

2024-08-20 CC AGENDA PACKET  
PUBLIC COMMUNICATION RELATED TO ITEM B8 - PW 23-08

**From:** John Paul Cosico <jcosico@feldmanandassoc.com>  
**Date:** August 19, 2024 at 5:53:49 PM PDT  
**To:** \*ALL CITY CLERKS <ALLCITYCLERKS@elsegundo.org>, "Rivera, Floriza" <frivera@elsegundo.org>  
**Cc:** jvazquez@hensleylawgroup.com, Mark Feldman <mfeldman@feldmanandassoc.com>, Dash Construction <info@dashconstructioncompany.com>  
**Subject: RE: Dash / City of El Segundo PW 23-08**

Good afternoon,

Please find attached a third letter regarding the above-referenced matter.

Best Regards,

John Paul Cosico, Esq.  
11030 Santa Monica Blvd., Suite 109  
Los Angeles, CA 90025  
(310) 312-5432 (telephone)  
(310) 312-5409 (fax)

\*\*\*\*\*  
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**From:** John Paul Cosico <jcosico@feldmanandassoc.com>  
**Sent:** Monday, August 19, 2024 3:38 PM  
**To:** 'ALLCITYCLERKS@elsegundo.org' <ALLCITYCLERKS@elsegundo.org>; 'Rivera, Floriza' <frivera@elsegundo.org>  
**Cc:** 'jvazquez@hensleylawgroup.com' <jvazquez@hensleylawgroup.com>; Mark Feldman <mfeldman@feldmanandassoc.com>; 'Dash Construction' <info@dashconstructioncompany.com>  
**Subject:** Dash / City of El Segundo PW 23-08

Good afternoon,

Please find attached another correspondence regarding the above-referenced matter.

Also, we request that this matter be taken off the agenda for the 8/20/24 meeting so that the parties can have more time to resolve this dispute. Kindly let us know if you are amendable to this request.

Best Regards,

John Paul Cosico, Esq.  
<image001.jpg>  
11030 Santa Monica Blvd., Suite 109  
Los Angeles, CA 90025  
(310) 312-5432 (telephone)  
(310) 312-5409 (fax)

\*\*\*\*\*  
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# FELDMAN & ASSOCIATES, INC.

ATTORNEYS AT LAW  
11030 SANTA MONICA BOULEVARD  
SUITE 109  
LOS ANGELES, CALIFORNIA 90025  
(310) 312-5401  
FACSIMILE (310) 312-5409

August 19, 2024

## VIA EMAIL

City of El Segundo Public Works Department  
Floriza Rivera  
Principal Engineer  
350 Main Street  
El Segundo, CA 90245  
[frivera@elsegundo.org](mailto:frivera@elsegundo.org)

Re: Dash Construction Company, Inc. / City of El Segundo  
Project: FY 24-25 Pavement Rehabilitation Project ("Project")  
Bid No.: PW 24-08  
Awarding Body: City of El Segundo ("City")

Dear Ms. Rivera:

As you know, this law firm represents Dash Construction Company, Inc. ("Dash").

### **I. LCR's Bid Is Non-Responsive Because It Does Not Conform with the City's Specifications**

Upon further review, Dash discovered another defect in LCR's bid. Page "I-C-9" titled "Proposal Guarantee Bond" states that "IN WITNESS WHEREOF the parties hereto have set their names, titles, hands, and *seals* this 2<sup>nd</sup> day of July 2024." (See Exhibit "A" to the August 8, 2024, Protest Letter). LCR submitted the Proposal Guarantee Bid Bond *without* LCR's seal. Therefore, LCR's bid is non-responsive and must be rejected as a matter of law.

### **II. The City Must Avoid the Appearance of Favoritism in the Bidding of this Project**

California law mandates that a public entity must competitively bid public works contracts and award the contract to the lowest responsible bidder that submits a responsive bid. *MCM Construction, Inc. v. City and County of San Francisco* (1998) 66 Cal.App.4th 359, 368. These requirements are strictly enforced to protect taxpayers by inviting competition, which helps "guard against favoritism, improvidence, extravagance, fraud and corruption," *Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal. 4th 161, 173. These public interests are what is important. *Ghilotti Construction Co. v. City of Richmond* (1996) 45

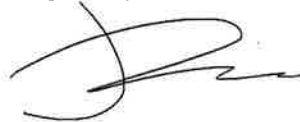
Cal.App.4th 897, 908-909. Plus, actual corruption is not required. Just the appearance of fraud, favoritism or corruption must be avoided in the public works bidding process. See *Konica Business Machines USA v. Regents of the University of California* (1988) 206 Cal.App.3d 449, 456.

In the past, the City of El Segundo (“City”) has exercised good judgment and displayed legal knowledge by rejecting bids that do not conform with the requirements of the City. In September 2022, Dash sent a letter to the City to protest the award of a pavement rehabilitation project to the lowest bidder, Hardy & Harper, due to its bid being nonresponsive. Per the bid documents in that project, it was required that Bid Item #1, which is for “Mobilization and Demobilization,” be limited to a maximum of 5% of the total bid amount. Hardy & Harper’s bid amount for this item exceeded the maximum amount. Due to this finding, the City awarded the project to the next lowest responsive and responsible bidder, Dash. Attached as **Exhibit “A”** is a copy of the City Council Agenda Statement dated September 20, 2022.

Here, LCR made multiple mistakes in filling out their bid. First, it failed to acknowledge Addendum No. 1, which the bid documents state that the bidder “**must** acknowledge” and that “[f]ailure to provide such acknowledgment **shall** render the proposal as non-responsive”. Second, LCR failed to add its seal to its Proposal Guarantee Bid Bond, which was another requirement.

Dash requests that the City be consistent with its decision making and reject bids that do not conform with the City’s bid requirements.

Very Truly Yours,



John Paul Cosico, Esq.  
for FELDMAN & ASSOCIATES, INC.

Cc: Client  
Mark A. Feldman, Esq.  
Joaquin Vazquez, Esq.

# **EXHIBIT A**

**TITLE:**

Pavement Rehabilitation Project Award

**RECOMMENDATION:**

1. Authorize the City Manager to execute a standard Public Works Contract with DASH Construction in the amount of \$997,777 for FY 22-23 Pavement Rehabilitation of East El Segundo Boulevard from Whiting Street to Illinois Street, Project No. PW 22-01, and authorize an additional \$117,523 for construction related contingencies.
2. Authorize the City Manager to execute a standard Professional Services Agreement with KOA Corporation in the amount of \$77,000 for construction inspection and testing services and authorize an additional \$7,700 for construction related contingencies.
3. Alternatively, discuss and take other action related to this item.

**FISCAL IMPACT:**

Included in Adopted FY 21-22 Budget and re-adopted for FY 22-23. The project cost is \$1,200,000 and is fully funded by the SB-1 Fund, Measure M Local Return Fund, and Measure R Local Return Fund.

Amount Budgeted: \$533,550.00

Additional Appropriation: \$666,450 to 127-400-0000-8382 (Measure M Expenditure)

Account Number(s): \$333,550 from 128-400-0000-8383 (SB 1 Expenditure)

\$200,000 from 110-400-8203-8943 (Measure R Local Streets)

\$666,450 from 127-400-0000-8382 (Measure M Expenditure)

**Pavement Rehabilitation Project Award**  
**September 20, 2022**  
**Page 2 of 3**

**BACKGROUND:**

On June 7, 2022, the City Council adopted the plans and specifications for the FY 2021-22 Pavement Rehabilitation Project and authorized staff to advertise this project for construction. The scope of construction includes grinding the top two inches of East El Segundo Boulevard from Whiting Street to Illinois Street, and overlaying it with asphalt.

It is to be noted that the average Pavement Condition Index (PCI) of this roadway is 66. This index number (from 100 to 0) indicates the quality of the pavement, with a perfect score being 100.

**DISCUSSION:**

City staff advertised the project, and the City Clerk received and opened the following five bids on July 19, 2022:

1. Hardy and Harper, Inc. (Lake Forest, CA)	\$961,000.00
2. DASH Construction (Woodland Hills, CA)	\$997,777.00
3. Sully-Miller Contracting (Brea, CA)	\$1,012,700.00
4. All American Asphalt (Corona, CA)	\$1,064,899.00
5. Palp, Inc. DBA Excel Paving Company (Long Beach, CA)	\$1,198,600.00

A protest against the lowest bidder, Hardy and Harper, Inc., was received on August 19, 2022. After reviewing the protest in coordination with the City Attorney's Office, staff reached the conclusion that Hardy and Harper's bid was nonresponsive. Per bid documents, it is required that Bid Item #1, which is for "Mobilization and Demobilization," be limited to a maximum of 5% of the total bid amount. The Hardy and Harper's bid amount for this item exceeded the maximum amount. The protest and response letters are attached.

Due to this finding, staff checked the references and license status of the next lowest responsive and responsible bidder, DASH Construction. Staff found their contractor license in good standing and the performance of their work to be satisfactory. DASH Construction has successfully completed similar projects for other public agencies.

KOA has provided inspection and testing services on resurfacing projects for the City over the past few years and staff finds them to be competent and professional, and their rates appropriate for the services to be provided.

With the Council's authorization, construction is anticipated to commence in October 2022 and is scheduled to be completed by December 2022.

**Pavement Rehabilitation Project Award**  
**September 20, 2022**  
**Page 3 of 3**

**CITY STRATEGIC PLAN COMPLIANCE:**

Goal 4: Develop and Maintain Quality Infrastructure and Technology

Objective 4A: El Segundo's physical infrastructure supports an inviting and safe community.

**PREPARED BY:**

James Rice, Associate Engineer

**REVIEWED BY:**

Elias Sassoon, Public Works Director

**APPROVED BY:**

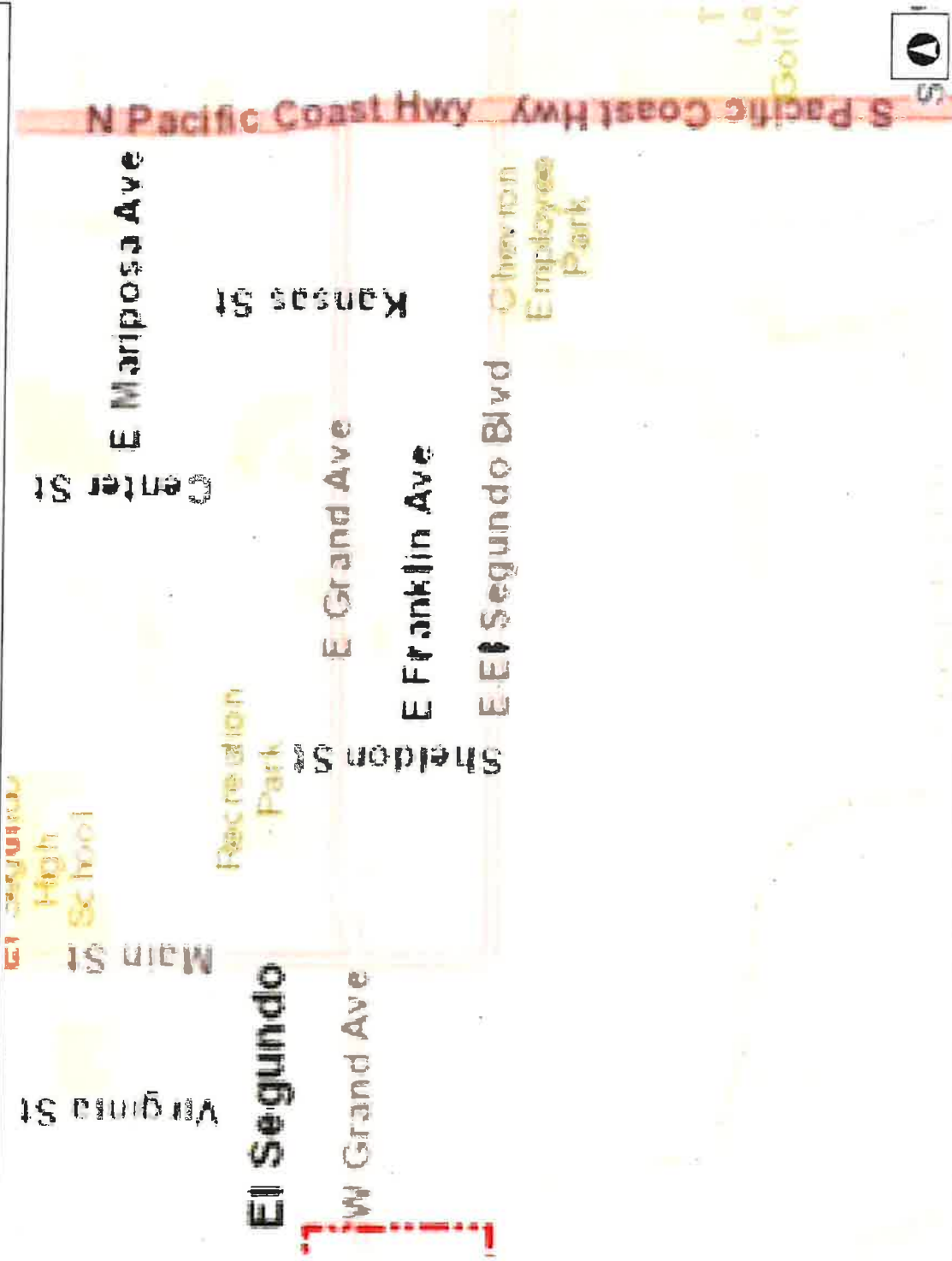
Barbara Voss, Deputy City Manager

**ATTACHED SUPPORTING DOCUMENTS:**

1. Location Map
2. Vicinity Map
3. Bid Protest City Response Letter
4. Bid Protest Letter

**Location Map  
PW 22-01 FY 21-22 Pavement Rehabilitation Project**

CITY OF  
EL SEGUNDO



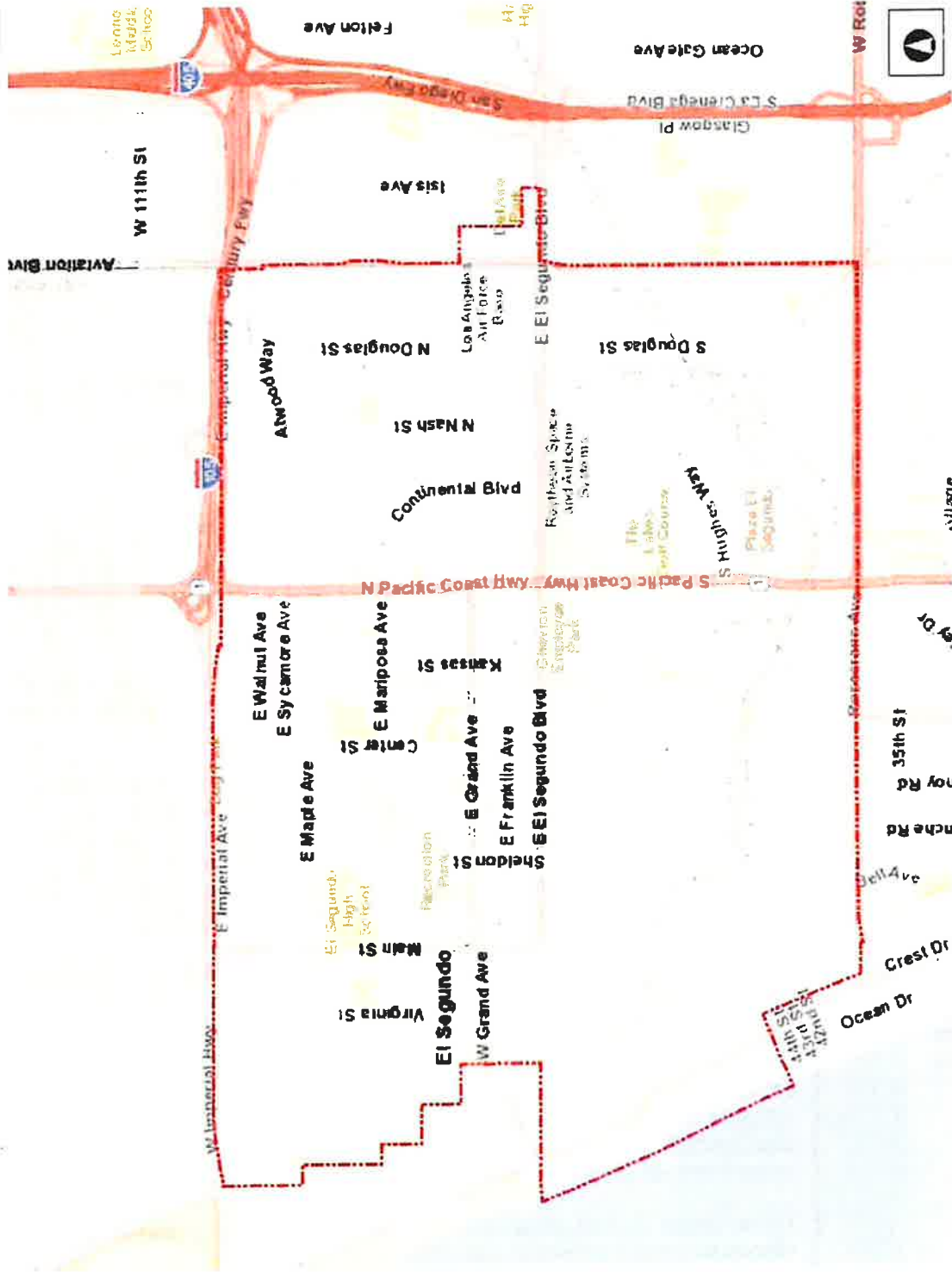
DISCLAIMER: The information shown on this map was compiled from different GIS sources. The land base and facility information on this map is for display purposes only and should not be relied upon without independent verification as to its accuracy. The City of El Segundo will not be held responsible for any claims, losses or damages resulting from the use of this map.

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# Vicinity Map PW 22-01 FY 21-22 Pavement Rehabilitation Project

City of  
EL SEGUNDO



DISCLAIMER: The information shown on this map was compiled from different GIS sources. The land base and facility information on this map is for display purposes only and should not be relied upon without independent verification as to its accuracy. The City of El Segundo will not be held responsible for any claims, losses or damages resulting from the use of this map.

WGS\_1984\_Web\_Mercator\_Auxiliary\_Sphere



September 12, 2022

City of El Segundo  
350 Main Street  
El Segundo, CA 90245  
310-524-2200

Hardy and Harper, Inc.  
Attn: Mike Amundson, Senior Estimator / Senior Project Manager  
32 Rancho Circle,  
Lake Forest, CA 92630  
Via Email to [mamundson@hardyandharper.com](mailto:mamundson@hardyandharper.com)

**Elected Officials:**

Drew Boyles,  
Mayor  
Chris Pimentel,  
Mayor Pro Tem  
Lance Giroux,  
Council Member  
Carol Pirsjuk,  
Council Member  
Scot Nicol,  
Council Member  
Tracy Weaver,  
City Clerk  
Matthew Robinson,  
City Treasurer

**Appointed Officials:**

Durrell George,  
City Manager  
Mark D. Hensley,  
City Attorney

**Department Directors:**

Barbara Voss,  
Deputy City Manager  
Joseph Lillia,  
Finance  
Deena Lee,  
Fire Chief  
Rebecca Redyk,  
Human Resources  
Aly Mancini,  
Recreation, Parks & Library  
Scott Kim,  
Acting Information Systems  
Michael Allen,  
Community Development  
Jaime Bernudez,  
Police Chief  
Elias Sassoon,  
Public Works

**Subject: Protest of Hardy and Harper, Inc.'s Bid by DASH Construction for PW 22-01 FY 21/22 Pavement Rehabilitation Project**

Dear Mr. Amundson,

The City of El Segundo ("City") received the attached bid protest from DASH Construction received on August 19, 2022 concerning Hardy and Harper, Inc.'s bid for the City's the FY 21/22 Pavement Rehabilitation Project (PW 22-01) ("Project"), which had a bid opening on July 19, 2022.

The bid protest specifically asserts "the apparent low bidder, Hardy and Harper, Inc. should be rejected on the following protest point . . . their Bid Item #1 is above the 5% maximum of the total bid amount, which is a requirement set forth in the bid documents."

A bid must conform to the material terms of the bid package and its responsiveness must be determined on the face of the bid. *Da Silva Gates Construction v. Department of Transportation* (2015) 242 Cal.App.4th 1409; *Great West Contractors, Inc. v. Irvine Unified School District* (2010) 187 Cal.App.4th 1425. Cities have discretion to determine responsiveness and may demand strict compliance with the bid specifications. *Taylor Bus Services Inc. v. San Diego Board of Education* (1987) 195 Cal.App.3d 1331, 1343.

Here, the City's bid documents (pages I-C-3 to I-C-4) required Bid Item #1 to be a maximum of 5% of the total bid amount. The Bid Item #1 amount of Hardy and Harper, Inc. did not meet this requirement because its total for this bid item was over 7% of its total bid. This nonconformance with the bid package is consequential because it not only affected the amount of the bid and affected the ability to make effective bid comparisons, but it also gave Hardy and Harper, Inc. an advantage over other bidders by affording it the possibility of avoiding its obligation to perform by withdrawing its bid without forfeiting its bid security under Public Contract Code § 5103. Accordingly, the bid of Hardy and Harper, Inc. did not conform to the material terms of the bid documents and is found to be nonresponsive.

For the reason set forth above staff will recommend the City Council award the Project contract to DASH Construction at its regular meeting on Tuesday, September 20, 2022. You may submit any materials concerning this bid protest and the issue of responsiveness on or before Thursday, September 15, 2022 to staff and address the City Council at its September 20, 2022 meeting.



Please contact James Rice at (310) 524-2316 or [jrice@elsegundo.org](mailto:jrice@elsegundo.org) for questions or additional information regarding the Project. We thank you for your interest in the Project and hope that you will continue to monitor the City's website for future contracting opportunities.

Sincerely,

A handwritten signature in black ink, appearing to read "James Rice".

James Rice  
Associate Engineer

CC:  
Elias Sassoon, Public Works Director  
Lifan Xu, City Engineer  
Joaquin Vazquez, Deputy City Attorney

## BID PROTEST

**District Representative:**

James Rice, Project Manager  
350 Main Street  
El Segundo, CA 90245

Project:

FY 21/22 Pavement Rehabilitation Project No.: PW 22-01

RE: Bid Protest (DASH Construction Company Inc. Bid Protest of Hardy & Harper, Inc.

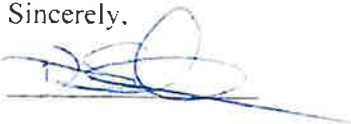
**Dear Mr. Rice,**

Many thanks to the City Clerk for sending us a copy of the bid proposal from Hardy & Harper, Inc., the apparent lowest bidder, for the above referenced project. After careful analysis, we would like to bring a discrepancy in Hardy & Harper, Inc.'s bid proposal to your immediate attention. Specifically, with respect to bid document Item No.1, page: I-C-3, BID SCHEDULE (Attachment A):

Item No. Description: Mobilization/Demobilization, including traffic control: (**maximum 5% of total bid**). Further, Hardy & Harper, Inc.'s total bid for the items 1 through 10 is \$ 961,000.00, of which 5% of the total would be: **\$ 48,050.00**. As you can see the item No. 1 on the bid schedule of, however, Hardy & Harper Inc.'s total for this item is **\$73,615.00** which **is 7.6%** of their total bid. This is a material and economically significant discrepancy and deviation from the requirements listed in the bid documents.

As a representative of DASH Construction Company, Inc. I wish to request a prompt and detailed review of our protest and dispute with respect to Hardy & Harper Inc.'s bid proposal. This bid protest in no way is intended to undermine the good faith effort or reputation of our competitors or clients. However, rules are there for a reason and we have on numerous occasions lost projects because we came in as winning bidder but had committed foot faults that resulted in discrepancies and deviations from the requirement of those projects, and we ultimately had to lose out on the project. As such, we request a fair and equitable review and determination with request to our bid protest and complaint. Many thanks.

Sincerely,



Dariush Shahnavaaz  
President

8/19/2022

Date:

This original letter will be sent by certified mail

**BID SCHEDULE**

**FY 21/22 PAVEMENT REHABILITATION PROJECT  
PROJECT NO.: PW 22-01**

Company Name: Hardy & Harper, Inc.

**BASE BID ITEMS**

ITEM NO.	DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE (IN FIGURES) DOLLARS/CENTS	ITEM TOTAL (IN FIGURES) DOLLARS/CENTS
1	Mobilization/ Demobilization including traffic control (maximum 5% of total bid)	LS	1	\$ 73,615.00	\$ 73,615.00
2	Grind asphalt 2"	SF	350,000	\$0.35	\$ 122,500.00
3	Overlay 2"	SF	350,000	\$1.22	\$ 427,000.00
4	Adjust sewer and storm drain manholes to final grade	EA	60	\$1,000.00	\$ 60,000.00
5	Adjust valve covers to final grade	EA	80	\$1,000.00	\$ 80,000.00
6	Remove and replace all traffic striping, pavement markings, and pavement markers	LS	1	\$ 48,000.00	\$ 48,000.00
7	Install inductive loop conductor and appurtenances at Illinois Street/El Segundo Boulevard intersection	EA	1	\$ 2,675.00	\$ 2,675.00
8	Remove and replace existing ADA ramps and adjacent sidewalk that do not comply with current ADA standards at Concord Street/El Segundo Boulevard intersection	EA	3	\$ 17,120.00	\$ 51,360.00
9	Asphalt full depth removal and replacement	SF	10,000	\$ 9.25	\$ 92,500.00

10	Remove and replace raised asphalt rumble strips to match existing. Strips to be 4" wide and 9' long spaced 3' O.C. with 1/4" thickness from top of finished grade of asphalt. Located west of Virginia Street/El Segundo Boulevard intersection.	EA	10	\$335.00	\$3,350.00
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TOTAL BID FOR ITEMS 1-10 IN FIGURES =

\$ 961,000.00

TOTAL BID WRITTEN IN WORDS:

Nine Hundred Sixty One Thousand Dollars  
And Zero Cents