

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF LAS VEGAS, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA,

Appellant,

vs.

180 LAND CO., LLC, A NEVADA LIMITED-
LIABILITY COMPANY; AND FORE STARS,
LTD., A NEVADA LIMITED-LIABILITY
COMPANY,

Respondents.

180 LAND CO., LLC, A NEVADA LIMITED-
LIABILITY COMPANY; AND FORE STARS,
LTD., A NEVADA LIMITED-LIABILITY
COMPANY,

Appellants/Cross-Respondents,

vs.

CITY OF LAS VEGAS, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA,

Respondent/Cross-Appellant.

No. 84345

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**AMENDED
JOINT APPENDIX
VOLUME 112, PART 7**

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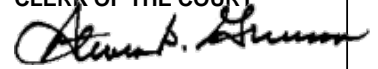
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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO., LLC, a Nevada limited liability
company, FORE STARS Ltd., DOE
INDIVIDUALS I through X, ROE
CORPORATIONS I through X, and ROE
LIMITED LIABILITY COMPANIES I through
X,

Plaintiffs,

vs.

CITY OF LAS VEGAS, political subdivision of
the State of Nevada, ROE government entities I
through X, ROE CORPORATIONS I through X,
ROE INDIVIDUALS I through X, ROE
LIMITED LIABILITY COMPANIES I through
X, ROE quasi-governmental entities I through X,

Defendant.

Case No.: A-17-758528-J

Dept. No.: XVI

**PLAINTIFF LANDOWNERS' MOTION
FOR ATTORNEY FEES**

Hearing Requested

COMES NOW Plaintiffs Landowners, 180 LAND CO., LLC and FORE STARS Ltd.
(hereinafter "Landowners"), by and through their attorneys of record, the Law Offices of Kermitt
L. Waters, and hereby respectfully submit Plaintiffs Landowners' Motion for Attorney Fees.

///

1 This motion is based upon NRCF Rule 54 and those other laws set forth herein, the papers
2 and pleadings on file, the declarations of counsel attached hereto and any evidence or argument
3 heard at the time of the hearing on this matter.

4 DATED this 9th day of December, 2021.

5 **LAW OFFICES OF KERMIT L. WATERS**

6 /s/ Autumn L. Waters

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15 *Attorneys for Plaintiffs Landowners*

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **I. FACTS**

18 This is an inverse condemnation action brought by 180 LAND CO, LLC, and FORE
19 STARS Ltd. ("Landowners") against the City of Las Vegas ("City") for the taking of the
20 Landowners' 34.07 acre residentially zoned property located near the southeast corner of Hualapai
21 Way and Alta Drive in Las Vegas, Nevada ("35 Acre Property" and/or "Landowners' Property").
22 This case involved three phases: 1) the property interest phase - the determination of the property
23 interest the Landowners had prior to the City's actions; 2) the take phase - whether the City
24 engaged in actions to take the Landowners' property; and, 3) the value phase - the value of the
Landowners' Property taken by the City. The Landowners have prevailed in all 3 phases and, as
the prevailing party in an inverse condemnation case, the Landowners are entitled to an award of
attorney fees. The attorney fees award should be based on: 1) the Lodestar method – the hours
worked times the hourly rate; and, 2) an enhanced fee based on the 12 Hsu Factors.

II. LAW

A. Law Requiring Attorney Fees.

There are three sources of Nevada law that provide the City must pay the Landowners' attorney fees in this inverse condemnation action – 1) the Uniform Relocation Assistance and Real Property Acquisition Act (“Relocation Act”); 2) the Nevada Constitution Article 1, Section 22 (4); and, 3) NRS 18.010(2)(b).

1. The Relocation Act

In the seminal inverse condemnation case of McCarran Int'l Airport v. Sisolak, 122 Nev. 645, 673 (2006), the district court awarded Mr. Sisolak attorney fees as a prevailing landowner in an inverse condemnation action and the Supreme Court affirmed, holding, “the district court properly based its award of attorney fees on a relevant provision of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Relocation Act).” *See also* Tien Fu Hsu v. County of Clark, 123 Nev. 625, 637 (2007) (adopting the same Sisolak attorney fees law). The Court held that “[t]he Relocation Act requires that a state government entity receiving federal funds institute formal condemnation proceedings to acquire any interest in real property by exercising the power of eminent domain” and, if not, Nevada landowners may bring inverse condemnation claims and “may recover attorney fees and costs if they succeed in an inverse condemnation claim against the government.” Sisolak, at 673. The Sisolak Court held that these attorney fee provisions “apply to all Nevada political subdivisions and agencies” that receive federal funds. Id., at 674. The Court further held that there does not need to be a specific nexus between federal funds and the project for which the property has been taken, which had previously been suggested in a prior case – Alper. Id. Finally, the Court held that eligibility for attorney fees is not limited to those situations where a person has been displaced. Id., at 675. The Court then plainly stated the standard for recovery of attorney fees in an inverse condemnation action –

1 “Because Sisolak is *a property owner who was successful in his inverse condemnation action*,
2 the plain terms of the Relocation Act allowed the District Court to award reasonable attorney fees
3 and costs.” Id.

4 Here, the Landowners are property owners who were successful in their inverse
5 condemnation action and, therefore, the plain terms of the Relocation Act allow recovery of
6 attorney fees. Specifically, 49 CFR § 24.107(c)(2020) provides:

7 **§ 24.107 Certain litigation expenses.** The owner of the real property shall be
8 reimbursed for any reasonable expenses, including reasonable attorney, appraisal,
9 and engineering fees, which the owner actually incurred because of a condemnation
10 proceeding, if: ... (c) The court having jurisdiction renders a judgment in favor of
11 the owner in an inverse condemnation proceeding or the Agency effects a
12 settlement of such proceeding. (*Exhibit 7, 49 CFR 24*) (emphasis added).

13 And, insofar as the rule may require a showing that the taking agency receives federal funds to
14 recover attorney fees under the Relocation Act, the Court can take judicial notice that the City
15 receives federal funds as this issue is beyond dispute and attached hereto is evidence of the City’s
16 federal funding. *See Exhibits 12-16. Exhibit 12, screenshot of the City’s Website stating the City*
17 *receives federal funds; Exhibit 13, the City’s 2050 Master Plan where the City details how it*
18 *receives federal funds, specifically for parks and open space see ATTY FEE MOT 0226; Exhibit*
19 *14, the City’s SNPLMA Projects (SNPLMA is a federal grant program where federal dollars are*
20 *given to the City for Parks and Open Space); Exhibit 15, the City’s 2017 Budget detailing federal*
21 *dollars received; Exhibit 16, City’s 2021 Budget detailing federal dollars received.*

22 Therefore, the Landowners are entitled to recovery of attorney fees under the Relocation
23 Act and the law set forth in Sisolak and Hsu.

24 **2. Nevada Constitution Article 1, Section 22 (4) – Effective 2008 after the
Sisolak and Hsu Decisions.**

While not necessary to explore, as there is a statute directly on point and two cases
interpreting that statute to mean a successful landowner in an inverse condemnation case is entitled

1 to attorney fees, the Nevada constitution also provides for attorney fees. Specifically, the Nevada
2 constitution provides, “[i]n all eminent domain actions, just compensation shall be defined as that
3 sum of money, necessary to place the property owner back in the same position, monetarily,
4 without any governmental offsets, as if the property had never been taken.” Nev. Const. Art I §
5 22(4). The Constitution further provides that “Just compensation shall include, but is not limited
6 to, compounded interest and all reasonable costs and expenses actually incurred.” Nev. Const. Art
7 I § 22(4)(emphasis added). Attorney fees are expenses actually incurred. As the Nevada Supreme
8 Court specifically stated, when interpreting constitutional provisions, the normal and ordinary
9 meaning of words **must** be utilized. Strickland v. Waymire, 126 Nev. 230, 234 (2010). The normal
10 and ordinary meaning of the word “*expense*,” according to Merriam-Webster, include “the amount
11 of money that is needed to pay for or buy something” and “something on which money is spent.”¹
12 These normal and ordinary meanings of “*expense*” certainly includes the amount of money needed
13 to pay for legal counsel. Therefore, pursuant to the normal and ordinary meanings of the word
14 “*expense*” it is clear that the voters of Nevada intended to include attorney fees, otherwise, the
15 voters would not have voted so overwhelmingly for the passage of Article 1, Section 22.

16 When a constitutional provision’s language is clear on its face, as is the case here, the Court
17 will not go beyond that language in determining the voters’ intent. Strickland at 608. However,
18 this constitutional provision was presented to and overwhelmingly approved by the Nevada
19 electorate twice – 2006 and 2008 – and it was clear that the voters knew that passing Article 1,
20 Section 22 would mean that Just Compensation would include attorney fees for a landowner,
21 meaning that the government would have to pay for a landowner’s attorney fees in eminent domain
22 matters. In fact, the Argument Opposing Passage in the Sample Ballot specifically informed
23 Nevada Voters in 2006 and 2008 that “Further, we believe **taxpayers may have to pay all lawyers**

24 _____
¹ <http://www.merriam-webster.com/dictionary/expense>

1 **fees** and court expenses for any legal actions brought by private parties on eminent domain!” (Bold
2 added, “!” in original text)(*Exhibit 9*, p. 11 and *Exhibit 10*, p. 7). The drafters of the Argument
3 Opposing Passage were so certain that the government would have to pay for a landowner’s
4 attorney fees in an eminent domain action under Article 1, Section 22, that they even added an
5 exclamation point “!” to the end of that sentence to denote its major significance to all Nevada
6 voters. An exclamation point is used to “indicate forceful utterance or strong feeling” or to indicate
7 “major significance.”² Accordingly, the opponents of Article 1, Section 22 made sure that even if
8 the normal and ordinary meaning of *expenses* was somehow lost on the Nevada voters, that the
9 voters were made aware that it would include attorney fees.

10 There can be no doubt, by both the normal and ordinary meaning and then as reinforced by
11 the Argument Opposing Passage that the Nevada voters intended for the government to pay for a
12 landowner’s attorney fees when a landowner’s private property is taken by eminent domain.
13 Accordingly, Article 1 § 22(4) provides that landowners must be reimbursed for their attorney
14 fees.

15 Furthermore, the intent of the just compensation clause and Article 1 § 22 is to put the
16 landowner back in the same position monetarily as if the property had never been taken. A
17 landowner simply cannot be made whole until they have been reimbursed for their attorney fees.
18 As will be shown below, attorney fees can be significant in these matters, and requiring a
19 landowner to bear the burden of her own attorney fees in a constitutional matter such as this would
20 have a chilling effect on constitutional rights and just compensation as defined would never be
21 achieved.

22 There was an effort by the Legislature to unwind part of Article 1 § 22(4) with NRS 37.120
23 as it relates to direct condemnation actions by excluding attorney’s fees, however, as made clear
24

² <http://www.merriam-webster.com/dictionary/exclamation%20point>

1 by NRS 37.185 such legislative exclusion (whether valid or not) is not applicable to an inverse
2 condemnation action, such as this, where there is no question that the Landowners are entitled to
3 attorney fees - “[t]his section (that denies attorney fees) does not apply in an inverse condemnation
4 action if the owner of the property that is the subject of the actions makes a request for attorney’s
5 fees from the other party to the action.” NRS 37.185.

6 **3. NRS 18.010(2)(b).**

7 The Landowners are additionally entitled to attorney fees under NRS 18.010(2)(b) which
8 provides in pertinent part that, under certain circumstances, the court may award a prevailing party
9 attorney fees:

10 Without regard to the recovery sought, when the court finds that the claim,
11 counterclaim, cross-claim or third-party complaint or defense of the opposing party
12 was brought or maintained without reasonable ground or to harass the prevailing
13 party. The court shall liberally construe the provisions of this paragraph in favor
14 of awarding attorney’s fees in all appropriate situations. It is the intent of the
15 Legislature that the court award attorney’s fees pursuant to this paragraph and
impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in
all appropriate situations to punish for and deter frivolous or vexatious claims and
defenses because such claims and defenses overburden limited judicial resources,
hinder the timely resolution of meritorious claims and increase the costs of
engaging in business and providing professional services to the public.

16 As the Court is aware, the City challenged all three phases of the Landowners’ inverse
17 condemnation case. The City repeatedly re-argued issues that had already been decided, made
18 arguments contrary to the position of its own client (the City Attorney, Planning, Tax departments,
19 and City Councilpersons), argued contrary to long standing Nevada eminent domain and inverse
20 condemnation precedent, and argued for a taking standard that has never been the law in any
21 jurisdiction. The City repeatedly argued petition for judicial review law, despite at least 4 orders
22 from the Court rejecting the petition for judicial review law’s application to inverse condemnation
23 and a decision directly on point from the Nevada Supreme Court that petition for judicial review
24 law should not be used. *See City of Henderson v. Eighth Judicial District Court*, 137 Nev. Adv.Op.
26 (June 24, 2021). The City simply ignored the Court’s orders and Nevada Supreme Court

precedent. The specifics of these actions are set forth below, as they are relevant to the first of the 12 Hsu Factors for enhancing the Landowners' attorney fees award. However, suffice it to say the City's frivolous and vexation claims overburdened both this Court's limited judicial resources and substantially increased the costs of engaging in business. Therefore, as more fully set forth below, the Landowners are entitled to recovery of attorney fees under NRS 18.010(2)(b).

In summary, the Landowners are entitled to attorney fees under specific inverse condemnation federal and state statutory law, the Nevada Constitution, Nevada case law and general Nevada statutory law. The following section will show how Nevada has elected to calculate these attorney fees in the specific context of an inverse condemnation case.

B. Nevada Inverse Condemnation Law Provides a Two-Step Process to Determine the Attorney Fee Award.

The leading case on calculation of attorney fees, in an inverse condemnation case, is Tien Fu Hsu v. County of Clark, 123 Nev. 625 (1007). Hsu requires a two-step process. **First**, the district court applies the lodestar analysis to "multiply the number of hours reasonably spent on the case by a reasonable hourly rate." Id., at 637. **Second**, the district court applies its "sound discretion" and adjusts the fee upward or downward based upon 12 Factors: "(1) the time and work required; (2) the difficulty of the issue; (3) the skill required to perform the service; (4) the amount of time taken away from other work; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) the time limitations imposed on the attorney by the case; (8) the amount of money involved and the results obtained; (9) the reputation, experience, and ability of the attorney; (10) the lack of desirability of the case; (11) the length of the acquaintanceship with the client; and, (12) awards in similar cases." Id. These 12 Factors will be referred to herein as the "12 Hsu Factors."

///

1 The 12 Hsu Factors are guide posts and the district court has wide discretion when applying
2 them, because the district court is most familiar with the case, having been present during all of
3 the proceedings.

4 **1. The First Step – Attorney Fees Actually Incurred.**

5 **a. The Numbers of Hours the Law Offices of Kermitt L. Waters**
6 **Spent on the 35 Acre Case.**

7 Kermitt L. Waters, James Jack Leavitt, Autumn Waters, and Michael Schneider, of the
8 Law Offices of Kermitt L. Waters, (jointly referred to as “Landowners’ Counsel”) were the four
9 attorneys that worked on behalf of the Landowners in this 35 Acre inverse condemnation case.
10 Landowners’ Counsel were retained, beginning on or about August 14, 2017. From that date
11 forward, Landowners’ Counsel have kept contemporaneous records of the hours worked on this
12 35 Acre Case. *Exhibits 1, 2, 3, and 4* (Declarations of Landowners’ Counsel). The Landowners’
13 Counsel were very careful to identify the hours worked on this 35 Acre Case separate from the
14 other three cases - 17, 65, and 133 Acre Cases. *Id.* The total hours worked for **all four cases**, as
15 of October 31, 2021, was 6,866.93, while the total hours for the 35 Acre Case individually were
16 only 3,536.25. The hours identified herein for recovery of attorney fees are the hours worked
17 exclusively on the 35 Acre Case as of October 31, 2021.³ *Id.* In those circumstances where work
18 was performed for all four cases, the hours for that work was split four ways between the 17, 35,
19 65, and 133 Acre cases, meaning $\frac{1}{4}$ of those hours are identified as work in the 35 Acre Case
20 pending before the Court. *Id.* To assure that correct hourly records were kept, the hours worked
21 on the 35 Acre Case were either recorded when the individual task was complete, at the end of the
22 day each task was completed, or very shortly thereafter. *Id.*

23
24

³ A supplemental calculation of additional hours will be included in the reply or at the conclusion
of the post-trial motion practice, as attorney hours are still accumulating.

The following shows the hours worked by each attorney over the more than four years in this 35 Acre Case only:

Kermitt L. Waters	217.9
James Jack Leavitt	1,338.45
Autumn L. Waters	1,446.68
Michael A. Schneider	533.22
TOTAL	3,536.25

See Declarations attached hereto as *Exhibits 1, 2, 3, and 4*.

The following are the hours worked by Landowners' Counsels' legal assistants during this more than four-year period in the 35 Acre Case only:

Sandy Guerra	264.52
Stacy Sykora	156.35
Evelyn Washington	477.14
TOTAL	898.25

See *Exhibit 3 at ¶ 11*.

b. The Blended and Reduced Hourly Rate.

The Landowners' Counsel saw the grave injustice that was being imposed on the Landowners. The Landowners were struggling under the excessive costs the City forced them to endure and the massive burden of the monthly carrying costs the Landowners had to shoulder as involuntary trustees for the City. Therefore, from the commencement of this case through May 31, 2019, that hourly rate was significantly reduced to \$450.00. From June 1, 2019, that hourly rate was adjusted upward, but still based on a reduced hourly rate of \$675.00 per hour. The rate for the legal assistants has been a consistent \$50 per hour.

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The following shows the total attorney fees, using these rates:

<u>Attorney</u>	\$450 (8/17-6/19)	\$675 (6/19-10/21)
Kermitt L. Waters	123.67	94.22
James Jack Leavitt	314.68	1,023.77
Autumn L. Waters	330.08	1,116.61
Michael A. Schneider	216.50	316.72
TOTAL HOURS	984.93	2,551.32
TOTAL FEES	\$443,218.50	\$1,722,141 = \$2,165,359.50

Legal Assistants

Total hours worked = 898.25 x hourly rate of \$50.00 = \$44,912.50

See Declarations, Exhibits 1 – 5.

Therefore, the total attorney fees and legal assistant fees actually incurred amounts to **\$2,165,359.50 + \$44,912.50 = \$2,210,272.00**. As will be shown, this rate was a significantly reduced rate for the Law Offices of Kermitt Waters and the specialized area of inverse condemnation practice. Therefore, an enhanced hourly rate is justified based on the second step to determine attorney fees in this inverse condemnation case – consideration of the 12 Hsu Factors.

2. The Second Step - Analysis of the 12 Hsu Factors Justifies an Enhanced Attorney Fee.

The consideration of enhanced fees pursuant to the 12 Hsu Factors is in the sound discretion of the Court, because the Court was present during all of the hearings and, therefore, is best suited to consider these 12 Factors. Hsu at 637.

As a preliminary matter, perhaps the best indication of an appropriate enhanced hourly rate under the 12 Hsu Factors is to consider the hourly rate approved in the seminal Sisolak case, which was an inverse condemnation case, like this 35 Acre Case. In that case, counsel for Governor Sisolak limited her practice to inverse condemnation at that time. She had a contingency fee and

1 therefore, did not keep hourly records, but, instead, provided an affidavit estimating the hours
2 worked at 1,400 hours. *Exhibit 8, Attorney Fee Affidavit of Counsel in the Sisolak case.* The
3 Sisolak Court approved a fee of \$1,950,000. Sisolak, supra, 657 and 671. Dividing the \$1,950,000
4 approved fee by the 1,400 hours worked on the Sisolak case, results in an approved hourly rate of
5 \$1,392 per hour. Therefore, the Nevada Supreme Court has approved an hourly rate of \$1,392 per
6 hour for the very specialized area of inverse condemnation. And, this hourly rate was approved
7 over 15 years ago.

8 The following shows that at least 11 of these 12 Hsu Factors are applicable in this case,
9 justifying an enhanced hourly rate, commensurate with the \$1,392 hourly rate approved in the
10 Sisolak case.

11 • **HSU FACTOR #1 - THE TIME AND WORK REQUIRED**

12 The time and work required is relevant to both this first Hsu Factor and the underlying
13 basis for awarding attorney fees under NRS 18.010(2)(b), referenced above. The time required
14 for the Sisolak case was only about one year. *Exhibit 8, Attorney Fee Affidavit of Counsel in the*
15 *Sisolak case.* Here, due to the City's improper litigation strategy to repeatedly re-argue issues that
16 had already been decided; argue contrary to the position of its own client; argue contrary to long
17 standing Nevada eminent domain and inverse condemnation precedent; repeatedly argue
18 inappropriate petition for judicial review law and ignore the Court's orders and Nevada Supreme
19 Court precedent, the time required in this case was over four years. Therefore, this Factor justifies
20 an enhanced hourly rate at least commensurate with the \$1,392 per hour approved in Sisolak. The
21 following further supports an enhanced fee.

22 (a) **The City's Improper Attempts to Dismiss and Remove to**
23 **Federal Court.**

24 As the Court will recall, this inverse condemnation case involved three phases under
Nevada law: 1) the determination of the property interest; 2) the determination of whether the

1 City's actions amounted to a taking; and, 3) the value of the property taken. Before the
2 Landowners even got to these three phases, the City filed a motion to dismiss and a redundant
3 motion for judgment on the pleadings and lost both requests. *City Motion to Dismiss, filed October*
4 *30, 2017; City Motion for Judgment on the Pleadings, filed February 13, 2019.* The City then
5 sought a Writ to the Nevada Supreme Court, which the Landowners had to oppose, and, after the
6 City lost the Writ, the City requested a panel rehearing and, after losing that, requested en banc
7 reconsideration, which it lost. *See City Notice of Filing of Petition for Writ, filed on May 17, 2019.*

8 Compounding the amount and complexity of the work in this case, the City then conflated
9 findings from the petition for judicial side of the 35 Acre Case with the inverse condemnation side.
10 As the Court will recall, the Court order severed the petition for judicial review matter from this
11 inverse condemnation case and tried both cases entirely separate and independent from one
12 another. This Courts' severance order proved correct by a recent Nevada Supreme Court case.
13 *See City of Henderson, supra.* The City however, improperly included four paragraphs in the
14 FFCL entered in the petition for judicial review matter that wrongfully dismissed the Landowners'
15 inverse condemnation case. This required the Landowners to file a motion to reconsider that
16 petition for judicial review FFCL to remove those improperly included four paragraphs.
17 *Landowners' request for reconsideration, filed December 11, 2018.* Instead of conceding the four
18 paragraphs were improper, the City filed a 25-page opposition and then, brazenly, asked for
19 sanctions against the Landowners. *City Opposition to reconsideration, filed January 1, 2019; City*
20 *Motion to Strike Landowners Motion for Summary Judgment, filed December 21, 2018 (asking for*
21 *sanctions against the Landowners).* These City actions were pure procedural gamesmanship, used
22 as an attempt to deny the Landowners their due process right and to cause excessive litigation costs
23 and attorney fees for the Landowners. The Court saw through the City's improper actions and, at
24 the hearing on the Landowners' motion, called the case up first in time and stated the matter "is

1 going to be uncontested because I'm going to issue a - - have someone issue a nunc pro tunc order.”
2 *Exhibit 11, 4:6-9, 16.* This Court continued, “I never intended on any level for that to be included
3 in the order” and, in the order granting reconsideration, held, “this Court had no intention of
4 making any findings of fact, conclusions of law or orders regarding the landowners severed inverse
5 condemnation claims as part of the Findings of Fact and Conclusions of Law entered on November
6 21, 2018 [petition for judicial review FFCL].” *Nunc Pro Tunc Order, filed February 6, 2019, 6:9-*
7 *10.*

8 The City also filed an improper removal to federal court on August 22, 2019 – more than
9 two years after this case commenced and, after significant briefing and oral arguments. The federal
10 court issued a written opinion that the removal was improper. *City Notice of Removal, filed August*
11 *22, 2019.* The City’s improper removal delayed this matter, and caused significantly more time
12 and attorney hours defeating the improper removal.

13 **(b) The City’s Frivolous Property Interest Arguments.**

14 Upon remand, the Landowners were finally able to move to the first phase in this inverse
15 condemnation action – the property interest, but the City’s vexatious and frivolous tactics
16 continued. The City repeatedly argued against long standing Nevada inverse condemnation
17 precedent. The City argued contrary to Alper, Sisolak and Hsu. These are foundational cases in
18 this area of law. It is not proper and it is vexatious and harassing to come to Nevada and force a
19 Nevada landowner to argue over already well-established law, yet that is exactly what the City
20 forced upon the Landowners in this case.

21 During this phase, as the Court will recall, the City repeatedly and vexatiously argued that
22 the Landowners did not have the property right to use their Property for anything other than a park
23 or open space because, according to the City, there was a City Master Plan PR-OS designation or
24 a Peccole Ranch Master Plan open space designation on the 35 Acre Property and these “master

1 plan” designations trump the R-PD7 zoning (PR-OS / PRMP Argument). This was a baseless and
2 frivolous argument.

3 **First**, the Queensridge Homeowners brought this same “open space” argument back in a
4 2016 case and the district court held that the entire 250 Acres has always been zoned “R-PD7,”
5 the zoning “dictates its use,” and gives the Landowners the “right to develop” and the arguments
6 to the contrary were “frivolous” and awarded the Landowners attorney fees. *SJMT Exhibits 172*,
7 vol. 19, filed September 15, 2021 at 005115:3-4; *SJMT Exhibit 173*, vol. 19 filed September 15,
8 2021 at 005142:11-12, 005152:23-24, 005167:10-18.⁴ The Nevada Supreme Court affirmed the
9 ruling and the district court’s attorney fee award. *SJMT Exhibit 175*, vol. 19 filed September 15,
10 2021 at p. 4. The City had actual knowledge of this ruling and this should have been sufficient for
11 the City to concede: 1) the R-PD7 zoning governs the use of the 35 Acre Property; and, 2) that R-
12 PD7 zoning gives the Landowners the “right to develop” residential units.

13 **Second**, there are 6 Nevada Supreme Court eminent domain / inverse condemnation cases
14 on point that hold zoning must be used to decide the property interest issue in an inverse
15 condemnation case, not the master plan. In fact, the City was a party to the eminent domain case
16 of City of Las Vegas v. Bustos, 119 Nev. 360 (2003), and the City argued in that case that the
17 courts should follow the City’s master plan, not zoning, under petition for judicial review law and
18 the district court and Supreme Court rejected the City’s argument, finding zoning must be
19 followed.

20 **Third**, the City’s master plan PR-OS / PRMP Argument was flatly rejected by the City
21 itself. As the Court will recall, the City Attorney’s Office, the City Planning Department, and the
22 City Tax Assessor flatly rejected this City argument. *See Landowners’ Reply in Support of*

23
24 ⁴ The SJMT Exhibits are the exhibits presented to the Court at the summary judgment hearing on
the take issue. *Exhibits 1-150* filed on March 26, 2021 and *Exhibits 151-198* filed on September
15, 2021.

1 *Plaintiff Landowners’ Motion to Determine “Property Interest,” filed September 9, 2020, pp. 9-*
2 *10, 14-16, 18-20.* The City’s own master plan says it is only a “policy” and zoning is the “law.”
3 *SJMT Exhibit 161, vol. 19* filed September 15, 2021, City 2050 Master Plan pages. Long-time
4 land use attorney Stephanie Allen confirmed how frivolous this City argument was, submitting an
5 affidavit that states in her 17 years of practice, zoning always governed property uses, the master
6 plan was just a planning document, and that “I don’t recall any government agency or employee
7 ever making the argument that a master plan land use designation trumps zoning.” *SJMT Exhibit*
8 *195, vol. 21* filed September 15, 2021 at 006088.

9 Despite this well-settled eminent domain law on the property interest issue, the City
10 repeatedly and unceasingly cited to petition for judicial review law to claim the Landowners never
11 had a right to use their property to begin with, because the City has “discretion” to deny the use of
12 property. The Court entered at least four orders that petition for judicial review law does not apply,
13 and the Supreme Court entered a recent decision confirming the Court’s orders - that petition for
14 judicial review law does not apply in this inverse condemnation action. City of Henderson v.
15 Eighth Judicial District Court, 137 Nev. Adv.Op. 26 (June 24, 2021). *See also FFCL Re: Take,*
16 *pp. 41-43.* The City didn’t care and, even after the City of Henderson decision, continued to
17 extensively cite petition for judicial review law and the PR-OS / PRMP Argument all the way up
18 to trial, requiring a motion in limine to exclude the argument. As the Court is aware, this caused
19 significant time and work to address.

20 **(c) The City’s Frivolous Take Arguments.**

21 The City clearly has the right to challenge inverse condemnation claims brought by
22 landowners, what the City doesn’t have a right to do is force a landowner to reargue long standing
23 Nevada takings jurisprudence. The City engaged in systematic and aggressive actions to take the
24 Landowners’ 35 Acre Property that clearly met Nevada’s four taking standards. *See FFCL Re:*

1 *Take.* The City did not deny these actions. Instead, the City argued that Nevada law is not actually
2 the law and cited to a series of “separation of powers” and petition for judicial review cases to
3 claim that: 1) the City has “discretion” to deny landowners the use of their property in Nevada; 2)
4 the doctrine of “separation of powers” prohibits the Court from interfering with the City’s
5 “discretion” to deny Nevada landowners the use of their property, and, 3) the Courts can only
6 intervene in the most egregious circumstances where there is a “total wipe out” of value. This was
7 a frivolous argument that has not been accepted in Nevada, where our Court has held: 1) the “first
8 right” in Nevada’s Constitution is the “inalienable right to acquire, possess and protect private
9 property;” 2) the Nevada Constitution contemplates expansive property rights in the context of
10 takings claims through eminent domain;” and, “our state enjoys a rich history of protecting private
11 property owners against government takings.” Sisolak, supra, at 669-670. This, again,
12 complicated and compounded the briefing and arguments on the take issue, requiring an excessive
13 amount of time to address. *See e.g. Exhibit 6, summary of list of filings.*

14 Then, when it came time to determine the City’s liability for its taking actions, the City
15 again caused significantly delay (and more attorney hours) by claiming it needed more time and
16 discovery to determine the economic impact the City’s actions had on the Landowners’ Property.
17 *See Transcr. of hearing on April 21, 2021 at 47-48.* In a shocking revelation, when it came time
18 to present this economic impact, the City had nothing to present and claimed it didn’t need
19 anything, completely contrary to the reasons it provided to obtain more time and discovery.

20 Attached as *Exhibit 6* is a list of the substantive pleadings, identifying the number of pages
21 for each pleading and the number of pages for the extensive exhibits. As identified in *Exhibit 6*,
22 the City’s litigation tactics required 2,009 pages of substantive pleadings and 29,977 pages of
23 exhibits. *Exhibit 6.* In fact, the City’s briefs kept getting longer and longer, as if each attorney
24 for the City that reviewed the briefs would simply add more sections, as opposed to edits and

1 revisions. The City's vexatious pleading practice crescendoed with a 92 page brief. *See City Opp.*
2 *to Motion to Determine Take filed August 25, 2021.* The City additionally filed motions and then
3 would withdraw them the day before the Landowners' opposition was due. *See Notice of*
4 *Withdrawal filed October 21, 2021.* Again, causing excessive attorney hours.

5 Finally, as the Court will recall, the City also made extensive discovery requests, demanded
6 monthly status checks, filed numerous motions to compel (nearly all of which were denied) and
7 filed lengthy status reports before each status check all of which required Landowners' Counsel's
8 attention. The City waged a war of attrition on the Landowners in an attempt to litigate them into
9 submission. This is a constitutional proceeding, and such litigation tactics should be strongly
10 discouraged. The only means of discouragement is to award the Landowners and their Counsel
11 substantial attorney fees.

12 Therefore, Factor #1 justifies an enhanced attorney fee.

13 • **HSU FACTOR #2 - THE DIFFICULTY OF THE ISSUE**

14 Inverse condemnation cases can be very difficult to litigate. The government has unlimited
15 resources, allowing it to hold a heavy hammer over the landowner's head. In fact, the City had to
16 go out of state to find an attorney to handle this case. So, in addition to hiring McDonald Carano
17 (one of the larger firms in Nevada) the City also hire Shute Mihaly and Weinberg from San
18 Francisco. Accordingly, the City had two separate law firms submitting work that the
19 Landowners' Counsel had to address. This shows not only the inherent difficulty of the issues in
20 this case, but also how the City unnecessarily made those issues more difficult.

21 Therefore, Factor #2 justifies an enhanced attorney fee.

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- **HSU FACTOR #3 - THE SKILL REQUIRED TO PERFORM THE SERVICES**

and

- **HSU FACTOR #9 - THE REPUTATION, EXPERIENCE, AND ABILITY OF THE ATTORNEY**

As Factors #3 and #9 are interrelated, these two Factors will be analyzed together.

In regards to Factor #3, eminent domain / inverse condemnation is a very specialized area of law that involves complicated and difficult issues. Nichols on Eminent Domain, the foremost authority on eminent domain law has over 20 volumes that discuss the law in this area, demonstrating there are many unique nuances of inverse condemnation law. Nevada's eminent domain statutes (Chapter 37) fall under TITLE 3 – which are referred to as “special actions and proceedings.” The Nevada State Constitution dedicates nine provisions to eminent domain in Article 1, Section 22. It is beyond dispute that this is a very specialized area of law that very few attorneys practice in and requires a specific skill set. This is further evidenced by the fact that, McDonald Carano, one of the larger firms in Nevada had to associate counsel in from San Francisco to litigate the Landowners' inverse condemnation claims. Therefore, Factor #3 justifies an enhanced attorney fee.

In regard to Factor #9, the Law Offices of Kermitt L. Waters' eminent domain and inverse condemnation expertise is incomparable. As will be explained, the attorneys with the Law Offices of Kermitt L. Waters have, combined, over **110 years** of legal expertise in Nevada eminent domain and inverse condemnation law. They are responsible for most of Nevada's eminent domain caselaw and drafted in its entirety the nine eminent domain provisions in Nevada's Constitution. In fact, the Law Offices of Kermitt L. Waters represented Mr. Hsu for over 14 years, which resulted in the Hsu case that includes the 12 Factors that guides this Court's award of attorney fees in this case.

1 **Kermitt L. Waters** has practiced exclusively in the area of eminent domain and inverse
2 condemnation in the State of Nevada for over 50 years. *See Exhibit 1, Declaration of Kermitt L.*
3 *Waters for all facts relevant to his expertise.* He has represented 100s of landowners at the district
4 court and appellate court levels in Nevada and has recovered more for landowners than any other
5 attorney in the history of Nevada. The Owners' Counsel of America is a network of attorneys who
6 represents landowners across the country and chooses only one lawyer from each State to be a
7 member and Mr. Waters was chosen for Nevada. Mr. Waters has more published and unpublished
8 Nevada Supreme Court eminent domain and inverse condemnation cases than any other attorney
9 in the history of Nevada. In 2005 – 2006, Mr. Waters drafted 9 eminent domain and inverse
10 condemnation provisions to be added to the Nevada Constitution through amendment and
11 personally financed the ballot initiative, which included being personally sued by many
12 government entities trying to stop the initiative. The people of Nevada overwhelmingly voted in
13 2006 and 2008 to amend the Constitution to adopt the nine provisions drafted by Mr. Waters which
14 are now part of the Nevada Constitution. *See Nev. Const. art. 1, sec. 22 (1) – (9).* Mr. Waters was
15 also Arby Alper's trial counsel, in the Alper case, which has been heavily cited in all three phases
16 of this case. In summary, Mr. Waters' work has resulted in numerous published and unpublished
17 eminent domain and inverse condemnation Supreme Court decisions and he drafted the eminent
18 domain provisions in the Nevada Constitution.

19 Although Mr. Waters did not present the majority of oral arguments, he was always present
20 during strategy meetings and at the hearings, providing wisdom and guidance on how the case
21 must proceed. As stated by former Las Vegas Mayor, Jan Laverty Jones, "I don't think anyone is
22 more powerful in their representation of a client ... He's passionate, he's dogged." The Law
23 Offices of Kermitt L. Waters has the reputation of being the "preeminent eminent domain firm on
24

1 the West Coast.” *See Exhibit 1, Declaration of Kermitt L. Waters for all facts relevant to his*
2 *expertise.* Mr. Waters’ contribution and work in this matter was incomparable.

3 **James Jack Leavitt** has practiced exclusively in the area of eminent domain and inverse
4 condemnation in the State of Nevada for over 25 years. *See Exhibit 2, Declaration of James Jack*
5 *Leavitt for all facts relevant to his expertise.* He went to work for Mr. Waters during his second
6 year of law school in 1995. He passed the Nevada State Bar prior to his final semester of law
7 school (Nevada allowed that back in 1995). After graduating, he continued his work with Mr.
8 Waters and has been with him ever since. Like Mr. Waters, Mr. Leavitt has limited his practice
9 exclusively to eminent domain and inverse condemnation for his entire career, having briefed,
10 argued, and presented cases to the Nevada judiciary on nearly every issue a Nevada landowner
11 may face when the government takes their property, frequently issues of first impression in
12 Nevada. Mr. Leavitt has testified at the Nevada Legislature on behalf of proposed eminent domain
13 legislation, he assisted Mr. Waters with drafting the Nevada Constitution’s eminent domain
14 provisions (as explained above), he has argued many eminent domain cases to the Nevada Supreme
15 Court, again, frequently issues of first impression, and he appears as counsel on many published
16 eminent domain decisions in Nevada. Mr. Leavitt has Co-chaired CLE seminars on eminent
17 domain and has frequently presented at conferences on eminent domain issues.

18 **Autumn L. Waters** has practiced exclusively in the area of eminent domain and inverse
19 condemnation in the State of Nevada for over 18 years. *See Exhibit 3, Declaration of Autumn L.*
20 *Waters for all facts relevant to her expertise.* Ms. Waters worked for the Law Offices of Kermitt
21 L. Waters during law school and then joined the firm in 2003 directly out of law school and has
22 dedicated her entire practice to eminent domain and inverse condemnation. Ms. Waters has
23 represented Nevada landowners in a wide variety of eminent domain and inverse condemnation
24 cases, including preparing Amicus Curiae briefs to the Nevada Supreme Court in defense of Article

1 1, Section 22, to ensure the protections intended by the amendments were maintained. Ms. Waters
2 has practiced in both state and federal court at both the trial and appellate court levels dealing with
3 unique and complex takings issues. Ms. Waters has chaired several CLE seminars dedicated to
4 eminent domain and inverse condemnation.

5 **Michael A. Schneider** has practiced exclusively in the area of eminent domain and inverse
6 condemnation in the State of Nevada for over 18 years. *See Exhibit 4, Declaration of Michael A.*
7 *Schneider for all facts relevant to his expertise.* Like both Mr. Leavitt and Ms. Waters, Mr.
8 Schneider worked for the Law Offices of Kermitt L. Waters while in law school and upon
9 graduation continued working with Mr. Waters and has for his entire career. Mr. Schneider has
10 litigated some of the most complex eminent domain and inverse condemnation cases in the State
11 of Nevada and has been instrumental in recovering millions of dollars for Nevada landowners. Mr.
12 Schneider has briefed numerous eminent domain matters before the Nevada Supreme Court,
13 including matters of first impression. He assisted Mr. Waters with drafting the constitutional
14 provisions on eminent domain which were adopted in Nevada and are now the operative law in
15 the state. Mr. Schneider has presented eminent domain topics at both national and regional CLE
16 seminars and has co-authored ABA publications on eminent domain law for the State of
17 Nevada.

18 In summary, this combined over 110 years of practicing exclusively in the area of eminent
19 domain and inverse condemnation in the State of Nevada has resulted in a reputation for the Law
20 Offices of Kermitt L. Waters, as the “preeminent eminent domain firm on the west coast.” *See*
21 *Exhibit 1, Declaration of Kermitt L. Waters for all facts relevant to his expertise.*

22 Therefore, Factors #3 and #9 justify an enhanced attorney fee.

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1 • **HSU FACTOR #4 - THE AMOUNT OF TIME TAKEN AWAY FROM**
2 **OTHER WORK**

3 As explained above and as this Court saw over the past four years, it is beyond dispute that
4 this case would cause a smaller law firm, like the Law Offices of Kermitt L. Waters, to take time
5 away from other work. For four years the City buried the Landowners' Counsel with improper
6 motions to dismiss, improper orders, improper removal to federal court, discovery, motions to
7 compel, extensive pleadings, repeated and extensive citations to inapplicable petition for judicial
8 review law, and **excessive** re-argument of already settled facts and law. The City even repeatedly
9 re-argued issues to the Court that the Court had already decided. The Law Offices of Kermitt L.
10 Waters is a small firm with four attorneys and it was impossible to maintain a full calendar of cases
11 during this four-year period. There were times when this 35 Acre Case occupied all or nearly all
12 of the time of all attorneys at the Law Offices of Kermitt L. Waters. And, there were several
13 occasions over the past four years when cases were turned down due to the time needed to manage
14 this 35 Acre Case. *See Exhibit 2, Declaration of James Jack Leavitt.* Therefore, Factor #4 justifies
15 an enhanced attorney fee.

16 • **HSU FACTOR #5 - THE CUSTOMARY FEE**

17 When deciding Factor #5, the Court should consider the "rates and practices prevailing in
18 the relevant market." City of Burlington v. Dague, 505 U.S. 557, 567 (1992). The Court should
19 also consider that eminent domain and inverse condemnation is a very unique and specialized area
20 of practice. In this connection, as explained above, perhaps the best evidence of an appropriate
21 hourly rate for specialized eminent domain counsel is the \$1,392 hourly rate awarded in the Sisolak
22 inverse condemnation case. As explained, in Sisolak, the Court awarded a fee of \$1,950,000,
23 based on an "estimate" of 1,400 hours worked, which amounts to \$1,392 per hour. And, that
24 hourly rate was approved over 15 years ago.

1 Based on the over 110 years of combined inverse condemnation experience and using the
2 Sisolak decision as a guide, a reasonable hourly rate for this inverse condemnation case is as
3 follows:

4 Kermitt L. Waters (over 50 years experience)	\$1,500 per hour
5 James Jack Leavitt (over 25 years experience)	\$1,300 per hour
6 Autumn Waters (over 18 years experience)	\$ 800 per hour
7 Michael Schneider (over 18 years experience)	\$ 800 per hour

8 Therefore, Factor #5 justifies an enhanced attorney fee and the hourly rates above should
9 be used to determine the enhanced attorney fee, which is calculated below.

10 • **HSU FACTOR #6 - WHETHER THE FEE IS FIXED OR**
11 **CONTINGENT**

12 While a contingency fee comes with an acknowledged risk that the attorney will receive
13 no payment, which is not present here, the Landowners' Counsel did apply a significant reduction
14 in their hourly rate to ensure that the Landowners were able to pursue their constitutional rights.
15 This should be considered in applying an upward adjustment.

16 • **HSU FACTOR #7 - THE TIME LIMITATIONS IMPOSED ON THE**
ATTORNEY BY THE CASE

17 The Landowners were paying to maintain property the City had taken which was a great
18 financial strain. This imposed time limitations on the Landowners' Counsel to pursue matters as
19 quickly as possible, despite the City's litigation strategy to hire two separate law firms to litigate
20 the Landowners into submission. Defending against the City's litigation strategy was all
21 consuming at times. Factor #7 justifies an enhanced fee.

22 • **HSU FACTOR #8 - THE AMOUNT OF MONEY INVOLVED AND**
23 **THE RESULTS OBTAINED**

24 The City denied liability, claiming not to owe the Landowners any money for the taking of
the 35 Acre Property. The Landowners' appraiser valued the property at nearly \$35 Million. That

1 is a tremendous spread and it is not yet complete. The Landowners will also be entitled to interest
2 which will increase that spread even more - the Nevada Supreme Court has held that prejudgment
3 interest is part of the just compensation award and this prejudgment interest will be calculated by
4 the Court post trial pursuant to NRS 37.175. *See Clark County v. Alper*, 100 Nev. 382 (1984).

5 Also, the Landowners prevailed at every phase of these proceedings - the property interest,
6 take, and value phases - despite lengthy opposition over a four-year period. The Landowners also
7 defeated numerous attempts to dismiss this matter, including defeating the City's Writ Petition to
8 the Nevada Supreme Court. At the end of the day, the Court entered a judgment in favor of the
9 Landowners for the exact amount the Landowners' appraiser valued the property at - \$34,135,000.
10 *See FFCL Re: Just Compensation, filed November 18, 2021.*

11 The amount of money involved in this matter is significant and the results the Landowners'
12 Counsel obtained speak for themselves.

13 Therefore, Factor #8 justifies an enhanced attorney fee.

14 • **HSU FACTOR #10 - THE LACK OF DESIRABILITY OF THE CASE**

15 Anytime a party has to fight the unlimited resources of the government, it is an undesirable
16 case. This case was even more challenging as the Landowners were suffering every month with
17 excessive carrying costs associated with being an involuntary trustee for the City. It is not
18 desirable to have a client who is suffering under the weight of City Hall (literally). Second, as this
19 Court will recall, the City's private counsel explained on September 24, 2021, during the hearings
20 on the take issue that the denial of the fence application was, perhaps, "politically charged" and
21 there is no doubt that the facts of this case bore this out. In fact, numerous judges have recused
22 themselves from the companion cases, arguably reflecting on the lack of desirability of these cases.
23 Third, the tenor of the City's counsel has made this case lack desirability. In nearly every brief,
24 the City has accused the Landowners' Counsel of filing frivolous claims stating "It is hard to

1 conceive of a greater abuse of the legal system than this case.”⁵ The City’s counsel has called the
2 Landowners’ Counsel’s argument “absurd,” just to name one of the insulting comments the
3 Landowners’ Counsel has had to endure. And, at every turn, the City’s counsel improperly alleged
4 that Landowners’ Counsel was “misrepresenting” the law. The barrage of insults from the City
5 has added to the lack of desirability of this case.

6 Therefore, Factor #10 justifies an enhanced attorney fee.

7 • **HSU FACTOR #11 - THE LENGTH OF THE ACQUAINTANCESHIP**
8 **WITH THE CLIENT**

9 The Law Offices of Kermit L. Waters has represented the Landowners from the very
10 beginning of this inverse condemnation case, from August, 2017, to present. Therefore, this Factor
11 #11 justifies an enhanced attorney fee.

12 • **HSU FACTOR #12 - AWARDS IN SIMILAR CASES**

13 The seminal inverse condemnation case of Sisolak provides a bench mark of the success
14 obtained in this case and the appropriate fee enhancement. In Sisolak, Governor Sisolak retained
15 two expert appraisers who valued his taken airspace at \$6,980,000 and \$6,970,000, the
16 Government had valued the taken airspace at \$200,000. Sisolak, at 657. The jury returned a
17 verdict of \$6,500,000, which is \$480,000 and \$470,000 less than Governor Sisolak’s expert
18 appraisers’ values. Id. Based on the success in Sisolak case, Judge Mark Denton awarded Mr.
19 Sisolak’s lawyer an enhanced attorney fee of \$1,392 per hour (total of \$1,950,000 for 1,400 hours
20 of work). The Nevada Supreme Court affirmed this \$1,392 per hour attorney fee.

21 Here, the Landowners obtained an award of \$34,135,000 – the exact value opined by the
22 Landowners’ expert appraiser, Tio DiFederico. Therefore, the result in this case was not only
23 higher, but it was not reduced below the value of the Landowners’ appraiser’s value, as was the
24

⁵ City Opp. and CM for Summary Judgment date August 25, 2021 at 2:5.

1 award in the Sisolak case. Therefore, the Landowners’ success in this case exceeds that in the
2 Sisolak case. Accordingly, an hourly rate commensurate with the \$1,392 per hour fee awarded in
3 Sisolak, adjusted upward for time, is appropriate.

4 Therefore, Factor #12 justifies an enhanced attorney fee.

5 **3. Requested Attorney Fee.**

6 As explained above, the total attorney fees paid to the Law Offices of Kermit L. Waters
7 to date in this 35 Acre Case is \$2,165,359.50, based on a blended reduced rate of \$450 per hour
8 (from August, 2017 to May, 2019) and \$675 per hour (from June, 2019 – November, 2021).

9 However, an enhanced fee is appropriate here. Based on the argument above, the following
10 is a summary of the hours worked for each attorney at the Law Offices of Kermit L. Waters and
11 the requested enhanced hourly rate:

12	Kermit L. Waters – 217.9 hours x \$1,500 per hour =	\$326,850.00
13	James Jack Leavitt – 1,338.45 hours x \$1,300 per hour =	\$1,739,985.00
14	Autumn Waters – 1,446.68 hours x \$800 per hour =	\$917,344.00
15	Michael Schneider – 533.22 hours x \$800 per hour =	\$426,576.00
16	TOTAL	\$3,410,755.00

17 **III. CONCLUSION**

18 As explained, the second step to calculate attorney’s fees set forth in Hsu, provides that the
19 Court use its “sound discretion” and consider the 12 Hsu Factors to “adjust this fee award.” The
20 Supreme Court clearly intended that the 12 Hsu Factors be considered by the Court to adjust the
21 fee upward. Otherwise, there would have been no reason to include these 12 Factors to “adjust”
22 the fee; the Nevada Supreme Court could have merely ordered a straight calculation of hours
23 worked multiplied by a reasonable hourly rate. Moreover, it is clear that the application of the 12
24 Hsu Factors warrants an upward adjustment of the attorney fee. Furthermore, the City’s litigation

1 tactics in this case warrant an upward adjustment, to not only encourage counsel to take difficult
2 constitutional cases such as this, but also to discourage the government from trying to suppress
3 constitutional rights through a war of attrition.

4 Based on the foregoing, the Landowners' request an attorney fee award in the amount of
5 **\$3,410,755.00**. The Landowners also request reimbursement of fees paid for the Law Offices of
6 Kermitt L. Waters legal assistants in the amount of **\$44,912.50**.

7 DATED this 9th day of December, 2021.

8 **LAW OFFICES OF KERMITT L. WATERS**

9 /s/ Autumn L. Waters
10 Kermitt L. Waters, Esq. (NSB 2571)
11 James J. Leavitt, Esq. (NSB 6032)
12 Michael A. Schneider, Esq. (NSB 8887)
13 Autumn L. Waters, Esq. (NSB 8917)
14 704 South Ninth Street
15 Las Vegas, Nevada 89101
16 Telephone: (702) 733-8877
17 Facsimile: (702) 731-1964
18 ***Attorneys for Plaintiffs Landowners***
19
20
21
22
23
24

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and
3 that on the 9th day of December 2021, pursuant to NRCP 5(b), a true and correct copy of the
4 foregoing: **PLAINTIFF LANDOWNERS' MOTION FOR ATTORNEY FEES** was served on
5 the below via the Court's electronic filing/service system and/or deposited for mailing in the U.S.
6 Mail, postage prepaid and addressed to, the following:

7 **McDONALD CARANO LLP**

8 George F. Ogilvie III, Esq.
9 Christopher Molina, Esq.
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20 /s/ Sandy Guerra
21 an employee of the Law Offices of Kermitt L. Waters
22
23
24