *Desert Valley’s favor* on Inose’s counterclaims against it. This argument is irrelevant, as it has no

bearing on Desert Valley’s appeal of its claims, which were determined solely on the basis of Desert Valley’s failure to establish its damages at trial. Regardless, Desert Valley’s argument that it did not breach the Contract is meritless. Indeed, based on the facts discerned at trial, it is undisputed that Desert Valley (1) failed to complete its work in a good, workmanlike manner, (2) failed to complete the scope of work within the confines of the insurance proceeds, and (3) failed to pay subcontractors for portions of work that they performed.

Accordingly, the district court committed no error in ruling in favor of Inose on Desert Valley’s claims, and this Court should affirm the findings of fact and conclusions of law of the district court in full.

V. STANDARD OF REVIEW

a. Findings of fact

The Nevada Supreme Court “reviews the district court’s findings of fact for an abuse of discretion, and this court will not set aside those findings ‘unless they are clearly erroneous or not supported by substantial evidence.’” *NOLM, LLC v. Cty. of Clark*, 120 Nev. 736, 739, 100 P.3d 658, 660–61 (2004).

b. Conclusions of law

“A district court’s conclusions of law are reviewed de novo.” *White v. Cont'l Ins. Co.*, 119 Nev. 114, 116, 65 P.3d 1090, 1091 (2003). Similarly, the Nevada Supreme Court reviews a district court’s application of law to facts on a de novo basis. *See D.R. Horton, Inc. v. Green*, 120 Nev. 549, 553, 96 P.3d 1159, 1162

(2004), *overruled on other grounds by U.S. Home Corp. v. Michael Ballesteros Tr.*, 134 Nev. 180, 415 P.3d 32 (2018).

c. Damages calculations

The “district court is given wide discretion in calculating an award of damages, and this award will not be disturbed on appeal absent an abuse of discretion.” *Diamond Enterprises, Inc. v. Lau*, 113 Nev. 1376, 1379, 951 P.2d 73, 74 (1997) (citing *Flamingo Realty v. Midwest Development*, 110 Nev. 984, 987, 879 P.2d 69, 71 (1994), *cert. denied*, 514 U.S. 1127, 115 S.Ct. 1999, 131 L.Ed.2d 1001 (1995)). Additionally, while “a district court’s interpretation of a contractual term is a question of law, which this court reviews de novo, whether a contract exists and *the parties’ intentions regarding a contractual provision are questions of fact, which this court reviews for substantial evidence.*” *Whitemaine v. Aniskovich*, 124 Nev. 302, 308, 183 P.3d 137, 141 (2008) (emphasis added).

VI. ARGUMENT

In challenging the district court’s findings of fact and conclusions of law (“FFCL”) on appeal, Desert Valley argues that (1) a “typo” in the Contract should be amended by the court to entitle Desert Valley to an additional \$89,197.58 from Inose; (2) it is entitled to twenty percent (20%) profit on Project costs that were never approved via a valid change order; and (3) the district court erred when it found Desert Valley in breach of the Contract (despite the fact that it ruled in

Desert Valley's favor on Inose's contract claims). See Appellant's Opening Brief at 8–21. For the following reasons, Desert Valley's appeal must fail.

- a. The district court did not abuse its discretion when it ruled that the Contract was ambiguous and construed its terms against the drafter, Desert Valley*

The Contract between Inose and Desert Valley states, in part:

Should Client terminate the Contractor after work has begun, but not completed in full, the Client shall be responsible for any and all fees and costs associated with the work performed, plus the profit that **the client would have made** on the job had Client not repudiated the contract.

VII APP 1163 (citing Trial Exhibit 560, the Contract); VII APP 1137–38.

Desert Valley relies on this provision of the contract (hereinafter, the “Termination Provision”) in support of its argument that it is entitled to an additional twenty percent (20%) of its costs on the Project as profit. Appellant's Opening Brief at 11–12. However, because the Termination Provision clearly states that the *client* is entitled to profits (and not Desert Valley) Desert Valley argues that the district court should have applied the scrivener's error doctrine to correct what it refers to as a “typo” in the Contract. *Id.* In addition to the fact that Desert Valley failed to demonstrate at trial the total amount of its *authorized* costs (and thus cannot demonstrate what an additional twenty percent (20%) of those costs would be), which Inose will discuss in detail *infra*, Desert Valley's argument regarding the proper interpretation of the Termination Provision must fail.

As this Court has held, the “objective of interpreting contracts is to discern

the intent of the contracting parties. Traditional rules of contract interpretation are employed to accomplish that result.” *Am. First Fed. Credit Union v. Soro*, 131 Nev. 737, 739, 359 P.3d 105, 106 (2015) (quotations and citations omitted). Moreover, as the district court recognized in its FFCL, where ambiguity is discerned in a contract, any such ambiguity “should be construed against the drafter.” *Id.* (quoting *Anvui, LLC v. G.L. Dragon, LLC*, 123 Nev. 212, 215–16, 163 P.3d 405, 407 (2007)) (internal quotation marks omitted) (emphasis added). *See also* VII APP 1178. In particular, “[n]egotiations between a wealthy, sophisticated commercial venturer and a naive consumer cannot be of equal strength. For that reason, the law attempts to render an ambiguous contract fair by making the drafter responsible for ambiguity.” *Ainsworth v. Combined Ins. Co. of Am.*, 104 Nev. 587, 592, 763 P.2d 673, 676 (1988).

Here, Inose has zero experience in the construction industry, while Desert Valley boasts in its Opening Brief that its owner, Dennis Zachary, “has over Thirty [sic] (30) years of experience in the construction industry.” Appellant’s Opening Brief at 14. Moreover, the Contract was prepared by Desert Valley and is a form contract utilized by Desert Valley when it performs insurance work. VII APP 1163. Therefore, Desert Valley had ample experience and opportunity to recognize the “typo” in the Contract, if indeed there was one. However, Desert Valley failed

to recognize this “typo,” and now asks that the Court hold Inose responsible for its unilateral error, even though Inose (a layperson) signed and agreed to the terms of the Contract *as written*.

While “a district court’s interpretation of a contractual term is a question of law, which this court reviews de novo, whether a contract exists and *the parties’ intentions regarding a contractual provision are questions of fact, which this court reviews for substantial evidence.*” *Whitemaine*, 124 Nev. at 308, 183 P.3d at 141 (emphasis added). Here, Desert Valley has failed to show that the Court was not presented with “substantial evidence” in making its determination that the Contract was ambiguous. The only evidence that Desert Valley presents regarding Inose’s understanding of the Contract is the following short excerpt of Inose’s trial testimony:

Q. ...So it is your understanding that if you terminated them you would have been still responsible for any profit that they would have earned if you had not terminated them?

A. Yes. ***How I read it now, yes.*** And as long as the work was in good workman like manner and condition.

Appellant’s Opening Brief at 11 (citing VII APP 113) (emphasis added).

If anything, this quote from Inose implies that this was *not* Inose’s interpretation of the Contract at the time he signed it. Without more, it cannot be shown that the district court did not rely on substantial evidence in determining that the Termination Provision of the Contract was ambiguous. Indeed, it was

Desert Valley that created the ambiguity by suggesting that the Termination Provision was intended to produce the *exact opposite* result of its plain text.

However, even if Desert Valley is correct that the Contract is not ambiguous, Desert Valley is still not entitled to reversal of the district court's holding. It is well-established that where the language of a contract is "clear and unambiguous . . . the contract will be enforced as written." *Am. First Fed. Credit Union*, 131 Nev. at 739, 359 P.3d at 106 (citing *Davis v. Beling*, 128 Nev. 301, 321, 278 P.3d 501, 515 (2012)) (emphasis added). Here, if the Termination Provision is unambiguous, it should be enforced as written (with Inose being entitled to profits upon termination of the Contract). Under either scenario, it is Desert Valley that should have to live with the consequences of the Contract that it drafted—not Inose.

b. Desert Valley cannot demonstrate that it has suffered any damages because it was paid commensurate with its validly incurred costs

Desert Valley's incurred costs on the Project totaled \$1,012,451.08. Appellant's Opening Brief at 13; VII APP 1170. This is notwithstanding the fact that (1) Desert Valley left the job at *eighty-five percent (85%)* completion, (2) Desert Valley's Final Bid¹⁰ to Fireman's Fund insurance included in its estimate work that was never completed (*e.g.*, the sauna bath removal), and (3) Desert

¹⁰ Notably, although Desert Valley's Final Bid totaled \$1,321,133.12, this figure *included* an additional ten percent (10%) for overhead and ten percent (10%) profit; *i.e.*, an additional twenty percent (20%) above its costs. VII APP 1163.

Valley never obtained Inose's written authorization to incur costs above and beyond its Final Bid to Fireman's Fund. VII APP 1166–67, 1169. Moreover, a significant portion of the cost of the Project was supposed to be disbursed to the subcontractors, and not retained solely by Desert Valley. *See* VII APP 1169. However, after Desert Valley instructed the subcontractors to stop work on the Project, Inose ended up retaining the subcontractors directly, paying them a total of \$256,481.46 to complete the Project. VII APP 1170.

Despite the foregoing, Desert Valley asserts that it was paid \$1,125,734.89 by Inose—*more* than its asserted (inflated) costs.¹¹ Appellant's Opening Brief at 13. Then, after Desert Valley's having (1) left the Project only eighty-five (85%) complete, (2) failing to complete the work it *did* do in a workmanlike manner, (3) failing to complete the work within the confines of the insurance proceeds as required by the Contract, and (4) failing to obtain Inose's written approval for approximately \$125,763.26 in change orders as required by the Contract (all unexcused breaches of the Contract), Desert Valley initiated suit to recover its anticipated "profit." VII APP 1174; Appellant's Opening Brief at 1, 6, 12–15. Now, Desert Valley appeals the district court's correctly decided FFCL that Desert

¹¹ Tellingly, Desert Valley's Opening Brief overstates the amount it was paid based on the FFCL, which states that Inose paid Desert Valley \$1,123,734.87. *Compare* Appellants Opening Brief at 13, *with* VII APP 1170. This disparity highlights Desert Valley's failure to adequately keep track of its records and purported change orders throughout the Project and subsequent litigation.

Valley is not entitled to *any* additional sums from Inose. VII APP 1169–70.

Because Desert Valley was unable to demonstrate which portion of its costs were incurred pursuant to validly authorized change orders (because there were none), and because Desert Valley provided inconsistent damages “computations” throughout trial, the district court properly found that Desert Valley failed to establish, by a preponderance of the evidence, that it had sustained any damages. Accordingly, and as will be discussed in further detail *infra*, the district court committed no error and properly ruled in favor of Inose on Desert Valley’s claims.

1. Desert Valley improperly asserts that this issue is subject to de novo review

As a preliminary matter, Desert Valley asserts that the issue of damages should be reviewed de novo, arguing that the district court’s determination that Desert Valley had not demonstrated damages “by a preponderance of the evidence” constitutes a question of law that is subject to de novo review. Appellant’s Opening Brief at 12. However, the district court made a series of findings of fact (the vast majority of which Desert Valley does not dispute) which led it to its natural conclusion that Desert Valley cannot have sustained any damages. *See* VII APP 1162–70. If applying those facts to the correct legal standard in reaching a determination as to damages (here, preponderance of the evidence) is tantamount to ruling on a question of law, then all questions of fact could be deemed questions of law, which would moot the need for separate

standards of review as to the same—an absurd result. This point is highlighted by Desert Valley’s failure to provide any authority for its assertion that this issue should be reviewed on a de novo basis. *See* Appellant’s Opening Brief at 12–13.

Rather, the “district court is given wide discretion in calculating an award of damages, and this award will not be disturbed on appeal absent an *abuse of discretion*.” *Diamond Enterprises, Inc.*, 113 Nev. at 1379, 951 P.2d at 74 (citing *Flamingo Realty v. Midwest Development*, 110 Nev. 984, 987, 879 P.2d 69, 71 (1994), *cert. denied*, 514 U.S. 1127, 115 S.Ct. 1999, 131 L.Ed.2d 1001 (1995)) (emphasis added). Therefore, the Court should review the district court’s determination regarding Desert Valley’s damages for abuse of discretion.

2. Desert Valley argues, without support, that it is entitled to \$89,197.58 in damages

The crux of Desert Valley’s argument is that it was entitled to an additional twenty percent (20%) above and beyond its “costs” on the project, which the district court found totaled \$1,012,451.08. VII APP 1170; Appellant’s Opening Brief at 13–14. Therefore, Desert Valley asserts that it was entitled to receive from Inose a total amount of \$1,214,941.30 (costs, plus 20%). Appellant’s Opening Brief at 14. Thus, because Desert Valley received a total of \$1,125,734.89 from Inose, it asserts that it has been damaged in the amount of \$89,197.58. *Id.* at 15.

First, while Desert Valley may have, in actuality, spent \$1,012,451.08 on the Project, such inflated costs were never approved via written, signed change orders

by Inose, as required by the Contract and by industry standard. *See* VII APP 1166. Without such change orders, any of Desert Valley's costs beyond its share of its Final Bid to Fireman's Fund were not properly incurred and Inose cannot be liable for the same. *Id.* As discussed, the total amount of Desert Valley's Final Bid was \$1,321,133.12 (which *included* sums that were supposed to be paid to subcontractors for their work on the Project, *as well as* an additional twenty percent (20%) to cover overhead and profit). *Id.* at 1164, 1167. Desert Valley represented on multiple occasions that the Project could be completed for that amount, and further represented that *no* change orders would be necessary. *Id.* at 1167–68. Indeed, Desert Valley never represented to Inose or Fireman's Fund in writing that it had been unilaterally approving change orders to the subcontractors' work. *Id.* at 1167–69. For that reason, the insurance claim was closed out at the amount of Desert Valley's Final Bid, as Fireman's Fund had no reason to believe that additional proceeds were necessary. *See id.*

Moreover, even disregarding the massive, unauthorized change order Desert Valley presented to Inose in November 2015, the Final Bid itself represents inflated and inaccurate costs, as the estimate Desert Valley provided Fireman's Fund along with its Final Bid included work that *Desert Valley never completed*. *Id.* Certainly, Desert Valley is not entitled to "profit" on a contract that it materially breached (unexcused), nor on "costs" that (1) a portion of which were

never actually incurred (e.g., the sauna bath removal), (2) were calculated according to “change orders” that were never authorized pursuant to the Contract, and (3) were ultimately paid directly by Inose to the subcontractors after Desert Valley left the Project eighty-five percent (85%) complete. Because the district court had no way to untangle Desert Valley’s authorized costs from its unauthorized costs, it was left with no choice but to hold that Desert Valley had failed to demonstrate, by a preponderance of the evidence, that it had sustained any damages. Desert Valley’s predicament in this regard only highlights the importance of written and signed change orders and proper recordkeeping.

Moreover, even though it is indisputable that Desert Valley’s Costs were impermissibly inflated, Zachary and Elliston confirmed via trial testimony that Desert Valley was paid for the *entirety* of its costs incurred, *as well as* a portion of its “profit” and overhead. VII APP 1170. Desert Valley failed to demonstrate at trial that it was entitled to anything more than that—as previously discussed, the Termination Provision upon which Desert Valley relies states that *Inose* would be entitled to profits if the Contract was terminated. *See* VII APP 1165 (citing Trial Exhibit 560, the Contract); VII APP 1137–38. However, even if Desert Valley had not written this egregious “typo” into Contract, nowhere in the Contract does it state that Desert Valley was entitled to an additional twenty percent (20%) above

and beyond its costs.¹² *See* VII APP 1137–38. Therefore, because it is undisputed that Desert Valley was reimbursed for *more* than the entirety of its costs on the Project, and because Desert Valley could not demonstrate that it was entitled to any additional sums from Inose, the district court properly ruled in favor of Inose on Desert Valley’s claims.

Finally, as a matter of procedure, Desert Valley should not have been permitted to present evidence of its damages at trial, as it never provided a computation of its damages pursuant to NRCP 16.1.¹³ *See* I SUPP 1–24, 25–69, 96–128, 156–188.¹⁴ NRCP 16.1 provides, in pertinent part, that a party must, without awaiting a discovery request, provide to the other parties “[a] computation of any category of damages claimed by the disclosing party.” NRCP 16.1(a)(1)(A)(iv). “[T]he word ‘computation’ contemplates some analysis beyond merely setting forth a lump sum amount for a claimed element of damages.” *CCR/AG Showcase Phase I Owner, L.L.C. v. United Artists Theatre Circuit, Inc.*, No. 2:08-cv-00984-RCJ-GWF, 2010 WL 1947016, at *5 (D. Nev. May 13, 2010) (unpublished disposition) (internal citation omitted).

Further, NRCP 37(c)(1) states that “[a] party that without substantial justification fails to disclose information required by Rule 16.1 . . . is not, unless

¹² This figure was established via trial testimony. *See* VII APP 1163.

¹³ Inose raised this argument in its pre-trial brief. I SUPP 214–233.

¹⁴ Citations to Inose’s Appendix will be formatted as “I SUPP *Bates No.*”

such failure is harmless, permitted to use as evidence at a trial . . . any witness or information not so disclosed. When a party fails to provide a computation of damages, the appropriate remedy is exclusion of evidence of damages at trial. *See Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261, 264–65, 396 P.3d 783, 787 (2017).

Here, Desert Valley never provided a computation of its damages in its initial disclosures (or supplements thereto), as required by NRCP 16.1. Similarly, Desert Valley did not even provide a computation of its damages in its pretrial disclosures. *See* I SUPP 189–213. This alone should have precluded Desert Valley from presenting evidence of its damages at trial.

However, to make matters more confusing for Inose prior to trial, Desert Valley set forth varying dollar figures (without any *computation*) of its purported damages throughout the litigation, via its answers to Inose’s interrogatories. For example, in Desert Valley’s initial responses to Inose’s First Set of Interrogatories (the “First Interrogatories”), which it served on May 19, 2017, Desert Valley asserted that its damages were “\$82,692.27”. I SUPP 76. Thereafter, in its supplemental responses to the First Interrogatories, Desert Valley changed its asserted damages figure to “\$89,197.58”. I SUPP 135. This morphing figure is peculiar, as Desert Valley should have been aware of its costs (and thus its expected “profits”) well before the start of litigation. To the contrary, Desert

Valley failed to provide a concrete damages figure at any point prior to or after Inose's termination of the Contract, which is exactly why this dispute resulted in the underlying litigation. This again highlights the inexactness of Desert Valley's recordkeeping throughout the Project and, subsequently, throughout the litigation.

In light of the foregoing, Inose respectfully submits that the district court committed no error in holding that Desert Valley did not establish its damages by a preponderance of the evidence at trial. To the extent that this Court determines that any of the foregoing factors did not weigh into the district court's decision, this Court may nevertheless affirm the judgment of the district court on any grounds supported by the record. *Lowrance v. Lowrance*, 87 Nev. 503, 507, 489 P.2d 676, 678 (1971). *See also Nat'l Audubon Soc. v. U.S. Forest Serv.*, 46 F.3d 1437, 1446 (9th Cir. 1993) ("In reviewing decisions of the district court, we may affirm on any ground supported by the record.").

c. The district court's findings regarding Desert Valley's breach of the Contract were proper, but nevertheless irrelevant to the instant appeal

Desert Valley prevailed on Inose's counterclaim for breach of contract. VII APP 1173–78. Nevertheless, Desert Valley argues that the district court erred in holding that Desert Valley had breached the Contract in several respects and requests that this Court overturn those holdings. Appellant's Opening Brief at 16. It is unclear why Desert Valley would challenge the district court's holdings pertaining to claims on which Desert Valley prevailed, as the fact of Desert

Valley's breach of the Contract is irrelevant to its appeal of its own claims against Inose. Indeed, the district court ruled in favor of Inose on Desert Valley's claims because Desert Valley was unable to establish its *damages* by a preponderance of the evidence—not because of the various breaches of the Contract committed by Desert Valley. *See* VII APP 1170–73. Rather, Desert Valley's breaches of the Contract were relevant to *Inose's* contract-based counterclaims against Desert Valley, which is why such holdings appear under its discussion of those claims. *See* VII APP 1173–78. Therefore, Desert Valley's argument that the district court's holdings are “inconsistent” is nonsensical. *See* Appellant's Opening Brief at 15. Regardless, because the district court properly held Desert Valley in breach of the Contract, Inose will briefly discuss why Desert Valley's arguments as to the same must fail.

First, Desert Valley argues that it did not breach the Contract by failing to complete the work in good and workmanlike manner, nor by failing to complete the scope of the work. Appellant's Opening Brief at 16–18. However, it is undisputed that Desert Valley stopped working on the project at approximately eighty-five percent (85%) completion, as confirmed by Merritt's trial testimony. VII APP 1169. To the extent that Desert Valley blames this on Inose's termination of the Contract on December 8, 2015, it is also undisputed that Desert Valley directed all subcontractors to stop work on the Project on November 16, 2015 *prior*

to Inose's terminating the Contract. *Id.* at 1168. Therefore, to avoid liens being placed on his Property and to have the work completed, Inose had no choice but to terminate the Contract with Desert Valley and engage the subcontractors directly to finish the remaining work on the Project. *Id.* at 1169.

Moreover, Desert Valley cites only one short excerpt from the trial testimony to challenge the district court's holding that Desert Valley had not completed the work in good and workmanlike manner. *See* Appellant's Opening Brief at 16–17. Through this excerpt, Desert Valley attempts to shift the blame for certain damage that occurred to the property to another company, ServPro, which Inose hired to assist with the initial cleanup following the flood damage. *Id.* However, Desert Valley caused additional damage to the property long after the initial cleanup was completed (and thus long after ServPro ceased working on the Property). For example, Desert Valley—not ServPro—damaged interior walls during its cutting of the replacement floor tiles. VII APP 1165. Additionally, Desert Valley failed to perform in a workmanlike manner by failing at times to lock the Property overnight, failing to adequately supervise the Project, and failing to properly document changes to the scope of work. *See* II APP 257–59; VII APP 1165–66.

Next, Desert Valley argues that it did not breach the Contract by failing to complete scope of work within confines of insurance proceeds. Appellant's

Opening Brief at 18–19. However, Desert Valley had represented on multiple occasions to Inose and Fireman’s Fund that it could complete the entirety of the Project for a total of approximately \$1,321,133.12, with *no* change orders necessary. VII APP 1167–68. Inose relied on that representation in closing out the insurance claim for that amount, even if he did not do so at the express direction of Desert Valley. *Id.* at 1169. Moreover, Desert Valley specifically represented that changes to the scope of work could be made without altering the total cost of the project by shifting costs from one part of the Project to certain others, as necessary. *Id.* at 1165. Desert Valley’s refusal to clearly and consistently communicate its required costs to Inose and Fireman’s Fund directly led to Desert Valley’s having breached the Contract by failing to complete the Project for the amount it claimed it would.

Finally, Desert Valley asserts that it did not fail to pay subcontractors in full for work to be completed and that it did not unilaterally approve change orders. Appellant’s Opening Brief at 19–20. This is patently false. While Desert Valley attempts to equivocate and suggest that Inose “was aware of the Change Orders,” this does not alter the requirement under the Contract that all change orders “**must be put in writing** so that these costs will be added to the Scope of Work.” VII APP 1165 (citing Trial Exhibit 560, the Contract); VII APP 1137–38. Because Desert Valley failed to obtain such written and signed change orders from Inose

throughout the Project, it necessarily approved such change orders unilaterally. *See* VII APP 1166. Additionally, Desert Valley's argument that it did not fail to pay subcontractors out of the sums it received is belied by the fact that Inose was forced to pay the subcontractors, out of pocket, a total of \$256,481.46 to complete the Project. *Id.* at 1170.

Therefore, because Desert Valley has failed to demonstrate that the district court erred in holding that it breached the Contract (and because such argument is irrelevant to the instant appeal), Desert Valley's argument regarding its various breaches of the Contract is unavailing. Rather, the pertinent issue is whether Desert Valley has successfully demonstrated, by a preponderance of the evidence, that it had sustained any damages to which it is entitled to receive from Inose. Based on the foregoing, it has not, and the district court's judgment should be affirmed.

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VII. CONCLUSION

In light of the foregoing, Inose respectfully requests that this Court affirm the findings of fact and conclusions of law of the district court in full, without the need for further proceedings on remand.

Dated this 17th day of July 2020.

HOLLEY DRIGGS

/s/ Brian W. Boschee, Esq.

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*Attorneys of record for Respondents In-
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Jeffrey Louie*

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because: This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point font Times New Roman.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 28.1(e)(1)–(2) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

☒ Proportionately spaced, has a typeface of 14 points or more, and contains 7,986 words; or

☐ Does not exceed 40 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to

sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 17th day of July 2020.

HOLLEY DRIGGS

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the law firm of Holley Driggs, and that on this 17th day of July, 2020, the above and foregoing **RESPONDENT'S ANSWERING BRIEF** was e-filed and e-served on all registered parties to the Supreme Court E-Flex system and with the Clerk of Court.

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/s/Madeline VanHeuvelen
an employee of Holley Driggs

IN THE SUPREME COURT OF THE STATE OF NEVADA

DESERT VALLEY CONTRACTING, INC. a
Nevada corporation,

Appellant,

vs.

IN-LO PROPERTIES, a Nevada limited
liability company; EUGENE INOSE, an
individual; JEFFREY LOUIE, an individual;
DOES 1 through 10; and ROE ENTITIES 1
through 10,

Respondents,

CASE NO. 79751

Electronically Filed
Aug 25 2020 07:45 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

REPLY

From the Eight Judicial District Court, Department XV
The Honorable Joe Hardy, District Judge
District Court Case No. A-16-734351-C

APPELLANTS' REPLY BRIEF

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NRAP 26.1 DISCLOSURE

Pursuant to NRAP 26.1, the undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed:

Desert Valley Contracting, Inc. has no parent company and no publicly listed company owns 10% or more of the Appellant's stock.

This representation is made in order that the judges of this court may evaluate possible disqualification or recusal.

DATED this 20th day of August 20, 2020



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INTRODUCTION

On or about 2008, Respondent, EUGENE INOSE and IN-LO PROPERTIES, LLC (hereafter “Respondent”), built the custom residential home located at 587 Saint Croix Street, Henderson, Nevada 89012 (APN: 178-27-114-001) (hereinafter “Subject Property”) through various subcontractors. In early August, 2014, the Subject Property sustained substantial water damage due to a burst pipe. At the time, the Respondent did not reside at the Subject Property, so the leak remained undetected for an unknown amount of time. Once the leak and water damages were detected, a friend of the Respondent contacted ServPro of Henderson, to begin the clean-up of the extensive water damage. ServPro of Henderson is a completely separate corporate entity from DESERT VALLEY CONTRACTING, INC. (hereafter referred to as “Appellant”) with different ownership and different employees. ServPro of Henderson conducted the initial demolition of the water damaged property.

Thereafter, ServPro of Henderson referred Respondent to Appellant. After the Appellant and Respondent made contact, Mr. Inose and Appellant’s Employee Daniel Merritt met at the property and discussed the damage and the remodel of the property. Thereafter, on August 24, 2014, Appellant, and Respondent, entered into a Contract wherein Appellant would complete perform the remediation and perform the restoration at the Subject Property. The Contract stated that;

“The undersigned hereby transfers, assigns and conveys to Contractor his/her/their right...to the insurance proceeds...The undersigned agrees to immediately endorse and tender all drafts as produced to the Contractor. The undersigned further agrees to authorize Desert Valley Contracting Inc. to sign on its behalf and/or deposit all insurance checks that are issued to pay for the services performed pursuant to the contract.”

The Respondent never endorsed or tendered the payment drafts he received from the insurance company, FIREMANS FUND, to the Appellant as required by the Contract. Respondent also never allowed the Appellant to sign on Respondent’s behalf or deposit the insurance checks themselves. The Respondent never relinquished control of the purse strings for this project. The documents show that the Respondent doled out payments to Appellant over the course of a year, from September 2014 to September 2015.

The Contract contemplates that work may be performed outside the scope of the Insurance Claim. The Contract states twice that all uninsured work, including uninsured code-upgrade work, or any form of work not covered under Owner’s Insurance Policy would be the responsibility of the Appellant as signatory of the contract. The contract also states in multiple places that if the contractor is forced to bring suit the prevailing party would be entitled to attorney’s fees and the legal interest rate of Prime Plus Two (2) points. The contract also states that requests for

additional work must be in writing so that they can be added to the Scope of Work. The contract does not say that they need to be signed by the Appellant to be added to the Scope of Work.

Respondent insisted that the Appellant retain, wherever possible, the same contractors that were involved in the original construction. These subcontractors were not companies that the Appellant regularly hired for construction work. Respondent also insisted that Appellant retain Robert Ramirez as a supervisor for the project. Mr. Ramirez had served as a supervisor during the original construction of the property. Mr. Ramirez's salary of approximately Ninety-Eight Thousand, Four Hundred, Seventeen Dollars and Sixty Cents (\$98,417.60) was paid out of the insurance proceeds. The Court has heard testimony that if Appellant did not acquiesce to hiring Mr. Ramirez then Appellant would be removed from the job.

In September of 2014, Appellant began reconstruction of the Subject Property. During the demolition and reconstruction of the house, several revised budgets were presented to Respondents insurance company, FIREMAN'S FUND. During the performance of the Contract, Respondent chose to have several upgrades in materials and work added onto the Contract's scope of work, which increased the original Contract's scope of work and cost. Basically, the Respondent took this opportunity to remodel home on the insurance company's dime. These changes also caused delays in construction. The Court has heard testimony regarding the upgraded

wine room, the upgrades to the pool area, and Master Bathroom. Additionally, other uncontrollable delays bedeviled the reconstruction, in particular, marble had to be imported from Tuscany and was not available for Three (3) months while it was held up in customs due to a dock workers labor dispute.

The testimony and exhibits have shown that the Respondent was a ubiquitous presence on the Property during the reconstruction. Mr. Inose received constant emails and telephone calls from the Appellant and from Rob Ramirez. He spoke directly to subcontractors as well and was intimately aware of Change Orders and the status of the project at all times. It is of course his right as owner to be involved in the reconstruction of his home, but he cannot then feign ignorance later when the bill comes due.

On June 19, 2015, the Respondent was sent a copy of the Final Estimate and among other documents in an email from Brian Lynch of FIREMAN'S FUND. Against the advice of the Appellant, the Respondent closed out the claim following the production of this estimate. Then, in October 2015, the Appellant could no longer abide by the Respondent's demands for the upgrades and changes that were overrunning the insurance proceeds that were designed to reconstruct, not improve the residence.

On November 18, 2015, the parties and their attorneys met at Appellant's counsel's offices and attempted to reach a compromise to complete the project.

Following the meeting, Appellant believed that an agreement was made to pay off the subcontractors change orders and complete the project. However, following the meeting the Respondent barred the Appellant from the Subject Property and negotiated with the subcontractors directly. On December 7, 2015 sent Appellant correspondence terminating their contract. The Contract specifically states that should the Client (Respondent) terminate the Contractor (Appellant) after the work has begun, the Respondent is responsible for any fees and costs plus the profit the Appellant would have made had the Respondent not repudiated the Contract. To date, the Respondent has not paid that amount. Following the termination, the Appellant attempted to continue negotiations through their counsel to no avail and filed this action on March 31, 2016.

A Bench Trial held on April 8, 9, 10, and 11, 2019, June 19, 20 and 21, 2019, and July 24, 2019. On July 24, 2019, the Court rendered its verdict wherein the Court did not award damages to either party. The Notice of Entry of Findings of Fact and Conclusions of Law was filed on September 4, 2019. DVC filed a timely Notice of Appeal on September 30, 2019. INOSE had previously sent DVC an Offer of Judgment in the amount of Fifty Thousand Dollars and Zero Cents (\$50,000.00). Therefore, on November 18, 2019, the Court Granted INOSE's Motion for Attorney's Fees and Costs based on the Courts award of no damages. If the award of damages is overturned then the Offer of Judgment is no longer satisfied.

LEGAL ARGUMENT

A. Desert Valley Contracting, Inc. Presented a Clear Calculation of Damages to the Court.

The Trial Court was clearly in error in ruling that the Appellant failed to prove its damages. The Appellant was damaged by the breach of the Respondent. The Appellant had a reasonable expectation of their profit and overhead for the project under the industry standard Ten Percent (10%) overhead and Ten Percent (10%) profit. Pursuant to the uncontradicted testimony of DVC owner Dennis Zachary, the Contract was to be performed on a “10 and 10” basis, meaning that Desert Valley was entitled to (10%) profit and (10%) overhead based on the amount Desert Valley Contract, Inc. spent on the project.

The general goal of contract damages is to provide compensation for the injured party based on the injured party’s expectation interest. 3 D. Dobbs, Law of Remedies § 12.2(1), at 22 (2d ed. 1993); Restatement (Second) of Contracts § 347cmt. a (2008). Although there are other remedies available for an injured party in a breach of contract situation, the general and traditional goals of awarding damages in a breach of contract case are aligned with the expectation/compensation remedy. Dobbs, § 12.2(1), at 22.

More specifically, “[c]ontract damages . . . are intended to give [the nonbreaching party] the benefit of his bargain by awarding him a sum of money that

will, to the extent possible, put him in as good a position as he would have been in had the contract been performed,” and no better. Restatement (Second) of Contracts § 347 cmt. a; Dobbs, supra, § 12.2(1), at 23; Colorado Env’t, Inc. v. Valley Grading Corp., 105 Nev. 464, 470, 779 P.2d 80, 84 (1989) (“It is fundamental that contract damages are prospective in nature and intended to place the nonbreaching party in as good a position as if the contract had been performed.”); Dalton Properties, Inc. v. Jones, 100 Nev. 422, 424, 683 P.2d 30, 31 (1984) (stating that placing the nonbreaching party in as good a position as if the contract had been performed is the “object of compensatory damages”).

In this matter, the Parties Contract states that if the Client terminates the contract before the work is completed, they shall be responsible for the profit the Contractor would have been made had the contract not been repudiated. The Appellant’s cost for the project was One Million, Twelve Thousand, Four Hundred, Fifty One Dollars and Eight Cents (\$1,012,451.08)(Appendix Volume VII Exhibit 14, JNT0001170). At a Twenty (20%) profit, the Appellant is entitled to a total of One Million, Two Hundred Fourteen Thousand, Nine Hundred Forty One Dollars and Thirty Cents (\$1,214,941.30). The Appellant was paid approximately One Million, One Hundred, Twenty-Five Thousand, Seven Hundred Forty Three Dollars and Seventy-Two Cents, (\$1,123,743.72). Therefore, Appellant has been damaged

in the amount of approximately Eighty-Nine Thousand, One Hundred Ninety Seven Dollars and Fifty Eight Cents (\$89,197.58).

The final estimate sent to FIREMAN'S FUND has nothing to do with the Appellant's claim for damages. The claim for damages is based on the amount that Appellant paid. There is nothing inflated about the Job and Billing Detail (Appendix Volume VII, Exhibit 13, JNT0001139). At no point in the trial did opposing counsel argue that these amounts were not paid. These amounts reflect what DVC actually paid out for labor, vendors, subcontractors, and other costs. The fact that they received a portion of their profit and overhead does not mean they were not damaged. They paid out One Million, Twelve Thousand, Four Hundred, Fifty One Dollars and Eight Cents (\$1,012,451.08). They received approximately One Million, One Hundred, Twenty-Five Thousand, Seven Hundred Forty Three Dollars and Seventy-Two Cents, (\$1,123,743.72) in payments. They are still owed Eighty-Nine Thousand, One Hundred Ninety-Seven Dollars and Fifty Eight Cents (\$89,197.58), it's really just as simple as that.

B. The Contract Should Be Interpreted Based on the Parties Intent

A contract should not be construed so as to lead to an absurd result. Reno Club v. Young Inv. Co., 64 Nev. 312, 182 P.2d 1011 (1947). The Doctrine of Scrivener's Error is well established Nevada Law. "It is undisputed that our courts will reform contracts and deeds in accordance with the true intention of the parties

thereto, when their intention has been frustrated by a mistake.” Ruhling v. Hackett, 1 Nev. 360; Holman v. Vieira, 53 Nev. 337, 300 P. 946 (1931). The Doctrine of Scrivener's error is a legal principle which permits a typographical error in a written contract to be corrected by parol evidence if the evidence is clear, convincing, and precise. The contract law doctrine of scrivener’s error or mutual mistake allows a court of equity to reform a contract if a written agreement does not reflect the clear intent of the parties due to a drafting error. 27 RICHARD A. LORD, WILLISTON ON CONTRACTS § 70:93 (4th ed.) The Court called upon to interpret contract is not limited to express terms of written contract, and may instead examine circumstances surrounding parties’ agreement in order to determine true mutual intentions of parties. Hilton Hotels Corp. v. Butch Lewis Prod., Inc., 107 Nev. 226, 808 P.2d 919 (1991). In its interpretation of a contract, trial court may examine both words and actions of parties. Fox v. First W. Sav. & Loan Ass’n, 86 Nev. 469, 470 P.2d 424 (1970).

In this matter, the contract created between the Respondent and the Appellant in the form of the August 14, 2014 Work Authorization and Contract to Perform Scope of Work Outlined in Estimate contained an error (Appendix Volume VII, Exhibit 15, JNT001137). The document states that in the event the Client repudiated the contract after work has begun on the project that, “the Client shall be responsible for any and all fees and costs associated with the work performed, plus the profit

that the *client* (italics added) would have made on the job had Client not repudiated the contract.” Here, clearly the document should state that, “the Client shall be responsible for any and all fees and costs associated with the work performed, plus the profit the Contractor would have made on the job had Client not repudiated the contract.” Clients and/or homeowners do not make a profit off a contractor’s rebuild of their property. Secondly, the Client would not be entitled to profit if they repudiated the contract, but also be responsible for fees and costs. The only sensible was to interpret that provision is that it is an error and that the word Contractor should be substituted for client where indicated above. Any other interpretation is non-sensical and is counter to the conduct and understanding of the parties.

C. Damage Calculation Was Provided to Respondent

The Respondent’s argument regarding NRCP 16.1 disclosures is a non-issue. The Respondents have been aware of the Appellants damage calculation for over Two (2) years. Their belief that NRCP 37 calls for a self-executing sanction is misguided. NRCP 37 requires that a party must first move for an order compelling disclosure or discovery. Sanctions can apply if, after making attempt to resolve the issue, a party files a motion and brings it before the court of Discovery Commissioner. The self-executing automatic sanction language cited by the Respondent applies to the Federal Rules of Civil Procedure not Nevada.

Rule 37. Failure to Make Disclosures or to Cooperate in
Discovery; Sanctions

(a) Motion for an Order Compelling Disclosure or Discovery.

(1) In General. On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.

(2) Appropriate Court. A motion for an order to a party must be made in the court where the action is pending. A motion for an order to a nonparty must be made in the court where the discovery is or will be taken.

(3) Specific Motions.

(A) To Compel Disclosure. If a party fails to make a disclosure required by Rule 16.1(a), 16.2(d), or 16.205(d), any other party may move to compel disclosure and for appropriate sanctions.

(B) To Compel a Discovery Response. A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:

(i) a deponent fails to answer a question asked under Rule 30 or 31;

(ii) a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a)(4);

(iii) a party fails to answer an interrogatory submitted under Rule 33; or

(iv) a party fails to produce documents or fails to respond that inspection will be permitted — or fails to permit inspection — as requested under Rule 34.

(C) Related to a Deposition. When taking an oral deposition, the party asking a question may complete or adjourn the examination before moving for an order.

(4) Evasive or Incomplete Disclosure, Answer, or Response. For purposes of Rule 37(a), an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond. A party's production of documents that is not in compliance with Rule 34(b)(2)(E)(i) may also be treated as a failure to produce documents.

The following calculation was disclosed to the Respondent on June 17, 2017 in response to their Interrogatory. They have had this information for almost Two (2) years. At no point did the Respondent ask for clarification, conduct an EDCR 2.34 hearing, or file a motion with the Discovery Commissioner.

“INTERROGATORY NO. 2:

Please specify in detail Your calculation of damages in this Action against Inose.

RESPONSE TO INTERROGATORY 2:

Please see PLT000685-706, Job Billing and Cost Detail. Appellant was paid approximately One Million, One Hundred, Twenty-Five Thousand, Seven Hundred Forty Three Dollars and Seventy-Two Cents, (\$1,125,743.72). Appellant is entitled to One Million, Two Hundred Fourteen Thousand, Nine Hundred Forty One Dollars and Thirty Cents (\$1,214,941.30). Therefore, Appellant has been damaged in the amount of approximately Eighty-Nine Thousand, One Hundred Ninety Seven Dollars and Fifty Eight cents (\$89,197.58). Discovery is continuing. Responding party reserved the right to supplement this response.”

This Interrogatory Response was e-filed and sent to the Respondent. The Respondent was provided the documents that the Appellant was relying upon to determine that amount. If the Respondent needed clarification, they should have sought it by motion over a year ago. The Respondents also had the opportunity to depose the President of DVC, Dennis Zachary, if they wanted clarification on damages and failed to do so.

The Respondent raised this same argument in their Trial Memorandum and the Court did not consider it in the Findings of Fact and Conclusions of Law (Appendix Volume VII Exhibit 14, JNT0001161). The Appellant disclosed its damage calculation and the Trial Court did not preclude them from arguing damages. The fact that it was disclosed in an Interrogatory instead of labeled as 16.1 disclosure does not alter the fact that it was disclosed to the Respondent. They were provided with a computation of damages and the documents that formed the basis of that

calculation as required by 16.1(a)(1)(A)(iv) on June 17, 2017. They knew full well what the damage allegations were and the amount.

The Amount owed has nothing to do with the final bid that was sent to FIREMAN'S FUND. The damages that are owed to the Appellant are strictly based on the profit and overhead DVC is owed based on the amount they spent. The fact that the Costs were paid does not render DVC whole again. DVC is entitled to their cost and overhead had Respondent not repudiated the contract.

D. The Respondent is Not an Unsophisticated Party and Was Aware of The Change Orders.

The Court has heard testimony from Rachelle Elliston and Daniel Merritt concerning the Respondent's interference with the Subcontractors. (Appendix VII Exhibit 14 JNT001166) The Court found that the Respondent's claim that he was unaware of the Change Orders was belied by the evidence presented at trial. (Appendix VII, Exhibit 14, JNT001166). The Respondent testified that he received emails from Appellants employees regarding Change Orders (Appendix Volume I, Exhibit 5, JNT0000157). The testimony shows that Respondent was aware of a Change Order on August 25, 2015. This testimony directly counters the Trial Court's Finding of Fact No. 39 that no written communications from Appellant were sent to Respondent prior to October 2015.

Additionally, the Respondents assertion that he is inexperienced in construction is not accurate. The Respondent oversaw original construction of the Subject Property (Appendix Volume I, Exhibit 5, JNT000007-JNT00008). Respondent is also familiar with construction litigation, having sued Ogden Drywall in Clark County District Court Case No. 09A585813. The allegation that the Respondent was taken advantage by the Appellants is preposterous. The Respondent was responsible for the cost overruns and should bear the burden for his excesses.

E. The Respondent is Solely Responsible for Closing Out the Insurance Claim With Fireman's Fund.

The Court found that the Respondent's testimony that Appellant advised him to close out the FIREMAN FUND insurance claim was not credible because it was in the best interest of Appellant to keep the claim open. (Appendix Volume VII, Exhibit 14, JNT001167). The Court is also found that the Respondent took no steps to reopen the insurance claim after it appeared that additional funds were needed. (Appendix Volume VII, Exhibit 14, JNT001168). The Respondent's claim that DVC employees advised him to close out the insurance claim is non-sensical and not supported by the evidence presented at trial.

CONCLUSION

For the foregoing reasons, the judgment of the District Court should be reversed and remanded to the District Court, and DVC should be awarded Eighty-

Nine Thousand, One Hundred Ninety-Seven Dollars and Fifty-Eight cents
(\$89,197.58) in damages against INOSE.

Date: August 20, 2020.

HURTIK LAW & ASSOCIATES

By: 

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this opening brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman and 14 point font size.

I FURTHER CERTIFY that this opening brief complies with the page or type volume limitations of NRAP 32(a)(7) because, excluding the parts of the answer exempted by NRAP 32(a)(7)(C) it is proportionally spaced, has a typeface of 14 points or more and contains 4276 words.

FINALLY, I CERTIFY that I have read this Appellant's Opening Brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be Found.

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I understand that I may be subject to sanctions in the event that the accompanying answer is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 20th day of August 2020.

HURTIK LAW & ASSOCIATES

By: 

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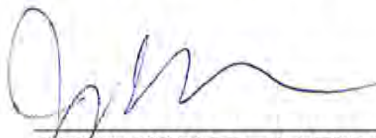
CERTIFICATE OF SERVICE

I JONATHON R. PATTERSON, HEREBY CERTIFY that I am an employee of HURTIK LAW AND ASSOCIATES, and that on the 20th day of August 2020, I caused to be served a true and correct copy of the foregoing APPELLANT'S REPLY by United States Mail by depositing a copy of the above-referenced document for mailing in the United States Mail, first class postage prepaid, at Las Vegas, Nevada, to the parties listed below at their last known mailing addresses, on the date above written:

Date: August 20, 2020

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

DESERT VALLEY CONTRACTING, INC. a
Nevada corporation,

Plaintiff,

v.

IN-LO PROPERTIES, a Nevada limited liability
company; EUGENE INOSE, an individual;
JEFFREY LOUIE, an individual; DOES 1
through 10; and ROE ENTITIES 1 through 10,

Defendants.

EUGENE INOSE, an individual;

Counterclaimant.

v.

DESERT VALLEY CONTRACTING, INC., a
Nevada corporation; DOES I through X,
inclusive, and ROE CORPORATIONS I through
X, inclusive,

Counterdefendants.

Case No.: A-16-734351-C
Dept. No.: XV

**DEFENDANTS' SUPPLEMENTAL BRIEF
ON REMAND**

**Hearing Date: June 2, 2021
Hearing Time: 10:00 a.m.**

Defendant IN-LO PROPERTIES ("IN-LO") and Defendant/Counterclaimant EUGENE
INOSE ("Inose") (collectively "Defendants"), by and through their attorneys of record, the law
firm of Holley Driggs, hereby file their Supplemental Brief on Remand from the Nevada Supreme
Court (the "Supreme Court").

This Supplemental Brief is made and based upon the papers and pleadings on file herein,
the following Memorandum of Points and Authorities, and any argument at hearing on this matter.

HOLLEY DRIGGS

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I. INTRODUCTION

Thereafter, when Inose refused to pay the balance of Desert Valley's inflated and unauthorized costs, Desert Valley instructed all of the subcontractors to stop work on the property (another breach of the contract). To have the work completed, obtain a certificate of occupancy to be able to live in the home, and avoid having liens placed on his property, Inose hired the subcontractors directly to complete the work, ultimately paying them \$256,481.46 out of his own pocket. Despite Desert Valley's breaches, and despite the fact that Inose paid Desert Valley *more* than its impermissibly-inflated costs, Desert Valley initiated suit against Inose in the Eighth Judicial District Court on March 31, 2016 to recover the "profits" it believed it was entitled to recover from Inose. In response, Inose filed its Answer and Counterclaims against Desert Valley on June 7, 2016, to recover the additional sums he was forced to pay directly to the subcontractors to complete the work on his home.

The parties proceeded to a seven-day bench trial that commenced on April 8, 2019 and continued on the following non-consecutive dates: April 9–11, 2019, and June 19–21, 2019. Throughout the trial, the Court was presented with thousands of pages of documents and the testimony of several key witnesses, including: Inose, Dennis Zachary (“Zachary,” the owner of Desert Valley), Daniel Merritt (“Merritt,” Desert Valley’s lead estimator on the project), and Rachelle Elliston (“Elliston,” Desert Valley’s operations manager on the project). Ultimately, the

1 Court ruled in favor of Inose on Desert Valley's claims, and in favor of Desert Valley on Inose's
2 counterclaims, holding that neither party had been able to establish its damages with any level of
3 certainty, given Desert Valley's failure to properly document authorized changes to the scope of
4 work throughout the project. Accordingly, the Court awarded Defendants their fees and costs under
5 NRCp 68 based on a generous offer of judgment to Desert Valley in January 2018, which Desert
6 Valley rejected.

7 Desert Valley appealed to the Supreme Court arguing, in pertinent part, that the
8 construction contract contained a scrivener's error which, if corrected, would entitle Desert Valley
9 to expected overhead and profits in the event of termination by Inose. The Supreme Court agreed
10 with Desert Valley on this single point (*leaving all of the Court's other factual findings*
11 *undisturbed*) and reversed the Court's judgment and remanded for further proceedings to
12 determine whether this single finding of fact was harmless error in light of the other established
13 facts of the case. As Defendants will demonstrate herein, Desert Valley materially breached the
14 contract first—and continued to materially breach the contract repeatedly throughout the project—
15 thereby waiving any claim to damages. Thus, the Court's error was harmless, and the same result
16 should be reached on remand.

17 **II. RELEVANT FINDINGS OF FACT AND CONCLUSIONS OF LAW**

18 Following the seven-day bench trial, on July 4, 2019, the Court entered a Minute Order
19 setting forth its critical findings of fact and conclusions of law and awarding both sides zero
20 damages. *See* Minute Order, on file herein. The Court entered its final FFCL on September 3,
21 2019. *See* FFCL, on file herein.

22 The following represent the pertinent holdings from both the Minute Order and the Court-
23 approved FFCL. For the sake of brevity and clarity, Defendants omit any of the Court's factual
24 findings that are irrelevant and/or unhelpful to the Court's consideration of the narrow issue on
25 remand. Defendants nevertheless submit that, even if the Court *were* to consider any of its other
26 prior findings of fact that are not mentioned herein, such facts would not alter the ultimate
27 conclusion previously reached by the Court.

28 ///

a. The Court's July 24, 2019 Minute Order

1. "Plaintiff and Defendants both breached the contract[.]" *See* Minute Order, bullet 1.
2. Neither Plaintiff nor Defendants "met their burden of proof, by a preponderance of the evidence, as they failed to provide evidence of the damages caused by those breaches[.]" *Id.* at bullet 2.
3. The "lack of thorough accounting on both sides contributed to the parties' failure to meet their burdens of proof[.]" *Id.* at bullet 8.
4. "Desert Valley Contracting interfered with the completion of the project, by sending out letters to their subcontractors, directing those subcontractors not to work with Eugene Inose and his decorator[.]" *Id.* at bullet 10.
5. There "was a contract in place; therefore, neither side proved-up the claim for unjust enrichment, and provided no proof of damages related to unjust enrichment[.]" *Id.* at bullet 12.
6. There "being a breach of contract, the Court did not have to get to the breach of implied covenant of good faith and fair dealing; alternatively, to the extent the Court did have to get to the breach of implied covenant of good faith and fair dealing, both sides breached the implied covenant, but failed to prove up their damages[.]" *Id.* at bullet 13.
7. Desert Valley Contracting and Eugene Inose's interference claims failed, for all of the reasons previously stated[.]" *Id.* at bullet 14.

b. The Court's September 3, 2019 Findings of Fact and Conclusions of Law

8. "Per the testimony of Zachary [owner of Desert Valley], the Contract was to be performed on a '10 and 10' basis, meaning that Desert Valley's job costs would have built in to its total an additional ten-percent to account for Desert Valley's overhead and another ten-percent to account for Desert Valley's profit." *See* FFCL at 3, ¶ 9.

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///

9. The contract provides, in pertinent part, as follows:

Should Client terminate the Contractor after work has begun, but not completed in full, the Client shall be responsible for any and all fees and costs associated with the work performed, plus the profit that the client would have made on the job had Client not repudiated the contract.

Contract, Ex. 560 (hereinafter, the “Termination Provision”); FFCL at 3, ¶ 7.¹

10. “Per Merritt’s [lead estimator] testimony, an initial bid for the project was completed on or around November 17, 2014 and was provided to Fireman’s Fund to coordinate an anticipated scope of work and release of insurance proceeds.” *See* Inose Full Bid3 (the “November Bid”), Exhibit 266; FFCL at 4, ¶ 22.

11. “The November Bid includes a line item total job cost of \$1,035,605.74, plus 10% overhead in the amount of \$103,561.15, plus 10% profit in the amount of \$103,561.15, and material sales tax of \$31,371.63, for a grand total claim of \$1,274,099.67.” *See* November Bid, Exhibit 266 at DVC000662; FFCL at 4, ¶ 23.

12. “Inose, Merritt, and Zachary all testified that Desert Valley had consistently represented to Inose that Desert Valley could offset the costs of certain changes in scope by removing other items that were part of the original scope of work and that doing so would not affect the total cost of the project. This included, but was not limited to, the removal of the sauna which had previously been on the Property offset by an expansion and various upgrades to the wine room.” FFCL at 5, ¶ 24 (emphasis added).

Cost Overruns

13. “Merritt testified that there were many cost overruns on the project which included, but were not limited to, an over-order of approximately eight (8) pallets of tile which Merritt testified were ordered based on measurements provided by Summit Tile and Stone, one of the subcontractors working for Desert Valley.” FFCL at 5, ¶ 25.

¹ The Supreme Court held that it was error to construe the typo in contract against Desert Valley. *See* Order of Reversal and Remand (the “Remand Order”) at 4. Thus, the contract should be construed to entitle Desert Valley to the profits it would have received in the event the contract was repudiated, *if any*. This is the only finding of fact by the Court that has been disturbed on appeal.

Change Orders to the Scope of Work

14. “The Contract further provides that ‘[i]f any requests for additional work to be performed are made during the scope of the job, all such requests **must be put in writing** so that these costs will be added to the Scope of Work.’” Contract, Ex. 560 (emphasis added); FFCL at 5, ¶ 30.

15. “Zachary further testified that without a written, approved, and signed change order, Desert Valley would have no obligation to and would not pay the subcontractor for the change to its scope of work.” FFCL at 6, ¶ 33.

16. “Zachary further testified that the process of requiring a written and approved change order signed by the owner (in this case Inose) would be necessary to obligate Inose to pay for any changes to Desert Valley’s scope of work.” FFCL at 6, ¶ 34 (emphasis added).

17. “Zachary and Merritt further testified that Desert Valley did not obtain Inose’s approval or signature on any change orders throughout the course of the Project.” FFCL at 6, ¶ 35 (emphasis added).

18. “The majority of the subcontractor change orders dated before July 3, 2015 are approved by and/or signed by Merritt.” *See* Exhibit 576 at IN-LO00255; Exhibit 82 at DVC000104; Exhibit 83 at DVC000105; Exhibit 90 at DVC000120; FFCL at 6, ¶ 36.

19. “No change orders that were signed or approved by Inose were presented as evidence at trial.” FFCL at 6, ¶ 38 (emphasis added).

20. “Rachelle Elliston and Daniel Merritt testified that Inose was aware of the Change Orders and refused to sign them[.]” FFCL at 6, ¶ 40.

The Insurance Claim

21. “The Contract further provides that the ‘Contractor agrees to perform the insured work as approved by the Insurance Company and accept insurance proceeds as payment for the insured work.’” Contract, Ex. 560; FFCL at 7, ¶ 42.

27. “On June 5, 2015, Merritt emailed Bryan Lynch of Fireman’s Fund and indicated that Desert Valley was at the ‘agreed contract amount with no needed change orders, and no more change orders from all of the subcontractors which had submitted their bids.’” Exhibit 571 at IN-

LO00074; FFCL at 7, ¶ 44.

28. “Merritt further represented in his email to Fireman’s Fund that Desert Valley ‘will be able to complete the project for this amount.’” Exhibit 571 at IN-LO00074; FFCL at 7, ¶ 45.

29. “The subject-line of the email states ‘Agreement on amount of \$1,321,133.12.’” Exhibit 571 at IN-LO00074; FFCL at 7, ¶ 46.

30. “The estimate attached to Merritt’s email which is titled as a Final Bid with a completed date of 4/27/15 includes work (such as the Sauna Bath for example) which Merritt, Inose, and Zachary all confirmed was removed from the scope of the Project and was never done.” Exhibit 571 at IN-LO00094; FFCL at 7, ¶ 47.

Post-Insurance Claim

31. “Inose and Merritt testified that on or about July 3, 2015, Desert Valley provided to Inose a waiver and release which included a notation signed by Daniel indicating ‘No change orders as of 07/03/2015.’” See Unconditional Waiver and Release on Progress Payment (the “Waiver”), Exhibit 562. FFCL at 8, ¶ 52.

32. “The Waiver provides in capitalized text as follows:

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.”

FFCL at 8, ¶ 53.

33. “Elliston testified that she signed an invoice dated September 4, 2015 which includes the following handwritten notation: ‘Total Contract to Complete House \$1,321,331.27.’” Desert Valley Invoice dated 9/4/15, Exhibit 564; FFCL at 8, ¶ 55.

34. “Elliston and Zachary testified that Desert Valley sent a letter dated November 16, 2015 to all subcontractors working on the project directing them to cease working on the Property.” See Letter dated November 16, 2015, Exhibit 567; FFCL at 8, ¶ 56.

35. “On November 24, 2015, Merritt forwarded to Inose this list [prepared for Desert Valley’s attorney] of what Desert Valley purported to be the differences between its estimated and

1 actual costs to complete the project. The total amount of the asserted differences was
2 approximately \$125,763.26.” See November 23, 2015 Email, Exhibit 568; FFCL at 8–9, ¶ 58. See
3 also FFCL at 8, ¶ 57.

4 36. “The list delineates between the estimate and finals costs and does not specify what
5 amounts are accounted for through written, approved, and signed change orders and what amounts
6 are not.” See Exhibit 568; FFCL at 9, ¶ 59.

7 37. “Merritt testified that, although he had been receiving and approving change orders
8 throughout the course of the Project, and notwithstanding that Desert Valley had indicated to Inose
9 in writing in July 2015 that there were no change orders and again in September 2015 that the cost
10 to complete the house was \$1,321,331.27, Merritt always intended to prepare and submit one large
11 master change order to Inose toward the end of the Project.” FFCL at 9, ¶ 60.

12 38. “No evidence was presented at trial or any written communications to Inose
13 indicating Desert Valley’s intent to compile and submit a large master change order at the end of
14 the project.” FFCL at 9, ¶ 59 (emphasis added).

15 39. “Inose testified that on or around December 8, 2015, he terminated the Contract
16 with Desert Valley.” FFCL at 9, ¶ 62.

17 40. “Merritt confirmed through testimony that at the time Desert Valley ceased working
18 on the Property, the Project was approximately eighty-five (85%) done.” FFCL at 9, ¶ 64
19 (emphasis added).

20 **Damages Calculation**

21 41. “Inose testified that after Desert Valley left the project uncompleted, with the work
22 incomplete and the Property not yet in livable condition, and in order avoid any liens from being
23 placed on the Property, Inose was forced to engage many of the subcontractors directly to complete
24 the work and to pay the subcontractors directly.” FFCL at 9, ¶ 65.

25 42. “During the course of the Project, Inose paid to Desert Valley the total amount of .
26 . . \$1,123,734.87.” See Checks, Exhibit 585; FFCL at 10, ¶ 69.

27 43. “Zachary confirmed through testimony that in total Desert Valley incurred costs in
28 the amount of . . . \$1,012,451.08.” See Job Cost and Billing Report, Exhibit 274 at DVC000706;

FFCL at 10, ¶ 71.

44. “Zachary and Elliston testified that Desert Valley was paid for the entirety of its costs incurred as well as a portion of its profit and overhead.” FFCL at 10, ¶ 72 (emphasis added).

45. “Inose paid directly to subcontractors the total amount of . . . \$256,481.46 to complete work for which Desert Valley had already been paid.” *See* Checks and Credit Card Statements, Exhibits 586 through 595; FFCL at 10, ¶ 73.

22. “Inose paid Desert Valley \$1,123,734.87 to complete approximately 85% of the Project, plus an additional \$256,481.46 to subcontractors directly to finish the project, for a sum total paid by Inose of \$1,380,216.33.” FFCL at 10, ¶ 74.

Conclusions of Law as to the Parties’ Breaches of the Contract

23. “Desert Valley breached its obligations under the Contract by failing to complete the work in a good and workmanlike manner including, but not limited to, by causing damage to the Property unrelated to the restoration and incorporated the cost of repairs for this damage into the cost it sought to collect from Inose.” FFCL at 14, ¶ 23.

24. “Desert Valley breached its obligations under the Contract by failing to complete the scope of work and provide Inose with a fully restored property.” FFCL at 14, ¶ 24.

25. “Desert Valley breached its obligations under the Contract by failing to complete the scope of work set forth in the Contract within the confines of the Insurance Proceeds as required under the Contract.” FFCL at 14, ¶ 25.

26. “Desert Valley breached the Contract by failing to pay the subcontractors in full for work to be completed by the subcontractors.” FFCL at 14, ¶ 26.

27. “Desert Valley breached its obligations under the Contract by unilaterally approving change orders received from subcontractors and failing to obtain approval of the same from Inose.” FFCL at 14, ¶ 27.

28. “The above-referenced breaches by Desert Valley were unexcused.” FFCL at 14, ¶ 28.

29. “Inose breached the Contract by failing to forward insurance proceeds as and when received to Desert Valley.” FFCL at 14, ¶ 29.

1 30. “Inose breached the Contract by coordinating directly with the subcontractors
2 retained by Desert Valley.” FFCL at 14, ¶ 30.

3 31. “Inose paid subcontractors directly the total amount \$256,481.46 to complete work
4 but could not distinguish between what was paid to restore the property versus what was paid for
5 upgrades to the property.” FFCL at 14, ¶ 31.

6 **III. LEGAL ARGUMENT**

7 As a preliminary matter, this Court did not address the scrivener’s error (the sole issue upon
8 which the Court has been reversed) in its Minute Order, which relayed to the parties the Court’s
9 central findings of fact and conclusions of law following the seven-day bench trial. *See* Minute
10 Order. While the Minute Order does not override the Court’s FFCL, this merely demonstrates the
11 relative unimportance of the sole issue on remand to the Court’s prior decision.

12 Indeed, the *narrow* issue before the Court on remand is whether it committed harmless
13 error when it found that the typo in the contract (calling for “the client” to receive the profits it
14 would have made had the client not repudiated) was an ambiguity rather than a scrivener’s error.
15 *See* Remand Order at 4. In other words, could the Court still reach its ultimate conclusion—that
16 neither party is entitled to damages—despite the now-reformed language in the contract? The
17 Supreme Court held that it could not decide for itself whether this was harmless error, as this Court
18 still could have found that Desert Valley waived its right to receive its expected profit and overhead
19 by virtue of its *own* various material breaches of the contract. *Id.* (citing *Cain v. Price*, 134 Nev.
20 193, 196, 415 P.3d 25, 29 (2018) and *Westinghouse Elec. Corp. v. Garrett Corp.*, 601 F.2d 155,
21 158 (4th Cir. 1979)). As Defendants will show, that is precisely what happened.

22 While the Court’s prior holding with regard to the “scrivener’s error” in the contract was
23 at the time one of the more simple and straightforward bases upon which to deny Desert Valley
24 any additional sums under the contract, this was only one of several independently sufficient
25 reasons to deny Desert Valley its purported damages. For the reasons that follow, the reformed
26 language of the contract has no bearing on the Court’s prior ruling, and Desert Valley is still not
27 entitled to any additional sums from Defendants.

28 ///

1 **a. Desert Valley is not entitled to additional payment, as it completed 85% of the**
2 **project and was paid more than 85% of the contract price**

3 First, without the need to consider any additional facts or points of law, the Court can
4 simply look to the overall contract price (\$1,321,331.27², as confirmed by Desert Valley) and the
5 percentage of the project that was completed before Desert Valley walked off the job (85%, as
6 confirmed by Desert Valley) to determine that Desert Valley was paid commensurately for the
7 work it performed.

8 Based on the Court’s prior, undisturbed findings of fact, it is undisputed that Inose paid to
9 Desert Valley a total of \$1,123,734.87 for its work. FFCL at 10, ¶ 69. It is also undisputed that
10 Merritt, the lead estimator on the job, testified that when Desert Valley stopped working on the
11 project, the project was approximately 85% complete. FFCL at 9, ¶ 64 and 10, ¶ 74. Finally, it is
12 indisputable that 85% of \$1,321,331.27 equals **\$1,123,131.58**. Thus, because Inose paid
13 **\$1,123,734.87**, Inose arguably *overpaid* Desert Valley by \$603.29. Thus, *even if* Desert Valley is
14 entitled to recover its expected profits and overhead as a result of Inose’s terminating the contract,
15 Desert Valley has already received such profit and overhead based on the percentage of work it
16 actually completed, as compared to the overall contract price (which *included* profit and overhead
17 and contemplated a *finished* product³). See FFCL at 3, ¶ 9. Equitable principles support this
18 conclusion, given Desert Valley’s material breaches of the contract and failure to complete the full
19

20 ² Desert Valley’s estimate of the total cost of the project varied somewhat between June 2015 and
21 September 2015. For example, on June 5, 2015, Merritt emailed Bryan Lynch of Fireman’s Fund
22 and indicated that the total contract price for the project was \$1,321,113.12, and that no change
23 orders would be submitted. FFCL at 7, ¶¶ 44–46. Then, on June 19, 2015, Fireman’s Fund emailed
24 Inose to relay the “final estimate” for the project of \$1,320,429.28. FFCL at 7, ¶ 48. The latest
25 (and highest) contract price for the project relayed by Desert Valley took place on September 4,
26 2015, when Elliston signed an invoice including the following handwritten notation: “Total
27 Contract to Complete House \$1,321,331.27.” FFCL at 8, ¶ 55. To avoid any disputes as to the
28 contract price, Defendants are willing to assume that the highest contract price quoted by Desert
29 Valley (\$1,321,331.27) is the operative contract price for purposes herein.

30 ³ A “householder who remodels his home is, usually, committing himself to one plan and one
31 result, not a series of unrelated projects.” *Fuller v. United Elec. Co.*, 70 Nev. 448, 453, 273 P.2d
32 136, 138 (1954).

1 scope of work. *See Westinghouse Elec. Corp. v. Garrett Corp.*, 601 F.2d 155, 158 (4th Cir. 1979)
2 (in awarding damages based on a termination provision in a contract that both parties breached,
3 the court may “*balance the fault of the parties and make an equitable adjustment in awarding*
4 *damages.*”) (emphasis added).

5 Anticipating Desert Valley’s argument on remand, Defendants submit that Desert Valley
6 should be held to its latest-quoted contract price estimate regardless of its actual costs, which
7 totaled \$1,012,451.08 (again, far less than what it received from Inose). By its own course of
8 conduct, Desert Valley assured both Inose and Fireman’s Fund that the total cost of the project
9 would be no more than \$1,321,331.27, and that *no change orders would be necessary*. FFCL at 7,
10 ¶¶ 44–46, 48; 8, ¶ 55. It further assured Inose that any changes to the scope of work could be offset
11 by making other adjustments throughout the project, which the Court found necessarily precluded
12 a finding of thorough accounting by Desert Valley (rendering its asserted damages speculative, at
13 best). *See* FFCL at 5, ¶ 24; Minute Order at bullet 8. Notably, Desert Valley’s continuous
14 assurances that any changes could be offset are what prompted Inose’s unwillingness to sign
15 Desert Valley’s change orders, which Desert Valley presented to him *only after* the work had been
16 completed and after the insurance claim had been closed. Finally, because “[n]o evidence was
17 presented at trial or any written communications to Inose indicating Desert Valley’s intent to
18 compile and submit a large master change order at the end of the project,” and indeed no change
19 orders signed by Inose were presented at trial even though the contract clearly requires that any
20 and all change orders be in writing, Desert Valley has waived the right to make additional upward
21 adjustments to the overall contract price of \$1,321,331.27. *See* FFCL at 9, ¶ 59; 6, ¶ 38; 5, ¶ 30.
22 This is particularly so since Desert Valley materially breached the contract, thereby forcing Inose
23 to engage and pay the subcontractors himself to complete the remainder of the work, obtain a
24 certificate of occupancy, and avoid mechanics liens being placed on his property. FFCL at 9, ¶ 65.

25 Even taking Merritt and Elliston’s testimony that “Inose was aware of the Change Orders
26 and refused to sign them” as true, this speaks to Desert Valley’s affirmative representations
27 throughout the project that it could offset the costs of certain changes in scope by removing other
28 items that were part of the original scope of work and that doing so *would not affect the total cost*

1 of the project. See FFCL at 6, ¶ 40; 5, ¶¶ 24, 30. Indeed, Inose refused to sign the change orders
 2 based on Desert Valley’s representations as to offsets, and the purported change orders were never
 3 forwarded to Fireman’s Fund—the sole source of funding for the project under the contract. FFCL
 4 at 7, ¶ 42 (Contract, Ex. 560). Only when Desert Valley realized that it would not have sufficient
 5 funding to complete the project—after the insurance claim was closed—and thereafter attempted
 6 to present Inose with one large change order towards the end of the project (contrary to its prior
 7 representations) did the issues described herein arise. See FFCL at 9, ¶¶ 60–61. Thus, based on its
 8 own conduct, Desert Valley should bear any risks associated with performing work not subject to
 9 a signed change order, to the extent such costs could not be offset, as promised by Desert Valley.

10 Ultimately, Inose paid Desert Valley *more than* 85% of its stated contract price to complete
 11 approximately 85% of the work. And with only 85% of the house complete as of November 2015
 12 when Desert Valley instructed the subcontractors to stop working (despite Desert Valley’s quote
 13 that the work would be done by April 2015) Inose was left without a certificate of occupancy, no
 14 place to live, and no choice but to either pay Desert Valley the surprise ransom it demanded for
 15 completion or hire the subcontractors directly to finish the work. In light of Desert Valley’s
 16 material breaches of the contract to that point, Inose chose the latter option, terminated the contract,
 17 and engaged the subcontractors directly. As the Court ultimately found, Desert Valley could not
 18 thereafter demonstrate by a preponderance of the evidence that it was entitled to any additional
 19 payment.

20 ***b. Desert Valley is not entitled to damages by virtue of its own material breaches of***
 21 ***the construction contract***

22 To the extent the Court finds the foregoing argument to be inconclusive, the legal principles
 23 cited by the Supreme Court in its Remand Order also weigh in Defendants’ favor. Defendants
 24 anticipate that Desert Valley will argue that, based on Inose’s December 2015 termination of the
 25 contract, the newly-reformed contract now entitles it to its expected overhead and profit, which is
 26 calculated on a “10 and 10” basis, based on the total job costs. See FFCL at 3, ¶ 7 (Termination
 27 Provision); FFCL at 3, ¶ 9 (explaining “10 and 10” basis). To illustrate, Defendants expect Desert
 28 Valley to argue that, because its costs incurred throughout the project totaled \$1,012,451.08, and

1 10% of that sum equals \$101,245.11, it is purportedly entitled to \$101,245.11 in profits, and
 2 \$101,245.11 in overhead, for a total amount of \$1,214,941.30 that it expected to receive from
 3 Inose.⁴ Thus, Desert Valley’s position will likely be that it is entitled to the difference between
 4 \$1,214,941.30 and \$1,123,734.87 (the amount actually paid by Inose).

5 However, as the Supreme Court pointed out, when “parties exchange promises to perform,
 6 one party’s material breach of its promise discharges the non-breaching party’s duty to perform.”
 7 *Cain v. Price*, 134 Nev. 193, 196, 415 P.3d 25, 29 (2018) (citing Restatement (Second) of
 8 Contracts § 237 (Am. Law Inst. 1981)); Remand Order at 5. Additionally, the Supreme Court
 9 recognized in its Remand Order that under “general contract law, courts have held that in some
 10 instances where both parties are at fault (or in default) neither may recover.” *Westinghouse Elec.*
 11 *Corp. v. Garrett Corp.*, 601 F.2d 155, 158 (4th Cir. 1979) (citing 6 Williston, Contracts s 882 (3d
 12 ed. 1962)); Remand Order at 5. The Supreme Court thus remanded the case for further proceedings,
 13 as “the court did not determine *who breached first* or if the breaches were *mutual*, thereby
 14 precluding relief.” Remand Order at 5 (emphasis added).

15 Critically, this Court has already held that Desert Valley inexcusably breached the contract
 16 in numerous ways from virtually day-one of the project, before Inose ever breached. *See* FFCL at
 17 14, ¶¶ 23–28. Its first breach—which relates directly to its inability to establish its damages by a
 18 preponderance of the evidence—occurred when Desert Valley promised Inose that certain changes
 19 to the scope of work could be offset in other areas, while at the same time unilaterally approving
 20 change orders received from the subcontractors and failing to obtain Inose’s written authorization
 21 via a signed change order. *See id.* at 5, ¶ 24; 14, ¶ 27; 6, ¶ 35. As Inose, Merrit, and Zachary all
 22 testified, this happened consistently throughout the project. *Id.* at 5, ¶ 24. It is for this very reason
 23

24 ⁴ Indeed, this is the only argument Desert Valley *can* make, as this was its theory of recovery at
 25 trial. *See* Desert Valley’s Trial Brief at 17, on file herein. As such, it has waived any other theories
 26 of recovery on remand. *See Nationstar Mortgage, LLC v. Sahara Sunrise Homeowners Ass’n*,
 27 215CV01597MMDNJK, 2020 WL 6729076, at *3 (D. Nev. Nov. 16, 2020) (refusing to consider
 28 new arguments post-appeal other than those specifically instructed by the appellate court); Remand
 Order at 5 (listing several narrow inquiries related to the scrivener’s error and instructing that
 “[t]hese are questions of fact for the district court to determine on remand,” thus implying the
 exclusion of any additional theories or issues of fact).

1 that this Court held Desert Valley had failed to maintain “thorough accounting” such that it could
2 not meet its burden of proof to establish its damages. *See* Minute Order at bullet 8. This breach
3 was material, and precluded this Court’s ability to award either side damages.

4 Desert Valley also breached the contract when it failed to pay the subcontractors in full for
5 work completed by them and thereafter instructed the subcontractors to stop working on the project
6 on November 16, 2015. FFCL at 14, ¶ 26; 8, ¶ 56. This resulted in Inose’s having to hire the
7 subcontractors directly to finish the work—paying the subcontractors a total of \$256,481.46 of his
8 own money in the process. FFCL at 10, ¶ 74. This material breach is the reason why Inose brought
9 counterclaims against Desert Valley. And although the Court held that Inose was not entitled to
10 recovery on this sum because he could not distinguish what was paid to restore the property from
11 what was paid for upgrades, neither could Desert Valley distinguish the same for purposes of
12 showing that Inose paid less than what he still owed Desert Valley to subcontractors for the cost
13 to restore the property, thereby owing Desert Valley the remaining sum. *See Hermann v. Varco-*
14 *Pruden Bldgs.*, 106 Nev. 564, 567, 796 P.2d 590, 592 (1990) (“In Nevada, if a party has
15 substantially performed, it may recover the full contract price *minus the necessary expenses to*
16 *complete the bargained for performance.*”) (emphasis added). This mutual failure on the part of
17 both parties further precluded the Court’s ability to assess damages to either side.

18 Only after *all* of the foregoing breaches by Desert Valley did Inose finally terminate the
19 contract on December 8, 2015, thereby triggering the Termination Provision upon which Desert
20 Valley’s position relies. FFCL at 9, ¶ 62. This act also led to Desert Valley’s final and most
21 egregious breach, which is its failure to complete the full scope of work, and failing to complete
22 the work it *did* do in a good and workmanlike manner (and in doing so, causing damage to Inose’s
23 property and then improperly attempting to incorporate the cost of repairs for the damage into the
24 sum it sought to collect from Inose). FFCL at 14, ¶ 23. Just like the foregoing breaches by Desert
25 Valley, this improper cost-shifting made it impossible for the Court to reach an accurate costs
26 figure, and thus an accurate calculation of either party’s damages, if any. Moreover, Desert Valley
27 should bear the repair costs and the costs of the over-ordered materials that remain sitting in Inose’s
28 garage. *See* FFCL at 5, ¶ 26; *Hermann*, 106 Nev. at 567, 796 P.2d at 592 (“Therefore, because the

subcontract does not have a provision allocating which party should bear the risk of loss for delivered but uninstalled materials, the risk of loss is borne by [the subcontractor and not the owner].”). Notably, Desert Valley added to the Court’s difficulty in determining its damages by including work in its final bids to Fireman’s Fund that was never actually completed (such as the sauna bath). FFCL at 7, ¶ 47. Desert Valley’s clumsy accounting resulted in the Court’s finding that it had failed to meet its burden of proof as to damages.

Based on Desert Valley’s numerous material breaches of the construction contract, and its other egregious conduct as described herein and throughout the seven-day bench trial, contract law and equitable principles require that the Court reach the same result as it did before, despite the Supreme Court’s narrow reversal, *i.e.*, that Desert Valley failed to establish its damages by a preponderance of the evidence, and has otherwise waived any claim thereto by its own conduct. *See Cain*, 134 Nev. at 196, 415 P.3d at 29 (“When parties exchange promises to perform, one party’s material breach of its promise discharges the non-breaching party’s duty to perform.”) (cited in Remand Order at 5); *Westinghouse Elec. Corp.*, 601 F.2d at 158 (Holding under “general contract law, courts have held that in some instances where both parties are at fault (or in default) neither may recover” and that courts may “balance the fault of the parties and make an equitable adjustment in awarding damages.”) (cited in Remand Order at 5).

c. There is no need for a new trial on remand

Defendants submit that there is no need to conduct a new bench trial to resolve the issues of fact identified by the Supreme Court. As a procedural matter, the Nevada Court of Appeals has suggested that a district court need not conduct a new trial on remand unless one is specifically ordered. *See, e.g., Brady v. Fortin*, 78836-COA, 2020 WL 362703, at *2 (Nev. App. Jan. 21, 2020) (unpublished) (Rejecting appellant’s argument that new trial was required on remand, as appellate court did not specifically order a new trial). Moreover, there are no additional factual findings necessary for the Court to answer the narrow questions posed by the Supreme Court, and this Court should decline the opportunity to address any new theories of recovery or issues of fact not already established. *See Nationstar Mortgage, LLC v. Sahara Sunrise Homeowners Ass’n*,

1 215CV01597MMDNJK, 2020 WL 6729076, at *3 (D. Nev. Nov. 16, 2020) (refusing to consider
2 new arguments post-appeal other than those specifically instructed by the appellate court).

3 As a practical matter, it would be exceedingly difficult to adequately prepare and present
4 witnesses at a new bench trial, as this matter relates to events that took place in 2014–15. Moreover,
5 there are sufficient documentary exhibits and pleadings on file for the Court to accomplish its tasks
6 on remand. Thus, Defendants respectfully request that the Court decide the issues on remand based
7 on these Supplemental Briefs and any oral argument this Court may entertain at a non-evidentiary
8 hearing.

9 **d. Because the Court’s decision as to the parties’ damages should stand, its award**
10 **of fees in favor of Defendants pursuant to NRCP 68 must be maintained**

11 On February 2, 2020, this Court granted Defendants’ Motion for Attorneys’ Fees and
12 Costs, pursuant to NRCP 68’s Offer of Judgment Rule. *See* Order Regarding Fees and Costs, on
13 file herein. Defendants offered Desert Valley the generous sum of \$50,000.00 in January 2018 to
14 resolve the dispute. *Id.* at 2, ¶ 2. Desert Valley rejected Defendants’ offer of judgment. *Id.* at ¶ 5.
15 Of course, because it failed to do better than this following the bench trial, Defendants were entitled
16 to recover their incurred fees and costs following the date of the offer of judgment. *See* NRCP
17 68(f). To the extent the Court affirms its prior ruling, Defendants’ award of fees and costs must be
18 maintained pursuant to NRCP 68.

19 **II. CONCLUSION**

20 The Supreme Court reversed and remanded this matter based on a very narrow and largely
21 irrelevant finding of fact. To hold that Desert Valley may have been entitled to its “profits” based
22 on Inose’s termination of the contract puts the cart before the horse—it assumes Desert Valley was
23 able to establish its so-called damages by a preponderance of the evidence, as required. As this
24 Court has already held, Desert Valley failed to meet its burden as to damages. Moreover, to the
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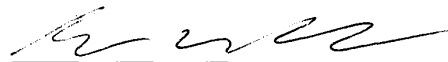
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extent Desert Valley did have any damages, it waived its right to recover them based on its various material breaches of the contract, which thereby precluded relief.

Accordingly, Defendants respectfully submit that this Court should affirm its prior decision on remand, including its award of attorneys' fees and costs in favor of Defendants.

Dated this 21st day of May, 2021.

HOLLEY DRIGGS



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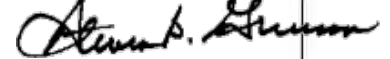
CERTIFICATE OF SERVICE

The undersigned, an employee of Holley Driggs, hereby certifies that on the 21st day of May, 2021, a copy of **DEFENDANTS' SUPPLEMENTAL BRIEF ON REMAND**, was served via electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's Odyssey E-File & Serve to the addresses below. **Pursuant to EDCR 8.05(i), the date and time of the electronic service is in place of the date and place of deposit in the mail.:**

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Attorneys for Plaintiff/Counterdefendant

/s/Madeline VanHeuvelen
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DESERT VALLEY CONTRACTING, INC.

9
10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 DESERT VALLEY CONTRACTING, INC. a
Nevada corporation,

13 Plaintiff,

14 vs.

15 IN-LO PROPERTIES, a Nevada limited liability
16 company; EUGENE INOSE, an individual;
JEFFREY LOUIE, an individual; DOES 1
17 through 10; and ROE ENTITIES 1 through 10,

18 Defendants.

19 EUGENE INOSE, an individual;

20 Counterclaimant,

21 vs.

22 DESERT VALLEY CONTRACTING, INC., a
Nevada corporation; DOES I through X,
inclusive, and ROE CORPORATIONS I through
23 X, inclusive,

24 Counter-defendants.
25
26
27
28

Case No.: A-16-734351-C
Dept. No.: XV

**PLAINTIFF/COUNTER-DEFENDANT
DESERT VALLEY CONTRACTING'S
BRIEFING AS TO SUPREME COURT
RULING**

Hearing Date: 06/02/2021

Hearing Time: 9:00 a.m.

1 Pursuant to the March 3, 2021 Order of the Nevada Supreme Court and Plaintiff/Counter-
2 Defendant, DESERT VALLEY CONTRACTING, INC. (hereinafter "PLAINTIFF"), by and through its
3 attorneys of record, CARRIE E. HURTIK, ESQ., and JONATHON R. PATTERSON, ESQ., of the Law
4 Firm of HURTIK LAW & ASSOCIATES, hereby submits its Brief for Consideration by the Court.
5 This Supplemental Brief is made and based upon the pleadings and papers on file herein, the points and
6 authorities attached hereto, any oral argument of counsel which may be permitted.
7

8 **I.**

9 **STATEMENT OF FACTS**

10 On or about 2008, Defendant, EUGENE INOSE and IN-LO PROPERTIES, LLC (hereafter
11 "Defendant"), built the custom residential home located at 587 Saint Croix Street, Henderson, Nevada
12 89012 (APN: 178-27-114-001) (hereinafter "Subject Property") through various subcontractors. In early
13 August, 2014, the Subject Property sustained substantial water damaged due to a burst pipe. At the time,
14 the Defendant did not reside at the Subject Property, so the leak remained undetected for an unknown
15 amount of time. Once the leak and damage were detected, a friend of the Defendant contacted ServPro
16 of Henderson, to begin the clean-up of the extensive water damage. ServPro of Henderson is a separate
17 corporate entity from DESERT VALLEY CONTRACTING, INC. (hereafter referred to as "Plaintiff")
18 with different ownership and different employees. **ServPro of Henderson** conducted the initial
19 demolition of the water damaged property. The Court has heard testimony that **ServPro of Henderson**
20 damaged and misplaced items during the initial demolition. The Court has also heard testimony that
21 **ServPro of Henderson** damaged driveway concrete with its equipment. Notwithstanding the
22 Defendant's failure to distinguish between the two companies, no testimony has been put forward that
23 proves that Plaintiff damaged or misplaced items.
24

25
26 Thereafter, **ServPro of Henderson** referred Defendant to Plaintiff. After the Plaintiff and
27 Defendant made contact, Mr. Inose and Plaintiff's Employee Daniel Merritt met at the property and
28 discussed the damage and the reconstruction of the property. Thereafter, on August 24, 2014, Plaintiff,

1 and Defendant, entered into a Contract wherein Plaintiff would complete reform repairs for
2 reconstruction of the Subject Property. The Contract stated that;

3 “The undersigned hereby transfers, assigns and convey to
4 Contractor his/her/their right...to the insurance proceeds...The
5 undersigned agrees to immediately endorse and tender all drafts as
6 produced to the Contractor. The undersigned further agrees to authorize
7 Desert Valley Contracting Inc. to sign on their behalf and/or deposit all
insurance checks that are issued to pay for the services performed pursuant
to the contract”. (See Exhibit 1).

8 The Defendant never endorsed or tendered the drafts he received from the Defendant’s insurance
9 company FIREMANS FUND to the Plaintiff as required by the Contract. Defendant breached the
10 agreement by failing to allow the Plaintiff to deposit the insurance checks themselves. The Defendant
11 never relinquished control of the purse strings for this project. The documents showed that the
12 Defendant doled out payments to Plaintiff over the course of a year, from September 2014 to September
13 2015, and tried to negotiate lesser payments with the Plaintiff.
14

15 The Contract contemplated that work may be performed outside the scope of the Insurance
16 Claim. The Contract states twice that all uninsured work, including uninsured code-upgrade work, or
17 any form of work not covered under Owner’s Insurance Policy would be the responsibility of the
18 Plaintiff as signatory of the contract. The contract also states in multiple places that if the contractor is
19 forced to bring suit the prevailing party would be entitled to attorney’s fees and the legal interest rate of
20 Prime Plus Two (2) points. The contract also states that requests for additional work must be in writing
21 so that it can be added to the Scope of Work. The contract does not say that the change orders needed to
22 be signed by the Plaintiff to add to the Scope of Work.
23

24 In September of 2014, Plaintiff began reconstruction of the Subject Property. During the
25 demolition and reconstruction of the house, several revised budgets were presented to Defendants
26 insurance company, FIREMAN’S FUND. During the performance of the Contract, Defendant chose to
27 have several upgrades in materials and work added onto the Contract’s scope of work, which increased
28

1 the original Contract's scope of work and cost. These changes also caused delays in construction. The
2 Court has heard testimony regarding the upgraded wine room, the upgrades to the pool area, and Master
3 Bathroom. Additionally, other uncontrollable delays bedeviled the reconstruction, in particular, marble
4 had to be imported from Tuscany and was not available for Three (3) months while it was held up in
5 customs due to a dock workers labor dispute.

6
7 The testimony and exhibits have shown that the Defendant was a ubiquitous presence on the
8 Property during the reconstruction. It is of course his right as owner to be involved in the reconstruction
9 of his home, but he cannot then feign ignorance of change orders and cost overrides later when the bill
10 comes due. Mr. Inose received constant emails and telephone calls from the Plaintiff and from the
11 Superintendent Rob Ramirez. The Defendant spoke directly to subcontractors as well and was intimately
12 aware of Change Orders and the status of the project at all times.

13
14 On June 19, 2015, the Defendant was sent a copy of the Final Estimate and among other
15 documents in an email from Brian Lynch of FIREMAN'S FUND (Exhibit 2). Against the advice of the
16 Plaintiff, the Defendant closed out the insurance claim following the production of this estimate. DVC
17 never advised Defendant INOSE to close out the insurance claim. The closing out of the claim
18 foreclosed any additional charges being paid by FIREMAN'S FUND as testified to by DVC employee
19 Daniel Merritt;

20
21 Q So you can't really go back and submit and say, oh, by the way this
22 thing we didn't tell you about is costing more than we thought it would --

23 A Yeah.

24 Q -- so we need some more money from you.

25 A Well --

26 Q Right?

27 A I mean it's weird, I've never seen it close out like this. I've never seen an
28 insurance claim not support the claim anymore. I don't know if -- there
should have been coverage -- enough coverage for the home. I just -- if it's
justifiable, I think we could have went back, and, you know, maybe asked
for -- like, not the -- not the wine room, none of that stuff.

Q Uh-huh.

A But the Lutron switches, absolutely. A missing TV, no. That's not --
that's not -- cracked tiles up above on the patio deck, yes. There are certain

1 things that I think that we could have recouped some if they would have
2 opened it back up.

3 Recorder's Transcript, Day 6. Page 116 line 1-18. (Exhibit 3).

4 On November 18, 2015, the parties and their attorneys met at Plaintiff's counsel's offices and
5 attempted to reach a compromise to complete the project. Following the meeting, Plaintiff believed that
6 an agreement was made to pay off the subcontractors change orders and complete the project. However,
7 following the meeting the Defendant barred the Plaintiff from the Subject Property and negotiated with
8 the subcontractors directly. *On December 8, 2015 Defendant sent correspondence terminating their*
9 *contract (Exhibit 4).* Furthermore, the Defendant offered testimony stating unequivocally that he
10 terminated DVC.
11

12 "Q So you terminated DVC in November of 2015 sometime,
13 correct?

14 A Like I said, I don't know if it was November, or I don't know
15 exactly what month it was. I just know it was the latter portion of the
16 year."- Recorder's Transcript Day One, Page 41, lines 4-8. (Exhibit 5)

17 There is no question that the Defendant repudiated the Contract. The Contract states that should
18 the Client (Defendant) terminate the Contractor (Plaintiff) after the work has begun, the Defendant is
19 responsible for any fees and costs plus the profit the Plaintiff would have made had the Defendant not
20 repudiated the Contract.

21 On September 4, 2019, the Court issued a Notice of Entry of Findings of Fact and Conclusions
22 of Law (Exhibit 6), wherein the Court awarded no damages to either party. This ruling was appealed to
23 the Nevada Supreme Court on September 30, 2019. On March 3, 2021 the Court reversed and remanded
24 the decision back to the District Court. The Supreme Court ruled that the ambiguity in the Contract
25 between the parties was a scrivener's error and that any determination made by the District Court against
26 DVC because of the error should be reversed.

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II.
BREACH OF CONTRACT

The Order from the Supreme Court stated that in order succeed on a breach of Contract Claim the Plaintiff must show that (1) a valid contract exists, (2) plaintiff performed its obligations; (3) defendant failed to perform its obligations; and (4) damages. See *Richardson v. Jones*, 1 Nev. 405, 408-809 (1865).

In this matter, a valid contract existed between the Plaintiff and the Defendant in the form of the August 14, 2014 Work Authorization and Contract to Perform Scope of Work (Exhibit 1). The Defendant breached the agreement several ways. First, Defendant did not turn over insurance proceeds as required by the contract. Secondly, Defendant refused to pay for work that was outside of the insurance claim. Also, *Defendant* terminated the Plaintiff from the project and then failed to pay them its fees and costs, plus profit that was due and owing pursuant to the contract.

The Plaintiff performed all duties under the contract and Defendant's breach was not excused. Defendant could not testify as to what was damaged by SERVPRO of Henderson during the initial remediation or what DVC allegedly damaged. The Plaintiff had on-site supervisors on the project, including Robert Ramirez, and Daniel Merritt. Additionally, other DESERT VALLEY CONTRACTING employees, Rachelle Elliston, visited the Subject Property several times a week. Finally, the Defendant never established what the industry standard is for general contractor supervision. Experienced State licensed subcontractors don't need someone to stand over their shoulder for Eight (8) hours to ensure they are performing their work correctly. The Court heard testimony that the Defendant kept tight control over the security codes and did not provide them to the Plaintiff. Defendant cannot then complain that the property was not properly secured if he prevented the Plaintiff from doing so.

Of course, the Plaintiff was damaged by the breach of the Defendant. The Plaintiff had a reasonable expectation of its profit and overhead for the project under the Construction industry standard

1 Ten Percent (10%) overhead and Ten Percent (10%) profit. Secondly, those damages are clearly
2 foreseeable if the Defendant refuses to pay the Plaintiff the amount due as they are spelled out in the
3 contract and on the estimates. The Court heard uncontroverted evidence regarding the “10 and 10”
4 standard from DVC President Dennis Zachary.

5
6 The general goal of contract damages is to provide compensation for the injured party based on
7 the injured party’s expectation interest. 3 D. Dobbs, Law of Remedies § 12.2(1), at 22 (2d ed. 1993);
8 Restatement (Second) of Contracts § 347cmt. a (2008). Although there are other remedies available for
9 an injured party in a breach of contract situation, the general and traditional goals of awarding damages
10 in a breach of contract case are aligned with the expectation/compensation remedy. Dobbs, § 12.2(1), at
11 22.

12
13 More specifically, “[c]ontract damages . . . are intended to give [the nonbreaching party] the
14 benefit of his bargain by awarding him a sum of money that will, to the extent possible, put him in as
15 good a position as he would have been in had the contract been performed,” and no better. Restatement
16 (Second) of Contracts § 347 cmt. a; Dobbs, supra, § 12.2(1), at 23; Colorado Env’t, Inc. v. Valley
17 Grading Corp., 105 Nev. 464, 470, 779 P.2d 80, 84 (1989) (“It is fundamental that contract damages
18 are prospective in nature and intended to place the nonbreaching party in as good a position as if the
19 contract had been performed.”); Dalton Properties, Inc. v. Jones, 100 Nev. 422, 424, 683 P.2d 30, 31
20 (1984) (stating that placing the nonbreaching party in as good a position as if the contract had been
21 performed is the “object of compensatory damages”).
22

23 In the Findings of Fact and Conclusions of Law, Page 11, Paragraph 3, the Court found that
24 Defendant INOSE was in breach of the Contract. However, the Court found that DVC failed to meet its
25 burden to show by a preponderance of the evidence the damages caused by that Breach. Based on the
26 Order from the Supreme Court, it is clear now that DVC is entitled to 10% profit and 10% overhead as
27 explained below.
28

1 The Contract states that if the Client terminates the contract before the work is completed, they
2 shall be responsible for the profit the Contractor would have made had the contract not been repudiated.
3 As stated above, the Defendant provided clear testimony that he terminated DVC from the project.

4 Pursuant to the Contract, Plaintiff DVC could be seeking damages in the amount of the upgrade
5 and change orders that occurred after they left the jobsite, the amount they would have made if the
6 contract had not been repudiated. However, the Plaintiff is only seeking damages for the amount it
7 spent on project at the *time of termination*. That amount is One Million, Twelve Thousand, Four
8 Hundred, Fifty One Dollars and Eight Cents (\$1,012,451.08)(Exhibit 7-Page 22). This is an accurate
9 and calculation of the amount DVC spent out of pocket to the Subject Property. At Ten Percent (10%)
10 profit and Ten Percent (10%) overhead, the Plaintiff is entitled to a total of One Million, Two Hundred
11 Fourteen Thousand, Nine Hundred Forty One Dollars and Thirty Cents (\$1,214,941.30). The Plaintiff
12 was paid approximately One Million, One Hundred, Twenty-Five Thousand, Seven Hundred Forty-
13 Three Dollars and Seventy-Two Cents, (\$1,125,743.72). The difference between that was paid to DVC
14 and the amount it should have been paid for the repudiated contract is Eighty-Nine Thousand, One
15 Hundred Ninety-Seven Dollars and Fifty Eight Cents (\$89,197.58). Therefore, Plaintiff has been
16 damaged in the amount of approximately Eighty-Nine Thousand, One Hundred Ninety-Seven Dollars
17 and Fifty Eight Cents (\$89,197.58).

18
19
20 **A. DVC Performed the Work in Good and Workmanlike**
21 **Manner.**

22 The Conclusions of Law wrongly determined that DVC breached by not completing the work in
23 good and workmanlike fashion, particularly by causing damage to the property unrelated to the
24 restoration of the property. This renovation project was the result of a water leak. DVC was not the first
25 company onsite. ServPro of Henderson was already on the scene removing property damaged by the
26 water leak. INOSE himself could not testify as to each companies' role in the initial clean up.

27
28 Q So you arrive in Vegas and SERVPRO is out there. Do you meet them at the site?

1 A I met them at the house, correct.

2 Q Okay. And was it SERVPRO of Henderson?

3 A I -- I just know it was SERVPRO.

4 Q Okay. So at that juncture did that start -- did they have discussion with you and you have a contract that you signed with them to start general clean up?

5 A I don't remember any contract at this time that I signed; however, they were already starting clean up. I don't know if Rommel had signed the contract or I had signed the -- I don't know.

6 Q Okay. So once they had -- did they do all of the cleanup for the water intrusion?

7 A When you say "they" meaning SERVPRO?

8 Q SERVPRO.

9 A SERVPRO, yes. SERVPRO, as far as I know, did all the cleanup. I don't know how much Desert Valley Contracting or Contractor did and how much SERVPRO did. I'm not 100 percent sure of that.

10 (Trial Testimony Day One, Pagex 11-12, Lines 24-16)(Exhibit 8)

11 Mr. INOSE has no idea what equipment or property was damaged by Servpro of Henderson in
12 the initial remediation of the house versus any damage that was caused by DVC. Nor did INOSE
13 distinguish any work that was in poor or unworkmanlike condition at the time he terminated DVC.
14 Finally, given that INOSE terminated DVC before the project was completed it would be impossible for
15 them to do a final punch list, repairs, or a construction cleaning for the project.

16 **B. DVC Did Not Breach the Contract by Failing to Complete the Scope of Work and**
17 **Provide INOSE With A Fully Restored Property.**

18 As stated above, Mr. INOSE terminated DVC before the project was completed. Therefore, they
19 could not complete the project. It's non-sensical to hold DVC responsible for not completing a project
20 that it was terminated from. Additionally, Paragraph 31 in the same Conclusion of Law states that
21 INOSE paid subcontractors directly Two Hundred, Fifty-Six Thousand, Four Hundred Eighty One
22 Dollars and Forty -Six Cents (\$256,481.46), but could not distinguish what was an upgrade or what was
23 paid to restore the property. INOSE failed to prove what was paid for extras and what was included in
24 DVC's scope of work. (Findings of Fact Conclusions of Law, Exhibit 14, Page 14-15). INOSE received
25 an upgraded house, not just a "fully restored" house.

26 ///

1 **C. DVC Did Not Breach the Contract by Failing to Complete the Scope of Work Within the**
2 **Confines of the Insurance Proceeds**

3 The Insurance proceeds would have been sufficient to complete the project had INOSE not
4 completed upgrades to the project or closed out the Insurance Claim with his Insurance Company
5 FIREMAN'S Fund. The Court's Finding of Fact stated that Inose's testimony regarding DVC advising
6 him to close out the Insurance claim was not credible and that INOSE took no steps to reopen the claim
7 after there appeared to be a need to do so. The reason that insurance claims are not closed out prior to
8 completion of work is simple, until the project is finished, additional issues may arise, during
9 construction. DVC's Owner, as Mr. Dennis Zachary, summed it up perfectly;
10

11 So that's one of the reasons we do not close out claims, because you will get hit. That's
12 why we call it a contingency fund. Every job we do, we have to go back in and turn in a
13 supplement to the insurance company. Every fire job we build that, say, is \$300,000,
14 you'll get a \$40- to \$50,000 change order at the end time. And the insurance companies
15 know that's coming. So they allow ten percent, at least ten percent of the contract to be
16 there for contingency.

17 (Trial Testimony Day 7, Page 14, Lines 18-24, Exhibit 9)

18 DVC employee, Daniel Merritt was surprised by the Close out of the Insurance claim as well,
19

20 THE COURT: When did you, if you recall, when did you learn that the claim had been
21 closed out?

22 THE WITNESS: I think it was in July. I believe it was in July when I actually learned
23 that it had been closed out to where Fireman's sent them the last check and that was that. I
24 believe it was July.

25 (Trial Testimony, Day 6, Page 166, Line 14-19, Exhibit 10)

26 Therefore, since INOSE closed the insurance claim himself he denied DVC the opportunity to
27 obtain additional funds to complete the project and it is inequitable to find them in breach under those
28 circumstances.

29 **D. DVC Did Not Fail to Pay Subcontractors In Full for Work to Be**
30 **Completed.**

31 This Conclusion of Law is incorrect (Findings of Facts and Conclusions of Law, Page 14). It
32 states that DVC failed to pay the subcontractors in full for work to be completed by the subcontractors.

1 DVC is not under an obligation to pay the subcontractors for work that has not yet been completed.
2 Furthermore, INOSE did not forward all the insurance proceeds to DVC, as he received them, as
3 required by the Contract.

4 The Contract (Exhibit 1) states the following regarding insurance proceeds;

5 Accordingly, undersigned authorize and directs their insured named below to
6 make Desert Valley Contracting a payee to all insurance drafts, for all insurance and
7 work performed by contractor on the above damaged property.

8 The undersigned also agrees to immediately endorse and tender all drafts that
9 produced to the contractor. The undersigned further agrees to authorized Desert Valley
10 Contracting to sign on their behalf and deposit all insurance checks that are issued, and to
11 pay for the services performed, pursuant to the contract.

12 The Court itself found INOSE in Breach of Contract by failing to forward insurance proceeds
13 and when received to DVC (Findings of Fact Conclusions of Law, page 14, paragraph 29, Exhibit 2).
14 Defendant INOSE never produced counter testimony that he was not forwarding insurance payments as
15 required by the contract. As such, DVC cannot be in breach for the reasons stated in the Conclusions of
16 Law.

17 **E. DVC Did Not Unilaterally Approve Change Orders**

18 Change orders were abundant on this project. DVC employee's Rachelle Elliston and Daniel
19 Merritt testified that Inose was aware of the Change Orders but would unilaterally refuse to sign them.
20 The court found that INOSE was well aware of the Change Orders for the project as well (Findings of
21 Fact Conclusions of Law, page 6, paragraph 41-Exhibit 6). The Court's Conclusion of Law that DVC
22 unilaterally approved change orders is internally inconsistent with to the Court's other Findings of Fact
23 and do not show a breach by DVC.

24 **III.**

25 **DAMAGES**

26 The Damage calculation that the Plaintiff is making is based upon the contract and the amount
27 that DVC had spent up until the point they were terminated, which was One Million, Twelve
28

1 Thousand Four Hundred Fifty One Dollars and Eight Cents (\$1,012,451.08). Twenty Percent of that
2 amount would be Two Hundred Thousand, Four Hundred, Ninety Dollars and Twenty One Cents
3 (\$202,490.21). Those combined figures would be One Million, Two Hundred Fourteen Thousand,
4 Nine Hundred Forty One Dollars and Thirty Cents (\$1,214,941.30). Desert Valley Contracting was
5 paid One Hundred, Twenty-Five Thousand, Seven Hundred Forty Three Dollars and Seventy-Two
6 Cents, (\$1,125,743.72) leaving a balance of Eighty-Nine Thousand, One Hundred Ninety Seven
7 Dollars and Fifty Eight cents (\$89,197.58). The Plaintiff is also contractually entitled to attorney's
8 fees and interest as well. These damages are clear and supported by industry standards and the
9 Defendant's contractual obligations.
10

11 **IV.**

12 **CONCLUSION**

13
14 DESERT VALLEY CONTRACTING, INC. is an experienced Nevada General Contractor
15 with a history of working on custom homes. When dealing with custom homes, the custom finishes
16 and high-end detail create extra work and delays. In this project another complicating factor was the
17 omnipresent interference of the homeowner. The Defendant consistently demanded upgrades, and he
18 wanted the Plaintiff to bury or eat those costs. The Defendant interfered with the Subcontractors and
19 directed them to perform work outside the scope of the contract, in violation of their subcontract
20 agreement.
21

22 After the Defendant and Plaintiff came to an impasse regarding the costs the Defendant
23 repudiated the contract and terminated the Plaintiff from the project. As a result, the Plaintiff has been
24 damaged at a minimum in the amount of Eighty-Nine Thousand, One Hundred Ninety Seven Dollars
25 and Fifty Eight cents (\$89,197.58) and we request that the court award damages to the Plaintiff.
26 Further, pursuant to the contract, Plaintiff is respectfully requesting the Court order for attorney fees
27
28

1 and costs be paid to Plaintiff/Counter-defendant, DESERT VALLEY CONTRACTING, INC. or what
2 the Court deems appropriate.
3

4 Dated this 21st day of May, 2021
5

6 **HURTIK LAW & ASSOCIATES**

7 
8 **CARRIE E. HURTIK, ESQ.**

9 Nevada Bar No. 7028

10 **JONATHON R. PATTERSON, ESQ.**

11 Nevada Bar No. 9644

12 **HURTIK LAW & ASSOCIATES**

13 6767 West Tropicana Ave. #200

14 Las Vegas, NV 89103

15 (702) 966-5200 Telephone

16 (702) 966-5206 Facsimile

17 Attorneys for Plaintiff/Counter-defendant,
18 DESERT VALLEY CONTRACTING, INC.
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, JONATHON R. PATTERSON, declare:

I am a resident of and employed in Clark County, Nevada. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6767 West Tropicana Avenue, Suite 200, Las Vegas, Nevada 89103.

Pursuant to N.R.C.P 5(b) and EDCR 7.26, I hereby certify that on 21st day of May 2021, I served a true and correct copy of the foregoing document described as **PLAINTIFF/COUNTER-DEFENDANT DESERT VALLEY CONTRACTING'S BREIFING AS TO SUPREME COURT RULING** on the party listed below:

BRIAN W. BOSCHEE, ESQ.
HOLLEY, DRIGGS, WALCH
FINE, WRAY, PUZEY & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Attorneys for Defendants

☒ **VIA ELECTRONIC SERVICE:** by transmitting via electronic service maintained by court's electronic filing system, on whom it is served at the electronic service address as last given by that person on any e-document which he/she has filed in the action and served on the party making the service. The copy of the document served by electronic service bears a notation of the date and time of transmission and the electronic mail address to which transmitted. A confirmation of the electronic service containing the electronic mail addresses to which the e-document(s) was/were transmitted will be maintained with the e-document(s) served.

I declare under penalty of perjury that the foregoing is true and correct.
Executed at Las Vegas, Nevada on May, 21 2021


JONATHON R. PATTERSON, an employee of
HURTIK LAW & ASSOCIATES

EXHIBIT 1

Desert Valley Contracting
3395 W. Cheyenne Ave #107
N. Las Vegas, NV 89032
(702) 633-5033

WORK AUTHORIZATION AND CONTRACT TO PERFORM
SCOPE OF WORK
OUTLINED IN ESTIMATE

The Undersigned (insured), Eugene Truse
587 St. Croix St. Henderson NV 89011
Address City State Zipcode

Represents that he/she/they are collectively or individually agents for the hereinafter specified property (and/or its contents) and hereby authorize and direct Desert Valley Contracting Inc. (Contractor) to provide all labor, equipment and materials required to properly repair the specified real property or structure commonly known as:

Same
Address City State Zipcode

It is understood and agreed that Contractor will perform all repair work in good and workmanlike manner in accordance with our General Conditions, will have policy of insurance in full force, will comply with local safety standards and will perform all work according to local business codes. A 2 year workmanship warranty will be presented upon full payment for the work performed. The undersigned hereby transfers, assigns and conveys to Contractor his/her/their right, title and interest in and to the insurance policy proceeds and all drafts for work performed to be performed by Contractor. Accordingly, undersigned authorizes and directs their insurer (named below) to make Desert Valley Contracting Inc. a payee on all insurance drafts for all insurance work performed by Contractor on the above named damaged property. The undersigned also agrees to immediately endorse and tender all drafts as produced to the Contractor. The undersigned further agrees to authorize Desert Valley Contracting, Inc. to sign on their behalf and/or deposit all insurance checks that are issued to pay for the services performed pursuant to the contract.

If for any reason the undersigned or the Contractor terminates the contract prior to the actual work beginning the undersigned is responsible to pay all costs and fees associated with preparation for beginning the job, such as estimates, permits, materials ordered, or any and all such fees and costs for services performed. Should Client terminate the Contractor after work has begun, but not completed in full, the Client shall be responsible for any and all fees and costs associated with the work performed, plus the profit that the client would have made on the job had Client not repudiated the contract. Upon termination of Contractor's services, Client is responsible to pay all fees and costs incurred by the Contractor within five (5) days of termination by either party. If any requests for additional work to be performed are made during the scope of the job, all such requests must be put in writing so that these costs will be added to the Scope of Work. If the scope of the work is beyond any insurance claim, the owner, agent or authorized party will pay all claims within ten (10) days of completion of work. Any materials will be paid for prior to the additional work being performed.

All insurance work performed by the Contractor is subject to the terms of the Insured's policy of insurance which sets the scope and price of the work based upon industry standards. All uninsured work performed, including uninsured code-upgrade work, depreciation an insurance deductibles are the responsibility of the undersigned or

IN-LO00022

SUPP000136

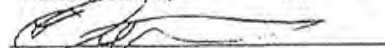
Owner. The undersigned also agrees to and understands the General Conditions stated below. Contractor agrees to perform the insured work as approved by the Insurance Company and accept insurance proceeds as payment for the insured work. Any uninsured work, which includes, but is not limited to, code-upgrade work, asbestos removal or any other form of work not covered under Owner's insurance policy shall be paid by the Owner. In the event insurance proceeds are not issued, Contractor has the right to stop work until such time the insurance proceeds are released.

This Contract will be governed by the Laws of the State of Nevada and should the Client Breach the Contract they shall be responsible for all Attorneys fees and costs associated with Contractor having to collect any and all amount due under the terms of the contract. This condition is more specifically defined under General Conditions.

The Client shall indemnify the Contractor for any and all costs and fees associated with collection of any amounts due the Contractor pursuant to the terms of the Contract and/or any Change Orders or Addendums if Client refuses to pay the amounts due and owing to Contractor.

\$ TBD
Amount (If Known)

8/6/14
Date


Desert Valley Contracting, Inc.
Las Vegas, Representative

Print & Eugene Iron
Insured-Owner-Authorized Representative

Sign 
Insured-Owner-Authorized Representative

Fireman's Fund
Insurance Company

Policy Number 805141513A
Claim Number

General Conditions

Owner agrees to allow timely inspections by municipal inspectors and/or Mortgage Company agents and to assist with obtaining any third party payee signatures on all insurance drafts so that Desert Valley Contracting Co., Inc. can be timely paid. If for any reason your claim is denied by your insurance carrier or they refuse to pay the costs of an and/or all insurance work performed by Contractor, or you otherwise delay or prevent the payment of said insurance draft, or use it for other purposes, then the insured/owner(s) of the above mentioned property will be personally liable for any and all costs of services performed. The Contractor and undersigned acknowledge and agree that the Contractor shall have no liability for, and shall be indemnified and held harmless from and against, all claims, damages, liabilities and costs arising out of or relating to the presence, discovery, or failure to discover, remove address, remediate or cleanup environmental or biological hazards including, but not limited to, mold, fungus, hazardous waste, substances or materials, or asbestos unless covered by the insured's policy of insurance. remediation is part of the scope of work and such work is directed by an Industrial Hygienists protocol and clearance testing. If for any reason the amount due under this Work Authorization is not paid when due, the Contractor shall be entitled to its expenses and attorneys' fees incurred in the collection of this agreement with interest on the unpaid balance at the legal interest rate in Nevada, which is the prime rate plus 2 points. The undersigned permits Contractor to obtain a personal credit report to insure the insurance proceeds for this project are not in jeopardy. Any controversy or claim arising out of or relating to this agreement, or breach thereof, may be submitted to a court of competent jurisdiction. Contractor is in good standing with the Better Business Bureau. Contractor reserves the right to terminate this contract should the client breach any of its terms or the assurance of payment.

IN-LO00023

SUPP000137

EXHIBIT 2

From: [REDACTED]
Sent: [REDACTED]
To: [REDACTED]
Subject: [REDACTED]
Attachments: [REDACTED]

----- Forwarded message -----

From: Eugene Inose <eugene@promotionproperties.com>
Date: Wed, Jul 29, 2015 at 1:38 PM
Subject: Fwd: Claim Number 00514151370 / Final Claim Payments
To: EC <ec@launchdistribution.com>

----- Forwarded message -----

From: Lynch, Brian <Brian.Lynch@acegroup.com>
Date: Fri, Jun 19, 2015 at 1:58 PM
Subject: Claim Number 00514151370 / Final Claim Payments
To: "Eugene@promotionproperties.com" <Eugene@promotionproperties.com>

Good Afternoon Mr. Inose,

We have received the final estimate from your contractor. We have also received the estimates for the final costs related to your content repairs and/or replacement.

The following documents are attached for your review:

1. An email from Desert Valley Construction stating that no further billing exists beyond their final estimate.
2. A copy of the final estimate presented by your contractor totaling \$1,320,429.28. (Final DVC Estimate)
3. Enservio Evaluation of Total Loss Contents
4. Furniture Medic estimate for items to be repaired
5. Diva Interiors summary for final selection travel expenses
6. Draft Statement of Loss documenting all claimed costs
7. Policyholder Release

Please forward a copy of the fully completed Policyholder's release via email and then mail the original to my address below. It is suggested that you also retain a copy for your records.

Best Regards,
Brian Lynch

Western Region Claims Manager, ACE USA

ACE Private Risk Services, 1 Progress Point Parkway, O'Fallon, MO 63368 USA

T +01 (636) 206-5244 | M +01 (314) 680-6518

Brian.Lynch@acegroup.com | www.acegroup.com

This email was sent by ACE Private Risk Services, now proudly servicing your current Fireman's Fund personal insurance policy.

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--

Regards,

Eugene Inose
President | CEO | Co-Founder
Pro-Motion Properties, LLC
Launch Distribution
SPOCOM USA

office: [626-839-7150](tel:626-839-7150)
cellular: [213-716-7440](tel:213-716-7440)

www.promotionproperties.com
www.launchdistribution.com
www.spocomusa.com
www.fujisfamous.com
www.toranokola.com

--

Regards,

Eugene Inose
President | CEO | Co-Founder

Pro-Motion Properties, L.L.C
Launch Distribution
SPOCOM USA

office: 626-839-7150
cellular: 213-716-7440

www.promotionproperties.com
www.launchdistribution.com
www.spocomusa.com
www.fujisfamous.com
www.toranokola.com

From: Daniel Merritt [dmerritt@desertvalleyco.com]
Sent: Friday, June 05, 2015 10:09 AM
To: brian.lynch@fflc.com
Cc: John Machin
Subject: Agreement on amount \$1,320,429.82

Brian,

Following our correspondence for the Inose claim, we are at the above agreed contract amount with no needed change orders, and no more change orders from all of the subcontractors which have submitted their bids. At this time, we will be able to complete the project for this amount. We are in the understanding that the expired ALE is due to products that were ordered out of the realm and the boundaries of a regularly ordered floor, and has postponed our completion date to possibly mid -August.

Thank you for your consideration on this matter.

Daniel Merritt

General Manager

Desert Valley Contracting, Inc.

ServPro of Downtown Las Vegas/ Northwest Las Vegas/ Summerlin North and Sun City

(702) 633-5033 – Desert Valley Contracting Phone

(702) 778-9451 – ServPro Phone

(702) 633-5038 – Fax

(702) 715-9775 –Cell

Dmerritt@desertvalleyco.com Email

Click [here](#) to report this email as spam.

Please Note:

The information in this E-mail message, and any files transmitted with it, is confidential and may be legally privileged. It is intended only for the use of the individual(s) named above. If you are the intended recipient, be aware that your use of any confidential or personal information may be restricted by state and federal privacy laws. If you, the reader of this message, are not the intended recipient, you are hereby notified that you should not further disseminate, distribute, or forward this E-mail message. If you have received this E-mail in error, please notify the sender and delete the material from any computer. Thank you.

IN-LO00074

SUPP000142

STATEMENT OF LOSS

Insured: Inose, Eugene
 Claim #: 005-14-151370
 Date of Loss: 08/02/2014
 Today's Date: 06/17/2015

SX-001: Building

	Value	Loss	Claim
Senpro Mitigation Final Bill		\$ 96,753.95	\$ 96,753.95
First Advance Payment to Desert Valley		\$ 50,000.00	\$ 50,000.00
Second Advance Payment to Desert Valley		\$ 349,773.27	\$ 349,773.27
Third Advance Payment to Desert Valley		\$ 23,961.60	\$ 23,961.60
Fourth Advance Payment to Desert Valley		\$ 300,000.00	\$ 300,000.00
Final Payment of Desert Valley Construction Repairs		\$ 554,508.41	\$ 554,508.41

SX-002: Erasing Fungi

Macrotech IH Protocol Invoice* (SX-002) Paid Direct	\$ 2,800.00	\$ 2,800.00	\$ 2,800.00
Senpro Fungi Remediation NTE* (SX-002) Paid from Advance	\$ 20,016.39	\$ 20,016.39	\$ 20,016.39
Macrotech Final Clearance Invoice* (SX-002) Paid from Advance	\$ 1,800.00	\$ 1,800.00	\$ 1,800.00
*subject to \$25,000 fungi limit			
(Total Fungi \$24,616.39)			

SX-003: Other Structures

Desert Valley Contracting Driveway Repairs	\$ 42,186.00	\$ 42,186.00	\$ 42,186.00
--	--------------	--------------	--------------

SX-004: Personal Property

Painting Rpr "The Horn Buckles"	\$ 2,005.00	\$ 2,005.00	\$ 2,005.00
Estimated Diminished Value	\$ 2,250.00	\$ 2,250.00	\$ 2,250.00
Painting Rpr "Guardian of the Gate"	\$ 1,675.00	\$ 1,675.00	\$ 1,675.00
Estimate Diminished Value	\$ 4,850.00	\$ 4,850.00	\$ 4,850.00
Art Conservation Inc. Storage	\$ 900.00	\$ 900.00	\$ 900.00
Enserve Select Total Loss Evaluation	\$ 36,327.39	\$ 36,327.39	\$ 36,327.39
Dina Interiors Final Selection Invoice	\$ 554.54	\$ 554.54	\$ 554.54
Furniture Medic Repair Estimate	\$ 3,317.00	\$ 3,317.00	\$ 3,317.00

SX-005: Additional Living Expenses

TownPlace Suites	\$ 346.08	\$ 346.08	\$ 346.08
Prior CRS Rental Payments	\$ 42,572.62	\$ 42,572.62	\$ 42,572.62
CRS Rental Payment 12.01 - 12.31	\$ 11,756.59	\$ 11,756.59	\$ 11,756.59
CRS Rental Payment 01.01 - 01.31	\$ 11,756.59	\$ 11,756.59	\$ 11,756.59
CRS Rental Payment 02.01 - 02.28	\$ 10,163.59	\$ 10,163.59	\$ 10,163.59
CRS Rental Payment 03.01 - 03.31	\$ 11,756.59	\$ 11,756.59	\$ 11,756.59
CRS Rental Payment 04.01 - 04.30	\$ 11,756.59	\$ 11,756.59	\$ 11,756.59
CRS Rental Payment 05.01 - 05.31	\$ 11,756.59	\$ 11,756.59	\$ 11,756.59
CRS Rental Payment 06.01 - 06.30	\$ 11,756.59	\$ 11,756.59	\$ 11,756.59

Total \$ - \$ 1,617,300.38 \$ 1,617,300.38

Claim \$ - \$ 1,617,300.38 \$ 1,617,300.38

Payment Reconciliation	Building	Contents	Alt	Fungi	Other Structures	TOTAL
Agreed Loss	\$ 1,374,997.23	\$ 51,878.93	\$ 123,621.63	\$ 24,616.39	\$ 42,186.00	\$ 1,617,300.38
Deductible						\$ -
Agreed Claim	\$ 1,374,997.23	\$ 51,878.93	\$ 123,621.63	\$ 24,616.39	\$ 42,186.00	\$ 1,617,300.38
Less prior payments	\$ (142,911.44)	\$ (11,680.00)	\$ (31,162.11)	\$ (24,616.39)		\$ (210,369.94)
CRS Payment for November (10.07.14)			\$ (11,756.59)			\$ (11,756.59)
CRS Payment for December (11.07.2014)			\$ (11,756.59)			\$ (11,756.59)
Advance Payment 10/15/2014	\$ (400,000.00)					\$ (400,000.00)
CRS Payment for January (12.13.2014)			\$ (11,756.59)			\$ (11,756.59)
CRS Payment for February (01.30.2015)			\$ (10,163.59)			\$ (10,163.59)
Advance Payment 02/27/2015	\$ (300,000.00)					\$ (300,000.00)
CRS Payment for March (03.03.2015)			\$ (11,756.59)			\$ (11,756.59)
CRS Payment for April (03.23.2015)			\$ (11,756.59)			\$ (11,756.59)
CRS Payment for May (04.30.2015)			\$ (11,756.59)			\$ (11,756.59)
CRS Payment for June (05.31.2015)			\$ (11,756.59)			\$ (11,756.59)
Pending Restoration Payment	\$ (532,039.75)					\$ (574,271.75)
Pending Other Structures Payment					\$ (42,186.00)	
Pending Contents Payment		\$ (40,196.83)				
Net Payable Claim	\$ -	\$ -	\$ 0.00			\$ 0.00

IN-LO00154

SUPP000143



Claim No.: 005-14-151370

Policy No.: NZF03034346

POLICYHOLDER'S RELEASE

For and in consideration of the total claim payments to me at this time for the sum of one million six hundred seventeen thousand three hundred dollars and thirty-eight cents (\$1,617,300.38), the receipt of which is hereby acknowledged, I, being of lawful age, do hereby release and forever discharge The American Insurance Company from any and all action, causes of action, claims and demands whatsoever for, upon, or by reason of any damage, loss or injury and all consequential damage, which heretofore have been or which hereafter may be sustained by me resulting or to result in consequence of the Property loss occurring on or about August 2, 2014 at 587 St. Croix, Henderson NV 89012.

It is being further agreed and understood, that the payment of said amount is a compromise of the claim and that this release is executed in full settlement and satisfaction of rights of the undersigned under Policy No. NZF03034346, Claim No. 00514151370 arising out of said Property loss above referred to.

I understand and acknowledge that the sum paid in consideration for this Agreement is intended to and does release and discharge any claim and/or cause of action with regard to any known, unknown or future loss, damage or injury which in any way relates to or arises from the above-referenced loss(es) and claim(s).

I further state that I have carefully read the foregoing release and know the contents thereof, and I sign the same as my own free act and it is my intention to be legally bound hereby.

Witness my/our signature(s) and seal(s) this _____ day of _____, _____

State of Nevada
County of _____

CAUTION! READ BEFORE SIGNING

On the _____ day of _____, _____,
before me came _____
to me known to be the individual(s) described in, and
who executed, the foregoing instrument, and
acknowledged that _____
executed same.

Signature of Mr. Eugene Inose (Seal)

Please Print Your Name On This Line

Notary Public

IN-LO00155

SUPP000144

Applicable in Alaska, Arkansas, Delaware, District of Columbia, Florida, Idaho, Indiana, Kentucky, Louisiana, Maine, New Jersey, New Mexico, Oklahoma, Rhode Island, Tennessee, Virginia, Washington and West Virginia

Any person who knowingly and with intent to defraud any insurance company or another person, files a statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact, material thereto, commits a fraudulent insurance act, which is a crime, subject to criminal prosecution and civil penalties. In DC, ME, TN, VA and WA, insurance benefits may also be denied. In DE, FL, ID, IN and OK any person who knowingly and with the intent to injure, defraud, or deceive an insurance company files a statement of claim containing false, incomplete or misleading information is guilty of a felony. In FL, such person is guilty of a 3rd degree felony.

Applicable in Alabama

Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or who knowingly presents false information in an application for insurance is guilty of a crime and may be subject to restitution fines or confinement in prison, or any combination thereof.

Applicable in Arizona

For your protection Arizona law requires the following statement to appear on this form. Any person who knowingly presents a false or fraudulent claim for payment of a loss is subject to criminal and civil penalties.

Applicable in California

For your protection California law requires the following to appear on this form. Any person who knowingly presents false or fraudulent claim for the payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison.

Applicable in Colorado

It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado Division of Insurance within the department of regulatory agencies.

Applicable in Maryland

Any person who knowingly OR willfully presents a false or fraudulent claim for payment of a loss or benefit or who knowingly OR willfully presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

Applicable in Minnesota

A person who files a claim with intent to defraud or helps commit a fraud against an insurer is guilty of a crime.

Applicable in New Hampshire

Any person who, with a purpose to injure, defraud or deceive any insurance company, files a statement of claim containing any false, incomplete or misleading information is subject to prosecution and punishment for insurance fraud, as provided in RSA 638:20.

Applicable in New York

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and shall be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.

Applicable in New York (personal automobile insurance)

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, and any person who knowingly makes or knowingly assists, abets, solicits or conspires with another to make a false report of the theft, destruction, damage or conversion of any motor vehicle to a law enforcement agency, the department of motor vehicles or an insurance company commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the value of the subject motor vehicle or stated claim for each violation.

Applicable in Ohio

Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.

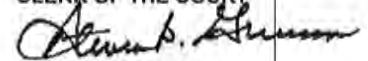
Applicable in Pennsylvania

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.

Applicable in Pennsylvania (automobile insurance)

Any person who knowingly and with intent to injure or defraud any insurer files an application or claim containing any false, incomplete or misleading information shall, upon conviction, be subject to imprisonment for up to seven years and payment of a fine of up to \$15,000.

EXHIBIT 3



1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 DESERT VALLEY CONTRACTING,
9 INC.,

10 Plaintiff,

11 vs.

12 IN-LO PROPERTIES, LLC,

13 Defendant.

CASE#: A-16-734351-C

DEPT. XV

14 BEFORE THE HONORABLE JOSEPH HARDY
15 DISTRICT COURT JUDGE
16 THURSDAY, JUNE 20, 2019

17 **RECORDER'S TRANSCRIPT OF BENCH TRIAL - DAY 6**

18 APPEARANCES:

19 For the Plaintiff:

CARRIE E. HURTIK, ESQ.
JONATHAN PATTERSON, ESQ.

20 For the Defendant:

BRIAN W. BOSCHEE, ESQ.
SEAN E. STORY, ESQ.

21
22
23
24
25 RECORDED BY: MATTHEW YARBROUGH, COURT RECORDER

1 Q So you can't really go back and submit and say, oh, by the
2 way this thing we didn't tell you about is costing more than we thought it
3 would --

4 A Yeah.

5 Q -- so we need some more money from you.

6 A Well --

7 Q Right?

8 A I mean it's weird, I've never seen it close out like this. I've
9 never seen an insurance claim not support the claim anymore. I don't
10 know if -- there should have been coverage -- enough coverage for the
11 home. I just -- if it's justifiable, I think we could have went back, and,
12 you know, maybe asked for -- like, not the -- not the wine room, none of
13 that stuff.

14 Q Uh-huh.

15 A But the Lutron switches, absolutely. A missing TV, no.
16 That's not -- that's not -- cracked tiles up above on the patio deck, yes.
17 There are certain things that I think that we could have recouped some if
18 they would have opened it back up.

19 Q Well, and this kind of goes the same question as the
20 driveway, right. If -- if SERVPRO or Desert Valley Contracting, one or the
21 other --

22 A Yeah.

23 Q Lost or damaged one of those Lutron switches, Eugene's
24 homeowner's insurance shouldn't be paying for that, should it?

25 A Well, no, I don't believe it should have, but I believe

EXHIBIT 4



HOLLEY•DRIGGS•WALCH
FINE•WRAY•PUZEY•THOMPSON

PLEASE REPLY TO LAS VEGAS OFFICE
WRITER'S EMAIL: BBOSCHEE@NEVADAFIRM.COM

December 8, 2015

VIA E-MAIL AND U.S. MAIL

Carrie E. Hurtik, Esq.
HURTIK LAW & ASSOCIATES
7866 West Sahara Avenue
Las Vegas, Nevada 89117
Email: churtik@hurtiklaw.com

RE: *Desert Valley Contracting, Inc. and Eugene Inose*

Dear Carrie,

This letter is a follow up correspondence to my December 4, 2015 letter, which letter is hereto incorporated by reference and attached hereto as **Exhibit "1"** and our subsequent conversations.

Desert Valley Contracting, Inc. ("Desert Valley") has breached its duties, obligations, and responsibilities under the Work Authorization and Contract to Perform Scope of Work Outlined in Estimate, entered into between Mr. Inose and Desert Valley (the "Contract"). A copy of the Contract is attached hereto as **Exhibit "2"**.

Desert Valley has breached the Contract, as it has not performed its work in "good and workmanlike manner". Desert Valley has not completed its scope of work on my client, Eugene Inose's ("Mr. Inose") residence, located at 587 Saint Croix, Henderson, Nevada 89012 (the "House") in fifteen months, a considerable delay, harming Mr. Inose by keeping him out of his House. Further, Desert Valley is now claiming that it cannot perform the work for the contract amount, meaning now the company is trying to charge Mr. Inose more for their work on the House and expand the scope of the work performed under the Contract.

However, pursuant to the express terms of the Contract, any additional work to be performed must be submitted in writing and approved by the owner, and Desert Valley failed to provide Mr. Inose any additional work charges in writing and/or has failed to present change orders (from subcontractors on the House) to Mr. Inose for his review/approval at the time these change orders were presented to Desert Valley. Now trying to charge Mr. Inose additional charges clearly violates the Contract, and Mr. Inose is not liable for any of these additional apparent charges. Moreover, pursuant to the Contract, Desert Valley agreed to perform the work on the House for the amount of insurance proceeds for the House, absent written authorization

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IN-LO00014

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December 8, 2015

Page 2

for additional amounts. Again, since Desert Valley is claiming more than the insurance proceeds, it has breached the Contract.

Given the above, Mr. Inose is giving notice to Desert Valley that Mr. Inose is terminating the Contract for cause, effective immediately, and will not pay Desert Valley any additional money under the Contract.

Our client will pay any amounts due to the subcontractors for work already performed. Mr. Inose will deal directly with the subcontractors to perform any additional work required to complete the House. Should any insurance money remain after completion of the House, Mr. Inose will tender it to your client. However, if Mr. Inose has to expend funds beyond the insurance money, he will seek reimbursement from your client, Desert Valley. Please be further advised that Mr. Inose intends to take action with the Contractors Board with respect to your client's conduct.

At the meeting on November 18, 2015, Desert Valley confirmed it had been compensated for its work on the House and that Mr. Inose was current on his bill with Desert Valley. Thus, as of the November 18, 2015, Desert Valley was not due any fees or costs for its work on the Project. As such, per the terms of the Contract, Desert Valley is not owed anything further for fees and costs, and Mr. Inose believes Desert Valley has likely been over-compensated for this project.

As alluded to in the December 4, 2015 letter, it is upsetting that we had to go down this road, especially given the fact that the parties worked in good-faith to resolve this issue, and achieved a full and complete resolution at the meeting on November 18, 2015, but your client gave us no choice. Please ensure that your client, Desert Valley, gets this Termination Letter, terminating Desert Valley for cause under the Contract, immediately.

Please understand that nothing herein shall be construed as a waiver of any of my client's rights, all of which are hereby expressly reserved. Nor is this letter offered to be an exhaustive statement of my client's contentions regarding your wrongdoing in this matter.

Thank you and if you have any questions regarding the above, please do not hesitate to contact me.

Very truly yours,

HOLLEY, DRIGGS, WALCII,
FINE, WRAY, PUZEY & THOMPSON



Brian W. Boschee, Esq.

cc: Client
Enclosures

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IN-LO00015

SUPP000151

EXHIBIT 1

EXHIBIT 1

IN-LO00016

SUPP000152



HOLLEY•DRIGGS•WALCH
FINE•WRAY•PUZEY•THOMPSON

PLEASE REPLY TO LAS VEGAS OFFICE
WRITER'S EMAIL: BBOSCHEE@NEVADAFIRM.COM

December 4, 2015

VIA E-MAIL

Carrie E. Hurtik, Esq.
HURTIK LAW & ASSOCIATES
7866 West Sahara Avenue
Las Vegas, Nevada 89117
Email: churtik@hurtiklaw.com

RE: *Desert Valley Contracting, Inc and Eugene Inose*

Dear Carrie,

This letter is a follow up correspondence to our meeting on November 18, 2015 at your office (the "Meeting"). As you may recall, the following individuals, among others, were present at the meeting: (1) myself; (2) my associate, Will Miller; (3) Mr. Inose; (4) you; and (5) three representatives of your client, Desert Valley Contracting, Inc. ("Desert Valley"), including Daniel Merritt. The purpose of the meeting was to try to reach a resolution regarding the final payment to Desert Valley from my client, Mr. Inose, and upon resolution, Desert Valley would then finish the construction of Mr. Inose's house (the "House"), which still is not complete over fifteen months after construction began. We spent most of that afternoon going over numbers (including the payments to all subcontractors), all of which were provided by your client, Desert Valley.

At the Meeting, after going over the numbers provided by your client, Desert Valley and Mr. Inose reached an agreement regarding this matter wherein Mr. Inose would pay Desert Valley \$215,000.00 and in return, Desert Valley would then finish the construction of the House. With this aforementioned money, Desert Valley agreed to resolve all (or any) payment issues with its subcontractors on the House. The \$215,000.00 was not contingent on anything involving the subcontractors and payments due to them. That is why at the Meeting we all went through the amounts that were due and owing from the subcontractors on the House (which said numbers were provided by your client) and based upon this discussion, the agreement was reached. Again, the agreement was that Mr. Inose would pay \$215,000.00 to Desert Valley and based on this payment, the House would be completed in full. Additionally, at the Meeting, Desert Valley was supposed to be in touch with Mr. Inose over the next couple of days to get exact payoffs from its subcontractors so that Mr. Inose could submit joint checks to the subcontractors and Desert Valley, which payment was included in the \$215,000.00.

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Page 2
December 4, 2015

However, as of date: (1) your client, Desert Valley has not given this payment information for the subcontractors to Mr. Inose; (2) your client apparently does not want to live up to the agreement, instead claiming that the \$215,000.00 may not be enough; and (3) virtually no work has been done at the House since the Meeting, even though your client, Desert Valley, agreed that the subcontractors would immediately resume their work on the House. In essence, your client is now trying to go back on the deal that was made at the Meeting, through arms-length negotiations. My client is able and ready to make this \$215,000.00 payment immediately but is waiting on Desert Valley for how payment should be made.

Given the above, unless your client abides by the terms of the agreement, my client is being left with no alternative but to pursue any and all legal remedies at his disposal, including, but not limited to, filing an action in a court of competent jurisdiction, terminating the contract with your client for cause, and pursuing remedies with the Contractor's Board. It is upsetting that we may have to go down this road, especially given the fact that the parties worked in good-faith to resolve this issue, and achieved a full and complete resolution at the Meeting. Yet, your client has given us no choice now. **If you do not confirm in writing by the end of business on Tuesday, December 8, 2015, that your client is going to abide by the terms of the agreement that was reached at the Meeting, we are left with no choice but to pursue all of our client's options (including, the options noted above in this paragraph).**

Please understand that nothing herein shall be construed as a waiver of any of my client's rights, all of which are hereby expressly reserved. Nor is this letter offered to be an exhaustive statement of my client's contentions regarding your wrongdoing in this matter.

Thank you and if you have any questions regarding the above, please do not hesitate to contact me.

Very truly yours,

HOLLEY, DRIGGS, WALCH,
FINE, WRAY, PUZEY & THOMPSON


Brian W. Boschec, Esq.

cc: Client

1
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EXHIBIT 2

EXHIBIT 2

IN-LO00019

SUPP000155

Desert Valley Contracting
3395 W. Cheyenne Ave #107
N. Las Vegas, NV 89032
(702) 633-5033

WORK AUTHORIZATION AND CONTRACT TO PERFORM

SCOPE OF WORK
OUTLINED IN ESTIMATE

The Undersigned (insured), Eugene Inose
587 St. Louis St. Henderson NV 89012
Address City State Zipcode

Represents that he/she/they are collectively or individually agents for the hereinafter specified property (and/or its contents) and hereby authorize and direct Desert Valley Contracting Inc. (Contractor) to provide all labor, equipment and materials required to properly repair the specified real property or structure commonly known as:

Same
Address City State Zipcode

It is understood and agreed that Contractor will perform all repair work in good and workmanlike manner in accordance with our General Conditions, will have policy of insurance in full force, will comply with local safety standards and will perform all work according to local business codes. A 2 year workmanship warranty will be presented upon full payment for the work performed. The undersigned hereby transfers, assigns and conveys to Contractor his/her/their right, title and interest in and to the insurance policy proceeds and all drafts for work performed to be performed by Contractor. Accordingly, undersigned authorizes and directs their insurer (named below) to make Desert Valley Contracting Inc. a payee on all insurance drafts for all insurance work performed by Contractor on the above named damaged property. The undersigned also agrees to immediately endorse and tender all drafts as produced to the Contractor. The undersigned further agrees to authorize Desert Valley Contracting, Inc. to sign on their behalf and/or deposit all insurance checks that are issued to pay for the services performed pursuant to the contract.

If for any reason the undersigned or the Contractor terminates the contract prior to the actual work beginning the undersigned is responsible to pay all costs and fees associated with preparation for beginning the job, such as estimates, permits, materials ordered, or any and all such fees and costs for services performed. Should Client terminate the Contractor after work has begun, but not completed in full, the Client shall be responsible for any and all fees and costs associated with the work performed, plus the profit that the client would have made on the job had Client not repudiated the contract. Upon termination of Contractor's services, Client is responsible to pay all fees and costs incurred by the Contractor within five (5) days of termination by either party. If any requests for additional work to be performed are made during the scope of the job, all such requests must be put in writing so that these costs will be added to the Scope of Work. If the scope of the work is beyond any insurance claim, the owner, agent or authorized party will pay all claims within ten (10) days of completion of work. Any materials will be paid for prior to the additional work being performed.

All insurance work performed by the Contractor is subject to the terms of the Insured's policy of insurance which sets the scope and price of the work based upon industry standards. All uninsured work performed, including uninsured code-upgrade work, depreciation and insurance deductibles are the responsibility of the undersigned or

IN-LO00020

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The Client shall indemnify the Contractor for any and all costs and fees associated with collection of any amounts due the Contractor pursuant to the terms of the Contract and/or any Change Orders or Addendums if Client refuses to pay the amounts due and owing to Contractor.

S. TBR
Amount (If Known) 86/04/14
Date

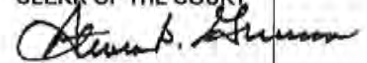
Desert Valley Contracting, Inc.
Las Vegas, Representative
Fireman's Fund
Insurance Company

Print & Eugene Iron
Insured-Owner-Authorized Representative
Singer
Insured-Owner-Authorized Representative
Policy Number
Claim Number 805141513A

General Conditions

Owner agrees to allow timely inspections by municipal inspectors and/or Mortgage Company agents and to assist with obtaining any third party payee signatures on all insurance drafts so that Desert Valley Contracting Co., Inc. can be timely paid. If for any reason your claim is denied by your insurance carrier or they refuse to pay the costs of an and/or all insurance work performed by Contractor, or you otherwise delay or prevent the payment of said insurance draft, or use it for other purposes, then the insured/owner(s) of the above mentioned property will be personally liable for any and all costs of services performed. The Contractor and undersigned acknowledge and agree that the Contractor shall have no liability for, and shall be indemnified and held harmless from and against, all claims, damages, liabilities and costs arising out of or relating to the presence, discovery, or failure to discover, remove address, remediate or cleanup environmental or biological hazards including, but not limited to, mold, fungus, hazardous waste, substances or materials, or asbestos unless covered by the insured's policy of insurance, remediation is part of the scope of work and such work is directed by an Industrial Hygienists protocol and clearance testing. If for any reason the amount due under this Work Authorization is not paid when due, the Contractor shall be entitled to its expenses and attorneys' fees incurred in the collection of this agreement with interest on the unpaid balance at the legal interest rate in Nevada, which is the prime rate plus 2 points. The undersigned permits Contractor to obtain a personal credit report to insure the insurance proceeds for this project are not in jeopardy. Any controversy or claim arising out of or relating to this agreement, or breach thereof, may be submitted to a court of competent jurisdiction. Contractor is in good standing with the Better Business Bureau. Contractor reserves the right to terminate this contract should the client breach any of its terms or the assurance of payment.

EXHIBIT 5



1 RTRAN

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3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 DESERT VALLEY CONTRACTING,
9 INC.,

10 Plaintiff,

11 vs.

12 IN-LO PROPERTIES, LLC,

13 Defendant.

CASE#: A-16-734351-C

DEPT. XV

14 BEFORE THE HONORABLE JOSEPH HARDY
15 DISTRICT COURT JUDGE
16 MONDAY, APRIL 8, 2019

17 **RECORDER'S TRANSCRIPT OF BENCH TRIAL - DAY 1**

18 APPEARANCES:

19 For the Plaintiff:

CARRIE E. HURTIK, ESQ.
JONATHAN PATTERSON, ESQ.

20 For the Defendant:

BRIAN W. BOSCHEE, ESQ.
SEAN E. STORY, ESQ.

21
22
23
24
25 RECORDED BY: MATTHEW YARBROUGH, COURT RECORDER

1 It says, "Completed 12/17/2015." And it says, "Passed." Is it your
2 understanding that the final electrical was passed at that time as well?

3 A Yes, it appears so.

4 Q So you terminated DVC in November of 2015 sometime,
5 correct?

6 A Like I said, I don't know if it was November, or I don't know
7 exactly what month it was. I just know it was the latter portion of the
8 year.

9 Q Okay. And your plumbing, mechanical, electrical, and there's
10 another item, which it doesn't clarify, those were all finalized [sic], the
11 house was completed, as to those items, which are those times on
12 12/17/2015, correct?

13 A When you say "completed", in the eyes of the inspector, yes,
14 it was completed.

15 Q Okay. So since you bring that up, "in the eyes of the
16 inspector", you didn't agree with the inspector?

17 A No, no, not at all. That's not what I meant by that at all.

18 Q Okay.

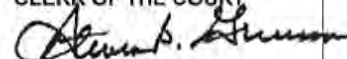
19 A What I --

20 Q Why don't you --

21 A -- what -- if I may expatiate on that, I'm just saying that in
22 order to get a final, from my understanding, it's basically, to get it to a
23 certain point where it's like the bare minimum to get it passed.

24 Q So you think a final inspection is for bare minimum, it isn't
25 completion?

EXHIBIT 6



BRIAN W. BOSCHKEE, ESQ.
Nevada Bar No. 7612
E-mail: bboschkee@nevadafirm.com
SEAN E. STORY, ESQ.
Nevada Bar No. 13968
E-mail: sstory@nevadafirm.com
HOLLEY DRIGGS WALCH
FINE PUZEY STEIN & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Telephone: 702/791-0308
Facsimile: 702/791-1912
*Attorneys for Defendant IN-LO Properties and
Defendant/Counterclaimant Eugene Inose*

DISTRICT COURT

CLARK COUNTY, NEVADA

DESERT VALLEY CONTRACTING, INC. a
Nevada corporation,

Plaintiff,

v.

IN-LO PROPERTIES, a Nevada limited liability
company; EUGENE INOSE, an individual;
JEFFREY LOUIE, an individual; DOES 1
through 10; and ROE ENTITIES 1 through 10,

Defendants.

EUGENE INOSE, an individual;

Counterclaimant.

v.

DESERT VALLEY CONTRACTING, INC., a
Nevada corporation; DOES I through X,
inclusive, and ROE CORPORATIONS I through
X, inclusive,

Counterdefendants.

Case No.: A-16-734351-C
Dept. No.: XV

**NOTICE OF ENTRY OF FINDINGS OF
FACT AND CONCLUSIONS OF LAW**

///

///

1 YOU, and each of you, will please take notice that a Finding of Fact and Conclusions of
2 Law in the above entitled matter was filed and entered by the Clerk of the above-entitled Court on
3 the 3rd day of September, 2019, a copy of which is attached hereto.

4 Dated this 4th day of September, 2019.

5 **HOLLEY DRIGGS WALCH**
6 **FINE PUZEY STEIN & THOMPSON**

7 /s/ Sean E. Story, Esq.

8 BRIAN W. BOSCHÉE, ESQ.

9 Nevada Bar No. 7612

10 SEAN E. STORY, ESQ.

11 Nevada Bar No. 13968

12 400 South Fourth Street, Third Floor

13 Las Vegas, Nevada 89101

14 *Attorneys for Defendant IN-LO Properties and*
15 *Defendant/Counterclaimant Eugene Inose*
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17
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CERTIFICATE OF SERVICE

The undersigned, an employee of HOLLEY DRIGGS WALCH FINE PUZEY STEIN & THOMPSON, hereby certifies that on the 4th day of September, 2019, a copy of **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW**, was served via electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's Odyssey E-File & Serve to the addresses below. **Pursuant to EDCR 8.05(i), the date and time of the electronic service is in place of the date and place of deposit in the mail.:**

Carrie E. Hurtik, Esq.
Rachel L. Shelstad, Esq.
HURTIK LAW & ASSOCIATES
6767 West Tropicana Ave., #200
Las Vegas, NV 89103

Attorneys for Plaintiff/Counterdefendant

/s/ Sandy Sell

An employee of HOLLEY DRIGGS WALCH
FINE PUZEY STEIN & THOMPSON

Steven D. Grierson

FFCL

BRIAN W. BOSCHKEE, ESQ.

Nevada Bar No. 7612

E-mail: bboschkee@nevadafirm.com

SEAN E. STORY, ESQ.

Nevada Bar No. 13968

E-mail: sstory@nevadafirm.com

HOLLEY DRIGGS WALCH

FINE PUZEY STEIN & THOMPSON

400 South Fourth Street, Third Floor

Las Vegas, Nevada 89101

Telephone: 702/791-0308

Facsimile: 702/791-1912

Attorneys for Defendant IN-LO Properties and

Defendant/Counterclaimant Eugene Inose

DISTRICT COURT

CLARK COUNTY, NEVADA

DESERT VALLEY CONTRACTING, INC. a
Nevada corporation,

Plaintiff,

v.

IN-LO PROPERTIES, a Nevada limited liability
company; EUGENE INOSE, an individual;
JEFFREY LOUIE, an individual; DOES 1
through 10; and ROE ENTITIES 1 through 10,

Defendants.

EUGENE INOSE, an individual;

Counterclaimant.

v.

DESERT VALLEY CONTRACTING, INC., a
Nevada corporation; DOES 1 through X,
inclusive, and ROE CORPORATIONS 1 through
X, inclusive,

Counterdefendants.

Case No.: A-16-734351-C

Dept. No.: XV

**DEFENDANT IN-LO PROPERTIES AND
DEFENDANT/COUNTERCLAIMANT
EUGENE INOSE'S ~~AMENDED~~
~~PROPOSED~~ FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Trial Dates: April 8-11, 2019

June 19-21, 2019

July 24, 2019

Honorable Joe Hardy

This case having come on for trial on April 8-11, 2019, June 19-21, 2019, and July 24,

2019 before this Court, Defendant IN-LO PROPERTIES ("In-Lo") and

Defendant/Counterclaimant EUGENE INOSE ("Inose" and collectively, "Defendants"), by and

through its undersigned counsel of record, Brian W. Boschkee, Esq. and Sean E. Story, Esq. of the

11218-00/2276284

AUG 23 2019

Case Number: A-16-734351-C

HOLLEY DRIGGS
WALCH FINE PUZEY STEIN THOMPSON

<input type="checkbox"/> Jury	<input type="checkbox"/> Disposed After Trial Start
<input type="checkbox"/> Non-Jury	<input type="checkbox"/> Judgment Reached
<input type="checkbox"/> Non-Jury	<input type="checkbox"/> Transferred Before Trial
<input type="checkbox"/> Non-Jury	<input type="checkbox"/> Other

SUPP000165

law firm of Holley Driggs Walch Fine Puzey Stein & Thompson, and DESERT VALLEY CONTRACTING, INC. ("Desert Valley"), by and through undersigned counsel of record, Carrie E. Hurtik, Esq. and Jonathon R. Patterson, Esq., of the law firm Hurtik Law & Associates.

Desert Valley asserted four (4) causes of action against Defendants: 1) Breach of Contract, 2) Breach of the Covenant of Good Faith and Fair Dealing, 3) Unjust Enrichment, and 4) Intentional Interference with Contractual Relations. Inose asserted four (4) causes of action as counterclaims against Desert Valley: 1) Breach of Contract, 2) Breach of the Implied Covenant of Good Faith and Fair Dealing, 3) Unjust Enrichment, and 4) Intentional Interference with Prospective Economic Advantage.

The Court, having fully heard the testimony of the witnesses, reviewed the evidence during the trial, having considered the oral and written arguments set forth by appearing counsel at the trial, having read and considered the other papers and pleadings on file herein, and good cause appearing therefor, enters the following findings of fact and conclusions of law. To the extent any finding of fact shall more appropriately be deemed a conclusion of law, it is so deemed. To the extent any conclusion of law shall more appropriately be deemed a finding of fact, it is so deemed.

FINDINGS OF FACT

1. Inose testified and it is not disputed that Inose is the principal of In-Lo, which owns the residential real property located at 587 St. Croix Street, Henderson, Nevada 89012 (APN No. 178-27-114-001) (the "Property"); and that Inose utilizes the Property as his residence when he is in Nevada.

2. Per the testimony of Inose, on or about August 2, 2014, the Property was flooded and damaged to the extent that Inose was unable to reside at the Property.

3. Inose testified that an agent acting on his behalf initially contacted ServPro of Henderson to conduct the water extraction and remediation work on the Property.

4. Per the testimony of Inose, a representative of ServPro of Henderson recommended Desert Valley as a general contractor purported to be experience and proficient in the restoration and remodeling of high-end custom homes such as the Inose Property.

///

1 5. Dennis Zachary ("Zachary") confirmed through his testimony that Zachary is the
2 owner of Desert Valley.

3 THE CONTRACT

4 6. Per the testimony of Inose and other witnesses, Inose retained Desert Valley to be
5 the general contractor in the restoration of the Property (the "Project"). See Work Authorization
6 and Contract to Perform Scope of Work (the "Contract"), Exhibit 560.

7 7. The Contract provides, in pertinent part, as follows:

8 Should Client terminate the Contractor after work has begun, but not
9 completed in full, the Client shall be responsible for any and all fees
10 and costs associated with the work performed, plus the profit that
11 the client would have made on the job had Client not repudiated
12 the contract.

13 Contract, Ex. 560 (emphasis added).

14 8. Per the testimony of Zachary and Merritt, the Contract was prepared by Desert
15 Valley and is a form contract utilized by Desert Valley when it performs insurance work.

16 9. Per the testimony of Zachary, the Contract was to be performed on a "10 and 10"
17 basis, meaning that Desert Valley's job costs would have built in to its total an additional ten-
18 percent to account for Desert Valley's overhead and another ten-percent to account for Desert
19 Valley's profit.

20 PROJECT ESTIMATES AND SUPERVISION

21 10. Per the testimony of Zachary and Daniel Merritt ("Merritt"), Desert Valley assigned
22 Merritt as the lead estimator on the project.

23 11. Per Merritt's testimony, he spent a minimum of one week assessing the damage
24 and coordinating with subcontractors as well as Inose's insurance company, Fireman's Fund, from
25 which it produced an estimated job cost.

26 12. Per Merritt's testimony, Desert Valley also begin overseeing the project and
27 engaging subcontractors to perform work on the Property.

28 13. Per the testimony of Inose, at all times relevant hereto, Merritt acted as Inose's
primary point of contact with Desert Valley.

///

14. Inose and Merritt testified that at the onset of the project, in part because the Property was a custom home that had originally been constructed pursuant to "as-built" plans, Merritt inquired with Inose to identify a person that Inose believed knows the home the best.

15. Inose testified that he identified Robert Ramirez ("Ramirez") as the person who knows the home the best.

16. Per the testimony of Rachelle Elliston ("Elliston") and Zachary, Elliston was the operations manager primarily responsible for handling the in-house administrative duties related to the Project.

17. Zachary and Elliston Desert Valley testified that Desert Valley retained Ramirez as a W-2 employee to act as a supervisor and/or consultant for the project. See Payroll Records, Exhibit 244.

18. Merritt and Zachary testified that, in addition to Ramirez, Desert Valley also had a designated project manager throughout the course of the Project.

19. The Contract provides, in pertinent part, that Desert Valley agreed to "perform all repair work in good and workmanlike manner." Contract, Ex. 560.

20. Each of the Subcontractors further confirmed that their primary point of contact throughout the course of the Project was Merritt.

COST OVERRUNS

21. Per Merritt's testimony, during the course of the Project Merritt oversaw the cost projections for the restoration of the Property and regularly communicated directly with Inose's insurance company, Fireman's Fund.

22. Per Merritt's testimony, an initial bid for the project was completed on or around November 17, 2014 and was provided to Fireman's Fund to coordinate an anticipated scope of work and release of insurance proceeds. See Inose Full Bid3 (the "November Bid"), Exhibit 266.

23. The November Bid includes a line item total job cost of \$1,035,605.74, plus 10% overhead in the amount of \$103,561.15, plus 10% profit in the amount of \$103,561.15, and material sales tax of \$31,371.63, for a grand total claim of \$1,274,099.67. *Id.* at DVC000662.

///

24. Inose, Merritt, and Zachary all testified that Desert Valley had consistently represented to Inose that Desert Valley could offset the costs of certain changes in scope by removing other items that were part of the original scope of work and that doing so would not affect the total cost of the project. This included, but was not limited to, the removal of the sauna which had previously been on the Property offset by an expansion and various upgrades to the wine room.

25. Merritt testified that there were many cost overruns on the project which included, but were not limited to, an over-order of approximately eight (8) pallets of tile which Merritt testified were ordered based on measurements provided by Summit Tile and Stone, one of the subcontractors working for Desert Valley.

26. Inose and Merritt testified that, as of today, the eight (8) pallets of over-ordered tile are still in his garage and taking up otherwise usable space.

27. Merritt testified that an additional cost overrun was attributable to the necessity for repainting the interior of the home since the home had originally been repainted prior to the installation of tile and that the cutting of tile caused dust to adhere to the painted walls which could not thereafter be sufficiently cleaned.

28. Merritt and Inose testified that additional cost overruns were attributable to items going missing from the Project including a television and several Lutron switches.

29. Pursuant to testimony by Daniel Merritt and Rachelle Elliston, and Exhibit 475, delivery of marble floors were delayed for several months due to customs issues and a dock workers strike in Los Angeles, California.

CHANGE ORDERS

30. The Contract further provides that "[i]f any requests for additional work to be performed are made during the scope of the job, all such requests must be put in writing so that these costs will be added to the Scope of Work." Contract, Ex. 560 (emphasis added).

31. Zachary testified that the industry practice is for a general contractor to obtain from a subcontractor a written, approved, and signed "change order" in order for a subcontractor to make any changes to its scope of work and be paid for those changes.

1 32. Each of the Subcontractors also testified that all change orders should be in writing.
2 All of the Subcontractors testified that they would not expect to be paid for any additional work
3 performed outside the scope of their bids unless the additional work was approved through a
4 written, approved, and signed change order.

5 33. Zachary further testified that without a written, approved, and signed change order,
6 Desert Valley would have no obligation to and would not pay the subcontractor for the change to
7 its scope of work.

8 34. Zachary further testified that the process of requiring a written and approved change
9 order signed by the owner (in this case Inose) would be necessary to obligate Inose to pay for any
10 changes to Desert Valley's scope of work.

11 35. Zachary and Merritt further testified that Desert Valley did not obtain Inose's
12 approval or signature on any change orders throughout the course of the Project.

13 36. The majority of the subcontractor change orders dated before July 3, 2015 are
14 approved by and/or signed by Merritt. *See, e.g.*, Exhibit 576 at IN-LO00255; Exhibit 82 at
15 DVC000104; Exhibit 83 at DVC000105; Exhibit 90 at DVC000120.

16 37. Each of the Subcontractors confirmed through testimony that they had change
17 orders on the Project which had been provided to and approved by Desert Valley prior to July 3,
18 2015.

19 38. No change orders that were signed or approved by Inose were presented as evidence
20 at trial.

21 39. No written communications from Desert Valley to Inose prior to October 2015
22 indicating the existence of change orders were presented as evidence at trial.

23 40. Rachelle Elliston and Daniel Merritt testified that Inose was aware of the Change
24 Orders and refused to sign them.,.

25 41. Inose's claims that he was unaware of the change orders was belied by the evidence
26 presented at trial.

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THE INSURANCE CLAIM

42. The Contract further provides that the "Contractor agrees to perform the insured work as approved by the Insurance Company and accept insurance proceeds as payment for the insured work." Contract, Ex. 560.

43. Merritt testified that throughout the course of the Project he negotiated directly with Fireman's Fund the total amount of Insurance Proceeds that would be available for the scope of work on the Property based on cost estimates prepared by Desert Valley.

44. On June 5, 2015, Merritt emailed Bryan Lynch of Fireman's Fund and indicated that Desert Valley was at the "agreed contract amount with no needed change orders, and no more change orders from all of the subcontractors which had submitted their bids." Exhibit 571 at IN-LO00074.

45. Merritt further represented in his email to Fireman's Fund that Desert Valley "will be able to complete the project for this amount." *Id.*

46. The subject-line of the email states "Agreement on amount of \$1,321,133.12." *Id.*

47. The estimate attached to Merritt's email which is titled as a Final Bid with a completed date of 4/27/15 includes work (such as the Sauna Bath for example) which Merritt, Inose, and Zachary all confirmed was removed from the scope of the Project and was never done. *Id.* at IN-LO00094.

48. Bryan Lynch of Fireman's Fund emailed Inose on June 19, 2015 stating that "[w]e have received the final estimate from your contractor" and identified that he was attaching "[a]n email from Desert Valley Construction stating that no further billing exists beyond their final estimate" as well as a "copy of the final estimate presented by your contractor totaling \$1,320,429.28. (Final DVC Estimate)." *Id.* at IN-LO00071. The email also included a Policyholder Release and Lynch requested therein that Inose forward a fully completed copy of the release. *Id.*

49. Inose's testimony that Desert Valley Contracting advised him to close out the insurance claim was not credible as it was in Desert Valley's best interest to keep the insurance claim open.

50. Inose took no steps to reopen the insurance claim after it appeared that there was a need to do so.

51. No evidence was presented at trial of any written communications from Desert Valley to Inose prior to October 2015 objecting to Inose having closed out the insurance claim.

POST INSURANCE CLAIM

52. Inose and Merritt testified that on or about July 3, 2015, Desert Valley provided to Inose a waiver and release which included a notation signed by Daniel indicating "No change orders as of 07/03/2015." See Unconditional Waiver and Release on Progress Payment (the "Waiver"), Exhibit 562.

53. The Waiver provides in capitalized text as follows:

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

54. In addition to Daniel's signature on the notation that there are no change orders as of 7/3/15, the Waiver is also signed by Rachell Elliston, Desert Valley's operations manager. *Id.*

55. Elliston testified that she signed an invoice dated September 4, 2015 which includes the following handwritten notation: "Total Contract to Complete House \$1,321,331.27." Desert Valley Invoice dated 9/4/15, Exhibit 564.

56. Elliston and Zachary testified that Desert Valley sent a letter dated November 16, 2015 to all subcontractors working on the project directing them to cease working on the Property. See Letter dated November 16, 2015, Exhibit 567.

57. Merritt testified that on or around November 23, 2015, he prepared a summary for Desert Valley's attorney of the purported differences between the initial bids of each of the subcontractors on the Project as well as Merritt's own projected costs and the actual costs for each category of work. See November 23, 2015 Email, Exhibit 568.

58. On November 24, 2015, Merritt forwarded to Inose this list of what Desert Valley purported to be the differences between its estimated and actual costs to complete the project. The

1 total amount of the asserted differences was approximately \$125,763.26. *Id.*

2 59. The list delineates between the estimate and finals costs and does not specify what
3 amounts are accounted for through written, approved, and signed change orders and what amounts
4 are not. *Id.*

5 60. Merritt testified that, although he had been receiving and approving change orders
6 throughout the course of the Project, and notwithstanding that Desert Valley had indicated to Inose
7 in writing in July 2015 that there were no change orders and again in September 2015 that the cost
8 to complete the house was \$1,321,331.27, Merritt always intended to prepare and submit one large
9 master change order to Inose toward the end of the Project.

10 61. No evidence was presented at trial or any written communications to Inose
11 indicating Desert Valley's intent to compile and submit a large master change order at the end of
12 the project.

13 62. Inose testified that on or around December 8, 2015, he terminated the Contract with
14 Desert Valley.

15 63. Inose testified that at the time Desert Valley ceased working on the Project, Desert
16 Valley had not fully restored the Property and, as a result, Inose was unable to reside in the
17 Property.

18 64. Merritt confirmed through testimony that at the time Desert Valley ceased working
19 on the Property, the Project was approximately eighty-five (85%) done.

20 DAMAGES CALCULATION

21 65. Inose testified that after Desert Valley left the project uncompleted, with the work
22 incomplete and the Property not yet in livable condition, and in order avoid any liens from being
23 placed on the Property, Inose was forced to engage many of the subcontractors directly to complete
24 the work and to pay the subcontractors directly.

25 66. In Merritt's June 5, 2015 email to Fireman's Fund, Merritt represented that the
26 house would be completed with no needed change orders for \$1,321,133.12 and in reliance on this
27 representation and further discussions with Merritt, Inose closed out the claim for this amount.

28 ///

67. This amount was confirmed in a signed Desert Valley invoice dated September 4, 2015.

68. Merritt confirmed through testimony that the Project was approximately eighty-five percent (85%) complete at the time that Desert Valley left the Project

69. During the course of the Project, Inose paid to Desert Valley the total amount of one-million, one-hundred twenty-three thousand seven-hundred thirty-four dollars and eighty-seven cents (\$1,123,734.87). *See* Checks, Exhibit 585.

70. Zachary testified that on April 25, 2017, well after Desert Valley had ceased working on the Project, Desert Valley generated a Job Cost & Billing Detail report. *See* Exhibit 274.

71. Zachary confirmed through testimony that in total Desert Valley incurred costs in the amount of one-million twelve-thousand four-hundred fifty-one dollars and eight cents (\$1,012,451.08). *Id.* at DVC000706.

72. Zachary and Elliston testified that Desert Valley was paid for the entirety of its costs incurred as well as a portion of its profit and overhead.

73. Inose paid directly to subcontractors the total amount of two-hundred fifty-six thousand four-hundred eighty-one dollars and forty-six cents (\$256,481.46) to complete work for which Desert Valley had already been paid. *See* Checks and Credit Card Statements, Exhibits 586 through 595.

74. Inose paid Desert Valley \$1,123,734.87 to complete approximately 85% of the Project, plus an additional \$256,481.46 to subcontractors directly to finish the project, for a sum total paid by Inose of \$1,380,216.33.

CONCLUSIONS OF LAW

A. Desert Valley's Claims

1. Desert Valley's Claim for Breach of Contract

1. In Nevada, in order to make a prima facie showing of a cause of action for breach of contract, a Plaintiff must establish the following elements: 1) a valid contract; 2) Defendant's breached the contract or failed to render performance when due; 3) Defendant's breach or failure

1 of performance was unexcused; 4) All conditions precedent to defendant's duty to perform were
2 fulfilled by plaintiff or were excused; 5) Plaintiff was damaged by the breach; 6) Causation and
3 damages were a foreseeable consequence of a particular breach. *See Cohen-Breen v. Gray Tel.*
4 *Grp., Inc.*, 661 F. Supp. 2d 1158, 1171 (D. Nev. 2009); *see also Clark Cnty. School Dist. v.*
5 *Richardson Constr., Inc.*, 123 Nev. 382, 168 P.3d 87 (2007); *May v. Anderson*, 19 P.3d 1254, 1257
6 (Nev. 2005).

7 2. The August 24, 2014 Work Authorization and Contract to Perform is a valid and
8 enforceable agreement between Desert Valley and Inose.

9 3. The Court finds that Defendant/Counter-Plaintiff INOSE was in Breach of
10 Contract. However, Plaintiff/Counter-Defendant DVC failed to meet their burden, to show by a
11 preponderance of the evidence the damages caused by that Breach of Contract.

12 4. Based on the foregoing, Desert Valley did not and cannot satisfy the necessary
13 elements to succeed on a claim for breach of contract and the Court therefore finds in favor of
14 Inose on Desert Valley claim for breach of contract.

15 2. **Desert Valley's Claim for Breach of the Implied Covenant of Good**
16 **Faith and Fair Dealing**

17 5. In Nevada, to prevail on a breach of the implied covenant of good faith and fair
18 dealing claim, there must be proof that: (1) the parties entered into a contract; (2) defendant owed
19 a duty of good faith to plaintiff; (3) defendant breached that duty by performing in a manner that
20 was unfaithful to the purpose of the contract and (4) plaintiff's justified expectations were thus
21 denied. *See Perry v. Jordan*, 111 Nev. 943, 948, 900 P.2d 335, 338 (1995); *see also Hilton Hotels*
22 *Corp. v. Butch Lewis Prods.*, 107 Nev. 226, 234, 808 P.2d 919, 923-24 (1991).

23 6. The August 24, 2014 Work Authorization and Contract to Perform is a valid and
24 enforceable agreement between Desert Valley and Inose.

25 7. A covenant of good faith and fair dealing arising from the Contract was owed by
26 Inose to Desert Valley.

27 8. That as both parties are in Breach of Contract, the Court does not need to make a
28 finding regarding this Cause of Action.

9. To the extent the Court is required to make a ruling on this Cause of Action, it fails for the reasons outlined in the Breach of Contract Cause of Action. Plaintiff/Counter Defendant DVC failed to prove his damages beyond a preponderance of the evidence.

10. Based on the foregoing, Desert Valley did not and cannot satisfy the necessary elements to succeed on a claim for breach of the implied covenant of good faith and fair dealing and the Court therefore finds in favor of Inose on Desert Valley's claim for breach of the implied covenant of good faith and fair dealing.

3. Desert Valley's Claim for Unjust Enrichment

11. In Nevada, "[u]njust enrichment is the unjust retention . . . of money or property of another against the fundamental principles of justice or equity and good conscience." *Asphalt Products Corp. v. All Star Ready Mix, Inc.*, 111 Nev. 799, 802, 898 P.2d 699, 701 (1995) (citations omitted). This claim for relief "exists when the plaintiff confers a benefit on the defendant, the defendant appreciates such benefit, and there is 'acceptance and retention by the defendant of such benefit under circumstances such that it would be inequitable for him to retain the benefit without payment of the value thereof.'" *Certified Fire Prot., Inc. v. Precision Constr., Inc.*, __ Nev. __, 283 P.3d 250, 257 (2012) (citations omitted).

12. "An action based on a theory of unjust enrichment is not available when there is an express, written contract, because no agreement can be implied when there is an express agreement." *Leasepartners Corp. v. Robert L. Brooks Tr. Dated November 12, 1975*, 113 Nev. 747, 755, 942 P.2d 182, 187 (1997).

13. Nevada law would permit an unjust enrichment claim when the benefit conferred is "vastly different in scope and kind from the contracted-for benefit." *Sierra Dev. Co. v. Chartwell Advisory Group, Ltd.*, 223 F. Supp. 3d 1098, 1108 (D. Nev. 2016).

14. "An action based on a theory of unjust enrichment is not available when there is an express, written contract, because no agreement can be implied when there is an express agreement." *Lease partners Corp. v. Robert L. Brooks Tr. Dated November 12, 1975*, 113 Nev. 747, 755, 942 P.2d 182, 187 (1997).

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15. Nevada law would permit an unjust enrichment claim when the benefit conferred is "vastly different in scope and kind from the contracted-for benefit." *Sierra Dev. Co. v. Chartwell Advisory Group, Ltd.*, 223 F. Supp. 3d 1098, 1108 (D. Nev. 2016).

16. The Court finds that a valid contract exists between the parties, therefore the Cause of Action for Unjust Enrichment fails as a matter of law.

4. Desert Valley's Claim for Intentional Interference with Contract

17. In Nevada, the elements for a claim of intentional interference with contractual relations are: 1) A valid and existing contract between plaintiff and a third party; 2) Defendant had knowledge of the valid contract or had reason to know of its existence; 3) Defendant committed intentional acts intended or designed to disrupt the contractual relationship or to cause the contracting party to breach the contract; 4) Actual disruption of the contract (the contracting party breached the contract); 5) The breach was caused by the wrongful and unjustified conduct; 6) Causation and damage. *See Klein v. Freedom Strategic Partners, LLC*, 595 F. Supp. 2d 1152 (D. Nev. 2009); *see also Blanck v. Hager*, 360 F. Supp.2d 1137 (D. Nev. 2005).

18. Desert Valley failed to establish that any disruptions in its contracts or contractual relations with subcontracts were caused Inose.

19. Desert Valley failed to identify any way in which it suffered damages by the actions of Inose arising from any alleged interference with its contractual relations.

20. The Court finds in favor of Inose on Desert Valley's claim for intentional interference with contractual relations.

B. Inose's Claims

1. Inose's Claim for Breach of Contract

21. In Nevada, in order to make a prima facie showing of a cause of action for breach of contract, a Plaintiff must establish the following elements: 1) a valid contract; 2) Defendant's breached the contract or failed to render performance when due; 3) Defendant's breach or failure of performance was unexcused; 4) All conditions precedent to defendant's duty to perform were fulfilled by plaintiff or were excused; 5) Plaintiff was damaged by the breach; 6) Causation and

1 damages were a foreseeable consequence of a particular breach. *See Cohen-Breen v. Gray Tel.*
2 *Grp., Inc.*, 661 F. Supp. 2d 1158, 1171 (D. Nev. 2009); *see also Clark Cnty. School Dist. v.*
3 *Richardson Constr., Inc.*, 123 Nev. 382, 168 P.3d 87 (2007); *May v. Anderson*, 19 P.3d 1254, 1257
4 (Nev. 2005).

5 22. The August 24, 2014 Work Authorization and Contract to Perform is a valid and
6 enforceable agreement between Desert Valley and Inose.

7 23. Desert Valley breached its obligations under the Contract by failing to complete the
8 work in a good and workmanlike manner including, but not limited to, by causing damage to the
9 Property unrelated to the restoration and incorporating the cost of repairs for this damage into the
10 cost it sought to collect from Inose.

11 24. Desert Valley breached its obligations under the Contract by failing to complete the
12 scope of work and provide Inose with a fully restored property.

13 25. Desert Valley breached its obligations under the Contract by failing to complete the
14 scope of work set forth in the Contract within the confines of the Insurance Proceeds as required
15 under the Contract.

16 26. Desert Valley breached the Contract by failing to pay the subcontractors in full for
17 work to be completed by the subcontractors.

18 27. Desert Valley breached its obligations under the Contract by unilaterally approving
19 change orders received from subcontractors and failing to obtain approval of the same from Inose.

20 28. The above-referenced breaches by Desert Valley were unexcused.

21 29. Inose breached the Contract by failing to forward insurance proceeds as and when
22 received to Desert Valley.

23 30. Inose breached the Contract by coordinating directly with the subcontractors
24 retained by Desert Valley.

25 31. Inose paid subcontractors directly the total amount \$256,481.46 to complete work
26 but could not distinguish between what was paid to restore the property versus what was paid for
27 upgrades to the property.

28 ///

32. Based on the evidence presented at trial, Inose failed to establish what portion, if any, of the funds paid to subcontractors was for work included in Desert Valley's scope of work and what was paid for extras.

33. Inose therefore failed to establish damages under his claim for breach of contract.

34. The Court finds in favor of Desert Valley and against Inose on Inose's claim for breach of contract.

2. Inose's Claim for Breach of the Implied Covenant of Good Faith and Fair Dealing

35. In Nevada, to prevail on a breach of the implied covenant of good faith and fair dealing claim, there must be proof that: (1) the parties entered into a contract; (2) defendant owed a duty of good faith to plaintiff; (3) defendant breached that duty by performing in a manner that was unfaithful to the purpose of the contract and (4) plaintiff's justified expectations were thus denied. *See Perry v. Jordan*, 111 Nev. 943, 948, 900 P.2d 335, 338 (1995); *see also Hilton Hotels Corp. v. Butch Lewis Prods.*, 107 Nev. 226, 234, 808 P.2d 919, 923-24 (1991).

36. The August 24, 2014 Work Authorization and Contract to Perform is a valid and enforceable agreement between Desert Valley and Inose.

37. A covenant of good faith and fair dealing arising from the Contract was owed by Desert Valley to Inose.

38. Desert Valley breached its covenant of good faith and fair dealing arising from the Contract by failing to complete the scope of work set forth in the Contract within the confines of the Insurance Proceeds.

39. Desert Valley breached its covenant of good faith and fair dealing by causing or allowing damage to be caused under its supervision to Property and incorporating the repair costs related to said damage into its restoration job cost to be recovered from Fireman's Fund.

40. Desert Valley breached its covenant of good faith and fair dealing arising from the Contract by representing to Inose that certain costs could be covered elsewhere or buried without submitting written changes written change orders to Inose.

///

41. Desert Valley breached its covenant of good faith and fair dealing by failing to timely present to Inose the written change orders that it received from subcontractors throughout the course of the project.

42. Desert Valley breached its covenant of good faith and fair dealing arising from the Contract by directing Inose to close out for the Insurance Proceeds and representing to both Fireman's Fund and Inose that it could complete the work for the total amount of Insurance Proceeds and that it had no change orders as of July 2015.

43. Inose breached his covenant of good faith and fair dealing by failing to forward insurance proceeds as and when received to Desert Valley.

44. Inose breached his covenant of good faith and fair dealing by coordinating directly with the subcontractors retained by Desert Valley.

45. As a result of Desert Valley's above-referenced breaches of its duty of good faith and fair dealing, Inose's justified expectations were denied.

46. Inose failed to establish any damages suffered in relation to his claim for breach of the implied covenant of good faith and fair dealing.

47. The Court therefore finds in favor of Desert Valley and against Inose on Inose's claim for breach of the implied covenant of good faith and fair dealing.

3. Inose's Claim for Unjust Enrichment

48. In Nevada, "[u]njust enrichment is the unjust retention . . . of money or property of another against the fundamental principles of justice or equity and good conscience." *Asphalt Products Corp. v. All Star Ready Mix, Inc.*, 111 Nev. 799, 802, 898 P.2d 699, 701 (1995) (citations omitted). This claim for relief "exists when the plaintiff confers a benefit on the defendant, the defendant appreciates such benefit, and there is 'acceptance and retention by the defendant of such benefit under circumstances such that it would be inequitable for him to retain the benefit without payment of the value thereof.'" *Certified Fire Prot., Inc. v. Precision Constr., Inc.*, __ Nev. __, 283 P.3d 250, 257 (2012) (citations omitted).

49. "An action based on a theory of unjust enrichment is not available when there is an express, written contract, because no agreement can be implied when there is an express

1 agreement." *Leasepartners Corp. v. Robert L. Brooks Tr.* Dated November 12, 1975, 113 Nev.
2 747, 755, 942 P.2d 182, 187 (1997).

3 50. Nevada law would permit an unjust enrichment claim when the benefit conferred
4 is "vastly different in scope and kind from the contracted-for benefit." *Sierra Dev. Co. v. Chartwell*
5 *Advisory Group, Ltd.*, 223 F. Supp. 3d 1098, 1108 (D. Nev. 2016).

6 51. The Court finds that a valid contract exists between the parties, therefore the Cause
7 of Action for Unjust Enrichment fails as a matter of law.

8 **4. Inose's Claim for Intentional Interference with Prospective Economic**
9 **Advantage**

10 52. In Nevada, the elements for a claim of intentional interference with prospective
11 economic advantage are as follows: 1) A prospective contractual relationship between plaintiff and
12 a third party; 2) Defendant has knowledge of the prospective relationship; 3) The intent to harm
13 plaintiff by preventing the relationship; 4) The absence of privilege or justification by the
14 defendants; 5) Actual harm to plaintiff as a result of defendant's conduct; and 6) Causation and
15 damages. *Custom Tel., Inc. v. Int'l Tele-Services, Inc.*, 254 F. Supp. 2d 1173, 1180-81 (Nev. 2003);
16 *Wichinsky v. Mosa*, 109 Nev. 84, 88, 847 P.2d 727 (1993); *Leavitt v. Leisure Sports, Inc.*, 103 Nev.
17 81, 88, 734 P.2d 1221, 1225 (1987).

18 53. After Desert Valley left the project, Inose had a prospective contractual relationship
19 with the subcontractors that had been working on the Property.

20 54. As the prior general contractor on the project, Desert Valley had knowledge of his
21 prospective relationship and was aware that Inose would need to engage the subcontractors to
22 complete the restoration of his home and to avoid any liens being placed on the Property.

23 55. In sending written direction to the subcontractors to cease work on the Property and
24 to refrain from dealing with Inose, Desert Valley had a clear intent to prevent the prospective
25 relationship between Inose and the subcontractors.

26 56. Desert Valley had no privilege or justification to inform the subcontractors to cease
27 work or to refrain from dealing with Inose after it had left the project.

28 ///

57. Inose failed to establish how the aforementioned actions of Desert Valley caused any damage to Inose.

58. The Court therefore finds in favor of Desert Valley and against Inose on Inose's claim for intentional interference with prospective economic advantage.

DAMAGES

1. The provision of the Contract which provides that upon termination by the client, Desert Valley would be entitled to its costs "plus the profit that the client would have made on the job had Client not repudiated the contract" is ambiguous. *See Anvui, LLC v. G.L. Dragon, LLC*, 123 Nev. 212, 215, 163 P.3d 405, 407 (2007) ("A contract is ambiguous when it is subject to more than one reasonable interpretation.").

2. Desert Valley conceded that it prepared the Contract, which it utilizes as a form contract, and thus any ambiguities are to be construed against Desert Valley. *Id.* ("Any ambiguity, moreover, should be construed against the drafter.").

3. Accordingly, Desert Valley failed to establish that it is entitled to recover any profit or overhead for amounts paid to subcontractors by Inose for work completed after Desert Valley left the Project.

4. Desert Valley was paid approximately 85% of the contract price for a job that its own witness testified was approximately 85% completed at the time that Desert Valley left the Project. Desert Valley failed to establish any legal theory upon which it is entitled to any additional sums and therefore failed to establish any damages under its asserted legal theories.

5. Inose paid additional sums directly to subcontractors after Desert Valley left the project. However, changes and upgrades were performed on the project and thus Inose failed to establish any specific amount of damages suffered under any of his asserted legal theories.

ORDER

Based on the foregoing, and other good cause appearing:

IT IS HEREBY ORDERED that, as to Plaintiff Desert Valley's claims for relief against Defendants for: 1) Breach of Contract, 2) Breach of the Covenant of Good Faith and Fair Dealing, 3) Unjust Enrichment, and 4) Intentional Interference with Contractual Relations; the Court finds

in favor of Defendants and against Desert Valley. Thus, Desert Valley's claims are dismissed with prejudice.

IT IS FURTHER ORDERED that, as to Inose's claims for relief against Desert Valley for: 1) Breach of Contract, 2) Breach of the Implied Covenant of Good Faith and Fair Dealing, 3) Unjust Enrichment, and 4) Intentional Interference with Prospective Economic Advantage; the Court finds in favor of Desert Valley and against Inose. Thus, Inose's claims are dismissed with prejudice.

IT IS FURTHER ORDERED that no damages are awarded to either party and neither party is considered the prevailing party.

IT IS FURTHER ORDERED that the Court will address any issues of attorneys' fees, costs, and prejudgment interest through post-decision motions that may be filed with the Court.


IT IS SO ORDERED.

DATED this 30th day of August, 2019


 DISTRICT COURT JUDGE

40

Respectfully Submitted by:
HOLLEY DRIGGS WALCH
FINE PUZEY STEIN & THOMPSON


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EXHIBIT 7

JOB: A19CTC CTC & MAT- INOSE

REF #	JR	DATE	DOCUMENT	DESCRIPTION	LABOR	MATERIAL	SUBCON	EQUIP	OTHER	BILLINGS
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SUBJOB: CTC - CTC & MAT- INOSE

** BASE BUDGET **

CODE: 00 UNCODED

874-0001	CA	12/15/14	Check# 13758	Eugene Inose					1000.00		
679-0115	AP	02/23/15	Inv# 4739944	Lowe's Commercial Services		29.68					
679-0109	AP	02/26/15	Inv# 64973506	Lowe's Commercial Services		74.64					
679-0110	AP	02/27/15	Inv# 47059887	Lowe's Commercial Services		112.95					
684-0072	AP	04/23/15	Inv# 26810376	Lowe's Commercial Services		291.57					
972-0066	CA	10/23/15	cc/oct/000372	Lowe's Commercial Services		32.75					
675-0301	CA	10/23/15	cc/oct/000 Reversed	Lowe's Commercial Services		-32.75					
055-0007	AP	11/04/15	Inv# 02623	Lowe's Commercial Services		56.57					
055-0008	AP	11/04/15	Inv# 02428	Lowe's Commercial Services		65.49					
055-0009	AP	11/04/15	Inv# 02829	Lowe's Commercial Services		27.00					
055-0010	AP	11/07/15	Inv# 02681	Lowe's Commercial Services		63.21					
CODE 00 TOTALS:				COST TOTALS:	1721.11	0.00	721.11	0.00	0.00	1000.00	0.00
				BUDGET:	0.00	0.00	0.00	0.00	0.00	0.00	0.00
				REMAINING:	-1721.11	0.00	-721.11	0.00	0.00	-1000.00	0.00

CODE: 01 Painting

-0012	CA	09/22/14	Check# 092214	Lowe's Commercial Services		34.98				
998-0010	CA	09/30/14	Check# 093014	Lowe's Commercial Services		167.44				
100-0010	CA	10/29/14	Check# 102914	Lowe's Commercial Services		143.99				
129-0001	PS	10/31/14	16.67 hr + 28% Burd	Jonatan Ambrocio	256.05					
156-0001	PS	11/28/14	8.00 hr + 28% Burd	Nemesio Mendoza	153.60					
134-0015	AP	01/20/15	Inv# 2204-3	Sherwin Williams Paint		56.85				
134-0002	AP	01/26/15	Inv# 19477	Burnham Painting & Drywall		15269.00				
132-0004	AP	01/27/15	Inv# 012715	The Home Depot		73.10				
161-0006	CA	01/27/15	Check# 012715	The Home Depot		73.10				
164-0013	CA	01/27/15	012715 Reversed	The Home Depot		-73.10				
194-0012	AP	01/27/15	Inv# 012715	The Home Depot		73.10				
124-0001	PS	01/30/15	25.00 hr + 28% Burd	Noe Pineda	960.00					
124-0001	PS	01/30/15	25.00 hr + 28% Burd	Miguel Rubio	960.00					
124-0001	PS	01/30/15	25.00 hr + 28% Burd	Jose Luis Marquez	960.00					
67-0001	PS	02/06/15	16.00 hr + 28% Burd	Cristian Gonzales	409.60					
67-0001	PS	02/06/15	30.00 hr + 28% Burd	Jose Luis Marquez	921.60					
67-0001	PS	02/06/15	30.00 hr + 28% Burd	Noe Pineda	921.60					
67-0001	PS	02/06/15	30.00 hr + 28% Burd	Miguel Rubio	921.60					
134-0010	AP	02/12/15	Inv# 1006-4	Sherwin Williams Paint		109.81				
31-0001	PS	02/13/15	25.00 hr + 28% Burd	Cristian Gonzales	512.00					
31-0001	PS	02/13/15	25.70 hr + 28% Burd	Noe Pineda	921.09					
31-0001	PS	02/13/15	30.00 hr + 28% Burd	Jose Luis Marquez	921.60					
31-0001	PS	02/13/15	30.00 hr + 28% Burd	Miguel Rubio	921.60					
88-0001	PS	02/20/15	30.00 hr + 28% Burd	Noe Pineda	921.60					
88-0001	PS	02/20/15	30.00 hr + 28% Burd	Jose Luis Marquez	921.60					
88-0001	PS	02/20/15	30.00 hr + 28% Burd	Miguel Rubio	921.60					
88-0001	PS	02/20/15	24.00 hr + 28% Burd	Cristian Gonzales	460.80					
1001	PS	02/27/15	24.00 hr + 28% Burd	Miguel Rubio	921.60					
52-0001	PS	02/27/15	24.00 hr + 28% Burd	Jose Luis Marquez	921.60					
52-0001	PS	02/27/15	24.00 hr + 28% Burd	Noe Pineda	921.60					

DVC000685

SUPP000185

JOB: A19CTC CTC & MAT- INOSE

REF #	JR	DATE	DOCUMENT	DESCRIPTION	LABOR	MATERIAL	SUBCON	EQUIP	OTHER	BILLINGS
552-0001	PS	02/27/15	24.00 hr + 28% Burd	Cristian Gonzales	460.80					
626-0001	PS	03/06/15	30.00 hr + 28% Burd	Miguel Rubio	921.60					
626-0001	PS	03/06/15	30.00 hr + 28% Burd	Jose Luis Marquez	921.60					
626-0001	PS	03/06/15	30.00 hr + 28% Burd	Noe Pineda	921.60					
626-0001	PS	03/06/15	24.00 hr + 28% Burd	Cristian Gonzales	460.80					
626-0001	PS	03/06/15	25.00 hr + 28% Burd	Rafael Chavez	448.00					
626-0001	PS	03/06/15	6.67 hr + 28% Burd	Gabino Delgado	256.13					
931-0013	AP	03/09/15	Inv# 4855-6	Sherwin Williams Paint		58.24				
696-0001	PS	03/13/15	12.00 hr + 28% Burd	Sergio Reyes	245.76					
696-0001	PS	03/13/15	12.00 hr + 28% Burd	Efrain Rivera	245.76					
696-0001	PS	03/13/15	12.00 hr + 28% Burd	Jorge Vargas Cerpa	245.76					
696-0001	PS	03/13/15	20.00 hr + 28% Burd	Rafael Chavez	448.00					
696-0001	PS	03/13/15	24.00 hr + 28% Burd	Cristian Gonzales	460.80					
696-0001	PS	03/13/15	30.00 hr + 28% Burd	Noe Pineda	921.60					
696-0001	PS	03/13/15	30.00 hr + 28% Burd	Jose Luis Marquez	921.60					
696-0001	PS	03/13/15	30.00 hr + 28% Burd	Miguel Rubio	921.60					
931-0004	AP	03/13/15	Inv# 5076-8	Sherwin Williams Paint		19.41				
931-0005	AP	03/13/15	Inv# 5093-3	Sherwin Williams Paint		19.41				
742-0001	PS	03/20/15	19.08 hr + 28% Burd	Jose Luis Marquez	537.29					
742-0001	PS	03/20/15	14.00 hr + 28% Burd	Noe Pineda	358.40					
742-0001	PS	03/20/15	5.15 hr + 28% Burd	Miguel Rubio	179.30					
105-0010	AP	03/24/15	Inv# 2154-9	Sherwin Williams Paint		29.42				
1-0009	AP	03/26/15	Inv# 5710-2	Sherwin Williams Paint		2480.45				
105-0003	AP	03/31/15	Inv# 4844-4	Sherwin Williams Paint		461.70				
009-0009	CA	04/01/15	Check# 040115	The Home Depot		100.65				
104-0002	AP	04/01/15	Inv# 2567-2	Sherwin Williams Paint		164.96				
664-0042	CA	04/01/15	040115 Reversed	The Home Depot		-100.65				
694-0041	AP	04/01/15	Inv# 040115	The Home Depot		100.65				
103-0004	AP	04/02/15	Inv# 6123-7	Sherwin Williams Paint		231.56				
928-0001	PS	04/03/15	12.00 hr + 28% Burd	Reynaldo Martinez Triqueros	245.76					
328-0001	PS	04/03/15	10.00 hr + 28% Burd	Ricardo Pena	217.60					
328-0001	PS	04/03/15	12.00 hr + 28% Burd	Jorge Vargas Cerpa	245.76					
328-0001	PS	04/03/15	12.00 hr + 28% Burd	Efrain Rivera	245.76					
328-0001	PS	04/03/15	12.00 hr + 28% Burd	Sergio Reyes	245.76					
102-0004	AP	04/07/15	Inv# 6352-2	Sherwin Williams Paint		506.33				
100-0001	PS	04/10/15	20.00 hr + 28% Burd	Ricardo Pena	384.00					
100-0001	PS	04/10/15	24.00 hr + 28% Burd	Jorge Vargas Cerpa	614.40					
100-0001	PS	04/10/15	25.00 hr + 28% Burd	Pedro Vargas	448.00					
100-0001	PS	04/10/15	30.00 hr + 28% Burd	Reynaldo Martinez Triqueros	537.60					
100-0001	PS	04/10/15	25.00 hr + 28% Burd	Leonel Archila	512.00					
100-0001	PS	04/10/15	25.00 hr + 28% Burd	Gonzalo Sierra	672.00					
100-0001	PS	04/10/15	25.00 hr + 28% Burd	Gillermo Urbina	448.00					
100-0001	PS	04/10/15	15.00 hr + 28% Burd	Rafael Chavez	384.00					
100-0001	PS	04/10/15	12.00 hr + 28% Burd	Efrain Rivera	307.20					
100-0001	PS	04/10/15	12.00 hr + 28% Burd	Sergio Reyes	307.20					
63-0003	CA	04/16/15	Check# 14173	Renee Marquez		21.59				
62-0001	PS	04/17/15	25.00 hr + 28% Burd	Jorge Vargas Cerpa	768.00					
62-0001	PS	04/17/15	20.84 hr + 28% Burd	Ricardo Pena	640.20					
62-0001	PS	04/17/15	25.00 hr + 28% Burd	Gillermo Urbina	512.00					
62-0001	PS	04/17/15	24.00 hr + 28% Burd	Rafael Chavez	614.40					
62-0001	PS	04/17/15	24.00 hr + 28% Burd	Gonzalo Sierra	614.40					
62-0001	PS	04/17/15	24.00 hr + 28% Burd	Reynaldo Martinez Triqueros	614.40					

DVC000686

SUPP000186

JOB: A19CTC CTC & MAT- INOSE

REF #	JR	DATE	DOCUMENT	DESCRIPTION	LABOR	MATERIAL	SUBCON	EQUIP	OTHER	BILLINGS
962-0001	PS	04/17/15	24.00 hr + 28% Burd	Sergio Cervantes	614.40					
105-0017	AP	04/17/15	Inv# 3309-8	Sherwin Williams Paint		258.79				
301-0020	CA	04/23/15	Check# 042315	Lowes Commercial Services		291.57				
675-0082	CA	04/23/15	042315 Reversed	Lowes Commercial Services		-291.57				
031-0001	PS	04/24/15	13.16 hr + 28% Burd	Jorge A. Lugo	640.10					
031-0001	PS	04/24/15	25.00 hr + 28% Burd	Rafael Chavez	256.00					
031-0001	PS	04/24/15	12.00 hr + 28% Burd	Reynaldo Martinez Triqueros	245.76					
031-0001	PS	04/24/15	16.00 hr + 28% Burd	Jorge Vargas Cerpa	307.20					
506-0001	AP	04/30/15	Inv# 3981-4	Sherwin Williams Paint		82.48				
101-0001	PS	05/01/15	24.00 hr + 28% Burd	Jorge Vargas Cerpa	460.80					
101-0001	PS	05/01/15	20.00 hr + 28% Burd	Rafael Chavez	512.00					
101-0001	PS	05/01/15	24.00 hr + 28% Burd	Efrain Rivera	460.80					
101-0001	PS	05/01/15	24.00 hr + 28% Burd	Reynaldo Martinez Triqueros	460.80					
102-0002	AP	05/01/15	Inv# 2974-0 04/10/15	Sherwin Williams Paint		541.18				
185-0001	PS	05/08/15	16.00 hr + 28% Burd	Jorge Vargas Cerpa	307.20					
185-0001	PS	05/08/15	16.00 hr + 28% Burd	Reynaldo Martinez Triqueros	245.76					
185-0001	PS	05/08/15	16.00 hr + 28% Burd	Efrain Rivera	245.76					
185-0001	PS	05/08/15	16.00 hr + 28% Burd	Gillermo Urbina	307.20					
185-0001	PS	05/08/15	20.00 hr + 28% Burd	Rafael Chavez	448.00					
254-0010	AP	05/13/15	Inv# 2411401.0 02/16	REW Materials		257.71				
293-0001	PS	05/15/15	28.00 hr + 28% Burd	Rafael Chavez	537.60					
293-0001	PS	05/15/15	20.00 hr + 28% Burd	Gillermo Urbina	486.40					
293-0001	PS	05/15/15	24.00 hr + 28% Burd	Efrain Rivera	491.52					
293-0001	PS	05/15/15	20.00 hr + 28% Burd	Reynaldo Martinez Triqueros	486.40					
293-0001	PS	05/15/15	30.00 hr + 28% Burd	Jorge Vargas Cerpa	614.40					
692-0002	AP	05/20/15	Inv# 8508-7	Sherwin Williams Paint		58.24				
692-0017	AP	05/21/15	Inv# 6839-2	Sherwin Williams Paint		38.38				
365-0005	AP	05/22/15	Inv# 7765-4 05/05/15	Sherwin Williams Paint		453.90				
365-0006	AP	05/22/15	Inv# 7766-2 05/05/15	Sherwin Williams Paint		10.80				
592-0014	AP	05/26/15	Inv# 8818-0	Sherwin Williams Paint		1607.56				
592-0016	AP	05/26/15	Inv# 5247-8	Sherwin Williams Paint		209.34				
592-0011	AP	05/28/15	Inv# 5313-8	Sherwin Williams Paint		65.72				
105-0001	PS	05/29/15	20.00 hr + 28% Burd	Jorge Vargas Cerpa	486.40					
105-0001	PS	05/29/15	24.00 hr + 28% Burd	Reynaldo Martinez Triqueros	368.64					
105-0001	PS	05/29/15	24.00 hr + 28% Burd	Efrain Rivera	368.64					
105-0001	PS	05/29/15	24.00 hr + 28% Burd	Gillermo Urbina	368.64					
105-0001	PS	05/29/15	20.00 hr + 28% Burd	Rafael Chavez	486.40					
592-0010	AP	05/29/15	Inv# 5379-9	Sherwin Williams Paint		183.25				
134-0001	CA	06/02/15	Check# 14360	Renee Marquez		49.97				
134-0002	CA	06/02/15	Check# 14361	Rodolfo Rubio		105.16				
134-0003	CA	06/02/15	Check# 14362	Juan Plancarte		61.84				
134-0023	AP	06/03/15	Inv# 9244-8	Sherwin Williams Paint		234.14				
398-0001	AP	06/04/15	Inv# 9330-5A	Sherwin Williams Paint		102.05				
157-0001	PS	06/05/15	24.00 hr + 28% Burd	Leonel Archila	614.40					
157-0001	PS	06/05/15	25.00 hr + 28% Burd	Pedro Vargas	614.40					
157-0001	PS	06/05/15	22.00 hr + 28% Burd	Gillermo Urbina	563.20					
157-0001	PS	06/05/15	25.00 hr + 28% Burd	Efrain Rivera	640.00					
157-0001	PS	06/05/15	24.00 hr + 28% Burd	Reynaldo Martinez Triqueros	614.40					
157-0001	PS	06/05/15	25.00 hr + 28% Burd	Jorge Vargas Cerpa	768.00					
157-0001	PS	06/05/15	30.00 hr + 28% Burd	Sergio Reyes	614.40					
138-0001	PS	06/12/15	25.00 hr + 28% Burd	Rafael Chavez	768.00					
138-0001	PS	06/12/15	20.00 hr + 28% Burd	Leonel Archila	491.52					

DVC000687

SUPP000187

JOB: A19CTC CTC & MAT- INOSE

REF #	JR	DATE	DOCUMENT	DESCRIPTION	LABOR	MATERIAL	SUBCON	EQUIP	OTHER	BILLINGS
538-0001	PS	06/12/15	20.00 hr + 28% Burd	Gillermo Urbina	491.52					
538-0001	PS	06/12/15	20.00 hr + 28% Burd	Sergio Reyes	491.52					
538-0001	PS	06/12/15	20.00 hr + 28% Burd	Efrain Rivera	491.52					
538-0001	PS	06/12/15	20.00 hr + 28% Burd	Reynaldo Martinez Triqueros	491.52					
538-0001	PS	06/12/15	25.00 hr + 28% Burd	Jorge Vargas Cerpa	768.00					
834-0027	AP	06/16/15	Inv# 0075-5	Sherwin Williams Paint		113.61				
910-0006	AP	06/18/15	Inv# 0235-5	Sherwin Williams Paint		73.36				
573-0001	PS	06/19/15	25.00 hr + 28% Burd	Rafael Chavez	576.00					
647-0001	PS	06/26/15	25.00 hr + 28% Burd	Jorge Vargas Cerpa	768.00					
834-0019	AP	06/30/15	Inv# 0910-3	Sherwin Williams Paint		65.38				
834-0020	AP	06/30/15	Inv# 9118-4	Sherwin Williams Paint		915.61				
742-0001	PS	07/10/15	8.72 hr + 28% Burd	Rafael Chavez	191.97					
742-0001	PS	07/10/15	10.00 hr + 28% Burd	Jorge Vargas Cerpa	153.60					
742-0001	PS	07/10/15	12.00 hr + 28% Burd	Pedro Vargas	153.60					
836-0001	PS	07/24/15	3.74 hr + 28% Burd	Rene Marquez	128.06					
836-0001	PS	07/24/15	30.00 hr + 28% Burd	Jorge Vargas Cerpa	921.60					
144-0024	CA	08/07/15	Check# 080715	Lowe's Commercial Services		141.39				
675-0210	CA	08/07/15	080715 Reversed	Lowe's Commercial Services		-141.39				
260-0003	AP	08/12/15	Inv# 0144-3	Sherwin Williams Paint		100.51				
260-0004	AP	08/13/15	Inv# 0102-9	Sherwin Williams Paint		27.28				
260-0020	AP	08/18/15	Inv# 3612-2	Sherwin Williams Paint		93.29				
030-0001	PS	08/21/15	5.00 hr + 28% Burd	Jose Luis Marquez	153.60					
1-0001	PS	08/21/15	5.77 hr + 28% Burd	Miguel Rubio	192.03					
030-0001	PS	08/21/15	5.65 hr + 28% Burd	Noe Pineda	179.35					
112-0001	PS	08/28/15	16.00 hr + 28% Burd	Adan Arellano	307.20					
112-0001	PS	08/28/15	16.00 hr + 28% Burd	Reynaldo Martinez Triqueros	307.20					
112-0001	PS	08/28/15	20.00 hr + 28% Burd	Rafael Chavez	409.60					
204-0001	PS	09/11/15	15.00 hr + 28% Burd	Adan Arellano	307.20					
204-0001	PS	09/11/15	10.00 hr + 28% Burd	Rafael Chavez	153.60					
791-0006	CA	09/22/15	cc/sept/000341	Lowe's Commercial Services		32.84				
675-0258	CA	09/22/15	cc/sept/00 Reversed	Lowe's Commercial Services		-32.84				
563-0024	AP	09/23/15	Inv# 5442-2	Sherwin Williams Paint		774.57				
253-0001	PS	09/25/15	6.25 hr + 28% Burd	Daniel Torres	256.00					
253-0001	PS	09/25/15	15.00 hr + 28% Burd	Jorge Vargas Cerpa	307.20					
253-0001	PS	09/25/15	15.00 hr + 28% Burd	Reynaldo Martinez Triqueros	307.20					
310-0001	PS	10/02/15	20.00 hr + 28% Burd	Reynaldo Martinez Triqueros	307.20					
310-0001	PS	10/02/15	15.00 hr + 28% Burd	Jorge Vargas Cerpa	307.20					
117-0001	PS	10/09/15	24.00 hr + 28% Burd	Jorge Vargas Cerpa	614.40					
117-0001	PS	10/09/15	24.00 hr + 28% Burd	Reynaldo Martinez Triqueros	614.40					
117-0001	PS	10/09/15	24.00 hr + 28% Burd	Gillermo Urbina	614.40					
117-0001	PS	10/09/15	10.00 hr + 28% Burd	Efrain Rivera	153.60					
117-0001	PS	10/09/15	20.00 hr + 28% Burd	Rafael Chavez	409.60					
363-0037	AP	10/16/15	Inv# 6621-0	Sherwin Williams Paint		69.83				
358-0001	PS	10/23/15	24.00 hr + 28% Burd	Efrain Rivera	460.80					
358-0001	PS	10/23/15	24.00 hr + 28% Burd	Pedro Vargas	460.80					
358-0001	PS	10/23/15	16.00 hr + 28% Burd	Reynaldo Martinez Triqueros	307.20					
358-0001	PS	10/23/15	16.00 hr + 28% Burd	Jorge Vargas Cerpa	307.20					
358-0001	PS	10/23/15	5.60 hr + 28% Burd	Jose Luis Marquez	179.20					
371-0001	PS	10/30/15	15.00 hr + 28% Burd	Reynaldo Martinez Triqueros	460.80					
0001	PS	10/30/15	18.00 hr + 28% Burd	Pedro Vargas	460.80					
351-0001	PS	10/30/15	6.00 hr + 28% Burd	Jorge Vargas Cerpa	153.60					
65-0001	AP	11/17/15	Inv# 1593-2	Sherwin Williams Paint		22.96				

DVC000688

SUPP000188

JOB: A19CTC CTC & MAT- INOSE

REF #	JR	DATE	DOCUMENT	DESCRIPTION	LABOR	MATERIAL	SUBCON	EQUIP	OTHER	BILLINGS
012-0014	AP	11/20/15	Inv# 8572-3	Sherwin Williams Paint		317.31				
972-0004	CA	11/24/15	cc/nov/000463	Lowes Commercial Services		91.40				
012-0013	AP	11/24/15	Inv# 4147-2	Sherwin Williams Paint		77.19				
675-0341	CA	11/24/15	cc/nov/000 Reversed	Lowes Commercial Services		-91.40				
012-0038	AP	12/01/15	Inv# 9027-7	Sherwin Williams Paint		279.87				
888-0001	PS	12/04/15	22.50 hr + 28% Burd	Efrain Rivera	460.80					
888-0001	PS	12/04/15	22.50 hr + 28% Burd	Jorge Vargas Cerpa	460.80					
888-0001	PS	12/04/15	17.50 hr + 28% Burd	Rafael Chavez	448.00					
012-0037	AP	12/08/15	Inv# 9345-3	Sherwin Williams Paint		122.21				
937-0001	PS	12/11/15	20.00 hr + 28% Burd	Jorge Vargas Cerpa	614.40					
937-0001	PS	12/11/15	12.50 hr + 28% Burd	Jorge A. Lugo	384.00					
937-0001	PS	12/11/15	13.71 hr + 28% Burd	Rafael Chavez	307.11					
937-0001	PS	12/11/15	25.00 hr + 28% Burd	Gillermo Urbina	512.00					
937-0001	PS	12/11/15	10.00 hr + 28% Burd	Pedro Vargas	307.20					
937-0001	PS	12/11/15	15.00 hr + 28% Burd	Reynaldo Martinez Triqueros	368.64					
937-0001	PS	12/11/15	25.00 hr + 28% Burd	Efrain Rivera	768.00					
984-0001	PS	12/18/15	20.00 hr + 28% Burd	Rafael Chavez	358.40					
984-0001	PS	12/18/15	20.00 hr + 28% Burd	Reynaldo Martinez Triqueros	491.52					
984-0001	PS	12/18/15	24.00 hr + 28% Burd	Pedro Vargas	614.40					
984-0001	PS	12/18/15	24.00 hr + 28% Burd	Efrain Rivera	614.40					
984-0001	PS	12/18/15	24.00 hr + 28% Burd	Jorge Vargas Cerpa	460.80					
024-0001	PS	12/24/15	15.00 hr + 28% Burd	Jorge A. Lugo	460.80					
JOE 01	TOTALS:		LABOR HOURS: 2935.71	COST TOTALS:	100425.76	73030.28	12126.48	15269.00	0.00	0.00
				BUDGET:	58000.00	42731.00	0.00	15269.00	0.00	0.00
				REMAINING:	-42425.76	-30299.28	-12126.48	0.00	0.00	0.00

Budget - 44083.89

CODE: 02 Drywall

537-0007	AP	01/07/14	Inv# 010714 enose	Lowes Commercial Services		20.81				
320-0007	AP	08/26/14	Inv# 082614cc	The Home Depot		190.17				
930-0001	AP	08/27/14	Inv# 082714	American Express - Lowes		57.83				
538-0006	AP	09/19/14	Inv# 091914 enosedry	Lowes Commercial Services		128.02				
538-0009	AP	09/22/14	Inv# 092214 inosedry	Lowes Commercial Services		111.66				
898-0013	CA	09/23/14	Check# 092314	Lowes Commercial Services		100.92				
538-0011	AP	09/29/14	Inv# 092914	Lowes Commercial Services		61.36				
556-0001	PS	11/28/14	5.00 hr + 28% Burd	Paul Adkisson	121.60					
556-0001	PS	11/28/14	8.00 hr + 28% Burd	Nemesio Mendoza	153.60					
556-0001	PS	11/28/14	15.16 hr + 28% Burd	Jose Luis Marquez	460.86					
223-0001	PS	01/16/15	4.80 hr + 28% Burd	Jose Guadalupe Delgado	153.60					
144-0003	AP	01/21/15	Inv# 2410363.0	REW Materials		74.93				
144-0004	AP	01/26/15	Inv# 2410542.0	REW Materials		183.12				
144-0005	AP	01/28/15	Inv# 2410675.0	REW Materials		196.53				
124-0001	PS	01/30/15	12.10 hr + 28% Burd	Ismael Bautista	384.10					
124-0001	PS	01/30/15	8.00 hr + 28% Burd	Cristian Gonzales	153.60					
144-0001	AP	02/02/15	Inv# 2410870.0	REW Materials		212.74				
167-0001	PS	02/06/15	4.36 hr + 28% Burd	Nemesio Mendoza	153.47					
31-0001	PS	02/13/15	5.30 hr + 28% Burd	Ismael Bautista	179.10					
44-0006	AP	02/16/15	Inv# 2410321.0	REW Materials		123.02				
88-0001	PS	02/20/15	5.00 hr + 28% Burd	Eliazer Ambrocio	122.88					
0001	PS	02/20/15	5.09 hr + 28% Burd	Nemesio Mendoza	179.17					
0001	PS	02/20/15	5.45 hr + 28% Burd	Ismael Bautista	153.47					
65-0012	CA	02/23/15	Check# 022315	Lowes Commercial Services		29.68				

DVC000689

SUPP000189

JOB: A19CTC CTC & MAT- INOSE

REF #	JR	DATE	DOCUMENT	DESCRIPTION	LABOR	MATERIAL	SUBCON	EQUIP	OTHER	BILLINGS
675-0009	CA	02/23/15	022315	Reversed	Lowes Commercial Services	-29.68				
765-0005	CA	02/27/15	Check# 022715	Lowes Commercial Services		112.95				
675-0015	CA	02/27/15	022715	Reversed	Lowes Commercial Services	-112.95				
632-0012	AP	04/11/15	Inv# 041115	The Home Depot		169.05				
389-0007	CA	05/05/15	Check# 050515	The Home Depot		118.97				
665-0002	CA	05/05/15	050515	Reversed	The Home Depot	-118.97				
695-0025	AP	05/05/15	Inv# 050515	The Home Depot		118.97				
254-0003	AP	05/13/15	Inv# 2412299.0	03/05 REW Materials		131.18				
254-0007	AP	05/13/15	Inv# 2411238.0	02/10 REW Materials		73.34				
254-0013	AP	05/13/15	Inv# 2410612.0	02/20 REW Materials		55.00				
254-0016	AP	05/13/15	Inv# 2412248.0	03/04 REW Materials		131.18				
254-0017	AP	05/13/15	Inv# 2412174.0	03/03 REW Materials		349.81				
293-0001	PS	05/15/15	16.80 hr + 28%	Burd Nemesio Mendoza	537.60					
542-0001	CA	06/12/15	Check# 14407	Juan Plancarte		45.61				
998-0001	PS	08/14/15	9.60 hr + 28%	Burd Juan plancarte	307.20					
998-0001	PS	08/14/15	10.00 hr + 28%	Burd Jorge A. Lugo	256.00					
998-0001	PS	08/14/15	5.00 hr + 28%	Burd Jose Luis Marquez	153.60					
144-0005	CA	08/17/15	Check# 081715	The Home Depot		158.67				
665-0049	CA	08/17/15	081715	Reversed	The Home Depot	-158.67				
696-0013	AP	08/17/15	Inv# 081715	The Home Depot		158.67				
030-0001	PS	08/21/15	6.25 hr + 28%	Burd Ismael Bautista	192.00					
030-0001	PS	08/21/15	25.00 hr + 28%	Burd Jorge A. Lugo	640.00					
7-0001	PS	08/21/15	10.00 hr + 28%	Burd Juan plancarte	307.20					
030-0001	PS	08/21/15	6.67 hr + 28%	Burd Nemesio Mendoza	179.29					
112-0001	PS	08/28/15	25.00 hr + 28%	Burd Miguel Rubio	768.00					
112-0001	PS	08/28/15	25.00 hr + 28%	Burd Ismael Bautista	768.00					
112-0001	PS	08/28/15	24.00 hr + 28%	Burd Noe Pineda	614.40					
112-0001	PS	08/28/15	16.80 hr + 28%	Burd Nemesio Mendoza	537.60					
112-0001	PS	08/28/15	20.00 hr + 28%	Burd Jose Luis Marquez	614.40					
112-0001	PS	08/28/15	5.00 hr + 28%	Burd Juan plancarte	153.60					
172-0001	PS	08/28/15	19.20 hr + 28%	Burd Jose Luis Marquez	614.40					
172-0001	PS	08/28/15	14.14 hr + 28%	Burd Juan plancarte	499.55					
186-0001	PS	08/28/15	-14.14 hr + 28%	Burd Juan plancarte	-499.55					
186-0001	PS	08/28/15	-19.20 hr + 28%	Burd Jose Luis Marquez	-614.40					
187-0001	PS	09/04/15	19.20 hr + 28%	Burd Jose Luis Marquez	614.40					
187-0001	PS	09/04/15	14.13 hr + 28%	Burd Juan plancarte	499.20					
204-0001	PS	09/11/15	6.00 hr + 28%	Burd Ismael Bautista	153.60					
228-0001	PS	09/18/15	9.63 hr + 28%	Burd Jose Guadalupe Delgado	332.81					
358-0001	PS	10/23/15	5.60 hr + 28%	Burd Noe Pineda	179.20					
388-0001	PS	12/04/15	20.00 hr + 28%	Burd Jose Luis Marquez	537.60					
388-0001	PS	12/04/15	10.00 hr + 28%	Burd Noe Pineda	166.40					
337-0001	PS	12/11/15	4.67 hr + 28%	Burd Juan plancarte	179.33					
337-0001	PS	12/11/15	6.19 hr + 28%	Burd Noe Pineda	166.39					
CODE 02	TOTALS:	LABOR HOURS:	378.80	COST TOTALS:	11073.27	2693.92	0.00	0.00	0.00	0.00
				BUDGET:	3629.00	3629.00	0.00	0.00	0.00	0.00
				REMAINING:	-10138.19	-7444.27	-2693.92	0.00	0.00	0.00
CODE: 04	Lawsuit additional	Extra Insurance	did not	Pay For						
0001	CA	07/22/15	sw card	Ferguson Eterprise Inc		1800.00				
-0002	CA	07/22/15	sw card	ProSource of Las Vegas		67.11				
42-0002	CA	08/05/15	sw card	The Home Depot		2799.39				

Burham Painting
145 in Paint.

DVC000690

SUPP000190

JOB: A19CTC CTC & MAT- INOSE

REF #	JR	DATE	DOCUMENT	DESCRIPTION	LABOR	MATERIAL	SUBCON	EQUIP	OTHER	BILLINGS	
652-0002	CA	09/21/15	sw card	Misc - Credit Card		713.50					
508-0003	AP	12/04/15	Inv# 5283710207	inos MSE Environmental			338.53				
280-0001	AP	12/04/15	5283710207	Reversed MSE Environmental			-338.53				
983-0001	AP	01/01/16	Inv# 5283710208	INOS Sunbelt Rentals				338.66			
984-0001	CA	01/01/16	Check# 010116	Sunbelt Rentals				338.66			
986-0001	AP	01/01/16	5283710208	Reversed Sunbelt Rentals				-338.66			
915-0009	CA	01/01/16	010116	Reversed Sunbelt Rentals				-338.66			
916-0001	CA	01/01/16	AMXCCD A19ctc	Sunbelt Rentals				338.66			
508-0002	AP	02/25/16	Inv# 5283710206	MSE Environmental			338.53				
280-0003	AP	02/25/16	5283710206	Reversed MSE Environmental			-338.53				
CODE 04	TOTALS:			COST TOTALS:	5718.66	0.00	5380.00	0.00	338.66	0.00	0.00
				BUDGET:	0.00	0.00	0.00	0.00	0.00	0.00	0.00
				REMAINING:	-5718.66	0.00	-5380.00	0.00	-338.66	0.00	0.00
CODE: 05 Doors											
076-0001	CA	10/17/14	Check# 101714	Lowes Commercial Services		24.45					
578-0001	CA	01/22/15	various s/w charges	Misc - Credit Card		340.08					
237-0006	AP	07/30/15	Inv# 413663	Valley's Best Garage Door			250.00				
CODE 05	TOTALS:			COST TOTALS:	614.53	0.00	364.53	250.00	0.00	0.00	0.00
				BUDGET:	650.00	650.00	0.00	0.00	0.00	0.00	0.00
				REMAINING:	35.47	650.00	-364.53	-250.00	0.00	0.00	0.00
CODE: 09 Job Walk											
801-0001	AP	10/04/14	Inv# 100214	Arx Engineering			350.00				
168-0001	GJ	10/04/14	Document# 100414	Move all per RE			-350.00				
CODE 09	TOTALS:			COST TOTALS:	0.00	0.00	0.00	0.00	0.00	0.00	0.00
				BUDGET:	0.00	0.00	0.00	0.00	0.00	0.00	0.00
				REMAINING:	0.00	0.00	0.00	0.00	0.00	0.00	0.00
CODE: 10 Baseboard											
884-0001	PS	07/31/15	5.00 hr + 28% Burd	Cristian Gonzales	128.00						
008-0001	CA	08/12/15	Check# 14659	Juan Plancarte		160.50					
CODE 10	TOTALS:	LABOR HOURS:	5.00	COST TOTALS:	288.50	128.00	160.50	0.00	0.00	0.00	0.00
				BUDGET:	0.00	0.00	0.00	0.00	0.00	0.00	0.00
				REMAINING:	-288.50	-128.00	-160.50	0.00	0.00	0.00	0.00
CODE: 12 Cabinets-Efficient											
136-0002	AP	11/25/14	Inv# 112514	Efficient Space Planning			22846.00				
223-0001	PS	01/16/15	5.00 hr + 28% Burd	Ismael Bautista	153.60						
185-0001	PS	05/08/15	15.00 hr + 28% Burd	Nemesio Mendoza	537.60						
CODE 12	TOTALS:	LABOR HOURS:	20.00	COST TOTALS:	23537.20	691.20	0.00	22846.00	0.00	0.00	0.00
				BUDGET:	37246.00	0.00	0.00	37246.00	0.00	0.00	0.00
				REMAINING:	13708.80	-691.20	0.00	14400.00	0.00	0.00	0.00
CODE: 13 Clean up											
0014	CA	09/25/14	Check# 092514	Lowes Commercial Services		61.36					
176-0006	CA	10/01/14	Check# 100114	Lowes Commercial Services		313.60					
176-0004	CA	10/02/14	Check# 100214	Lowes Commercial Services		66.54					

DVC000691

SUPP000191

JOB: A19CTC CTC & MAT- INOSE

REF #	JR	DATE	DOCUMENT	DESCRIPTION	LABOR	MATERIAL	SUBCON	EQUIP	OTHER	BILLINGS
076-0003	CA	10/15/14	Check# 101514	Lowes Commercial Services		6.14				
982-0001	PS	10/16/14	24.00 hr + 28% Burd	Kevin Herrera	307.20					
982-0001	PS	10/16/14	6.00 hr + 28% Burd	Juan Alfredo	153.60					
064-0001	AP	10/23/14	Inv# inose	The Home Depot		374.25				
051-0001	AP	10/28/14	Inv# inose	Chase Card Services/SW Air		129.58				
671-0014	AP	10/28/14	Inv# HDEPOT	Chase Card Services/SW Air		129.58				
129-0001	PS	10/31/14	10.00 hr + 28% Burd	Isai Delgado-Jimenez	153.60					
129-0001	PS	10/31/14	10.00 hr + 28% Burd	Simon Figueroa	307.20					
129-0001	PS	10/31/14	10.00 hr + 28% Burd	Noe Pineda	307.20					
129-0001	PS	10/31/14	9.68 hr + 28% Burd	Miguel Rubio	307.28					
129-0001	PS	10/31/14	9.60 hr + 28% Burd	Daniel Torres	307.20					
274-0001	PS	01/23/15	9.00 hr + 28% Burd	Cristian Gonzales	115.20					
324-0001	PS	01/30/15	16.00 hr + 28% Burd	Cristian Gonzales	307.20					
765-0008	CA	02/26/15	Check# 022615	Lowes Commercial Services		74.64				
675-0012	CA	02/26/15	022615 Reversed	Lowes Commercial Services		-74.64				
626-0001	PS	03/06/15	12.00 hr + 28% Burd	Maria Placido	153.60					
626-0001	PS	03/06/15	12.00 hr + 28% Burd	Josefina Placido	153.60					
696-0001	PS	03/13/15	5.22 hr + 28% Burd	Gabino Delgado	192.10					
742-0001	PS	03/20/15	20.00 hr + 28% Burd	Cristian Gonzales	307.20					
742-0001	PS	03/20/15	5.47 hr + 28% Burd	Jose Luis Marquez	154.04					
742-0001	PS	03/20/15	5.15 hr + 28% Burd	Miguel Rubio	179.30					
900-0001	PS	04/10/15	8.56 hr + 28% Burd	Jose Luis Marquez	333.08					
1-0001	PS	04/10/15	4.11 hr + 28% Burd	Noe Pineda	166.25					
900-0001	PS	04/10/15	5.49 hr + 28% Burd	Miguel Rubio	192.05					
101-0001	PS	05/01/15	10.00 hr + 28% Burd	Nemesio Mendoza	358.40					
101-0001	PS	05/01/15	12.10 hr + 28% Burd	Juan Alfredo	384.10					
185-0001	PS	05/08/15	10.00 hr + 28% Burd	Laura Delgado	192.00					
388-0003	CA	05/19/15	Check# 051915	The Home Depot		249.34				
565-0006	CA	05/19/15	051915 Reversed	The Home Depot		-249.34				
595-0029	AP	05/19/15	Inv# 051915	The Home Depot		249.34				
157-0001	PS	06/05/15	4.00 hr + 28% Burd	Rene Marquez	153.60					
157-0001	PS	06/05/15	6.00 hr + 28% Burd	Jose Luis Marquez	153.60					
157-0001	PS	06/05/15	10.53 hr + 28% Burd	Laura Delgado	256.09					
384-0001	PS	07/31/15	2.00 hr + 28% Burd	Jose A Salazar	51.20					
347-0001	PS	08/07/15	6.00 hr + 28% Burd	Juan plancarte	153.60					
347-0001	PS	08/07/15	5.08 hr + 28% Burd	Ismael Bautista	166.46					
304-0001	PS	09/11/15	5.00 hr + 28% Burd	Jose Luis Marquez	153.60					
353-0001	PS	09/25/15	5.60 hr + 28% Burd	Jose Luis Marquez	179.20					
353-0001	PS	09/25/15	5.00 hr + 28% Burd	Jorge A. Lugo	128.00					
110-0001	PS	10/02/15	25.00 hr + 28% Burd	Jose Luis Marquez	896.00					
189-0003	AP	10/17/15	Inv# 101715 A19CTC	Lowes Commercial Services		24.45				
147-0002	AP	10/17/15	101715 Reversed	Lowes Commercial Services		-24.45				
189-0019	AP	10/29/15	Inv# 102915 A19CTC	Lowes Commercial Services		143.99				
139-0002	AP	10/29/15	102915 Reversed	Lowes Commercial Services		-143.99				
77-0001	AP	11/15/15	Inv# 015772842	Republic Services					220.00	
72-0006	CA	11/24/15	cc/nov/000467	Lowes Commercial Services		95.79				
75-0342	CA	11/24/15	cc/nov/000 Reversed	Lowes Commercial Services		-95.79				
88-0001	PS	12/04/15	10.00 hr + 28% Burd	Gillermo Urbina	128.00					
99-0001	PS	12/04/15	10.00 hr + 28% Burd	Juan plancarte	179.20					
0001	PS	12/04/15	7.00 hr + 28% Burd	Ismael Bautista	179.20					
37-0001	PS	12/11/15	4.67 hr + 28% Burd	Juan plancarte	179.33					
37-0001	PS	12/11/15	9.04 hr + 28% Burd	Jose Luis Marquez	332.68					

DVC000692

SUPP000192

JOB: A19CTC CTC & MAT- INOSE

REF #	JR	DATE	DOCUMENT	DESCRIPTION	LABOR	MATERIAL	SUBCON	EQUIP	OTHER	BILLINGS	
444-0001	AP	05/23/16	Inv# a-215699	Las Vegas Toilet Rentals.					85.00		
444-0002	AP	05/23/16	Inv# a-216497	Las Vegas Toilet Rentals.					85.00		
444-0003	AP	05/23/16	Inv# a-217206	Las Vegas Toilet Rentals.					85.00		
444-0005	AP	05/23/16	Inv# a-215914	Las Vegas Toilet Rentals.					95.00		
CODE 13	TOTALS:		LABOR HOURS: 329.30	COST TOTALS:	10221.55	8321.16	1330.39	0.00	0.00	570.00	0.00
				BUDGET:	7500.00	7500.00	0.00	0.00	0.00	0.00	0.00
				REMAINING:	-2721.55	-821.16	-1330.39	0.00	0.00	-570.00	0.00
CODE: 14	Stucco & Exterior										
799-0001	AP	08/29/14	Inv# 082914	The Home Depot		100.00					
964-0002	CA	03/04/15	Check# 14078	Red Star Foam		79.75					
774-0001	PS	03/27/15	3.60 hr + 28% Burd	Jose Luis Marquez	115.20						
828-0001	PS	04/03/15	15.00 hr + 28% Burd	Cristian Gonzales	460.80						
828-0001	PS	04/03/15	10.00 hr + 28% Burd	Jorge A. Lugo	307.20						
828-0001	PS	04/03/15	11.07 hr + 28% Burd	Jose Luis Marquez	460.52						
828-0001	PS	04/03/15	25.00 hr + 28% Burd	Juan plancarte	819.20						
900-0001	PS	04/10/15	25.00 hr + 28% Burd	Juan plancarte	832.00						
900-0001	PS	04/10/15	16.00 hr + 28% Burd	Cristian Gonzales	307.20						
900-0001	PS	04/10/15	8.33 hr + 28% Burd	Gabino Delgado	255.90						
963-0002	CA	04/16/15	Check# 14172	Juan Plancarte			140.55				
962-0001	PS	04/17/15	25.00 hr + 28% Burd	Gabino Delgado	768.00						
9-0001	PS	04/17/15	24.00 hr + 28% Burd	Cristian Gonzales	460.80						
92-0001	PS	04/17/15	25.00 hr + 28% Burd	Juan plancarte	883.20						
982-0009	CA	04/24/15	Check# 14078	Red Star Foam		79.75					
031-0001	PS	04/24/15	20.00 hr + 28% Burd	Cristian Gonzales	460.80						
031-0001	PS	04/24/15	25.00 hr + 28% Burd	Juan plancarte	883.20						
964-0001	CA	04/24/15	14078 Reversed	Red Star Foam		-79.75					
107-0001	CA	05/01/15	Check# 14204	Rodolfo Rubio		142.22					
101-0001	PS	05/01/15	25.00 hr + 28% Burd	Gabino Delgado	768.00						
101-0001	PS	05/01/15	20.00 hr + 28% Burd	Cristian Gonzales	486.40						
101-0001	PS	05/01/15	30.00 hr + 28% Burd	Juan plancarte	1139.33						
185-0001	PS	05/08/15	17.50 hr + 28% Burd	Cristian Gonzales	448.00						
185-0001	PS	05/08/15	25.00 hr + 28% Burd	Juan plancarte	928.00						
293-0001	PS	05/15/15	28.00 hr + 28% Burd	Juan plancarte	896.00						
293-0001	PS	05/15/15	20.00 hr + 28% Burd	Cristian Gonzales	409.60						
352-0001	PS	05/22/15	25.00 hr + 28% Burd	Cristian Gonzales	640.00						
352-0001	PS	05/22/15	28.00 hr + 28% Burd	Juan plancarte	896.00						
352-0001	PS	05/22/15	25.00 hr + 28% Burd	Gabino Delgado	768.00						
105-0001	PS	05/29/15	24.00 hr + 28% Burd	Cristian Gonzales	460.80						
105-0001	PS	05/29/15	25.00 hr + 28% Burd	Juan plancarte	896.00						
138-0001	PS	06/12/15	21.95 hr + 28% Burd	Jose Luis Marquez	767.86						
138-0001	PS	06/12/15	20.95 hr + 28% Burd	Ismael Bautista	793.75						
138-0001	PS	06/12/15	25.00 hr + 28% Burd	Cristian Gonzales	512.00						
138-0001	PS	06/12/15	25.00 hr + 28% Burd	Jose A Salazar	768.00						
138-0001	PS	06/12/15	18.75 hr + 28% Burd	Juan plancarte	768.00						
173-0001	PS	06/19/15	25.00 hr + 28% Burd	Ismael Bautista	768.00						
173-0001	PS	06/19/15	25.00 hr + 28% Burd	Juan plancarte	832.00						
173-0001	PS	06/19/15	20.00 hr + 28% Burd	Cristian Gonzales	409.60						
0001	PS	06/19/15	30.00 hr + 28% Burd	Jose A Salazar	768.00						
13-0001	PS	06/19/15	10.00 hr + 28% Burd	Jose Luis Marquez	307.20						
147-0001	PS	06/26/15	12.50 hr + 28% Burd	Cristian Gonzales	256.00						

DVC000693

SUPP000193

JOB: A19CTC CTC & MAT- INOSE

REF #	JR	DATE	DOCUMENT	DESCRIPTION	LABOR	MATERIAL	SUBCON	EQUIP	OTHER	BILLINGS
CODE 14		TOTALS:	LABOR HOURS: 759.65	COST TOTALS:	23163.08	22700.56	321.97	140.55	0.00	0.00
				BUDGET:	10000.00	10000.00	0.00	0.00	0.00	0.00
				REMAINING:	-13163.08	-12700.56	-321.97	-140.55	0.00	0.00
CODE: 15		Diversified F.S.								
263-0001	AP	04/24/15	Inv# 042415	Diversified Protection			215.00			
736-0011	AP	11/04/15	Inv# 108071	Diversified Protection			420.60			
CODE 15		TOTALS:		COST TOTALS:	635.60	0.00	0.00	635.60	0.00	0.00
				BUDGET:	635.00	0.00	0.00	635.00	0.00	0.00
				REMAINING:	-0.60	0.00	0.00	-0.60	0.00	0.00
CODE: 17		D.H.Electric Low V.								
919-0001	AP	09/20/14	Inv# 1605	Firehouse Electric			5000.00			
463-0001	GJ	09/20/14	Document# 092014	Inv. 1605 Firehouse Elec			-5000.00			
076-0005	CA	10/10/14	Check# 101014	Lowe's Commercial Services		48.18				
256-0001	AP	10/21/14	Inv# 13957	Desert Home Electric, Inc.			7950.00			
963-0007	AP	12/05/14	Inv# 14079	Desert Home Electric, Inc.			6875.00			
328-0001	AP	12/11/14	Inv# 14103	Desert Home Electric, Inc.			6875.00			
462-0017	AP	01/21/15	Inv# 14214	Desert Home Electric, Inc.			2605.00			
DE 17		TOTALS:		COST TOTALS:	24353.18	0.00	48.18	24305.00	0.00	0.00
				BUDGET:	19755.00	0.00	0.00	19755.00	0.00	0.00
				REMAINING:	-4598.18	0.00	-48.18	-4550.00	0.00	0.00
CODE: 18		Framing								
549-0022	AP	08/26/14	Inv# 082614	Lowe's Commercial Services		57.42				
549-0024	AP	08/27/14	Inv# 082714 inose	Lowe's Commercial Services		119.04				
549-0037	AP	08/29/14	Inv# 082914 inose	Lowe's Commercial Services		29.19				
549-0045	AP	09/03/14	Inv# 090314 inose	Lowe's Commercial Services		253.02				
549-0032	AP	09/04/14	Inv# 090414 inose	Lowe's Commercial Services		47.16				
321-0016	AP	09/04/14	Inv# 606126	Desert Lumber		4035.74				
549-0031	AP	09/05/14	Inv# 090514 inose	Lowe's Commercial Services		133.94				
549-0051	AP	09/08/14	Inv# 090814	Lowe's Commercial Services		233.53				
549-0052	AP	09/08/14	Inv# 090814	Lowe's Commercial Services		73.11				
321-0017	AP	09/08/14	Inv# 836216	Desert Lumber		-949.55				
549-0033	AP	09/10/14	Inv# 091014	Lowe's Commercial Services		153.91				
549-0025	AP	09/11/14	Inv# 091114	Lowe's Commercial Services		96.08				
10-0001	AP	09/11/14	Inv# 1015666	Desert Fasteners		418.82				
133-0004	AP	09/24/14	Inv# 607827	Desert Lumber		246.04				
184-0005	AP	09/24/14	Inv# 1016498	Desert Fasteners		341.36				
45-0001	PS	09/26/14	16.92 hr + 28% Burd	Paul Adkisson	506.78					
121-0005	AP	10/02/14	Inv# 608257	Desert Lumber		41.74				
177-0001	PS	10/10/14	25.00 hr + 28% Burd	Kevin Herrera	512.00					
177-0001	PS	10/10/14	25.00 hr + 28% Burd	Juan Alfredo	768.00					
177-0001	PS	10/10/14	10.00 hr + 28% Burd	Eliazer Ambrocio	204.80					
177-0001	PS	10/10/14	10.00 hr + 28% Burd	Nemesio Mendoza	307.20					
177-0001	PS	10/10/14	14.40 hr + 28% Burd	Jonatan Ambrocio	368.64					
0002	CA	10/14/14	Check# 101414	Lowe's Commercial Services		102.48				
0001	PS	10/16/14	25.00 hr + 28% Burd	Isai Delgado-Jimenez	768.00					
182-0001	PS	10/16/14	15.00 hr + 28% Burd	Ismael Bautista	460.80					

Insurance paid - 302.99

DVC000694

SUPP000194

JOB: A19CTC CTC & MAT- INOSE

REF #	JR	DATE	DOCUMENT	DESCRIPTION	LABOR	MATERIAL	SUBCON	EQUIP	OTHER	BILLINGS	
067-0001	PS	10/24/14	24.00 hr + 28% Burd	Isai Delgado-Jimenez	614.40						
129-0001	PS	10/31/14	10.16 hr + 28% Burd	Ismael Bautista	306.92						
204-0002	AP	10/31/14	Inv# 103114	Desert Lumber		3844.45					
817-0005	AP	12/03/14	Inv# 612380	Desert Lumber		37.85					
760-0001	PS	12/12/14	8.00 hr + 28% Burd	Paul Adkisson	194.56						
055-0007	AP	12/18/14	Inv# 613425	Desert Lumber		214.85					
421-0017	AP	12/18/14	Inv# 121814	The Home Depot		75.91					
986-0001	PS	12/24/14	6.67 hr + 28% Burd	Nemesio Mendoza	153.68						
986-0001	PS	12/24/14	16.00 hr + 28% Burd	Paul Adkisson	389.12						
067-0001	PS	12/31/14	4.29 hr + 28% Burd	Rene Marquez	192.19						
067-0001	PS	12/31/14	6.26 hr + 28% Burd	Cristian Gonzales	115.23						
140-0001	PS	01/09/15	2.94 hr + 28% Burd	Rene Marquez	127.95						
140-0001	PS	01/09/15	8.00 hr + 28% Burd	Gabino Delgado	153.60						
274-0001	PS	01/23/15	3.77 hr + 28% Burd	Eliazer Ambrocio	102.30						
274-0001	PS	01/23/15	4.94 hr + 28% Burd	Gabino Delgado	191.97						
274-0001	PS	01/23/15	5.29 hr + 28% Burd	Jose Guadalupe Delgado	191.83						
274-0001	PS	01/23/15	5.29 hr + 28% Burd	Arturo Mendoza	191.83						
367-0001	PS	02/06/15	4.80 hr + 28% Burd	Eliazer Ambrocio	122.88						
389-0005	CA	04/27/15	Check# 042715	The Home Depot		31.28					
664-0056	CA	04/27/15	042715 Reversed	The Home Depot		-31.28					
595-0018	AP	04/27/15	Inv# 042715	The Home Depot		31.28					
185-0001	PS	05/08/15	5.00 hr + 28% Burd	Nemesio Mendoza	179.20						
1-0001	PS	05/15/15	15.00 hr + 28% Burd	Eliazer Ambrocio	384.00						
336-0001	PS	07/24/15	10.00 hr + 28% Burd	Jose Luis Marquez	307.20						
130-0001	PS	08/21/15	6.67 hr + 28% Burd	Nemesio Mendoza	179.29						
CODE 18	TOTALS: LABOR HOURS: 288.40			COST TOTALS:	17631.74	7994.37	9637.37	0.00	0.00	0.00	0.00
				BUDGET:	23000.00	23000.00	0.00	0.00	0.00	0.00	0.00
				REMAINING:	5368.26	15005.63	-9637.37	0.00	0.00	0.00	0.00
CODE: 20	Equipment Rental Mis										
162-0026	AP	07/08/14	Inv# 070814	American Express - Lowes		533.43					
01-0004	AP	09/15/14	Inv# 013152207	Republic Services					320.00		
198-0011	CA	09/26/14	Check# 092614	The Home Depot		666.07					
21-0010	AP	09/26/14	Inv# 092614	The Home Depot		566.07					
21-0006	AP	09/30/14	Inv# 093014	Las Vegas Toilet Rentals.					102.00		
21-0007	AP	09/30/14	Inv# 013296973	Republic Services					320.00		
44-0001	AP	10/31/14	Inv# a-208092	Las Vegas Toilet Rentals.					85.00		
32-0001	AP	10/31/14	a-208092 Reversed	Las Vegas Toilet Rentals.					-85.00		
33-0001	AP	10/31/14	Inv# A208092	Las Vegas Toilet Rentals.					85.00		
65-0002	AP	11/04/14	Inv# 48784139-1 enos	Sunbelt Rentals				805.73			
65-0003	AP	11/12/14	Inv# 49036564-1 enos	Sunbelt Rentals				1377.44			
97-0008	AP	11/15/14	Inv# 013689780	Republic Services					646.40		
48-0008	AP	11/30/14	Inv# A-208616	Las Vegas Toilet Rentals.					85.00		
12-0010	AP	12/31/14	Inv# A-209189	Las Vegas Toilet Rentals.					85.00		
88-0002	AP	01/31/15	Inv# A-209739	Las Vegas Toilet Rentals.					170.00		
00-0004	AP	02/28/15	Inv# 022815	Las Vegas Towel & Tissue				85.00			
03-0001	AP	02/28/15	022815 Reversed	Las Vegas Towel & Tissue				-85.00			
04-0001	AP	02/28/15	Inv# 022815	Las Vegas Toilet Rentals.					85.00		
0012	AP	03/31/15	Inv# 014802432	Republic Services					101.69		
00-0004	CA	04/29/15	Check# 042915	The Home Depot		21.59					
64-0068	CA	04/29/15	042915 Reversed	The Home Depot		-21.59					

DVC000695

SUPP000195

JOB: A19CTC CTC & MAT- INOSE

REF #	JR	DATE	DOCUMENT	DESCRIPTION	LABOR	MATERIAL	SUBCON	EQUIP	OTHER	BILLINGS	
695-0020	AP	04/29/15	Inv# 042915	The Home Depot		21.59					
239-0006	AP	04/30/15	Inv# 014205568	Republic Services					222.03		
014-0003	AP	04/30/15	Inv# A-211660	Las Vegas Toilet Rentals.					85.00		
014-0004	AP	05/31/15	Inv# A-212329	Las Vegas Toilet Rentals.					85.00		
014-0005	AP	06/01/15	Inv# A-212898	Las Vegas Toilet Rentals.					85.00		
613-0001	AP	06/15/15	Inv# 014562871	Republic Services					220.00		
773-0010	AP	07/01/15	Inv# A-213613	Las Vegas Toilet Rentals.					85.00		
967-0006	AP	08/01/15	Inv# A-214340	Las Vegas Toilet Rentals.					85.00		
851-0003	AP	08/15/15	Inv# 014141595	Republic Services					220.00		
087-0005	AP	08/15/15	Inv# 014353785	Republic Services					220.00		
237-0001	AP	09/01/15	Inv# A-215008	Las Vegas Toilet Rentals.					85.00		
429-0002	AP	09/30/15	Inv# 015355363	Republic Services					220.00		
592-0003	AP	10/15/15	Inv# 015565025	Republic Services					220.00		
281-0001	AP	12/04/15	Inv# 5283710207	Sunbelt Rentals				338.53			
013-0009	AP	12/15/15	Inv# 121515	Republic Services					220.00		
717-0002	AP	12/15/15	121515 Reversed	Republic Services					-220.00		
281-0002	AP	12/23/15	Inv# 5730858201	Sunbelt Rentals				90.00			
281-0003	AP	02/25/16	Inv# 5283710206	Sunbelt Rentals				338.53			
914-0027	CA	04/04/16	AMXCCD - inose cred	Sunbelt Rentals				-338.66			
CODE 20	TOTALS:			COST TOTALS:	8230.85	0.00	1787.16	0.00	2611.57	3832.12	0.00
				BUDGET:	2300.00	2300.00	0.00	0.00	0.00	0.00	0.00
				REMAINING:	-5930.85	2300.00	-1787.16	0.00	-2611.57	-3832.12	0.00

CODE: 22 Floor - Tile

649-0047	AP	08/28/14	Inv# 082814 inose	The Home Depot		30.95					
453-0001	AP	09/04/14	Inv# 21	Robert Ramirez			12563.00				
062-0001	AP	09/04/14	21 Reversed	Robert Ramirez			-12563.00				
811-0001	PS	10/03/14	10.00 hr + 28% Burd	Jose Luis Marquez	307.20						
811-0001	PS	10/03/14	6.00 hr + 28% Burd	Paul Adkisson	194.54						
811-0001	PS	10/03/14	20.00 hr + 28% Burd	Eliazer Ambrocio	409.60						
811-0001	PS	10/03/14	15.00 hr + 28% Burd	Nemesio Mendoza	460.80						
911-0001	PS	10/03/14	15.00 hr + 28% Burd	Christian Deleon	307.20						
311-0001	PS	10/03/14	25.00 hr + 28% Burd	Kevin Herrera	512.00						
311-0001	PS	10/03/14	25.00 hr + 28% Burd	Juan Alfredo	768.00						
798-0017	CA	12/05/14	Check# 120514	Lowes Commercial Services		23.14					
106-0006	AP	01/09/15	Inv# 0010775	The Tuscany Collection, LLC		67865.18					
106-0005	AP	01/14/15	Inv# 0010794	The Tuscany Collection, LLC		2825.84					
327-0002	AP	01/27/15	Inv# 1544210	Walker Zanger Inc.		74018.92					
170-0001	AP	01/27/15	1544210 Reversed	Walker Zanger Inc.		-74018.92					
105-0001	PS	05/29/15	25.00 hr + 28% Burd	Jose Luis Marquez	768.00						
105-0001	PS	05/29/15	25.00 hr + 28% Burd	Ismael Bautista	832.00						
399-0001	PS	07/03/15	11.82 hr + 28% Burd	Jose Luis Marquez	332.85						
399-0001	PS	07/03/15	4.45 hr + 28% Burd	Noe Pineda	166.32						
104-0001	PS	09/11/15	12.00 hr + 28% Burd	Noe Pineda	307.20						
104-0001	PS	09/11/15	6.00 hr + 28% Burd	Ismael Bautista	153.60						
104-0001	PS	09/11/15	12.00 hr + 28% Burd	Efrain Rivera	307.20						
104-0001	PS	09/11/15	5.00 hr + 28% Burd	Jose Luis Marquez	153.60						
177-0006	CA	09/29/15	Check# 14756	Daltile		810.48					
22	TOTALS: LABOR HOURS: 217.27			COST TOTALS:	77535.70	5980.11	71555.59	0.00	0.00	0.00	0.00
				BUDGET:	67865.00	0.00	0.00	67865.00	0.00	0.00	0.00
				REMAINING:	-9670.70	-5980.11	-71555.59	67865.00	0.00	0.00	0.00

DVC000696

SUPP000196

JOB: A19CTC CTC & MAT- INOSE

REF #	JR	DATE	DOCUMENT	DESCRIPTION	LABOR	MATERIAL	SUBCON	EQUIP	OTHER	BILLINGS
CODE: 24 Floor - Carpet										
101-0001	PS	05/01/15	12.51 hr + 28% Burd	Eliazer Ambrocio	384.31					
009-0004	AP	08/06/15	Inv# 080615	Three Star Carpet			2400.00			
253-0001	PS	09/25/15	5.60 hr + 28% Burd	Jose Luis Marquez	179.20					
CODE 24 TOTALS: LABOR HOURS: 18.11 COST TOTALS: 2963.51 563.51 0.00 2400.00 0.00 0.00 0.00										
BUDGET: 7000.00 7000.00 0.00 0.00 0.00 0.00 0.00										
REMAINING: 4036.49 6436.49 0.00 -2400.00 0.00 0.00 0.00										
CODE: 28 Silver State Spec.										
637-0002	AP	01/09/15	Inv# 39841	Silver State Spec Comm LLC		7470.00				
972-0001	AP	01/14/15	Inv# 011415	Central Valley Insulation			650.00			
967-0003	AP	07/30/15	Inv# 46795	Silver State Spec Comm LLC		165.00				
276-0006	AP	09/21/15	Inv# 092115	Silver State Spec Comm LLC		2000.00				
418-0002	AP	09/21/15	092115 Reversed	Silver State Spec Comm LLC		-2000.00				
839-0001	AP	11/30/15	Inv# 51659	Silver State Spec Comm LLC		2000.00				
CODE 28 TOTALS: COST TOTALS: 10285.00 0.00 9635.00 650.00 0.00 0.00 0.00										
BUDGET: 7665.00 30.00 0.00 7635.00 0.00 0.00 0.00										
REMAINING: -2620.00 30.00 -9635.00 6985.00 0.00 0.00 0.00										
CODE: 31 Permits/Blueprints										
J-0002	CA	09/26/14	Check# 13410	City of Henderson Bus.					6771.00	
085-0005	CA	08/17/15	Check# 14688	City of Henderson					804.20	
CODE 31 TOTALS: COST TOTALS: 7575.20 0.00 0.00 0.00 0.00 7575.20 0.00										
BUDGET: 6771.00 6771.00 0.00 0.00 0.00 0.00 0.00										
REMAINING: -804.20 6771.00 0.00 0.00 0.00 -7575.20 0.00										
CODE: 34 Demolition										
363-0001	PS	09/05/14	21.71 hr + 28% Burd	Paul Adkisson	875.35					
363-0001	PS	09/05/14	19.83 hr + 28% Burd	Nemesio Mendoza	729.74					
363-0001	PS	09/05/14	24.79 hr + 28% Burd	Jose Luis Marquez	729.82					
363-0001	PS	09/05/14	16.44 hr + 28% Burd	Noe Pineda	614.46					
363-0001	PS	09/05/14	21.33 hr + 28% Burd	Ismael Bautista	614.31					
363-0001	PS	09/05/14	12.00 hr + 28% Burd	Isai Delgado-Jimenez	153.60					
363-0001	PS	09/05/14	20.00 hr + 28% Burd	Christian Deleon	512.00					
363-0001	PS	09/05/14	22.00 hr + 28% Burd	Juan Alfredo	422.40					
363-0001	PS	09/05/14	14.00 hr + 28% Burd	Kevin Maiden	179.20					
363-0001	PS	09/05/14	16.00 hr + 28% Burd	Eliazer Ambrocio	486.40					
369-0001	PS	09/12/14	30.00 hr + 28% Burd	Paul Adkisson	921.60					
369-0001	PS	09/12/14	30.00 hr + 28% Burd	Juan Alfredo	768.00					
369-0001	PS	09/12/14	30.00 hr + 28% Burd	Jose Luis Marquez	768.00					
369-0001	PS	09/12/14	30.00 hr + 28% Burd	Nemesio Mendoza	768.00					
369-0001	PS	09/12/14	25.00 hr + 28% Burd	Christian Deleon	512.00					
369-0001	PS	09/12/14	25.00 hr + 28% Burd	Eliazer Ambrocio	512.00					
369-0001	PS	09/12/14	30.00 hr + 28% Burd	Ismael Bautista	768.00					
369-0001	PS	09/12/14	30.00 hr + 28% Burd	Noe Pineda	768.00					
369-0001	PS	09/12/14	30.00 hr + 28% Burd	Isai Delgado-Jimenez	768.00					
369-0001	PS	09/12/14	8.96 hr + 28% Burd	Jose Guadalupe Delgado	307.37					
369-0001	PS	09/12/14	7.81 hr + 28% Burd	Miguel Rubio	256.61					

DVC000697

SUPP000197

JOB: A19CTC CTC & MAT- INOSE

REF #	JR	DATE	DOCUMENT	DESCRIPTION	LABOR	MATERIAL	SUBCON	EQUIP	OTHER	BILLINGS
469-0001	PS	09/12/14	20.00 hr + 28% Burd	Kevin Maiden	409.60					
469-0001	PS	09/12/14	25.00 hr + 28% Burd	Kevin Herrera	512.00					
639-0001	PS	09/19/14	30.00 hr + 28% Burd	Paul Adkisson	921.60					
639-0001	PS	09/19/14	25.00 hr + 28% Burd	Christian Deleon	512.00					
639-0001	PS	09/19/14	25.00 hr + 28% Burd	Kevin Herrera	512.00					
639-0001	PS	09/19/14	25.00 hr + 28% Burd	Eliazer Ambrocio	512.00					
639-0001	PS	09/19/14	30.00 hr + 28% Burd	Jose Luis Marquez	768.00					
639-0001	PS	09/19/14	30.00 hr + 28% Burd	Juan Alfredo	768.00					
639-0001	PS	09/19/14	30.00 hr + 28% Burd	Nemesio Mendoza	768.00					
639-0001	PS	09/19/14	25.00 hr + 28% Burd	Ismael Bautista	768.00					
639-0001	PS	09/19/14	25.00 hr + 28% Burd	Isai Delgado-Jimenez	768.00					
639-0001	PS	09/19/14	25.00 hr + 28% Burd	Noe Pineda	768.00					
639-0001	PS	09/19/14	6.82 hr + 28% Burd	Miguel Rubio	307.28					
870-0005	AP	09/19/14	Inv# 7707-6	Sherwin Williams Paint		17.84				
745-0001	PS	09/26/14	17.78 hr + 28% Burd	Christian Deleon	409.65					
745-0001	PS	09/26/14	25.00 hr + 28% Burd	Jose Luis Marquez	768.00					
745-0001	PS	09/26/14	25.00 hr + 28% Burd	Noe Pineda	768.00					
745-0001	PS	09/26/14	25.00 hr + 28% Burd	Isai Delgado-Jimenez	614.40					
745-0001	PS	09/26/14	25.00 hr + 28% Burd	Ismael Bautista	768.00					
745-0001	PS	09/26/14	20.00 hr + 28% Burd	Kevin Herrera	409.60					
745-0001	PS	09/26/14	25.00 hr + 28% Burd	Eliazer Ambrocio	512.00					
745-0001	PS	09/26/14	25.00 hr + 28% Burd	Juan Alfredo	768.00					
3-0001	PS	09/26/14	30.00 hr + 28% Burd	Nemesio Mendoza	806.40					
811-0001	PS	10/03/14	25.00 hr + 28% Burd	Isai Delgado-Jimenez	768.00					
811-0001	PS	10/03/14	25.00 hr + 28% Burd	Ismael Bautista	768.00					
811-0001	PS	10/03/14	25.00 hr + 28% Burd	Noe Pineda	768.00					
811-0001	PS	10/03/14	30.00 hr + 28% Burd	Jonatan Ambrocio	614.40					
877-0001	PS	10/10/14	25.00 hr + 28% Burd	Ismael Bautista	768.00					
877-0001	PS	10/10/14	25.00 hr + 28% Burd	Isai Delgado-Jimenez	768.00					
877-0001	PS	10/10/14	20.55 hr + 28% Burd	Noe Pineda	768.08					
067-0001	PS	10/24/14	24.00 hr + 28% Burd	Kevin Herrera	307.20					
220-0001	PS	11/07/14	27.90 hr + 28% Burd	Jose Luis Marquez	767.81					
220-0001	PS	11/07/14	26.05 hr + 28% Burd	Paul Adkisson	972.98					
760-0001	PS	12/12/14	4.62 hr + 28% Burd	Nemesio Mendoza	153.75					
760-0001	PS	12/12/14	8.00 hr + 28% Burd	Jose Luis Marquez	153.60					
067-0001	PS	12/31/14	4.03 hr + 28% Burd	Mauricio Torres	127.92					
067-0001	PS	12/31/14	3.41 hr + 28% Burd	Eliazer Ambrocio	76.39					
140-0001	PS	01/09/15	7.50 hr + 28% Burd	Mauricio Torres	153.60					
223-0001	PS	01/16/15	6.32 hr + 28% Burd	Cristian Gonzales	153.70					
223-0001	PS	01/16/15	4.00 hr + 28% Burd	Arturo Mendoza	153.60					
274-0001	PS	01/23/15	15.50 hr + 28% Burd	David Alvarez	307.52					
274-0001	PS	01/23/15	14.00 hr + 28% Burd	Ada Torres	197.12					
185-0001	PS	05/08/15	20.00 hr + 28% Burd	Eliazer Ambrocio	512.00					
336-0001	PS	07/24/15	7.50 hr + 28% Burd	Cristian Gonzales	153.60					
CODE 34	TOTALS:	LABOR HOURS:	1352.85	COST TOTALS:	35984.50	35966.66	17.84	0.00	0.00	0.00
				BUDGET:	15000.00	15000.00	0.00	0.00	0.00	0.00
				REMAINING:	-20984.50	-20966.66	-17.84	0.00	0.00	0.00

CODE: 35 HVAC Sunrise Service

121-0004	AP	09/23/14	Inv# A142541	Sunrise Service Inc.	595.00					
121-0002	AP	09/24/14	Inv# A142545	Sunrise Service Inc.	425.00					

DVC000698

SUPP000198

JOB: A19CTC CTC & MAT- INOSE

REF #	JR	DATE	DOCUMENT	DESCRIPTION	LABOR	MATERIAL	SUBCON	EQUIP	OTHER	BILLINGS
921-0003	AP	09/26/14	Inv# A142549	Sunrise Service Inc.			1256.00			
112-0007	AP	12/23/14	Inv# P145286	Sunrise Service Inc.	1300.00					
766-0008	AP	01/07/15	Inv# P145299	Sunrise Service Inc.			227.50			
156-0017	AP	08/06/15	Inv# P150663	Sunrise Service Inc.			170.00			
850-0003	AP	08/25/15	Inv# A150529	Sunrise Service Inc.			406.00			
CODE 35	TOTALS:			COST TOTALS:	4379.50	1300.00	0.00	3079.50	0.00	0.00
				BUDGET:	9916.00	0.00	0.00	9916.00	0.00	0.00
				REMAINING:	5536.50	-1300.00	0.00	6836.50	0.00	0.00
CODE: 38	Plumbing S.S.Inc.									
552-0004	AP	08/04/14	Inv# 39739	Precision Plumbing			478.95			
649-0046	AP	08/28/14	Inv# 082814 inose	The Home Depot		14.27				
387-0025	AP	09/08/14	Inv# 090814	Lowes Commercial Services		118.10				
845-0001	AP	09/10/14	Inv# P142038	Sunrise Service Inc.			1160.00			
538-0010	AP	09/23/14	Inv# 092314 clubhse	Lowes Commercial Services		33.33				
758-0001	AP	09/29/14	Inv# 092914	Robert Ramirez			2500.00			
760-0001	AP	09/29/14	092914 Reversed	Robert Ramirez			-2500.00			
833-0005	AP	10/07/14	Inv# C65492	SAN Plumbing Supply	-291.94					
498-0001	AP	10/07/14	C65492 Reversed	SAN Plumbing Supply	291.94					
276-0002	AP	09/25/15	Inv# 48978	Silver State Spec Comm LLC		2500.00				
CODE 38	TOTALS:			COST TOTALS:	4304.65	0.00	2665.70	1638.95	0.00	0.00
				BUDGET:	8121.00	3109.00	0.00	5012.00	0.00	0.00
				REMAINING:	3816.35	3109.00	-2665.70	3373.05	0.00	0.00
CODE: 39	Arx Engineering									
718-0001	AP	09/24/14	Inv# 0531 inose	Arx Engineering			1000.00			
168-0001	GJ	10/04/14	Document# 100414	Move all per RE			350.00			
CODE 39	TOTALS:			COST TOTALS:	1350.00	0.00	0.00	1350.00	0.00	0.00
				BUDGET:	1350.00	0.00	0.00	1350.00	0.00	0.00
				REMAINING:	0.00	0.00	0.00	0.00	0.00	0.00
CODE: 41	Punch List									
727-0001	AP	08/26/14	Inv# 082614 mcdonald	The Home Depot		-35.59				
457-0001	PS	06/05/15	3.73 hr + 28% Burd	Mauricio Torres	127.95					
CODE 41	TOTALS: LABOR HOURS: 3.73			COST TOTALS:	92.36	127.95	-35.59	0.00	0.00	0.00
				BUDGET:	0.00	0.00	0.00	0.00	0.00	0.00
				REMAINING:	-92.36	-127.95	35.59	0.00	0.00	0.00
CODE: 50	CONTRACT AMOUNT									
176-0001	AR	09/04/15	Inv# 63717	Inose, Eugene						247596.40
177-0001	AR	09/04/15	63717 Reversed	Inose, Eugene						-247596.40
178-0001	AR	09/04/15	Inv# 63718	Inose, Eugene						247596.40
CODE 50	TOTALS:			COST TOTALS:	0.00	0.00	0.00	0.00	0.00	247596.40
				BUDGET:	0.00	0.00	0.00	0.00	0.00	247596.40
				REMAINING:	0.00	0.00	0.00	0.00	0.00	0.00
51	Completion to Date									
150-0001	AR	09/22/14	Inv# 063029	Inose, Eugene						138262.80

DVC000699

SUPP000199

JOB: A19CTC CTC & MAT- INOSE

REF #	JR	DATE	DOCUMENT	DESCRIPTION	LABOR	MATERIAL	SUBCON	EQUIP	OTHER	BILLINGS
854-0001	AR	09/22/14	063029	Reversed Inose, Eugene						-138262.80
855-0001	AR	10/08/14	Inv# 063065	Inose, Eugene						87541.01
859-0001	AR	10/08/14	063065	Reversed Inose, Eugene						-87541.01
860-0001	AR	10/08/14	Inv# 063067	Inose, Eugene						87541.01
CODE 51	TOTALS:			COST TOTALS:	0.00	0.00	0.00	0.00	0.00	87541.01
				BUDGET:	0.00	0.00	0.00	0.00	0.00	87541.01
				REMAINING:	0.00	0.00	0.00	0.00	0.00	0.00
CODE: 53	Ferguson Ent.									
739-0010	CA	08/18/14	Check# 13251	Perfect picture tv repair			605.00			
546-0001	CA	08/18/14	13251	Reversed Perfect picture tv repair			-605.00			
866-0001	AP	08/25/14	Inv# COMPTAPPL INOSE	Chase Card Services/SW Air		89.00				
901-0014	AP	08/25/14	Inv# comftappl inose	Chase Card Services/SW Air		89.00				
640-0001	AP	11/26/14	Inv# B540606	Ferguson Eterprise Inc		5218.46				
362-0001	AP	02/04/15	Inv# 2454152	Chase Card Services/SW Air		340.08				
099-0001	AP	03/27/15	Inv# B562462 inose	Ferguson Eterprise Inc		20012.35				
821-0001	AP	07/22/15	Inv# 072215 FERGSON	Chase Card Services/SW Air			1800.00			
CODE 53	TOTALS:			COST TOTALS:	27548.89	0.00	25748.89	1800.00	0.00	0.00
				BUDGET:	30478.00	0.00	0.00	30478.00	0.00	0.00
				REMAINING:	2929.11	0.00	-25748.89	28678.00	0.00	0.00
CODE: 54	Content Manipulation									
204-0001	PS	09/11/15	5.00 hr + 28% Burd	Jose Luis Marquez	153.60					
204-0001	PS	09/11/15	4.62 hr + 28% Burd	Miguel Rubio	153.75					
204-0001	PS	09/11/15	5.00 hr + 28% Burd	Juan plancarte	153.60					
CODE 54	TOTALS: LABOR HOURS: 14.62			COST TOTALS:	460.95	460.95	0.00	0.00	0.00	0.00
				BUDGET:	2000.00	2000.00	0.00	0.00	0.00	0.00
				REMAINING:	1539.05	1539.05	0.00	0.00	0.00	0.00
CODE: 61	Firehouse Electric									
163-0001	GJ	09/20/14	Document# 092014	Inv. 1605 Firehouse Elec			5000.00			
197-0012	AP	10/28/14	Inv# 1642	Firehouse Electric			435.00			
197-0011	AP	10/30/14	Inv# 1645	Firehouse Electric			1040.00			
197-0014	AP	11/03/14	Inv# 1647	Firehouse Electric			435.00			
197-0013	AP	11/11/14	Inv# 111114	Firehouse Electric			435.00			
CODE 61	TOTALS:			COST TOTALS:	7345.00	0.00	0.00	7345.00	0.00	0.00
				BUDGET:	13051.00	0.00	0.00	13051.00	0.00	0.00
				REMAINING:	5706.00	0.00	0.00	5706.00	0.00	0.00
CODE: 62	Completion to Date									
16-0001	AR	09/24/14	Inv# 063039	Inose, Eugene						50000.00
CODE 62	TOTALS:			COST TOTALS:	0.00	0.00	0.00	0.00	0.00	50000.00
				BUDGET:	0.00	0.00	0.00	0.00	0.00	50000.00
				REMAINING:	0.00	0.00	0.00	0.00	0.00	0.00
CODE: 63	Received Agreement									
56-0001	AR	10/02/14	Inv# 063052	Inose, Eugene						188882.26
56-0001	AR	10/02/14	063052	Reversed Inose, Eugene						-188882.26

DVC000700

SUPP000200

JOB: A19CTC CTC & MAT- INOSE

REF #	JR	DATE	DOCUMENT	DESCRIPTION	LABOR	MATERIAL	SUBCON	EQUIP	OTHER	BILLINGS
85B-0001	AR	10/08/14	Inv# 063066	Inose, Eugene						262232.26
CODE 63	TOTALS:			COST TOTALS:	0.00	0.00	0.00	0.00	0.00	262232.26
				BUDGET:	0.00	0.00	0.00	0.00	0.00	262232.26
				REMAINING:	0.00	0.00	0.00	0.00	0.00	0.00
CODE: 64	Artesia Kitchen Cabs									
119-0001	AP	10/14/14	Inv# 869	inose	Artesia Kitchen & Bath LLC	73930.00				
432-0005	AP	04/27/15	Inv# 1052		Artesia Kitchen & Bath LLC	73930.00				
677-0002	AP	04/27/15	1052	Reversed	Artesia Kitchen & Bath LLC	-73930.00				
746-0001	AP	07/07/15	Inv# 1134		Artesia Kitchen & Bath LLC		7712.00			
677-0001	AP	07/07/15	1134	Reversed	Artesia Kitchen & Bath LLC		-7712.00			
678-0001	AP	07/07/15	Inv# 1052	A19CTC	Artesia Kitchen & Bath LLC	67712.00				
CODE 64	TOTALS:			COST TOTALS:	141642.00	0.00	141642.00	0.00	0.00	0.00
				BUDGET:	163284.00	0.00	0.00	163284.00	0.00	0.00
				REMAINING:	21642.00	0.00	-141642.00	163284.00	0.00	0.00
CODE: 65	Creative Closets									
744-0001	AP	07/07/15	Inv# 1134		Creative Closets & Cabs LLC		7712.00			
744-0002	AP	07/07/15	Inv# 613		Creative Closets & Cabs LLC		430.00			
745-0001	AP	07/07/15	1134	Reversed	Creative Closets & Cabs LLC		-7712.00			
DE 65	TOTALS:			COST TOTALS:	430.00	0.00	0.00	430.00	0.00	0.00
				BUDGET:	18150.00	0.00	0.00	18150.00	0.00	0.00
				REMAINING:	17720.00	0.00	0.00	17720.00	0.00	0.00
CODE: 66	Diva Interior Con.									
134-0001	AP	09/10/14	Inv# 1119	inose	Diva Interior Concepts LLC				9295.00	
750-0001	AP	01/05/15	Inv# 417		Diva Interior Concepts LLC	3880.00				
747-0001	AP	03/11/15	Inv# 1132		Diva Interior Concepts LLC				24253.08	
747-0003	AP	03/16/15	Inv# 1133		Diva Interior Concepts LLC				9232.92	
381-0001	AP	03/27/15	Inv# b562462		Diva Interior Concepts LLC				20012.35	
398-0001	AP	03/27/15	b562462	Reversed	Diva Interior Concepts LLC				-20012.35	
384-0001	AP	04/14/15	Inv# 1137		Diva Interior Concepts LLC				18107.14	
110-0001	AP	04/24/15	Inv# 451		Diva Interior Concepts LLC				2203.94	
143-0015	AP	04/24/15	Inv# 4510		Diva Interior Concepts LLC				205.04	
752-0001	AP	05/20/15	Inv# 14266	O/P	Diva Interior Concepts LLC	-205.04				
751-0001	AP	07/06/15	Inv# 485		Diva Interior Concepts LLC	554.54				
778-0001	AP	07/15/15	Inv# 071515		Diva Interior Concepts LLC				619.84	
237-0010	AP	08/20/15	Inv# 509		Diva Interior Concepts LLC				96.91	
CODE 66	TOTALS:			COST TOTALS:	68243.37	0.00	0.00	4229.50	0.00	64013.87
				BUDGET:	65535.00	0.00	0.00	65535.00	0.00	0.00
				REMAINING:	-2708.37	0.00	0.00	61305.50	0.00	-64013.87
CODE: 67	Eagle Sentry									
138-0001	AP	11/25/14	Inv# 112514		Eagle Sentry	41841.37				
396-0001	AP	11/25/14	112514	Reversed	Eagle Sentry	-41841.37				
397-0001	AP	11/25/14	Inv# 112514	A19CTC	Eagle Sentry	20920.96				
DE 67	TOTALS:			COST TOTALS:	20920.96	0.00	0.00	20920.96	0.00	0.00
				BUDGET:	57612.00	0.00	0.00	57612.00	0.00	0.00
				REMAINING:	36691.04	0.00	0.00	36691.04	0.00	0.00

DVC000701

SUPP000201

JOB: A19CTC CTC & MAT- INOSE

REF #	JR	DATE	DOCUMENT	DESCRIPTION	LABOR	MATERIAL	SUBCON	EQUIP	OTHER	BILLINGS	
CODE: 69 Inose Superintendent											
063-0001	AP	09/10/14	Inv# 091014	Robert Ramirez					2500.00		
063-0002	AP	09/29/14	Inv# 092914	Robert Ramirez					2500.00		
067-0001	PS	10/24/14	160.00 hr + 28% Burd	Robert Ramirez	11264.00						
067-0001	PS	10/24/14	160.00 hr + 28% Burd	Robert Ramirez	2048.00						
129-0001	PS	10/31/14	40.00 hr + 28% Burd	Robert Ramirez	3952.00						
220-0001	PS	11/07/14	40.00 hr + 28% Burd	Robert Ramirez	4659.20						
241-0001	PS	11/14/14	34.00 hr + 28% Burd	Robert Ramirez	2828.80						
359-0001	PS	11/21/14	29.50 hr + 28% Burd	Robert Ramirez	2454.40						
450-0001	PS	11/26/14	36.00 hr + 28% Burd	Robert Ramirez	3161.60						
556-0001	PS	11/28/14	23.00 hr + 28% Burd	Robert Ramirez	1913.60						
760-0001	PS	12/12/14	39.00 hr + 28% Burd	Robert Ramirez	3244.80						
904-0001	PS	12/19/14	43.50 hr + 28% Burd	Robert Ramirez	3619.20						
986-0001	PS	12/24/14	46.00 hr + 28% Burd	Robert Ramirez	3827.20						
067-0001	PS	12/31/14	34.00 hr + 28% Burd	Robert Ramirez	2828.80						
223-0001	PS	01/16/15	49.00 hr + 28% Burd	Robert Ramirez	4076.80						
274-0001	PS	01/23/15	55.00 hr + 28% Burd	Robert Ramirez	4576.00						
324-0001	PS	01/30/15	40.00 hr + 28% Burd	Robert Ramirez	3660.80						
367-0001	PS	02/06/15	40.00 hr + 28% Burd	Robert Ramirez	3993.60						
431-0001	PS	02/13/15	48.00 hr + 28% Burd	Robert Ramirez	3993.60						
552-0001	PS	02/27/15	32.00 hr + 28% Burd	Robert Ramirez	2662.40						
7-0001	PS	02/27/15	38.00 hr + 28% Burd	Robert Ramirez	3161.60						
726-0001	PS	03/06/15	45.00 hr + 28% Burd	Robert Ramirez	3744.00						
696-0001	PS	03/13/15	41.00 hr + 28% Burd	Robert Ramirez	3411.20						
742-0001	PS	03/20/15	40.00 hr + 28% Burd	Robert Ramirez	2560.00						
774-0001	PS	03/27/15	40.00 hr + 28% Burd	Robert Ramirez	2560.00						
962-0001	PS	04/17/15	40.00 hr + 28% Burd	Robert Ramirez	2560.00						
962-0001	PS	04/17/15	24.00 hr + 28% Burd	Robert Ramirez	1536.00						
101-0001	PS	05/01/15	40.00 hr + 28% Burd	Robert Ramirez	2560.00						
101-0001	PS	05/01/15	40.00 hr + 28% Burd	Robert Ramirez	2560.00						
CODE 69	TOTALS:			LABOR HOURS: 1297.00	COST TOTALS: 98417.60	93417.60	0.00	0.00	0.00	5000.00	0.00
					BUDGET: 76038.00	0.00	0.00	76038.00	0.00	0.00	0.00
					REMAINING: -22379.60	-93417.60	0.00	76038.00	0.00	-5000.00	0.00
CODE: 72 Summit Tile & Stone											
594-0001	AP	06/16/15	Inv# 1247	Summit Tile & Stone, LLC			20971.75				
747-0001	AP	06/27/15	Inv# 1259	Summit Tile & Stone, LLC			19348.20				
748-0001	AP	07/07/15	Inv# 1271	Summit Tile & Stone, LLC			5176.50				
118-0004	AP	07/07/15	1271 Reversed	Summit Tile & Stone, LLC			-5176.50				
378-0002	AP	07/28/15	Inv# 1314	Summit Tile & Stone, LLC			10013.55				
276-0004	AP	09/18/15	Inv# 1385	Summit Tile & Stone, LLC			9255.00				
118-0005	AP	09/18/15	1385 Reversed	Summit Tile & Stone, LLC			-9255.00				
CODE 72	TOTALS:				COST TOTALS: 50333.50	0.00	0.00	50333.50	0.00	0.00	0.00
					BUDGET: 72805.00	982.00	0.00	71823.00	0.00	0.00	0.00
					REMAINING: 22471.50	982.00	0.00	21489.50	0.00	0.00	0.00
CODE: 74 Floor- Wood											
1-0001	AP	05/14/15	Inv# ES503465	PS of Las Vegas LLC	24985.56						
106-0001	AP	07/31/15	Inv# 3355	Flooring Encounters			13249.25				

DVC000702

SUPP000202

JOB: A19CTC CTC & MAT- INOSE

REF #	JR	DATE	DOCUMENT	DESCRIPTION	LABOR	MATERIAL	SUBCON	EQUIP	OTHER	BILLINGS
278-0001	AP	07/31/15	Inv# 3354	Flooring Encounters			158.00			
CODE 74	TOTALS:			COST TOTALS:	38392.81	0.00	24985.56	13407.25	0.00	0.00
				BUDGET:	30000.00	30000.00	0.00	0.00	0.00	0.00
				REMAINING:	-8392.81	30000.00	-24985.56	-13407.25	0.00	0.00
CODE: 80	Walker Zanger Inc									
060-0001	AP	08/24/15	Inv# 1594017	Walker Zanger Inc.		7343.73				
CODE 80	TOTALS:			COST TOTALS:	7343.73	0.00	7343.73	0.00	0.00	0.00
				BUDGET:	7343.00	0.00	0.00	7343.00	0.00	0.00
				REMAINING:	-0.73	0.00	-7343.73	7343.00	0.00	0.00
CODE: 81	Latin Glass									
009-0005	AP	07/27/15	Inv# 072715	Latin's Glass & Mirrors		1900.00				
156-0006	AP	07/27/15	Inv# 2	Latin's Glass & Mirrors		1900.00				
379-0022	AP	07/27/15	2	Reversed Latin's Glass & Mirrors		-1900.00				
CODE 81	TOTALS:			COST TOTALS:	1900.00	0.00	1900.00	0.00	0.00	0.00
				BUDGET:	1900.00	0.00	0.00	1900.00	0.00	0.00
				REMAINING:	0.00	0.00	-1900.00	1900.00	0.00	0.00
CODE: 82	Sunrise HVAC Insp.									
5-0007	AP	12/30/14	Inv# P145291	Sunrise Service Inc.			255.00			
372-0002	AP	01/20/15	Inv# P145477	Sunrise Service Inc.			379.00			
432-0002	AP	04/24/15	Inv# A142540	Sunrise Service Inc.			510.00			
472-0001	AP	05/26/15	Inv# P148248	Sunrise Service Inc.			1900.00			
967-0008	AP	07/31/15	Inv# P149540	Sunrise Service Inc.			525.00			
CODE 82	TOTALS:			COST TOTALS:	3569.00	0.00	0.00	3569.00	0.00	0.00
				BUDGET:	510.00	0.00	0.00	510.00	0.00	0.00
				REMAINING:	-3059.00	0.00	0.00	-3059.00	0.00	0.00
CODE: 83	Trendy Surfaces									
776-0001	AP	06/03/15	Inv# 2169	Trendy Services Inc.		19250.00				
CODE 83	TOTALS:			COST TOTALS:	19250.00	0.00	19250.00	0.00	0.00	0.00
				BUDGET:	19250.00	0.00	0.00	19250.00	0.00	0.00
				REMAINING:	0.00	0.00	-19250.00	19250.00	0.00	0.00
CODE: 84	Hy-Bar Windows									
136-0001	AP	11/17/14	Inv# 5559	Hy-bar Las Vegas			46042.00			
747-0002	AP	02/25/15	Inv# 5978	Hy-bar Las Vegas		7123.00				
793-0001	AP	02/25/15	Inv# 5977	Hy-bar Las Vegas		23021.00				
376-0001	AP	03/30/15	Inv# 6130	Hy-bar Las Vegas		12050.00				
146-0003	AP	04/01/15	Inv# 6328	Hy-bar Las Vegas		605.00				
239-0005	AP	04/22/15	Inv# 14-105431	Hy-bar Las Vegas		8176.00				
712-0001	AP	06/24/15	Inv# 6677	Hy-bar Las Vegas		5021.00				
717-0001	AP	06/24/15	6677	Reversed Hy-bar Las Vegas		-5021.00				
747-0001	PS	08/07/15	6.00 hr + 28% Burd	Jose A Salazar	153.60					
0001	AP	09/23/15	Inv# 6870	Hy-bar Las Vegas		10000.00				
118-0006	AP	09/23/15	6870	Reversed Hy-bar Las Vegas		-10000.00				

DVC000703

SUPP000203

JOB: A19CTC CTC & MAT- INOSE

REF #	JR	DATE	DOCUMENT	DESCRIPTION	LABOR	MATERIAL	SUBCON	EQUIP	OTHER	BILLINGS
CODE 84	TOTALS:	LABOR HOURS:	6.00	COST TOTALS:	97170.60	153.60	50975.00	46042.00	0.00	0.00
				BUDGET:	110657.00	0.00	0.00	110657.00	0.00	0.00
				REMAINING:	13486.40	-153.60	-50975.00	64615.00	0.00	0.00
CODE: 85	D.H.Electric High V									
462-0016	AP	12/16/14	Inv# 121614	Desert Home Electric, Inc.			1250.00			
462-0015	AP	01/19/15	Inv# 14208	Desert Home Electric, Inc.			6748.20			
537-0004	AP	05/26/15	Inv# 14616	Desert Home Electric, Inc.			6748.20			
753-0001	AP	06/12/15	Inv# 51216B	Desert Home Electric, Inc.			1050.00			
754-0001	AP	06/12/15	Inv# 51216C	Desert Home Electric, Inc.			900.00			
755-0001	AP	06/12/15	Inv# 51216A	Desert Home Electric, Inc.			3280.00			
CODE 85	TOTALS:			COST TOTALS:	19976.40	0.00	0.00	19976.40	0.00	0.00
				BUDGET:	32344.00	0.00	0.00	32344.00	0.00	0.00
				REMAINING:	12367.60	0.00	0.00	12367.60	0.00	0.00
CODE: 87	Picture Perfect TV									
544-0001	AP	08/18/14	Inv# INOSE	Perfect Picture TV					605.00	
CODE 87	TOTALS:			COST TOTALS:	605.00	0.00	0.00	0.00	605.00	0.00
				BUDGET:	605.00	605.00	0.00	0.00	0.00	0.00
				REMAINING:	0.00	605.00	0.00	0.00	-605.00	0.00
CODE: 89	Comfort Home Electr									
571-0025	AP	09/02/14	Inv# INOSEAPPL	Chase Card Services/SW Air		89.00				
CODE 89	TOTALS:			COST TOTALS:	89.00	0.00	89.00	0.00	0.00	0.00
				BUDGET:	89.00	0.00	0.00	89.00	0.00	0.00
				REMAINING:	0.00	0.00	-89.00	89.00	0.00	0.00
CODE: 90	Completion To Date									
973-0001	AR	01/22/15	Inv# 063255	Inose, Eugene						300000.00
CODE 90	TOTALS:			COST TOTALS:	0.00	0.00	0.00	0.00	0.00	300000.00
				BUDGET:	0.00	0.00	0.00	0.00	0.00	300000.00
				REMAINING:	0.00	0.00	0.00	0.00	0.00	0.00
CODE: 91	H.O. Landscape									
927-0001	AP	01/22/15	Inv# 0215023	High Desert Landscape &			2094.00			
CODE 91	TOTALS:			COST TOTALS:	2094.00	0.00	0.00	2094.00	0.00	0.00
				BUDGET:	2094.00	0.00	0.00	2094.00	0.00	0.00
				REMAINING:	0.00	0.00	0.00	0.00	0.00	0.00
CODE: 92	LEE HVAC									
993-0002	AP	03/12/15	Inv# 031215	Lee's Heating and Cooling			6685.00			
CODE 92	TOTALS:			COST TOTALS:	6685.00	0.00	0.00	6685.00	0.00	0.00
				BUDGET:	6685.00	0.00	0.00	6685.00	0.00	0.00
				REMAINING:	0.00	0.00	0.00	0.00	0.00	0.00
CODE: 94	West Coast Concrete									

DVC000704

SUPP000204

JOB: A19CTC CTC & MAT- INOSE

REF #	JR	DATE	DOCUMENT	DESCRIPTION	LABOR	MATERIAL	SUBCON	EQUIP	OTHER	BILLINGS
067-0003	AP	04/23/15	Inv# 7171	West Coast Concrete			1850.00			
395-0001	AP	05/21/15	Inv# 7188	West Coast Concrete			8117.00			
775-0006	AP	07/06/15	Inv# 7216	West Coast Concrete			4288.00			
049-0001	AP	07/06/15	7216	Reversed West Coast Concrete			-4288.00			
050-0001	AP	07/06/15	Inv# 7216	West Coast Concrete			3288.00			
156-0002	AP	08/21/15	Inv# 7259	West Coast Concrete			15188.00			
418-0001	AP	08/21/15	7259	Reversed West Coast Concrete			-15188.00			
CODE 94	TOTALS:			COST TOTALS:	13255.00	0.00	0.00	13255.00	0.00	0.00
				BUDGET:	29443.00	0.00	0.00	29443.00	0.00	0.00
				REMAINING:	16188.00	0.00	0.00	16188.00	0.00	0.00
CODE: 95	Billing 7/1/2015									
691-0001	AR	07/01/15	Inv# 63608	Inose, Eugene						350000.00
CODE 95	TOTALS:			COST TOTALS:	0.00	0.00	0.00	0.00	0.00	350000.00
				BUDGET:	0.00	0.00	0.00	0.00	0.00	350000.00
				REMAINING:	0.00	0.00	0.00	0.00	0.00	0.00
CODE: 97	Easy Lift Elevators									
537-0002	AP	06/08/15	Inv# 162940	Eazylift Elevators			882.40			
CODE 97	TOTALS:			COST TOTALS:	882.40	0.00	0.00	882.40	0.00	0.00
				BUDGET:	882.00	0.00	0.00	882.00	0.00	0.00
				REMAINING:	-0.40	0.00	0.00	-0.40	0.00	0.00
CODE: 98	Custom Landau									
432-0001	AP	04/08/15	Inv# 5799	Custom Landau			3250.00			
CODE 98	TOTALS:			COST TOTALS:	3250.00	0.00	0.00	3250.00	0.00	0.00
				BUDGET:	3250.00	0.00	0.00	3250.00	0.00	0.00
				REMAINING:	0.00	0.00	0.00	0.00	0.00	0.00
CODE: 99	VENETIAN									
757-0001	AP	06/04/15	Inv# 2310	Venetian Tile & Stone			3825.00			
650-0004	CA	09/04/15	sw card	Misc - Credit Card		713.50				
CODE 99	TOTALS:			COST TOTALS:	4538.50	0.00	713.50	3825.00	0.00	0.00
				BUDGET:	3825.00	0.00	0.00	3825.00	0.00	0.00
				REMAINING:	-713.50	0.00	-713.50	0.00	0.00	0.00
BASE BUDGET TOTALS:	LABOR HOURS:	7526.44		COST TOTALS:	1009123.08	261909.22	391057.83	270609.61	2950.23	82596.19
										1297369.67
** CHANGE ORDER C001 Robs Supplement **										
CODE: 00	Robs Supplement									
126-0001	AR	01/08/15	Inv# 063225	Inose, Eugene						23961.60
140-0001	PS	01/09/15	40.00 hr + 28% Burd	Robert Ramirez		3328.00				
CODE 00	TOTALS:	LABOR HOURS:	40.00	COST TOTALS:	3328.00	3328.00	0.00	0.00	0.00	23961.60
				BUDGET:	19000.00	19000.00	0.00	0.00	0.00	23961.60
				REMAINING:	15672.00	15672.00	0.00	0.00	0.00	0.00

DVC000705

SUPP000205

DESERT VALLEY CONTRACTING, INC.

** JOB COST & BILLING DETAIL **

Page 22

For Codes: A11

04/25/17

For Dates: Beginning - To Date

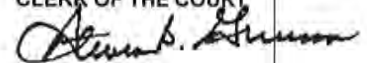
JOB: A19CTC CTC & MAT- INOSE

REF #	JR	DATE	DOCUMENT	DESCRIPTION	LABOR	MATERIAL	SUBCON	EQUIP	OTHER	BILLINGS
C/O C001	TOTALS:	LABOR HOURS: 40.00	COST TOTALS:	3328.00	3328.00	0.00	0.00	0.00	0.00	23961.60
SUBJOB CTC TOTALS:	LABOR HOURS: 7666.44	COST TOTALS:	1012451.08	265237.22	391057.83	270609.61	2950.23	82596.19	1321331.27	
JOB A19	TOTALS:	LABOR HOURS: 7666.44	COST TOTALS:	1012451.08	265237.22	391057.83	270609.61	2950.23	82596.19	1321331.27

DVC000706

SUPP000206

EXHIBIT 8



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 DESERT VALLEY CONTRACTING,
9 INC.,

10 Plaintiff,

11 vs.

12 IN-LO PROPERTIES, LLC,

13 Defendant.

CASE#: A-16-734351-C

DEPT. XV

14 BEFORE THE HONORABLE JOSEPH HARDY
15 DISTRICT COURT JUDGE
16 MONDAY, APRIL 8, 2019

17 **RECORDER'S TRANSCRIPT OF BENCH TRIAL - DAY 1**

18 APPEARANCES:

19 For the Plaintiff:

CARRIE E. HURTIK, ESQ.
JONATHAN PATTERSON, ESQ.

20 For the Defendant:

BRIAN W. BOSCHEE, ESQ.
SEAN E. STORY, ESQ.

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25 RECORDED BY: MATTHEW YARBROUGH, COURT RECORDER

1 A Yes, he did. He called me immediately. I remember when he
2 called me and -- because it was so traumatic for me -- and he told me I
3 better get my butt over to Vegas immediately.

4 Q Okay. So did you fly, or did you drive?

5 A No, I took the first flight out the very next morning.

6 Q Okay. And so upon getting to Vegas, had anything been
7 done before you got here?

8 A Yes. I -- I can't recall who called SERVPRO or how we even
9 got SERVPRO's number, but we needed to get someone to -- I'm not
10 sure what the terminology is, but basically start the process of cleaning
11 up the house, getting the water out of the house, and all that.

12 Q Okay. So suffice it to say, it was a major flood; is that
13 correct?

14 A Yes. In my opinion, yes.

15 Q Okay. And what started the water leak, do you know?

16 A It was -- I believe it's called -- called an angle stop in the -- it
17 was in the women's toilet upstairs master's bathroom.

18 Q Okay. And did the water seep into the entire house or was it
19 contained to certain rooms?

20 A Oh, it was almost the entire house. I would probably say
21 approximately 80 percent of the house.

22 Q Okay. So there were some areas that were not affected?

23 A Yes.

24 Q So you arrive in Vegas and SERVPRO is out there. Do you
25 meet them at the site?

1 A I met them at the house, correct.

2 Q Okay. And was it SERVPRO of Henderson?

3 A I -- I just know it was SERVPRO.

4 Q Okay. So at that juncture did that start -- did they have

5 discussion with you and you have a contract that you signed with them

6 to start general clean up?

7 A I don't remember any contract at this time that I signed;

8 however, they were already starting clean up. I don't know if Rommel

9 had signed the contract or I had signed the -- I don't know.

10 Q Okay. So once they had -- did they do all of the cleanup for

11 the water intrusion?

12 A When you say "they" meaning SERVPRO?

13 Q SERVPRO.

14 A SERVPRO, yes. SERVPRO, as far as I know, did all the

15 cleanup. I don't know how much Desert Valley Contracting or Contractor

16 did and how much SERVPRO did. I'm not 100 percent sure of that.

17 Q Okay. But you are aware that they -- Desert Valley

18 Contracting is not the same entity as SERVPRO that did your

19 remediation?

20 A No, I -- to me, they were all the same. They -- Desert Valley

21 Contract -- D -- can -- may I -- may I call them DVC?

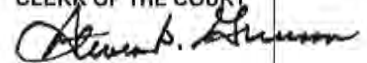
22 Q You can call them DVC.

23 A Okay.

24 THE COURT: DVC?

25 THE WITNESS: Desert Valley Contracting.

EXHIBIT 9



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 DESERT VALLEY CONTRACTING,
9 INC.,

10 Plaintiff,

11 vs.

12 IN-LO PROPERTIES, LLC,

13 Defendant.

CASE#: A-16-734351-C

DEPT. XV

14 BEFORE THE HONORABLE JOSEPH HARDY
15 DISTRICT COURT JUDGE
16 FRIDAY, JUNE 21, 2019

17 **RECORDER'S TRANSCRIPT OF BENCH TRIAL - DAY 7**

18 APPEARANCES:

19 For the Plaintiff:

CARRIE E. HURTIK, ESQ.
JONATHAN PATTERSON, ESQ.

20 For the Defendant:

BRIAN W. BOSCHKEE, ESQ.
SEAN E. STORY, ESQ.

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25 RECORDED BY: MATTHEW YARBROUGH, COURT RECORDER

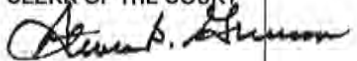
1 wait for that to come. You don't change finishes on cabinets after you
2 already made it, you know. So you can see -- I think you seen that
3 there's a lot of frustration with the subs, you know, with all the changes
4 and stuff -- the doors, cabinets, paint colors, tile floors, adding rubber
5 membranes, stuff like that.

6 So I think there was a lot of frustration on this job. It was a
7 slow -- every custom home that you build, even from ground up this size,
8 I'd say it's a year and a half to two years because of the finishes and we
9 always had a 20 percent contingency fund for when we do these houses.
10 And the reason I say that is because, like in this situation, you don't know
11 when the inspectors come out there with the new codes that's all
12 changed, like we had to change stuff here with the fire sprinkler system.
13 We had to do some stuff with the fire sprinkler. The inspectors reserve
14 their right, and they're permitted, once they come on site for the very
15 first time and they start to -- if they see anything that they want fixed,
16 they can call it out right there. Whether it be electrical, plumbing, fire
17 sprinklers, fire alarms, whatever -- that right.

18 So that's one of the reasons we do not close out claims,
19 because you will get hit. That's why we call it a contingency fund. Every
20 job we do, we have to go back in and turn in a supplement to the
21 insurance company. Every fire job we build that, say, is \$300,000, you'll
22 get a \$40- to \$50,000 change order at the end time. And the insurance
23 companies know that's coming. So they allow ten percent, at least ten
24 percent of the contract to be there for contingency.

25 So if you miss -- if stuff don't work for electrical, or stuff like

EXHIBIT 10



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7)
8 DESERT VALLEY CONTRACTING,
9 INC.,)

10 Plaintiff,)

11 vs.)

12 IN-LO PROPERTIES, LLC,)

13 Defendant.)

CASE#: A-16-734351-C

DEPT. XV

14 BEFORE THE HONORABLE JOSEPH HARDY
15 DISTRICT COURT JUDGE
16 THURSDAY, JUNE 20, 2019

17 **RECORDER'S TRANSCRIPT OF BENCH TRIAL - DAY 6**

18 APPEARANCES:

19 For the Plaintiff:

CARRIE E. HURTIK, ESQ.
JONATHAN PATTERSON, ESQ.

20 For the Defendant:

BRIAN W. BOSCHEE, ESQ.
SEAN E. STORY, ESQ.

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25 RECORDED BY: MATTHEW YARBROUGH, COURT RECORDER

1 claim?

2 A I don't believe we talked about that. I know there was an
3 email from me to the adjuster saying that we did have all the bids in, but
4 I don't believe that Eugene and I talked or emailed anything to do with
5 that.

6 Q Okay. And were you shocked when the claim was actually
7 closed and you weren't finished, completed with your work?

8 A I was more shocked when I got the change orders from the
9 subcontractors, essentially the Eagle Sentry one. That's when I was
10 getting to the point where I needed to reach back out and get some extra
11 funds for that because I think it was justifiable. So, that's more of the
12 shocking part when I started to see the change orders come in.

13 Q Okay. So -- excuse me --

14 THE COURT: When did you, if you recall, when did you learn
15 that the claim had been closed out?

16 THE WITNESS: I think it was in July. I believe it was in
17 July when I actually learned that it had been closed out to where
18 Fireman's sent them the last check and that was that. I believe it was
19 July.

20 BY MS. HURTIK:

21 Q Okay. So -- and, again, you were asked four or five times --
22 well, I asked you again, so never mind --

23 THE COURT: So, we're going to ask number 6?

24 BY MS. HURTIK:

25 Q You were asked eight times --