

**Testimony of Ralph B. Ibarra, President – DiverseAmerica Network
Port of Seattle Commission Meeting: March 27, 2018**

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 alert the 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 the Design-Build Contract provisions within

ARTICLE G-08; subsection G-08.03 PROGRESS PAYMENTS:

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.

Today the Commission will learn details in the PROJECT UPDATE, BUDGET, and SECTIONS of Agenda Item No. 9a that should cause the Commissioners great concern and questions about Clark Construction's management of the IAF project. I first brought this situation to the Commission on August 15, 2017 and I am glad to report that Port Executives and the relevant staff have been actively engaged to resolve the difficult circumstances that Clark has caused for Sundancer. Thanks to Dave Soike, Ralph Graves, Glenn Fernandes, and Spencer Bright, some progress has been made. In addition, Sundancer has made significant good faith efforts to resolve all monies due it for work negotiated, awarded, and performed on the IAF project. Alas, Clark Construction continues to blame the Port for its inability to fulfill the terms of its contract with its prime subcontractor Macro-Z-Technology, of which Sundancer is a subcontractor.

ACTIONS REQUESTED

It is respectfully requested that actions be taken to compel Clark Construction to fulfill its contractual obligations to adhere to the Design-Build Contract provisions within **ARTICLE G-08; subsection G-08.03 PROGRESS PAYMENTS**, so that Sundancer can be paid the full past due amount of \$600,000; not including retainage. Through public records requests, I will be conducted an audit of all "Monthly Amounts Paid to All Subcontractor Participants" forms submitted to the Port by Clark as stipulated in **E ARTICLE G-08; subsection G-08.03 PROGRESS PAYMENTS DIVISION, Item E.**