



April 24, 2019

John Raaymakers, PE  
Public Works Project Manager  
Public Works  
Re: South De Anza Boulevard Medians-Phase 1 – Claim No. 1

Mr. Raaymakers

This letter is in response to the City of Cupertino's letter dated March 28<sup>th</sup>, 2019. Clean Cut Landscape Incorporated (CCLI) does not agree with the statements made and/or the attachments to the City of Cupertino's letter. CCLI is submitting Claim No 1 as attached to this letter.

CCLI has completed a Time Impact Analysis (TIA) using the acceptable P6 Primavera Software. The Contract ran for two hundred and seven (207) calendar days, of which seventy three (73) calendar days are original contract construction days. The amount of, one hundred and thirty four (134) calendar days are the days the contract was extended. Of the one hundred and thirty four (134) calendar days, thirty five (35) calendar days are non-compensable and are days that extra work was performed, holidays and weather days. Nineteen (19) calendar days are non-excusable and subject to liquidated damages. Eighty (80) calendar days are compensable days and subject to extended costs. A total of one hundred and sixteen (116) calendar days are excusable delay time extension. (See attachments)

CCLI encountered several City cause delays and disruptions including but not limited to; late and/or non-responsive change order requests, delays to material approvals, excessive extra work, unforeseen work, etc. these delays and disruptions were not caused by CCLI, but were caused by the actions and/or inactions of the City of Cupertino.

In regards to the Arbor Precast Concrete Columns specifically, CCLI is not in agreement with the City of Cupertino's deduction of 10% (\$3,873.60). John Cahalan (JCLA Architect) was informed by Dura Art specifically that the design is untenable prior to fabrication. By adding sharp 45 angles on all corners a condition was created in which the installation and functionality of the razor thin edges was untenable and impossible. Standard 90 degree corners are both the standard and recommended. The repairs are due to this specific design flaw as well as the obvious ongoing arbor modulation as evidenced in the recorded videos. Simply, the razor thin cementitious product is too thin to function. These repairs were completed by CCLI Employees with material approved



and supplied by the same fabricator, Dura Art. Dura Art shipped the same material as a Patch kit that was used in the initial fabrication of the Column Wraps. The City of Cupertino has not expressed to CCLI in any correspondence that the repairs made were unacceptable and/or given any reason that the repairs were unacceptable. Therefore the City of Cupertino's position to deduct 10% (\$3,873.60) has no merit.

In regards to the City of Cupertino's Eight (8) unilateral change orders, CCLI is not in agreement with all Eight (8) unilateral change orders. In all Eight (8) unilateral change orders the City of Cupertino has not included any days for the work stated on the unilateral change orders. Nor has the City of Cupertino calculated said unilateral change orders correctly. In the attached claim you will find CCLI's breakdown of each individual Request for Price Quotation, Extra Work Bill at Force Account and Increase/Decrease in Items per Contract Documents.

Upon reviewing the Time Impact Analysis as well as correction of the numerous flaws in the City of Cupertino's accounting of the issues at hand, CCLI will accept 19 days of liquidated damages at contract rate of \$1,500.00 per day *and no more*. The Contract Documents do not agree with the City of Cupertino's Change Order No. 8 "accounting of liquidated and actual damages". Per Contract Documents No. 6. *"Liquidated Damages, If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of \$1,500.00 per day for each day of unexcused delay in completion, and such liquidated damages may be deducted from City's payments due or to become due to Contractor under this Contract."* And Section 5.4 General Conditions *"Liquidated Damages. It is expressly understood that if Final Completion is not achieved within the Contract Time, City will suffer damages from the delay that are difficult to determine and accurately specify. Pursuant to Public Contract Code section 7203, if Contractor fails to achieve Final Completion within the Contract Time, City will charge Contractor the amount specified in the Contract for each day that Final Completion is delayed beyond the Contract Time, as liquidated damages and not as a penalty."* Based on these two (2) sections in the Contract Documents, the City of Cupertino is **not** entitled to additional "Actual Damages" above the stated Liquidated Damages in the Contract Documents of Fifteen Hundred Dollars per Day (\$1,500.00).

Furthermore, in attached Claim No. 1 you will find CCLI's breakdown for each of the individual costs for non-excusable days and compensable days per Contract Documents. Again, CCLI will take responsibility for Nineteen (19) Calendar Days of non-excusable days (Liquidated Damages) and no other erroneous and excessive fees the City of Cupertino is so ridiculously attempting to add to the Contract Documents.





Finally, you will see in the attached Claim No. 1 document "Summary Table" that the City of Cupertino owes Clean Cut Landscape Incorporated Six Hundred Forty Seven Thousand Seven Hundred Ninety One Dollars and Forty Three Cents (\$647,791.43). CCLI will be available to meet and discuss the information provided prior to taking legal actions against the City of Cupertino. There are a few options available however, if the City and its counsel is immovable and resolute, we can begin the legal process immediately for the sake of all involved. A simple immediate response to that effect will begin the process. If not, you now have 45 days to respond.

Sincerely,

Saul Rodriguez  
Project Manager

Cc: Karry Wendel, President

Attachments:

- Part 1 of 14. City of Cupertino's Letter Dated March 28, 2019
- Part 2 of 14. Claim No. 1 Cover Page
- Part 3 of 14. Summary Table
- Part 4 of 14. Contract Documents
- Part 5 of 14. Project Manual & Addendum
- Part 6 of 14. Extended Field Overhead & Home Office Overhead
- Part 7 of 14. Change Orders & Extra Work
- Part 8 of 14. Notice of Delays (NOD)
- Part 9 of 14. Delay Narratives
- Part 10 of 14. Emails
- Part 11 of 14. Timesheets & Daily Reports
- Part 12 of 14. Schedules & Delay Matrix
- Part 13 of 14. Receipts
- Part 14 of 14. Certified Payroll Records