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June 7, 2022

VIA PERSONAL DELIVERY

City of Garden Grove City Council
c/o City Clerk – Teresa Pomeroy, CMC
11222 Acacia Parkway
Garden Grove, California 92840

Re: Notice of Appeal

Project: VARIOUS STREETS REHABILITATION 2022
Project Awarded To: All American Asphalt
Award Date: May 11, 2022

The Honorable City of Garden Grove City Council:

Please accept this correspondence as a supplement to R.J. Noble Co.'s ("RJNC") May 19, 2022, Notice of Appeal, specifically to address the points raised by counsel for All American Asphalt ("AAA") in his May 27, 2022, Initial Response to the Notice of Appeal ("the Response"). RJNC understands this matter will be taken up by the City of Garden Grove City Council on June 14, 2022. If this date has changed, please let me know.

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Clearly the policies underlying the Public Contract Codes, specifically the promotion of obtaining the best economic results for public agencies and avoiding favoritism, extravagance, fraud, and corruption, all require bids to be received pursuant to a fair, uniform set of rules that are enforced equally among all bidders. Two of the elements of any bid instructions that are most amenable to bright line rules are the time and the place for submission of a bid. In this case, AAA admits in the Response it delivered its bid to 12860 Acacia Parkway – the wrong address. Moreover, AAA acknowledges its bid was delivered to the parking lot of 12860 Acacia Parkway where a City employee took it from them. This is contrary to the express bid instructions which specifically instructed bidders to deliver the bids to the back door of City Hall located at 11222 Acacia Parkway.

The Garden Grove City Hall lobby is temporarily closed for construction. Bidders can hand delivered [sic] their bid proposals at the back door of the City Hall prior to or by the deadline.

All other bidders for the subject project successfully, and without issue, were able to comply with the location set forth in the Notice of Inviting Bids. Thus, why AAA was unable to do this is unknown.

In the Response, AAA seemingly ignores the fact that RJNC provided evidence under penalty of perjury that AAA's bid was received after the 11:00 am deadline. There is no evidence presented by AAA that in fact its bid was timely received. If the runner had arrived at 9:20 a.m. as set forth in the Response, it seems one hour and forty minutes would be ample time to get from the front of City Hall to the back door as required by the Notice Inviting bids. Moreover, RJNC suspects there is likely video surveillance evidence that supports the fact AAA's bid was not timely submitted, and as such, AAA was unable and unwilling to attempt to contradict this.

Setting aside these two seemingly unambiguous requirements of the bid that AAA failed to comply with, AAA argues that the City is permitted to correct a discrepancy between the total of the unit prices and the total amount of the contract. RJNC disagrees with this based upon the case law cited in its Notice of Appeal. However, beyond that, AAA's total for Section 3A (Hazard Avenue Rehabilitation) shows a price of \$167,501. Using this figure, AAA's bid would have been \$3,798,930 – a difference of \$1,000,000 from the total re-calculated by the City. Thus, a correction to both this section of the bid and the total were required in order to even evaluate AAA's bid. Such corrections are prohibited under California case law.

Finally, one item of the Response RJNC agrees with is the conclusion by AAA wherein AAA suggests rejecting all bids and re-bidding the project would be inappropriate. RJNC believes the City should reject AAA's bid as non-compliant, and award the bid to the lowest, compliant, responsible bidder – RJNC.

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Thank you, and please feel free to contact me in advance of the June 14th Council meeting should you have any questions.

Very truly yours,

COLLINSWORTH, SPECHT,
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MARK T. COLLINSWORTH, ESQ.

MTC:jb

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