

Testimony of Ralph B. Ibarra, President – DiverseAmerica Network

Port of Seattle Commission Special Meeting: August 15, 2017

RE: Non-compliance by Clark Construction Group, LLC of Design-Build Contract Provisions

For the record, my name is Ralph Ibarra and my company is DiverseAmerica Network, my home is in Algona, Washington, and I have been a tax-paying resident of the Port's jurisdiction since 1980. I am here representing Sundancer Electric, Inc., a prominent subcontractor on the International Arrivals Facility Project and to testify in opposition to the purpose and intent of Agenda Item 6c, Attachment A; International Arrivals Facility (IAF); Authorize the Balance of Funding (Capital Improvement Project #C800583).

My testimony is to alert the Port of Seattle Commissioners of the non-compliance by Clark Construction Group, LLC of critical provisions contained within the Design-Build Contract executed on July 20, 2015. Particularly troubling is Clark Construction's lack of adherence to those Federal Aviation Administration Supplementary Provisions referenced in **ARTICLE 2- WORK OF THIS CONTRACT** that states: *"Without limiting the generality thereof, Design-Builder shall in that event comply with Section 01 05 01c of the Requirements Documents."* Entitled **Required Contract Provisions for Airport Improvement Program Projects \$100,000 And Over**, Prompt Payment to each subcontractor is clearly defined: *"The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime contractor receives from Port of Seattle... This clause applies to both DBE and non-DBE subcontractors."* Moreover, the Port's provisions within **ARTICLE G-08; subsection G-08.03 PROGRESS PAYMENTS** are definitive:

***Item D.** The Design-Builder is required to make payment to all Subcontractors and Suppliers for all Work included within the Progress Payment within ten (10) Days from the receipt of the Progress Payment. Furthermore, the Design-Builder shall require all subcontracts issued under this contract to all Subcontractors and Suppliers at all tiers to also make all due payments within ten (10) Days of their receipt of payment.*

***Item E.** The Design-Builder shall supply with each payment request a certification signed by a corporate or company officer. This certification shall attest that all payments by the Design-Builder due to Subcontractors or Suppliers from the last payment estimate have been made within the ten (10) Day payment period. The certification shall attest that the Design-Builder will make payment within ten (10) Days of all obligations due from the current payment estimate. The Design-Builder is required to receive the same certification from all Subcontractors and Suppliers at all tiers. It is particularly critical to know that inconsistent compliance of the aforementioned clauses of the Design-Build Contract held by Clark Construction Group, LLC could be considered a material breach of the Design-Build Contract.*

Furthermore, details of how Clark Construction Group, LLC has not fulfilled its obligation to make required payments to its Prime Subcontractor Macro-Z-Technology (MZT) - under Subcontract Agreement No. 41554, and has failed to process the required Change Orders to substantiate payments to MZT Subcontractors; namely, Sundance Electric, Inc. are outlined in a supplemental memorandum, along with Exhibits for reference.

In closing, we respectfully ask that any request to authorize additional funding for the International Arrivals Facility be deferred until the ACTIONS REQUESTED contained in the supplemental memorandum are accomplished.



MEMORANDUM

TO: Port of Seattle Commissioners
Cc: David Soike, Port of Seattle Interim Chief Executive Officer
Ralph Graves, Managing Director – Port of Seattle Capital Development Division
FROM: Ralph B. Ibarra, President | DiverseAmerica Network
Representing Sundancer Electric, Inc.
DATE: August 15, 2017
RE: Design-Build Contract for International Arrivals Facility Project (IAF)

BACKGROUND

This memorandum is to alert the Port of Seattle Commissioners of the non-compliance by Clark Construction Group, LLC of critical provisions contained within the Design-Build Contract executed on July 20, 2015. Particularly troubling is Clark Construction's lack of adherence to those Federal Aviation Administration Supplementary Provisions referenced in **ARTICLE 2- WORK OF THIS CONTRACT** that states: *"Without limiting the generality thereof, Design-Builder shall in that event comply with Section 01 05 01c of the Requirements Documents."* Entitled **Required Contract Provisions for Airport Improvement Program Projects \$100,000 And Over**, Prompt Payment to each subcontractor is clearly defined: *"The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime contractor receives from Port of Seattle...This clause applies to both DBE and non-DBE subcontractors."* Moreover, the Port's provisos within **ARTICLE G-08**; subsection **G-08.03 PROGRESS PAYMENTS** are definitive:

Item D. The Design-Builder is required to make payment to all Subcontractors and Suppliers for all Work included within the Progress Payment within ten (10) Days from the receipt of the Progress Payment. Furthermore, the Design-Builder shall require all subcontracts issued under this contract to all Subcontractors and Suppliers at all tiers to also make all due payments within ten (10) Days of their receipt of payment. The Design-Builder must justify to the Port in writing any intent to withhold payment of monies due to any Subcontractor or supplier.

Item E. The Design-Builder shall supply with each payment request a certification signed by a corporate or company officer. This certification shall attest that all payments by the Design-Builder due to Subcontractors or Suppliers from the last payment estimate have been made within the ten (10) Day payment period. The certification shall attest that the Design-Builder will make payment within ten (10) Days of all obligations due from the current payment estimate. The Design-Builder is required to receive the same certification from all Subcontractors and Suppliers at all tiers. No Progress Payments will be processed until the Design-Builder's certification is received. It is particularly critical to know that inconsistent compliance of the aforementioned clauses of the Design-Build Contract held by Clark Construction Group, LLC could be considered a material breach of the Design-Build Contract.

The **BACKGROUND** synopsis is a prelude to details of how Clark Construction Group, LLC has not fulfilled its obligation to make required payments to its Prime Subcontractor Macro-Z-Technology (MZT) - under Subcontract Agreement No. 41554, for IAF Project No. 113458 - and failed to process the required Change Orders to substantiate payments to MZT Subcontractors; namely, Sundance Electric, Inc (Sundancer). As such, the relevant circumstances and details are outlined in chronological order:

October 31, 2016: Subcontract No. 1385-002 entered into between Macro-Z-Technology Company ("Contractor") and Sundancer Electric, Inc. ("Subcontractor"); "Contractor has entered into a contract with the following Owner: Clark Construction Group, LLC (Clark) and Port of Seattle, (a) the firm fixed price of Five hundred ninety-three thousand two hundred eighty-nine Dollars (\$593,289.00).

March 16, 2017: Sundancer Electric, Inc. issues Serial Letter #13 to MZT about the hardship that has been caused by not having processed change orders that Sundancer has proceeded with work as directed by MZT in order to attempt to comply with a fast tract schedule for the IAF. Total of directives that have not been processed into change orders as of this date: \$3,178,549.59. **[See EXHIBIT A]**

March 20, 2017: Ralph Graves alerted to lack of processed change orders from MZT to Sundancer for work authorized by Clark via Addendums and Bulletins, now totaling over five (5) times the original firm fixed price of \$600K.

April 18, 2017: Email response from Lou Palandrani, Senior Vice President, Clark Construction Group - California LP in answer to an inquiry by Mian Rice with these statements: *"...Clark is actively working w/ MZT and Sundancer to ensure they are receiving due payments for work completed on the project and that includes any work associated with change order scope...Both Clark and the Port will work to expedite any payments to MZT and Sundancer."* Alas, Mr. Palandrani's promises turned out to be empty. [See EXHIBIT B]

May 5, 2017: Sundancer Project Supervisor Joshua Van Allen issues a letter to MZT outlining his concerns about work directives for the IAF Parking structure 3rd floor that includes this opening sentence: *"ATTENTION: For two months now Sundancer Electric has been asking about the design on the 3rd floor parking level. Not only is it incomplete and doesn't follow the ports standards for the amount of outlets and data drops, it is also too vague to attempt an install."* [See EXHIBIT C] This letter attests to Sundancer's commitment to the integrity of the IAF Project and to properly notify MZT of potential schedule impacts of MZT's directives.

June & July 2017: Numerous assurances from MZT that Sundancer would be paid for work performed on the IAF.

August 2, 2017: Email from Jim Mortensen, Macro-Z-Technology to Sundancer and a large number of Subcontractors about MZT's May Invoice to Clark, informing them all that: *"Clark Construction has paid our May invoice and after careful review we discovered that they had short paid the invoice based on their recent approval."* Mr. Mortensen elaborated with these statements: *"Clark Construction indicated that they have not received approval from the Port of Seattle and were waiting for supported labor rates that they had requested from MZT in October 2016. Well, after tracking down emails we found that MZT did not drop the ball as Clark kept accusing us of yesterday and in previous emails. MZT responded to the request and provided the requested information to Clark Construction for their submission to the Port of Seattle for review. This is out of our hands and although Clark Construction states we dropped the ball, we have a paper trail showing we turned in the required documentation they requested and they dropped the ball by not working with the Port of Seattle to resolve this matter. We negotiated the change order and settled on an amount with Clark Construction on May 16, 2017. As we have been told multiple times with the Port of Seattle, we don't have a contract with them but with Clark Construction so they feel their hands are tied in this matter."* [See EXHIBIT D]

August 3, 2017: Sundancer issues Serial Letter #14 to MZT about **Sundancer Financing Fees/Interest – Notice of Impact and Claim**, in response to Mr. Mortensen's email. These are the salient points from Sundancer's Serial Letter #14: *"Sundancer was provided with an accounting spreadsheet from MZT yesterday (August 1), indicating \$97,553.10 will be paid, leaving an additional \$397, 446.90 remaining due and owing on the May invoice (provided Sundancer receives the \$97,553.10 payment). In addition, Sundancer's June Invoice for \$430,000 is also due and owing, for a total outstanding amount of \$925,000 – just under a million dollars. Further, Sundancer's July invoice seeks an additional \$80k, a reduced amount due to the direction that Sundancer may not bill for its directed change order work until those change orders are entered into the system. With Sundancer's additional changed and extra work, Sundancer's July invoice will exceed \$400,000. Ultimately, Sundancer is currently financing this work for MZT, Clark and the Port, and is suffering extraordinary financial impacts and repercussions as a result of the magnitude of unpaid contract and extra work."* [See EXHIBIT E]

ACTIONS REQUESTED

It is respectfully requested that actions be taken to compel Clark and MZT to fulfill their responsibilities to immediately pay Sundancer the full past due amount of \$925,00, and assure prompt payment of their July invoice of over \$400,000. Additionally, an audit be conducted of all "Monthly Amounts Paid to All Subcontractor Participants" forms submitted to the Port by Clark and MZT as required by condition 1.07 REPORTING OF AMOUNTS PAID TO ALL SUBCONTRACTORS, as stipulated in **DIVISION 0 – REQUIREMENTS DOCUMENTS | Document 00 83 00 – Civil Rights, Title VI, and Non-Discrimination:** *"A. The Contractor shall submit, with each application for progress payment, a completed form titled "Monthly Amounts Paid to All Subcontractor Participants". A sample is appended to this Section. The Prime Contractor, Subcontractors and all lower tier Subcontractors shall include Subcontractors and Suppliers data on this form."* [See EXHIBIT F]



A Veteran, Native American,
DBE/MBE Owned Business

EXHIBIT A

25500 74th Ave S Kent, WA 98032

Phone: 253-398-2999

Fax: 253-398-2997

03/16/2017

Serial Letter #13

TO: Macro-Z Technology Company
Address: 841 East Washington Avenue, Santa Ana CA
PROJECT: International Arrival Facility Enabling Project - Early works
Project NO: 113458 Contract NO. 41554

SUBJECT: Processing change orders

ATTENTION: Kent Henry

Mr Henry,

We have spoken on numerous occasions about the hardship that has been caused by not having processed change orders. We have proceeded with work as directed by MZT in order to attempt to comply with a fast track schedule. We have supplied pricing, assisted with engineering coordination with Port of Seattle requirement. Brought on many additional electricians to build this fast track project. Incurred a great deal of cost and overhead expense.

I believe we have been more than patient during this process. We can no longer afford to carry the burden of the forced on directives. We cannot increase our lines of credit because we do not have approved or guaranteed change orders. We are using our capital and are forced to borrow money to cover the cost of building your project.

We have issued Purchase orders for well over 1/2 million dollars for work that was not part of our original contract.

Every time we complain about this issue we are told that you will have a change order next week. This has been going on since December. When is it enough? Please forward change orders so that we can continue our work and not be concerned about getting paid.

To date we have the following non processed changes:

Addendum #4: \$519,754
Addendum #5: \$ 172,090
Bulletin #1: \$450,794
Bulletin # 2: \$66,968
Bulletin #4: \$1,946,443.59
Fire alarm equipment purchase \$22,500

Total of directives that have not been processed into change orders **\$3,178,549.59**

It is my understanding that the Port and Clark Construction solicit the use of small DBE/SCS contractors. I am hoping this is an over sight and it is not the intention of Clark construction to do financial damage to Sundancer Electric.

We have several pending areas of impact and delay:

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25500 74th Ave S Kent, WA 98032
Phone: 253-398-2999
Fax: 253-398-2997

1. Shift Differential cost. From beginning through April. **\$117,085.00**
2. RFI for concrete encased conduits that must shift to new panel locations in Addendum 4, it was not noted that these conduits were underground and could not be intercepted. New raceways will have to be installed as well as locating all of the loads. Assumed cost for locating and installing new conduits **\$60,000.00**
3. Office space rental for relocation. **\$5,000**
4. Added communication boxes not identified on contract drawings. **\$28,000**
5. Night Work inefficiencies. **\$140,000** Night work was excluded from our bid.
6. Not Issuing keys and access issues additional hours. **\$61,200**
7. Additional cost in Parking lot. Undefined at the moment,
8. Commissioning requirements not included with spec or bid. **\$35,000**
9. Misc changes or additional requirements by Pert. **\$100,000**
10. Manpower efficiency issues. **\$125,000**

Ron VanAllen

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Subject: FW: Small Business: Sundancer
From: "Graves, Ralph" <Graves.R@portseattle.org>
Date: 4/18/2017 5:11 PM
To: "Ralph B. Ibarra" <Ralph@MBEWorld.com>

EXHIBIT B

Ralph,

Here's an answer that our contractor provided to Mian, who continues to chase this as well.

Ralph

From: Lou Palandrani <lou.palandrani@clarkconstruction.com>
Sent: Tuesday, April 18, 2017 4:36 PM
To: Rice, Mian
Cc: Paustian, Ann; Jarvi, Valarie; Dysart, Michael; Brush, David - Contractor; Sheerer, Janet; Marivic Bamba Chennault <marivic.chennault@clarkconstruction.com> (marivic.chennault@clarkconstruction.com); Marshall Singh; Clark, Marguerite
Subject: Re: Small Business: Sundancer

Hi Mian,

I wanted to get back to you promptly on this issue, since Clark is actively working w/ MZT and Sundancer to ensure they are receiving due payments for work completed on the project and that includes any work associated with change order scope. To that end, we have initiated the following action:

- Clark has made a direct payment to Sundancer for premium time work requested on the project in an effort to support getting a faster payment to Sundancer (Sundancer is a sub to MZT)
- Clark is making payment to MZT and in turn we expect MZT is making payment to Sundancer as we get paid by the Port for approved invoices. We will follow up on this issue
- We have assigned a team, lead by one of our senior managers - Marshall Singh, to review and resolve the change proposal submitted by MZT/ Sundancer for change order work. We have recently received a revised proposal from MZT / Sundancer which is less than that originally submitted and it is a follow up to our initial change order resolution meeting.
- We are currently reviewing all payroll records submitted by MZT and Sundancer to ensure they are getting due payment for actual labor expended on the project.
- We plan to review w/ MZT and Sundancer all material purchases to make payment for legitimate material purchases related to the project
- Clark will be working w/ the Port over the next week to resolve change related work scope on the work that MZT and Sundancer has underway with the goal to be able to include an appropriate requisition for MZT / Sundancer in our April 2017 pay request to the Port.
- Both Clark and the Port will work to expedite any due payments to MZT and Sundancer.

Again, I wanted to quickly respond on the issue and let you know what efforts are already underway. We are focused on getting due payment to all our subcontractors, including Sundancer.

As discussed w/ you last week when you were at our office, feel free to call me at any time if you have any questions related to Clark Construction and the IAF project.

Thank you

Lou Palandrani LEED AP
Senior Vice President
Clark Construction Group- California LP
San Francisco CA 415-767-7000 / Irvine CA 714-429-9779
Mobile 510-715-6212
License No. 839892
www.clarkconstruction.com

On Tue, Apr 18, 2017 at 11:36 AM, Rice, Mian <Rice.M@portseattle.org> wrote:
 Hello All

What's the status regarding Sundancer Electrical Inc.? I just received a copy of a letter (dated 3/16/17) to MZT indicating Change Order concerns that equate up to \$3.1M. Has this issue been resolved? If not, what is the plan of action to resolve these C/O



EXHIBIT C

Electrical Contractors Seattle, WA
A Veteran, Native American,
DBE/MBE Owned Business

25500 74th Ave S Kent, WA 98032
Phone: 253-398-2999
Fax: 253-398-2997

Date: 5/8/2017

SER# 3025

TO: Macro-Z

PROJECT: International Arrival Facility- Early works

SUBJECT: Parking structure 3rd floor

ATTENTION: For two months now Sundancer electric has been asking about the design on the 3rd floor parking level. Not only is it incomplete and doesn't follow the ports standards for the amount of outlets and data drops, it is also too vague to attempt an install. Approximately 2 months ago Quintin Richardson began to pose the question of install in multiple emails. After no avail, I began to redesign the 3rd floor communication and power rout. I have spent 20 hours, Multiple meetings and 3 separate design draw ups.

This morning I received an e mail to proceed for surface mounting all conduit in the 3rd floor parking garage. Which has been in talks for about a week and a half prior too this. Jeff Clark said he would send me something in writing, which I asked about almost every day. Surface mounting this conduit brings up fastening and aesthetic issues. The problem with fastening is either using toggles or screws. The toggles are not approved in the port specs are not seismic and may not be the best bet for the 1/2" concrete ceiling. Screwing into the hat channel is impossible, due to the fact that it is poured in concrete. There is a second layer of hat channel that sits above the other hat channel, it is most likely too thin to attach to and is a 1/2 inch above the ceiling. In order to fasten the conduit rack securely to the ceiling every anchor point needs to have an approximate 4 inch hole. This will ruin the aesthetics of the ceiling and will possibly need a shroud afterward.

I am not satisfied that the port has accepted a surface mount install. I have seen no other conduit installed on the ceiling. Not to mention that the port has said the install has not been accepted by them. For me to install this conduit on the ceiling surface mount and go through the process of being blamed by the Port or Clark weighs heavily on my mind. This letter is my attempt to show that this may go awry and will possibly need to be redone. This has already caused schedule impacts, costs and is not Sundancer's fault. We have done our diligence to attempt to make this flow smoothly.

The e mail I received this morning states that this work needs to be completed by this coming Wednesday 5/10. The duration of work in this area does not change. No amount of man power, overtime or night work will get this done by Wednesday. This area is too small to throw all 15 of our guys at. Having two shifts in the same area is very counter productive. This work will take 2.5 weeks. Lets not forget that there are port rules that need to be followed one of which are waiting 7 days for outages and access.

There will be additional cost for 2 shifts round the clock with not guarantee that we will be able to meet the schedule put in front of this. The lack of planning and neglect to give notice is ridiculous considering this has been in the Clark Construction and the Ports hands for several weeks. We believe with the overtime and shift differential that the guys will not work with out and the improper shift notification means we will be paying double time, our extra anticipated cost could be approximately \$40,000 over our estimate. The work as defined is inefficient, we will have to mob in and out of every area. All CAFs will have to be requested again. We also had an agreement when we received your last payment that we could not continue on extended overtime.

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Electrical Contractors Seattle, WA
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Joshua Van Allen



SUNDANCER ELECTRIC INC.
Veteran Owned, Native American Business
25500 74th Ave S, Kent, WA 98032
Ph: 253-398-2999 Fx: 253-398-2997 Cell: 425-492-6633

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EXHIBIT D

From: Jim Mortensen [mailto:jmortensen@mztco.com]

Sent: Wednesday, August 02, 2017 1:28 PM

To: Erin Tasche <ErinT@abfabricators.com>; Ken Phillips <ken.phillips@apollomech.com>; Eric Duke <eduke@fenceitall.com>; Sean Morgan <smorgan@coscofire.com>; Ron Van Allen <ron@sundancerelectrical.com>; Josh <josh@sundancerelectrical.com>; Wendi Edwards <wendi@rubensteins.com>; S Paul Singh <paul@rubensteins.com>; Dow, Richard <Richard.Dow@sbdinc.com>; Ronald Robke <ronaldr@purcellpainting.com>; Chase Chandler <chase@trade-marx.com>; davep@purcellpainting.com; m@mlfoxconstruction.com; Steve Bell <SteveBell_DLH@msn.com>; Don Henriksen <don@dlhenriksen.com>; russ@applyaline.com; radams@cascadeconst.com; Brandon Zahnow <brandon@cascadeconst.com>; Mgrace@acousticaldesigninc.com; ajaillet@crjnw.com; sduvaras@isinstallations.com; esepolen@obuncoengineering.com; 'dcollazo@penhall.com' (dcollazo@penhall.com) <dcollazo@penhall.com>; Dave Spurgin (dave@mysignsource.com) <dave@mysignsource.com>; scott@sklandscapellc.com; steve.greiling@titanearth.com; kelly@trade-marx.com; mph@tucciandsons.com; smorris@wondoer.com

Cc: Jeremy Wastweet <jwastweet@mztco.com>; Dan Parks <dparks@mztco.com>; William Esparza <wesparza@mztco.com>; Greg Moore <gmoore@burconstruction.net>; Janise Lerum <jlerum@mztco.com>; Jeff Bowers <jbowers@mztco.com>; Darrell Johnson <djohnson@mztco.com>

Subject: SEATAC IAF - May Invoice

Importance: High

Team,

Clark Construction has paid our May invoice and after careful review we discovered that they had short paid the invoice based on their recent approval. Once we received notification of the payment our team began the process of determining what was billed versus what was paid only to discover in addition to the initial determination of reduced payment they did not pay any of the change order work.

So yesterday, MZT had a meeting with Clark Construction to discuss this additional short pay (over \$1.2 million) in change order work. Clark Construction indicated that they have not received approval from the Port of Seattle and were waiting for supported labor rates that they had requested from MZT in October 2016. We listened carefully to their discussion and why they were not going to pay the invoice only to hear again that the Port of Seattle was not proceeding because of missing or requested information that MZT hadn't provided.

So, this morning I spent over two (2) hours reviewing the requested labor rate requirements they rejected and asked to have resubmitted back in October 2016. Most of you will remember that you had to provide some additional information on your SUTA rates and some other minor issues. Well, after tracking down emails we found that MZT did not drop the ball as Clark kept accusing us of yesterday and in previous emails. MZT responded to the request and provided the requested information to Clark Construction for their submission to the Port of Seattle for review.

Here is where we stand as of today regarding payments. Clark Construction has paid us for base contract work only for our May invoice. This invoice was short roughly \$115,000 (on the base contract) which Clark indicated they are processing. The payment for change order work is on hold pending additional revisions to labor rates being requested by Clark Construction and the Port of Seattle. Their timeline on approval is roughly: if we get them the additional information by Friday, then it will take two (2) weeks for review, one (1) week for the Port of Seattle to award a change order, and then payment can be processed. Right now Clark is on a forty-five (45) day pay cycle with the Port of Seattle. We are currently on at least a sixty (60) day pay cycle with Clark Construction. Marshall Singh has indicated the best situation is award by the end of August which we interpret to mean payment possibly mid-September.

We are providing you the phone numbers of our Clark Construction Representatives for you to call and speak with them regarding delayed payments. This is out of our hands and although Clark Construction

states we dropped the ball, we have a paper trail showing we turned in the required documentation they requested and they dropped the ball by not working with the Port of Seattle to resolve this matter. We negotiated the change order and settled on an amount with Clark Construction on May 16, 2017. As we have been told multiple times with the Port of Seattle, we don't have a contract with them but with Clark Construction so they feel their hands are tied in this matter.

The following are the points of contact for this project:

Lou Palandrani, Project Director / Sr VP mobile (510) 715-6212

Marshall Singh, Project Director mobile (714) 448-6073

Jeff Clark, Senior Project Manager mobile (702) 303-8110

We are currently working on the base contract payment amounts and are trying to find out when the "short" pay will be resolved. We hope to have the amounts resolved by tomorrow so we can get checks processed. Please don't call the accounting department because right now it is in my hands to work out the payments based on the "approved" schedule of prices.

Please forward this email to whomever in your firm needs to receive it. I will do my best to get the payment schedule out by tomorrow so you are aware of what you are being paid for your May invoice.

Respectfully,

Jim Mortensen

Macro-Z-Technology

816 99th Street E.

Tacoma, WA

www.mztco.com

jmortensen@mztco.com

Ph. (253) 536-1100

Direct (253) 539-9757

FAX (253) 536-1121

Cell (253) 363-3087



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EXHIBIT E

25500 74th Ave S Kent, WA 98032
Phone: 253-398-2999
Fax: 253-398-2997

08/03/2017

Serial Letter #14

TO: Macro-Z Technology Company
Address: 841 East Washington Avenue, Santa Ana CA
PROJECT: International Arrival Facility Enabling Project - Early works
Project NO: 113458 Contract NO. 41554

SUBJECT: Sundancer Financing Fees/Interest
Notice of Impact and Claim

ATTENTION: Jim Mortensen

Dear Jim,

Sundancer Electric is in receipt of Macro-Z-Technology's email dated 08/02/2017. Sundancer Electric understands that its payment for May 2017 though currently due is being held up by forces beyond Sundancer's control and, according to MZT, specifically due to Clark's failure to timely and properly submit its payment applications. MZT expects the payment will likely be delayed until sometime in mid-September of 2017 or approximately 106 days from the invoicing date. Sundancer was provided with an accounting spreadsheet from MZT yesterday, indicating \$97,553.10 will be paid, leaving an additional \$397,446.90 remaining due and owing on the May invoice (provided Sundancer receives the \$97,553.10 payment).

In addition, Sundancer's June Invoice for \$430,000 is also due and owing, for a total outstanding amount of \$925,000—just under a million dollars. Further, Sundancer's July invoice seeks an additional \$80k, a reduced amount due to the direction that Sundancer may not bill for its directed change order work until those change orders are entered into the system. With Sundancer's additional changed and extra work, Sundancer's July invoice will exceed \$400,000. Ultimately, Sundancer is currently financing this work for MZT, Clark, and the Port, and is suffering extraordinary financial impacts and repercussions as a result of the magnitude of unpaid contract and extra work.

Sundancer is a small, disadvantaged business and is struggling to bear the financial burden MZT, Clark, and the Port are imposing. Sundancer has and will be forced to seek (for the second time) financial assistance from others to continue its performance on the job. As a result, Sundancer will incur financing fees, additional interest, and administrative costs, among others. In addition, MZT, Clark, and/or the Port are in violation of Washington's Prompt Payment Act and the contractual payment provisions.

MZT, Clark, and/or the Port are responsible for all damages Sundancer incurs. Therefore, this letter serves as Sundancer's Notice of Impact and Claim. Sundancer will be compiling all accounting fees and interest and will submit the final accounting when available.

Again, we are a private, small business that is unfairly supporting a public project with our own dollars. Please don't forget too that we are a tax paying entity in King County as well, and should not be placed in this corrosive atmosphere.

Please contact me with any questions or concerns that you may have.

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EXHIBIT F

MONTHLY AMOUNTS PAID TO ALL SUBCONTRACTOR PARTICIPANTS

This form is to be completed by the Prime and all Subcontractors that hire lower tier subs and suppliers.

Contractor (Prime/Subcontractor):				Street Address:			
City:		State:		Zip:		For the Month Of:	
Contract Number:				Work Project Number:			
Project Title:							
Prime Bid Price				Dollar Amount of the DBE Goal at Award			
Subcontractor Participant (Name And Address)	Date Paid	DBE, MBE WBE	Ethnic Code	Contract Type	Specification Section	Amount Paid This Month	Amount Paid To Date
<u>Ethnic Code</u> C = Caucasian B = Black H = Hispanic A = Asian American I = American Indian Alaskan Native O = Other				<u>Contract Type</u> S = Subcontractor M = Material Supplier JV = Joint Venture		Total DBE Participation Achieved To Date	
						Total MBE Participation Achieved To Date	
						Total WBE Participation Achieved To Date	
<u>Comments</u> CANCELLED CHECKS REQUIRED UPON REQUEST. <input type="checkbox"/> Attached <input type="checkbox"/> Not available this report <input type="checkbox"/> Checks Attached Are For Previous Reporting Period							
Signature				Title		Date	

**INSTRUCTIONS FOR COMPLETING THE MONTHLY AMOUNTS PAID TO ALL
SUBCONTRACTOR PARTICIPANTS FORM**

DUE MONTHLY AND AT END OF PROJECT

- A. Complete the form for each project, every month and at the end of the project. Each form should reflect payments made during the month and cumulative to date. At the end of the job, the form should reflect all payments made since the last form was submitted.
- B. The form is due in the Port's EEO office **on the 5th** of each month and at the end of the project. A company may be requested to submit forms for progress payments prior to the end of the quarter if there have been unusual circumstances. This would include: exceptionally large projects, companies or contractors having a poor record of EEO responsibility, refusal to submit timely reports, complaints, etc.
- C. The Contract Number is the number assigned to the contract by the Port of Seattle. (Example: MC-0310234)
- D. The Work Project Number is the specification number assigned to the project by the Port of Seattle at the time that bids are advertised.
- E. The Project Title is the job title from the specifications, contracts, etc.
- F. The Contract Bid Price is the total amount for which the contract was signed with the prime contractor.
- G. The DBE Award Amount is the total dollar amount of the subcontractors' bids.
- H. Please enter one of the following into the Ethnic Code column.
 - C – Caucasian
 - B – Black
 - H – Hispanic
 - A – Asian American
 - I – American Indian or Alaskan Native
 - O – Other
- I. Enter one of the following codes into the Contract Type column.
 - S – Subcontractor
 - M – Material Supplier
 - JV – Joint Venture
- J. The Amount Paid This Month is to be the actual dollar amount disbursed to each participant from the 1st day to the last day of the month. This figure does not include any monies owing or retained at the time the form is signed.
- K. The Amount Paid to Date is the actual cumulative dollar amount disbursed to each participant from the beginning of the project and includes the amounts paid during the reporting month.
- L. Forms should be completed in ink or typed. Forms completed in pencil will be returned to the contractor.
- M. All forms not properly completed will be returned to the contractor for correction.
- N. Progress payments may not be released if the form is not received by **the 5th of each month.**