SUPREME COURT
OF THE STATE OF WASHINGTON

NO. 1028890

C.A. CAREY CORPORATION,

Appellants,

v.

CITY OF SNOQUALMIE,

Respondents.

RESPONDENT CITY OF SNOQUALMIE'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Division I appropriately affirmed the Trial Court's granting of summary judgment to City of Snoqualmie ("Snoqualmie"). The decision was based on this Court's well-settled rule for considering essentially the same contract provisions at issue in this case: a contractor waives its claims if it fails to strictly follow a contract's notice of claims provisions. *See e.g., Mike M. Johnson, Inc. v. Cnty. of Spokane*, 150 Wn.2d 375, 386, 78 P.3d 161 (2003). Petitioner C.A. Carey Corporation ("Carey") failed to follow contractual claims provisions in this case and consequentially waived its claims.

The introduction to Carey's Petition for Review is a compilation of unsubstantiated accusations against Snoqualmie without any citation to the record. Snoqualmie disputes these allegations as without factual basis. Moreover, the record shows that the parties' contract anticipated changes to Carey's work on the project. When Carey provided Snoqualmie with proper notice of those changes and substantiation of its costs,

Snoqualmie appropriately compensated Carey. *See e.g.* CP 74, 118-121, 133-134, 141-147, 156-160, 179-180, 200-203, 213-217, 235-237, 246-249.

Carey, however, disagreed with the compensation awarded by Snoqualmie, and belatedly pursued the claims that are the subject of this lawsuit. The parties' contract contained provisions delineating the procedure for Carey to present its claims to Snoqualmie. Carey did not follow those provisions. The contract stated that Carey's failure to follow the provisions would result in a waiver of its claims. These are the same contract provisions at issue in *Mike M. Johnson* and its progeny, and Division I properly affirmed the Trial Court's dismissal of Carey's claims.

II. IDENTITY OF ANSWERING PARTY

Snoqualmie opposes Carey's Petition for Review.

III. COURT OF APPEALS DECISION

Division I entered its decision in this case on February 20, 2024 ("Opinion"), and subsequently ordered it for

publication on the unopposed motions of an amicus curiae and a nonparty under RAP 12.3(e)(4) (clarification of an established principle of law) and RAP 12.3(e)(5) (general public interest and importance) on April 19, 2024.

IV. ISSUE PRESENTED FOR REVIEW

Whether this Court should deny Carey's Petition for Review when Division I correctly applied this Court's existing precedents to hold that Carey waived its claims by not strictly complying with the Contract's notice of protest and claims provisions.

V. STATEMENT OF THE CASE

A. The Contract

Snoqualmie and Carey entered into a contract on May 12, 2014 ("Contract") for the construction of Snoqualmie's Town Center Phase 2A Infrastructure Improvements Project ("Project"). CP 89-90. The Contract incorporated the 2012 edition of the Washington Department of Transportation Standard Specifications for Road, Bridge and Municipal

Construction ("Standard Specifications"). CP 68, 92, 627. The Standard Specifications are a set of standardized requirements for public works construction projects. Significantly, they contain provisions with mandatory notice and claim procedures that apply when a contractor is seeking additional time or compensation. CP 68-69.

1. Contract Changes Under the Standard Specifications

The Standard Specifications anticipate and provide a mechanism for changing the scope of a construction project. Section 1-04.4 allows Snoqualmie's Engineer to make changes to Carey's scope without invalidating the Contract:

> The Engineer reserves the right to make, at any time during the Work, such changes in quantities and such alterations in the Work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the Contract nor release the Surety, and the Contractor agrees to perform the Work as altered.

CP 96. The Engineer is to document these changes by issuing a written "change order." *Id.*

If a change "significantly alters" the character of the Work, an adjustment to the Contractor's compensation or time to complete the work (as applicable) is to be made to the Contract, either agreed upon prior to the performance of the work, or "in such amount as the Engineer may determine to be fair and reasonable." *Id.* Similarly, if a change increases or decreases the Contractor's costs or time to do the Work, an equitable adjustment is made to the Contract, again by agreement or by the Engineer's determination. *Id.* If not made by agreement, the Engineer's determination is final. CP 96 and 103.

2. Protest of Engineer's Decision

Despite the finality of the Engineer's adjustment of price and time, the Standard Specifications provide a contractor with a means to protest the Engineer's determination. Under Standard Specifications Section 1-04.4, a contractor must—within 14 days of receiving a change order—accept the change order, request an extension to the 14-day period, or protest the

change order. CP 96-97. If a contractor does none of these things, it is deemed to accept the change order. CP 97.

To protest a change order, a contractor is required to follow the requirements of Section 1-04.5, "Procedure and Protest by the Contractor." CP 97. Compliance with these provisions is mandatory; failure to follow the requirements is an express waiver of rights to file a claim:

> A change order that is not protested as provided in this Section shall be full payment and final settlement of all Work either covered or affected by the change. *By not protesting as this Section provides, the Contractor also waives any additional entitlement and accepts from the Engineer any written or oral order* (including directions, instructions, interpretations, and determinations).

CP 97 (emphasis added).

Section 1-04.5 requires a contractor to immediately provide a written protest, and then provide a written supplement to that protest within 14 days. CP 97. The written supplement must provide sufficient detail for the Engineer to analyze the protest, including a full discussion of the circumstances which

caused the protest, the estimated dollar cost, if any, of the protested work with a detailed breakdown showing how that estimate was determined, and an analysis of the progress schedule showing any schedule change or disruption of the protested work. CP 97-8. If the protest involves an ongoing issue and is continuing in nature, "the information required above shall be supplemented upon request by the Project Engineer until the protest is resolved." *Id.*

If the Contractor's protest includes a request for additional time, it is also subject to the requirements of Section 1-08.8 ("Extensions of time will be evaluated in accordance with Section 1-08.8"). CP 98. Its request for additional time "shall be limited to the affect [sic] on the critical path of the Contractor's approved schedule attributable to the change or event giving rise to the request." CP 101. The protest must therefore include a schedule analysis showing impacts of the change and demonstrating that the impacts could not have been avoided. *Id.*

The Engineer is to evaluate and make a determination on the protest only if "the procedures in this Section are followed." CP 98. If the contractor fails to follow any of the requirements of Section 1-04.5, it "completely waives any claims for protested Work." *Id*. If it complies with the necessary procedures and disagrees with the Engineer's determination on the protest, it must "pursue the dispute and claims procedures set forth in Section 1-09.11." *Id*.

3. Dispute and Claims Procedures

To pursue a claim after an Engineer's adverse determination on a protest, the contractor must comply with Standard Specifications Section 1-09.11. First, the contractor is to provide the Project Engineer with "written notification that the Contractor will continue to pursue the dispute in accordance with the provisions of Section 1-09.11." CP 108. It must provide that written notification "within 7 calendar days after receipt of the Engineer's written determination that the Contractor's protest is invalid pursuant to Section 1-04.5." *Id.*

After providing the 7-day notice, the contractor is then required to submit its claim under Section 1-09.11(2). The claim "shall be in writing and in sufficient detail to enable the Engineer to ascertain the basis and amount of the claim." CP 111. Though the Standard Specifications do not provide a number of days within which the Contractor must submit information required for a claim, Section 1-09.11(2) contains an outside time limit: the contractor must submit the claim and its required information with the Final Contract Voucher Certification or the contractor waives its claim:

> Failure to submit with the Final Contract Voucher Certification such information and details as described in this Section for any claim shall operate as a waiver of the claims by the Contractor as provided in Section 1-09.9.

CP 112.

4. Final Contract Voucher Certification

The Final Contract Voucher Certification is the mechanism by which an owner accepts a project under the Standard Specifications. Once all project work is completed,

the Engineer calculates the final amounts owing to the contractor and presents it to the contractor on a "Final Contract Voucher Certification" for the contractor's signature. CP 106-107.

For Carey to pursue a claim under the Standard Specifications after final acceptance, it was required to have already filed the claim with Snoqualmie and to have expressly excluded the claim from the Final Contract Voucher Certification:

> Such voucher shall be deemed a release of all claims of the Contractor unless a claim is filed in accordance with the requirements of Section 1-09.11 and is expressly excepted from the Contractor's certification on the Final Contract Voucher Certification.

Id. The contractor must provide the Engineer with the Final Contract Voucher Certification as a precondition to achieving completion of the project. CP 633.

5. Unilateral Acceptance of a Project

A contractor cannot prevent an owner from accepting a project as complete by refusing to sign the Final Contract

Voucher Certification. The Standard Specifications Section 1-09.9 provides a mechanism for an owner to unilaterally issue the Final Contract Voucher Certification and establish a "Completion Date" if the contractor "fails, refuses, or is unable to sign and return the Final Contract Voucher Certification or any other documentation required for completion and final acceptance of the Contract." CP 107.

B. Change Orders

Snoqualmie issued a total of 15 change orders to Carey on the Project. CP 46-47. In total, these Change Orders increased the contract amount from $4,282,653.42 to $4,702,656.86, and the allowed contract duration from 180 days to 242.5 days. *Id.*

C. Carey Signed Change Orders Under Protest

Carey notified Snoqualmie of its "intent" to protest Change Orders 5, 7, 8, 10, 11, 12, 13, 14, and 15, by indicating that it signed them "under protest." CP 74-75, 118-253. Most of these "protest" signatures were accompanied with a "written

supplement" in the form of a one-paragraph statement from Carey that advised, generally, that Carey "reserves all of its rights" to protest for additional costs, and that Carey would supplement its "protest" within 14 Calendar Days per Section 1-04.5. *See e.g.*, CP 178, 199, 212, 234, 245, 253.

Carey then submitted letters that it contended constituted a "supplement" to its protest. CP 75, 255-286. These letters, however, failed to address the substantive requirements for such supplements. For example, Section 1-04.5(2)(d) requires "an analysis of the progress schedule showing any claimed schedule change or disruption," but Carey's "supplement" letters actually admitted Carey's failure to comply: "C.A. Carey is currently analyzing the schedule impacts from this change…*and cannot provide specific schedule impacts at this point*." CP 75, 255, 257, 270, 272 (emphasis added).

In the limited instances where Carey did supply additional information, it was insufficient. As an example, for additional compensation, Carey merely stated its disagreements

with the Engineer's pricing of the Change Order, and/or provided estimated amount subtotals (*e.g.*, home and field office overhead, traffic control) without any breakdown showing how it determined those amounts. And where Carey did try to address schedule impacts, instead of providing an analysis of impacts to the critical path schedule (as required by Section 1-08.8), Carey improperly tried to shift this obligation to Snoqualmie: "If the Agency would review the schedule that was submitted" on some previous date, "it would show that the above changes affected the critical path by the days requested." CP 75, 273-274, 283-286.

In light of these deficiencies, Snoqualmie denied each of Carey's "protests" and "supplements." CP 75, 288-317. Snoqualmie's responses highlighted that Carey had failed to comply with Section 1-04.5's requirements for protesting a change order, and that as a result, Carey had completely waived its claims for the protested work. *Id*.

In response to Snoqualmie's denial of Carey's protests, Carey filed "notices of intent" to file a claim for each of the protested Change Orders under Section 1-09.11. CP 75, 319-327. The next step under the Standard Specifications (had Carey met all prior requirements, which it did not) would have been for Carey to file a formal Section 1-09.11(2) claim, as Carey's "notices of intent" stated it would. Despite Carey's stated intent, however, Carey did not actually file any of these claims, except for the lone instance of Change Order 5 ("CO 5"). Snoqualmie denied Carey's claim for CO 5 largely due to its failure to document or support its claim for additional working days or compensation. For example, Carey failed to provide required evidence (receipts, payroll records) of actual time spent and costs incurred for the change order–rather than "estimates." CP 76, 359-365.

D. <u>Snoqualmie's Unilateral Acceptance of the Project</u>

When Carey finally completed Project work, Snoqualmie prepared to administratively close out the Contract. CP 76.

Over the course of nearly six months, Snoqualmie indicated to Carey repeatedly, and in writing, of its intention to issue a Final Contract Voucher Certification and close the job. CP 76-77. Carey repeatedly refused to sign it. *Id.* Ultimately, Snoqualmie issued the Final Pay Estimate (No. 25) on October 14, 2016. CP 387-396. On November 14, 2016—98 days after Snoqualmie first notified Carey that it would unilaterally close out the Contract—the City Council adopted a resolution accepting the Project as complete and authorizing issuance of the Final Contract Voucher Certification. CP 77-78, 408-409. Snoqualmie executed the Final Contract Voucher Certification that same day and sent a copy to Carey on November 16, 2016. CP 77-78, 397-399.

E. Carey's Omnibus Claim

Six months later—and despite the Standard Specifications' requirements for prompt presentation of a formal "claim" prior to the Final Contract Voucher Certification—Carey filed a 26-page, omnibus "claim." CP

411-438. Carey served Snoqualmie with its complaint in this litigation on the same day. CP 78. Snoqualmie rejected Carey's claim. CP 440-461.

F. Procedural History

Both parties cross-moved for summary judgment on September 27, 2019. CP 40-66, 1189-1217. The Honorable Avril Rothrock granted summary judgment for Snoqualmie (and denied summary judgment for Carey) by issuing a comprehensive written decision on November 4, 2019. CP 1662-1672. Judge Rothrock concluded, *inter alia*, that Carey did not timely provide notice of its intent to file a claim as required by Standard Specifications Section 1-09.11 for two elements of its claim, and for those elements that Carey did timely provide notice, Carey failed to file the claim no later than the Final Contract Voucher Certification. Because timely filing of a claim is a condition precedent to judicial relief, Judge Rothrock concluded that Carey waived its claims. CP 1665-1666.

Carey moved for reconsideration pursuant to CR 59(7) and (9). CP 1742-1756, 1792-1808. Judge Rothrock denied the motion, issuing another written decision and holding *inter alia*, that Carey waived claims by not advancing them with the Final Contract Voucher Certification:

> As a matter of law, Carey's failure to submit with the Final Contract Voucher Certification information and details constituting a formal claim was noncompliant with Section 1-09.11(2) and insufficient to permit pursuit of the claims in this litigation.

CP 1828.

G. Response to Carey's "Facts"

In its "Factual Background" section, Carey tells a fictional story about Snoqualmie bidding the Project while knowing of design problems. While this story is irrelevant to whether this Court should grant review, Snoqualmie provides a brief response.

Carey's fiction is belied by the record Carey relies upon. Carey relies almost exclusively on a January 9, 2014, email sent from Olivia Buban of KPG, an independent designer (*i.e.*, not a

Snoqualmie employee), informing Kathy Johnson of "potential gas conflicts," and attaching drawings. CP 470-478. Instead of ignoring these conflicts, Ms. Buban instructs Ms. Johnson to "verify clearances" as shown on the attached drawings. *Id.* It is not apparent from the record where Ms. Johnson works.

Then, Carey relies on a July 2, 2014, internal Snoqualmie email from the City's engineer Kamal Mahmoud. CP 480. Mr. Mahmoud writes about a utility conflict and, instead of Mr. Mahmoud indicating the City knew this conflict would be a problem, he states that KPG was supposed to address it with PSE during design: "KPG sent the conflic [sic] info to PSE back in January 2014. For some reason PSE thought KPG was going to redesign the storm [sewer] to avoid the conflict. That did not happen." *Id.* The conflict was a mistake by the designer or PSE and was supposed to be addressed, not ignored. Instead of trying to make Carey pay for that mistake, Mr. Mahmoud acknowledged Snoqualmie would need to pay Carey additional money through a change order, and that it should be

PSE's responsibility to pay for that change order: "Relocating the storm [sewer] will cause a change order. We are asking PSE to also cover the cost of that change order." *Id.*

Carey's narrative relies on only two emails, neither of which support the story it tells. It is also belied by the number of change orders Snoqualmie issued to Carey, substantially increasing the contract amount. CP 47. Ultimately, none of this matters because of Carey's failure to follow the contract's mandatory claims procedures, and the Court should disregard Carey's irrelevant narrative.[1]

VI. ARGUMENT: REASONS WHY REVIEW SHOULD BE DENIED[2]

Division I properly construed applicable law in affirming the Trial Court. First, it held that compliance with the protest

[1] Carey asks the Court to take judicial notice of a story posted to a website. Snoqualmie objects to this attempt to supplement the record, as Carey did not comply with RAP 9.11 or 9.12, and this Court may not consider evidence that was not before the Trial Court.

[2] In its Footnote 4, Carey attempts to incorporate its arguments to the Court of Appeals into its Petition for Review. To the extent that incorporation is effective, Snoqualmie incorporates its responses to those arguments.

and claims provisions of the Standard Specifications is mandatory. In doing so, it rejected Carey's arguments related to substantial completion and held that the standard under *Mike M. Johnson, American Safety Cas. Inc. Co. v. City of Olympia*, 162 Wn.2d 762, 174 P.3d 54 (2007), and *Nova Contracting, Inc. v. City of Olympia*, 191 Wn.2d 854, 426 P.3d 685 (2018), is strict compliance. Opinion at 5-9. Second, Division I held that Carey did not follow the protest provisions of the Standard Specifications and did not timely file its claim before the Final Contract Voucher Certification. Opinion at 12, 19-20. Thus, Division I affirmed the Trial Court, as Carey failed to demonstrate any genuine issue of material issue of fact as to whether it complied with the mandatory procedures to preserve its claims under the Contract. Opinion at 24.

A. The Opinion is Consistent with this Court's Precedent on the Summary Judgment Standard.

Carey first seeks review under RAP 13.4(b)(1), arguing the Opinion conflicts with this Court's precedent on summary

judgment. Under RAP 13.4(b)(1), this Court will accept review if "the decision of the Court of Appeals is in conflict with a decision of the Supreme Court." RAP 13.4(b)(1). Carey does not identify any Supreme Court decision on summary judgment that conflicts with the Opinion, and instead generally states the standard of review for summary judgment by citing *Lybbert v. Grant County*, 141 Wn.2d 29, 1 P.3d 1124 (2000) and *Weyerhaeuser Co. v. Aetna Cas. Sur. Co.*, 123 Wn.2d 891, 874 P.2d (1994). Division I cites to these same cases when correctly identifying the summary judgment standard of review (de novo) and stating how a court of appeals is to consider the evidence presented to the Trial Court (in the light most favorable to the non-moving party). Opinion at 4.

So Carey is seeking review not because Division I misstated the summary judgment standard of review, but because Carey disagrees with Division I's application of the correct standard. That is not a proper basis for review under RAP 13.4(b)(1), because "[a]s the highest court in the state, the

Supreme Court is a court of law, 'not a court of error correction.'" Wash. State Bar Ass'n, Washington Appellate Practice Deskbook §18.2(5), at 18-7 (4th ed. 2016), quoting Justice Stephen Breyer, *Reflections on the Role of Appellate Courts: a View from the Supreme Court*, 8 J. App. Prac. & Process 91, 92 (Spring 2006). While review should be denied on this basis alone, Snoqualmie further responds to the additional issues raised by Carey.

First, Carey suggests that granting summary judgment is improper when the parties have yet to take any depositions. A lack of depositions is not something that would justify Supreme Court review. Moreover, this is the first time Carey has raised this issue. Carey did not even seek a continuance for further discovery under CR 56(f) when responding to Snoqualmie's motion for summary judgment. A denial of a CR 56(f) request for continuance is reviewed for abuse of discretion, and there is no abuse of discretion when the party opposing a motion for summary judgment has not requested a continuance. *See MRC*

Receivables Corp. v. Zion, 152 Wn. App. 625, 629, 218 P.3d 621 (2009). Moreover, Carey independently moved for summary judgment at the same time as Snoqualmie. CP 1189. Thus, even if there was a rule against summary judgment before depositions, Carey's attempt at summary judgment waived its right to raise it as an issue.

Second, Carey seeks the opportunity to plead additional facts and raise additional claims and defenses. Again, this is not a proper basis for Supreme Court review under RAP 13.4(b). This is especially the case where Carey made no motion to amend its pleadings prior to the Trial Court dismissing its claims. Carey now asks this Court for the chance to amend its complaint. Even if that was proper on a petition for review, the Civil Rules require that summary judgment "shall be rendered forthwith" if the pleadings show no genuine issue of material fact. CR 56(c). Because Carey failed to provide sufficient facts to defeat summary judgment, a court is to dismiss its claims, not give it the opportunity to revise its

pleadings. *See Ingersoll v. DeBartolo, Inc.*, 123 Wn.2d 649, 654, 869 P.2d 1014 (1994) (stating plaintiff bears the burden of showing the existence of a genuine issue of material fact to defeat summary judgment). Under no standard of law should a court—whether a trial court or appellate court—deny summary judgment to allow a plaintiff to plead additional facts and claims. The Opinion does not conflict with Supreme Court authority, and the Court should deny Carey's petition.

B. The Opinion Does Not Conflict with *Mike M. Johnson* or *Nova*.

Carey next argues under RAP 13.4(b)(1) that, by requiring contractors to strictly comply with notice of claims procedures, the Opinion conflicts with the *Mike M. Johnson* and *Nova* decisions. Not only is this wrong, Carey acknowledges it is wrong by recognizing the rule from the *Mike M. Johnson* case has come to be known as the "strict compliance rule." Both cases involved the Standard Specifications' notice provisions. In *Mike M. Johnson*, this Court held that actual

notice does not waive strict compliance with contractual notice provisions:

> MMJ argues, though, that the Court of Appeals correctly found that "an unresolved question exists regarding whether the county's actual notice of [MMJ's] claims should act as a waiver to [MMJ's] strict compliance with the contract terms." [citations omitted.] MMJ is incorrect.

150 Wn.2d at 386. Then, 15 years later, this Court recognized that its decision in *Mike M. Johnson* required "strict compliance." *Nova Contracting*, 191 Wn.2d at 866 ("… *Mike M. Johnson*'s rule of strict compliance …."). The Opinion is consistent with these cases because it also requires strict compliance with essentially the same contract notice provisions at issue in *Mike M. Johnson* and *Nova*. Opinion at 5-6. Thus, the Opinion is consistent with *Mike M. Johnson* and *Nova*, and review is not warranted under RAP 13.4(b)(1).

Carey next argues that it should be excused from the rule of strict compliance and instead be held to a substantial compliance standard. Carey does not cite any Supreme Court authority for a substantial compliance standard, and no such

authority exists. Instead, Carey misconstrues two appellate court decisions as allowing substantial compliance: *Weber Construction Inc. v. Cty. of Spokane*, 124 Wn. App. 29, 98 P.3d 60 (2004), and *Realm, Inc. v. City of Olympia*, 168 Wn. App. 1, 4-5, 277 P.3d 679 (2012). If anything, this would implicate RAP 13.4(b)(2), although Carey does not seek review under that rule. Even if it did, neither *Weber* nor *Realm* announced a rule that would allow a contractor to avoid the strict compliance rule of *Mike M. Johnson*. Division I recognized that *Weber* was about a public owner that "waived strict compliance," and that *Realm* was about a contractor that "failed to follow the notice requirements" of its contract. Opinion at 8. This analysis is correct.

In *Weber*, Spokane County entered a change order requiring the contractor, Weber, to haul unsuitably large boulders from a construction site. Weber gave the initial notice of protest under Section 1-04.5, then timely issued its 14-day supplement. In doing so, Weber acknowledged that Section 1-

04.5 required the supplement to include a cost estimate, "but stated an estimate could not be provided because the County had failed to designate a dumpsite for unusable boulders." *Id.* at 62-63. The County did not provide the requested information, "so Weber could not have stated in good faith how any such estimate was determined." *Id.* at 63. Thus, Division III held that Weber provided substantial evidence that it either complied with the claims provisions or that the County waived strict compliance with the claims provisions. *Id.* at 34-35. To be clear, either the County prevented Weber from strictly complying with the requirements or Weber provided *substantial evidence* of strict compliance—the Court did not announce a *substantial compliance* standard. The *Weber* decision is about an owner preventing a contractor from strictly complying with the claims procedures, not excusing a contractor's strict compliance in all circumstances.

In *Realm*, Division II *affirmed* dismissal of a contractor's claims for failing to follow the Standard Specifications claims

procedures. 168 Wn. App. at 12. Carey cites qualified and conditional language in the decision that is not part of the Court's ruling: "If Realm had shown *some* good faith effort to comply with section 1–04.5, we might reach a different result," and "we might be persuaded that it provided sufficient evidence of compliance with the contract to escape summary judgment." *Id.* at 11 (underlining added). The language is *dicta* and not a basis for Division I to overrule this Court's strict compliance rule in *Mike M. Johnson*.

Division I correctly held that neither of these cases established a "substantial compliance" rule. Opinion at 7-8. There is no basis for review under RAP 13.4(b)(1) or (2).

C. The Opinion Affirmed the Trial Court on an Independent Basis that Carey's Petition Does Not Address.

In addition to failing to comply with the Contract's notice of claims provisions, Carey failed to timely submit its claim to Snoqualmie. The Contract stated a failure to except claims from a Final Contract Voucher Certification would constitute a

release of the claims. CP 106-107. Carey did not except its omnibus claim from the Final Contract Voucher Certification and waited approximately six months to assert its omnibus claim. CP 397-399, CP 411-438. Division I correctly held that "the failure to timely file the omnibus claim is *independently* fatal to Carey's appeal." Opinion at 20 (emphasis added). Carey does not address this independent basis Division I provided for affirming the Trial Court. Accordingly, even if Carey's petition presented adequate grounds for this Court to consider review under RAP 13.4—which Snoqualmie strongly disputes—the Court should still deny Carey's petition because Carey did not present any argument to overcome this independent basis to affirm the Trial Court.

D. Request for Fees.

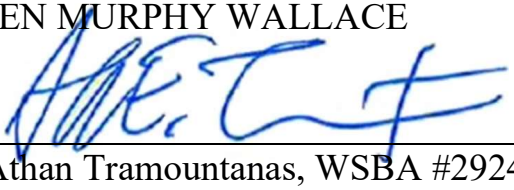
Division I properly awarded Snoqualmie its fees and expenses on appeal. Opinion at 25. Snoqualmie respectfully requests that the Court award Snoqualmie its fees and expenses

for responding to Carey's Petition for Review, pursuant to RAP 18.1(j).

RESPECTFULLY SUBMITTED this 20th day of May, 2024.

I certify that the foregoing memorandum contains 4,708 words, excluding words contained in the title sheet, tables of contents and authorities, certificate of service, signature blocks, any pictorial images or appendices, and this certificate.

OGDEN MURPHY WALLACE

By 

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CERTIFICATE OF SERVICE

On said day below I electronically served a true and accurate copy of Respondent City of Snoqualmie's Answer to Petition for Review to the following parties:

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DATED this 20th day of May 2024.

Susan Grimes
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