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December 2, 2011

Via Facsimile (559) 924-6708 and U.S. Certified Mail

David Wlaschin
Public Works Director
City of Lemoore
119 Fox Street
Lemoore, CA 93245

**RE: Response of West Valley Construction to Bid Protest of Halopoff
and Sons, Inc.
Project: 19th Avenue Sewer and Water Project**

Dear Mr. Wlaschin:

My firm represents West Valley Construction Company, Inc. ("West Valley"). We have been asked to review and reply to the formal bid protest submitted by Halopoff and Sons, Inc. ("Halopoff") on the above-referenced project. The bid protest of Halopoff and Sons must be denied based upon both California law and the relevant facts as set forth herein.

1. First, California Public Contract Code section 4100 et seq. has no applicability to this bid protest despite the contention by Halopoff. Those Code sections specifically relate to subcontractors and are not relevant to the listing of suppliers in the subject bid. This is confirmed by the bid documents themselves. In the listing of subcontractors, reference is made to sections 4100 to 4113 of the Public Contract Code. On the other hand, the bid form page BC-15 which requests a listing of major material suppliers has no reference at all to the subject Code sections cited by Halopoff.
2. The contention regarding Goodall Trucking likewise has no merit. Goodall Trucking is, in fact, the supplier for asphalt concrete and aggregate base mixes. While Goodall Trucking will also handle the trucking, the pricing from Goodall to West Valley Construction was for both supply and transport of the subject materials. The term "supply" as defined in Webster's Dictionary refers to "providing for, make available for use, satisfy the needs of wishes and/or to furnish." Clearly, Goodall Trucking is not only handling trucking but supplying the materials listed to West Valley. It is by legal definition a "supplier."

If the City of Lemoore wished a listing of only the manufacturer or producer of materials, then the bid documents should have referred to manufacturer, not to "manufacturer or supplier". Clearly, the objection to Goodall Trucking as the listed supplier for Item 10 (asphalt concrete mixes) and Item 11 (aggregate base mixes) has no merit.

3. An immaterial mistake was, in fact, made by West Valley in listing "Hanford Ready Mix" as a supplier in Item 12 (Portland Cement Concrete mixes). The original quote obtained from West Valley Construction was from "Viking" Ready Mix located in Hanford. We understand that the Portland Concrete mixes to be provided are approximately 50 yards at a price of \$86.00 a yard, i.e. approximately \$4,300. This is an immaterial amount on a bid of approximately \$1,200,000. If the Public Contract Code sections cited above were applicable, it would be less than one-half of one percent and, therefore, not a requisite listing. Clearly under that guideline it is an immaterial amount.

California law is clear that a public agency can waive minor irregularities and immaterialities. The mistake in showing "Hanford" Ready Mix as opposed to Viking Ready Mix located in Hanford is a minor irregularity and did not give West Valley any advantage or benefit over any other bidders in that the amount in question is \$4,300 on a bid in excess of \$1,200,000. See *Menefee v. County of Fresno* (1985) 163 Cal.App.3d 1175. Furthermore, West Valley has in fact confirmed that Hanford Ready Mix located in Elk Grove, California will supply the subject material if the City of Lemoore wishes to hold West Valley to the technicality of the listed named supplier.

4. Finally, Halopoff makes another baseless objection to the use of the term "subcontractor" on page BC-15 for those scopes which are being performed by subcontractors. West Valley identified the specific subcontractors on page BC-14, the requisite page for the subcontractor listing requirement. Here again, the bid is responsive and must be honored as such.

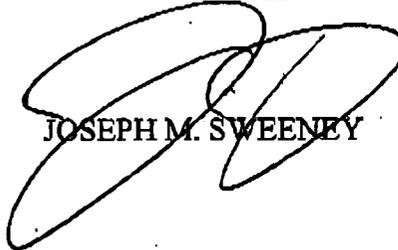
The City of Lemoore has a duty to its tax payers to accept the lowest, qualified and competitive bid from a responsible bidder: West Valley Construction was the lowest responsible bidder and submitted a responsive bid. As such, the bid protest of Halopoff and Sons, Inc. should be denied as it is without merit as set forth herein.

Please advise as to the decision of the City of Lemoore regarding this bid protest. Furthermore, please provide me with notification as to when the City Council meeting will be held with respect to the awarding of the subject contract. West Valley requests the opportunity to attend such meeting and reply to any further questions.

Thank you for your courtesy and attention in these regards.

Very truly yours,

**SWEENEY, MASON, WILSON &
BOSOMWORTH**



JOSEPH M. SWEENEY

JMS:clm

cc: Halopoff and Sons Inc. (via facsimile 559-781-7676)
David Jacobs, PE, LS, Quad Knopf (via facsimile 559-733-7821 and U.S. Certified Mail)
Client