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VIA U.S. MAIL

Michael Futch, Vice President, General Counsel, Secretary
John D. Gilliland, Director of Risk Management
Granite Construction Company
585 W. Beach Street
Watsonville, CA 95076

James A. Diani, President
A.J. Diani Construction Co., Inc.
295 N Blosser Road
Santa Maria, CA 93454

Re: Request to Mediate Dispute Re: Fall 2007 Wildfires Debris Removal Costs

Dear Gentlemen:

As you know, in October, 2007, a massive wildfire destroyed hundreds of homes in the City of San Diego [City], and the City hired your companies to clear the debris for homeowners participating in a City clean-up program. As you are also likely aware, recent media reports have suggested that your companies excessively charged for their respective services. Having had the opportunity to review these media reports, I am deeply concerned about any overcharges which will ultimately fall on the shoulders of San Diego and California taxpayers. I write to propose mediation as a process by which to quickly and efficiently resolve these issues.

BACKGROUND SUMMARY

As a result of the wildfires, the City of San Diego and the Governor of California declared a State of Emergency, and the President of the United States declared that the conditions in the effected communities constituted a major disaster. On November 2, 2007, in an effort to deal quickly with the extensive damage done to private residences and assist displaced families, Mayor Jerry Sanders proposed a "Comprehensive Cleanup Services" program to wildfire victims in which the City would award and execute an agreement with private companies to remove debris and materials destroyed by the fires. The costs of the services would

partially be paid back by state and federal disaster relief funds, partially by homeowners upon their receipt of insurance money, with the City of San Diego responsible for the balance of the costs.

On November 6, 2007, the San Diego City Council unanimously approved the "City of San Diego Fire Cleanup Program" as proposed by the Mayor. Supporting documentation for the Council hearing stated, "The recommended option [for homeowners] is the San Diego Fire Cleanup Program. In this option, the City will hire the contractor and the city and state will be responsible for all costs not covered by the impact resident's homeowners insurance. In addition to greater financial security, the homeowner accrues the added benefit of knowing the cleanup work was done right by a contractor that specializes in this type of cleanup."

On November 7, 2007 and November 9, 2007, respectively, Granite Construction Company [Granite] and A.J. Diani Construction Company [A.J. Diani] responded to a Request for Proposal [RFP] from the City of San Diego's Purchasing and Contracting Department. The RFP's stated objective follows:

> The objective of this RFP is to make an award to a qualified Proposer who will furnish the City of San Diego with removal of the structural debris both east and west of Interstate 15 associated with the City of San Diego Fall 2007 and San Pasqual Wildfires, ***which represents best overall value to the City*** meeting the specifications and requirements of this RFP.

(RFP, p. 3, ¶ C, emphasis added.) The RFP further explained:

> Except as otherwise specified herein, the City of San Diego General Provisions for Proposals, dated January 18, 2005, (on file in the Office of the Purchasing Agent) are incorporated as part of this Proposal and any resulting contract by reference. The General Provisions are available online at www.sandiego.gov/purchasing or via request from the Purchasing & Contracting Department by calling (619) 236-6000.
>
> By signing and/or authorizing the Proposal submittal, the Proposer acknowledges that they have read and understood the meaning, intent, and requirements of said General Provisions; and acknowledge said General Provisions are included as a part of this Proposal.

(RFP, p. 40, ¶ E.)

Pursuant to the terms of the RFP, the City hired Granite to clear debris from destroyed homes west of I-15 and A.J. Diani to clear debris from homes east of I-15.

THE PROBLEMS

As you are likely aware, multiple reports appearing in the *San Diego Union-Tribune* state that both of your companies inflated and/or made false claims on invoices. It is suggested that your companies both originally inflated costs when responding to the City's RFP as well as that your companies unnecessarily and unreasonably incurred and/or reported incurring excessive costs for services.

Estimates in RFP responses were described as, "'Way overkill,'" by Mr. Chilson, president of Mirabella Design/Build in Escondido. The media reports allege that final costs, such as the costs of clearing debris, turned out in some cases to be nearly nine times the estimated amount. An invoice to billing estimate comparison notes:

> Granite charged the city 10 time more to remove burned greens than the city estimated and spent 30 times more on erosion-control fiber rolls and mats - $484,004 instead of $16,320 – than the city projected.
>
> Diani spent $92,678 on fiber rolls and mats – instead of $8,970 as first estimated – and $117,428 for landscape removal instead of $29,368.

One *San Diego Union-Tribune* media report cited the debris clearing cost of a 5,000-square foot home in Rancho Bernardo at $224,506, while the cost of clearing of a 7,000-square-foot home for a private resident on the same street but not in the City's program, was just $77,693 – a difference of more than $146,000. More disconcerting, the *San Diego Union-Tribune* media report alleged that A.J. Diani hauled 897 tons of debris from the 5,000-square-foot home, while the debris removal company contracted by the private resident reported removing 575 tons from the larger 7,000-square-foot home.

The media report also included the testimony of a Chad Mitten, president of Maximum Demolition Inc. who reported that representatives of the A.J. Diani were "loading dirt." Mr. Mitten continued, "'[T]hey were just excavating the hillside and loading it out. There is no reason (for that), other than their tonnage' increases." Also included were the comments of Shanon Chilson, president of Mirabella Design/Build in Escondido, who reportedly completed work in Rancho Bernardo after the fire. Mr. Chilson stated that he observed "city contractors 'moving stuff way out of the perimeters of what burned…they were taking trees, rocks, anything they could put in a truck to increase the weight.'"

The *San Diego Union-Tribune* also included the testimony of Rancho Bernardo resident Elisa Martinez, who did not participate in the City's program and instead hired a debris removal contractor privately. Ms. Martinez stated that clearing costs totaled $8,300 for her home, while

the *San Diego Union-Tribune* reported that documents obtained show two homes in the City's program and comparable in size to Ms. Martinez's homes were charged about $49,000 each.

REQUEST TO MEDIATE

Both of your companies agreed to provide services, "in accordance with the standards customarily adhered to by an experienced and competent professional using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California." (General Provisions for Proposals, p. 10, ¶ F(1).) Furthermore, your companies agreed, "Where approval by the City, the City Manager, or other representatives of the City is required, it is understood to be general approval only and does not relieve the Contractor of responsibility for complying with all applicable laws, codes, and good business practices." (*Id.*)

Should your companies be found to have engaged in conduct as mentioned above, the contracts and the law provide for strict penalties. (*See e.g.* Cal. Gov. Code §§ 12651(a); 12652(g)(8); General Provisions for Proposals, p. 12, ¶¶ F(7), G(2)(b); p. 19, ¶ H(16).)

I am hopeful you will agree that it will benefit all involved to promptly mediate this matter. Please contact me at your earliest opportunity to discuss an agreeable time and location.

Sincerely yours,

MICHAEL J. AGUIRRE
City Attorney

cc. Honorable Mayor Sanders
Honorable City Council
Jay Goldstone, Chief Operating Officer