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February 13, 2018

Sent Via U.S. & Electronic Mail

Will Clements, Chair
California Uniform Construction Cost Accounting Commission
California State Controller's Office
P.O. Box 942850
Sacramento, CA 94250

Email: Paavo@oceanocsd.org

Subject: ***Request for Commission Review:
City of Santa Fe Springs Clarke Estate Project***

Honorable Chair & Commissioners:

The City of Santa Fe Springs ("City") hereby submits its response to the Construction Industry Force Account Council's ("CIFAC") complaint to the Uniform Construction Cost Accounting Commission ("UCCAC" or "Commission") alleging violation of Section 22042(b) of the California Public Contract Code.

BACKGROUND

Some background information is appropriate. The Clarke Estate Project was divided into two projects: Exterior Painting and Window and Door Replacement. The total budget was ninety thousand dollars (\$90,000.00). The exterior painting was awarded to and performed by A.J. Fistes, of Long Beach, CA. for a total amount of forty-six thousand four hundred eighty dollars (\$46,480.00). Subsequently, the City advertised for bids and received bids for the Clarke Estate window/door frame work on December 22nd, 2015 and again on February 9th, 2016. The bids were rejected both times on January 14, 2016 and March 24th, 2016 by the City Council due to the extremely high bid proposal amounts.

At its October 27th, 2016 meeting, the City Council did not authorize advertising the work a 3rd time. Although staff was prepared to re-advertise the work a third time, during the meeting, a lengthy discussion ensued amongst the Council and staff as to whether bidding the project a third time would yield a different result. The result being receiving bids that were beyond the budgeted amount of approximately forty thousand dollars (\$45,000.00). As reflected in the minutes of the October 27th, 2016 meeting, the Director of Public Works believed that the project could be done less expensive than the previous bids received-Painting and Décor, Inc. at two hundred eleven thousand and eighty-eight dollars (\$211,088.00) and GDL Best Contractors, Inc. at three hundred sixty nine thousand dollars (\$369,000.00). As a result, the City Council did not authorize the project to be advertised.

A. City Council's Action on December 14th, 2017 and October 27th, 2016 Satisfy Public Contract Code Section 22038(a)

Section 22038(a)(2) of the Public Contract Code authorizes a city to reject bids and complete the work in-house if it determines that the project can be performed more economically by employees of the city “[b]y passage of a resolution by a four-fifths vote of its governing body declaring that the project can be performed more economically by the employees of the public agency, may have the project done by force account without further complying with this article.”

The City believes that it the City Council actions on December 14, 2017 and October 27th, 2016 satisfy that requirement. It is important to point out that had Section 22038(a)(2) specified that the City Council was required to act via ordinance, there is no question that a violation of Section 22038 occurred since there are very clear requirements for adoption of an ordinance-first and second reading followed by publication before taking effect. Resolutions, on the other hand, offer far greater flexibility. Resolutions are far less formal and have been defined as a “mere expression of the opinion of the legislative body concerning some administrative matter for the disposition of which it provides.” CEB Section 1.230 citing Central Manufacturing Distributors, Inc. v. Board of Supervisors, (1960) 176 Cal. App. 2nd 850, 860. A resolution has been further described as “encompass[ing] all actions of the municipal body other than ordinances. McQuillin, *The Law of Municipal Corporations* §15.2 (3d ed. 1988).

With that legal framework in mind, we would argue that actions on December 14th, 2017 and October 27th, 2016 constitute a resolution of the City Council. Beginning with the December 14, 2017 meeting, the staff report, attached hereto as Exhibit 1, specifies that the City Council rejected the two (2) prior bids due to the high bid amounts. In fact, the staff report calls out the 1st bid amounts of \$98,900 and \$211,088. The Public Works Director's staff report goes on to provide the estimated cost to perform the work in-house would cost approximately sixty five thousand (\$65,000.00). The City Council then, unanimously approved the Public Works Director's request to appropriate fifty two thousand (\$52,000.00) for completion of the work in-house and, further, “[a]uthorized the Director of Public Works to complete installation of the new Clarke Estate window/door frames with City forces.” The minutes of the December 14, 2017 meeting, attached hereto, as Exhibit 2, confirm that the City Council action was unanimous. Based on the definitions of a resolution, provided above, the City Council's action met the requirements for passage of a resolution in that the City Council's approval of the funding and authorizing the Public Works Director to install the windows and door frames in-house both, in purpose and effect, was the equivalent of passing a resolution. Moreover, not only was that

approval gained by a four-fifths of the City Council. But rather, was a unanimous approval.

We would argue that the December 14, 2017 meeting was the appropriate moment in time for the City Council to take that action in that the Public Works Director, first, had to confirm that the work could be completed in-house at a lower cost. Between June 2017 and December 2017, the Public Works Department installed in order to determine 1) that the City was capable of performing the work in-house and 2) that it could in fact the work could be performed more economically in-house. The staff report estimates the cost of installation at that point in time as sixteen thousand (\$16,000.00), however, that amount reflects other work such that the labor costs for this work is far lower. As the Public Works Director will attest, the labor costs for this work was closer to six thousand (\$6,000.00) while the total labor cost for the entire window installation will ultimately be fifteen thousand (\$15,000.00). This action should be seen, not as a violation of the law, but rather thoughtful consideration of the requirements under the UCCAA. And the City has proven to be correct in that the work will be performed at a fraction of bid response amounts.

Additionally, the City would argue that the City Council's action on October 27th, 2016 was consistent with Section 22038(a) in that, as the minutes reflect and the Public Works Director can attest to, the City Council did not proceed with re-advertising but rather involved a long discussion as to how that work could be performed in-house for less. While the minutes do not reflect a formal vote, as the legal authority above indicate, the City Council's action that evening met the requirements of Section 22038 in that, by not authorizing advertisement a 3rd time, the City Council in effect found that the work should be conducted in-house because it could be performed more economically. Based upon the foregoing, the City asks the Commission to find that Section 22038 has been satisfied.

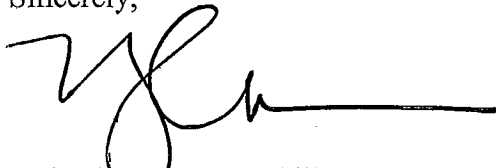
B. Meeting the Definition of Public Project under Section 22002 of the Public Contract Code

It is important to point out that the Clarke Estate is a hundred year old historic landmark and what constitutes a *public project* can vary depending upon the age, type and use of any given building. Section 22002(d)(1) excludes maintenance that is "routine, recurring, and usual work for the preservation or protection of any public owned or operated facility..." Moreover, so few cases interpret Section 22002, the Commission has wide latitude for interpretation. Therefore, the City asks that the Commission find that given the age of the building, its historic nature and other factors, the work performed here does not constitute a public project in that the work performed here is building *maintenance* that is part of the "usual work for the preservation" of this historic landmark.

In conclusion, the City is sorry that the UCCAC's time has been taken to consider this matter. It came as a great surprise when presented, this past week, with this complaint as it is neither the City of Santa Fe Spring's intention, nor practice, to violate this or any other law. With that in mind, we do not anticipate that we will ever have to come before this body again. That being said, we do believe that the City has complied with the spirit of the law, as well as, the letter of the law in this venture and respectfully request that this Commission find that there has been no violation of the UCCAA.

If you have any questions, please do not hesitate to contact me. Please contact me should you wish to further discuss this issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Yolanda M. Summerhill', with a long horizontal line extending to the right.

Yolanda M. Summerhill
Santa Fe Springs City Attorney

Cc:

Don Powell, Interim City Manager

Noe Negrete, Director of Public Works/City Engineer

EXHIBIT 1



City of Santa Fe Springs

City Council Meeting

December 14, 2017

NEW BUSINESS

Clarke Estate Window /Door Frame Restoration Project – Additional Appropriation

RECOMMENDATIONS

That the City Council take the following actions:

- Approve appropriation funds of \$52,000 from the Bond Funded Capital Improvement Projects Fund to Activity No. 455-397-S032 to complete installation of the Clarke Estate Windows/Door Frames; and
- Authorize the Director of Public Works to complete installation of the new Clarke Estate windows/door frames with City forces.

BACKGROUND

The City Council, at their August 25, 2013 meeting, approved a project list for the Capital Improvement Program that included the Clarke Estate Window/Door Frame Project. The project included painting the exterior of the facility, including the windows and door frames. The approved project budget was \$90,000.

Pursuant to Staff evaluation, it was determined that the condition of the Clarke Estate windows required replacement with new windows. The architectural design of the Clarke Estate required that each window be individually measured and fabricated. The total cost for painting the Clarke Estate exterior (including required construction activities) was approximately \$46,000.

Staff solicited bids for fabrication and installation of 32 new windows. Based on the bid amounts (\$98,900 and \$211,088), the City Council approved rejecting all bids. A second bid process resulted in the same outcome.

The approach that was finally implemented was to solicit bids for fabrication of the windows only and Staff would be responsible for installation. The total cost to fabricate the windows is approximately \$65,000. Eighteen (18) windows have been installed to date at a Staff labor cost of \$16,000. The estimated Staff cost to install the balance of fourteen (14) windows is \$15,000.

FISCAL IMPACT

Staff is requesting an additional appropriation of \$52,000 for the costs of fabricating the Clarke Estate windows, and for City forces to complete installation of the new windows. Staff is scheduling the project to be completed by March 30, 2018.

Following is a summary of project costs and estimated additional appropriation to complete the Clarke Estate Window/Door Frame Restoration Project:

Report Submitted By: Noe Negrete, Director *NR* Date of Report: December 8, 2017
Department of Public Works

ITEM NO. 19

Project Expenditures

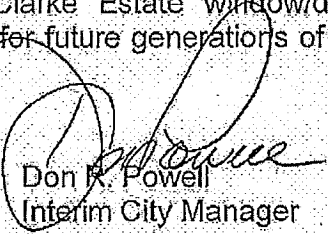
	Cost
Painting	\$ 46,000
Window Fabrication	\$ 65,000
Window Installation (Staff cost)	\$ 31,000
Total	\$ 142,000

Project Funding

	Cost
Approved Project Appropriation	\$ 90,000
Requested Additional Appropriation	\$ 52,000
Total:	\$ 142,000

INFRASTRUCTURE IMPACT

The custom fabricated windows are consistent the architectural integrity and historical designation of the Clarke Estate. In addition, the new windows provide additional security for the building. The Clarke Estate window/door frame restoration project protects a vital City asset for future generations of patrons of this historically significant building.


Don R. Powell
Interim City Manager

Attachments:

None

EXHIBIT 2

Alliance (NJPA) cooperative contract number 031014-ALT; and authorize a purchase order to be issued in the amount of \$211,861 for this transaction, by the following vote:

Ayes: Moore, Trujillo, Zamora, Sarno, Rounds

Nays: None

19. Clarke Estate Windows/Door Frame Restoration Project – Additional Appropriation

Recommendation: That the City Council:

- Approve appropriation funds of \$52,000 from the Bond Funded Capital Improvement Projects Fund to Activity No. 455-397-S032 to complete installation of the Clarke Estate Windows/Door Frames; and
- Authorize the Director of Public Works to complete installation of the new Clarke Estate windows/door frames with City forces.

Mayor Rounds asked if this this would complete the project. Director of Public Works Noe Negrete said that they estimated everything would be completed by the end of March, in time for the wedding season.

It was moved by Council Member Zamora, seconded by Council Member Trujillo, to approve appropriation funds of \$52,000 from the Bond Funded Capital Improvement Projects Fund to Activity No. 455-397-S032 to complete installation of the Clarke Estate Windows/Door Frames; and to authorize the Director of Public Works to complete installation of the new Clarke Estate windows/door frames with City forces, by the following vote:

Ayes: Moore, Trujillo, Zamora, Sarno, Rounds

Nays: None

20. Snake Basket Fountain – Review Security Options

Recommendation: That the City Council:

- Evaluate Snake Basket Fountain security options reviewed by the Heritage Arts Advisory Committee (HAAC);
- Approve a security option for the Snake Basket Fountain;
- Approve an appropriation from the Art Fund; and
- Authorize the Director of Public Works to install the approved security option for the Snake Basket Fountain.

Director of Public Works Noe Negrete stated that there are three different options available. The options available are to keep the decorative tiles from being stolen and to stop children playing on the fountain since it is not currently operational. Option 1 is to put a screening, which is the most costly option, and people can jump over the screening fence. Option 2 will utilize used fencing and use that instead of purchasing new fencing. It will be applied like Option 1. He noted it would be the least costly option. Option 3 would be use a cover to cover to the fountain. This is the least favorable option due to the cover not being flush, which may cause a tripping hazard. Mr. Negrete recommended Option 2. He noted that the cover option would be uneven because of sculpture. He also stated that there would be a concern about kids going under the cover with the implementation of Option 3. Mayor Pro Tem Sarno asked if this would be a temporary solution. Noe Negrete stated yes, until the hotel decides what to do with it in the future since it