Attachment D
Vandert Construction Bid Protest Response Letter

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June 29, 2026

City of Newport Beach
100 Civic Center Drive
Newport Beach, California 92660
Attention: Kyle Aube

Re: Response to Bid Protest #2 — Trash Enclosure Modifications
Contract No. C-10030-1 | Project No. 27F13

Dear Mr. Aube:

Vandert Construction, Inc. ("Vandert"), the apparent low bidder on the above-referenced project, submits this response to the bid protest filed by Golden Coast Construction ("Golden Coast"). For the reasons set forth below, the protest is without merit, and Vandert respectfully requests that the City deny the protest and proceed with award to Vandert as the lowest responsive and responsible bidder.

I. Any Deficiency in the Principal Notary Acknowledgment Is a Minor Irregularity the City Has Discretion to Waive.

Golden Coast's first argument is that Vandert failed to attach a notary acknowledgment for the Principal, Karen Garcia Man, directly to the Bidder's Bond. Even assuming, for the sake of argument, that the acknowledgment was not affixed to the bond form itself, this does not render Vandert's bid non-responsive. At most, it constitutes a minor irregularity that the City has full discretion to waive.

Under California public contract law, a public agency may waive minor irregularities or informalities in a bid that do not affect the amount of the bid, do not give the bidder a competitive advantage, and do not implicate the public interest. (See Public Contract Code § 100; Domar Electric, Inc. v. City of Los Angeles (1994) 9 Cal.4th 161.) The question is not whether a technical deficiency exists, but whether it is material — that is, whether it goes to the substance of the bid security and whether waiving it would be unfair to other bidders.

Here, any deficiency in the attachment of the principal acknowledgment is not material for the following reasons:

First, the bid bond itself is fully executed. Karen Garcia Man signed the Bidder's Bond as President of Vandert Construction, Inc. The bond is legally binding on Vandert. The surety, Merchants National Indemnity Company, is separately and independently bound by its own executed bond and Power of Attorney. The enforceability of the bid security is not in question.

Second, the identity and authority of Karen Garcia Man was verified by a California notary public. A notarization for Karen Garcia Man, executed by Notary Public Leola Lara (Commission No. 2529227, Los Angeles County, State of California) on June 17, 2026, was included in Vandert's bid submittal package. The purpose of the notarization requirement — to verify the identity and signing authority of the Principal — was therefore substantially satisfied. No question exists as to who signed the bond or in what capacity.

Third, no competitive advantage was gained. The notarization requirement does not affect the bid amount, the bid security amount, or any material term of the bid. Every bidder on this project submitted a bid bond for 10% of their bid amount. Vandert's bond obligation is identical in substance to any other bidder's. Waiving a technical attachment deficiency gives Vandert no pricing advantage, no reduced security exposure, and no benefit unavailable to any other bidder.

Fourth, the bid security is enforceable against both the Principal and the Surety. Even without a notarized acknowledgment, a signed bid bond is enforceable as a contract. California courts have consistently held that notarization defects do not automatically void an otherwise executed instrument where the signatory's identity and authority are not in genuine dispute. (See Civil Code § 1189.) There is no risk to the City that Vandert could walk away from its bond obligation.

For these reasons, any technical deficiency in the attachment of the principal acknowledgment to the bond form is a minor, waivable irregularity. It does not affect the enforceability of the bid security, it does not give Vandert any competitive advantage, and rejecting Vandert's bid on this basis would elevate form over substance in a manner contrary to the public interest in competitive bidding.

II. The One-Day Variance Between the Surety's Notarization Date and the Bond Execution Date Is Not a Material Defect.

Golden Coast's second argument is that the Surety's notarization — dated June 17, 2026 — is fatally defective because the bond face recites an execution date of June 18, 2026. This argument misunderstands both the function of a notary acknowledgment and the practical realities of surety bond execution.

A notary acknowledgment does not certify the execution date of the underlying document. The acknowledgment form itself states expressly: "A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document." The June 17 notarization for Jason Rouse, Attorney-in-Fact for Merchants National Indemnity Company, certified his identity and his authority to act on behalf of the Surety — nothing more. It did not and could not certify the bond's execution date.

A one-day variance of this nature is routine in remote notarization workflows, where the Attorney-in-Fact signs and is notarized electronically before the bond form is finalized with its recital date. The Power of Attorney was certified by the Secretary of Merchants Bonding Company on June 18, 2026 — the same date as the bond — confirming the Surety's full authorization on that date. The bond package as a whole is internally consistent and legally sound.

Moreover, accepting Golden Coast's argument would lead to an absurd result. If a one-day variance between a notarization date and a bond execution date were a material defect requiring rejection, virtually every surety bond executed through remote online notarization would be vulnerable to protest. Public agencies across California routinely accept bonds with this type of minor date variance as non-material. There is no authority — and Golden Coast cites none — holding that such a variance constitutes a material defect requiring rejection.

At most, the one-day variance is a minor irregularity the City has discretion to waive. It does not affect the enforceability of the bond, did not give Vandert any competitive advantage, and provides no valid basis for rejection.

Conclusion

Golden Coast's protest rests on technical arguments that, even taken at face value, amount to minor irregularities the City has full discretion to waive. The bid bond is fully executed and enforceable. The Principal's identity was verified by a California notary public. The Surety is independently bound. The one-day date variance is a non-material artifact of remote notarization practice. Neither ground supports a finding of non-responsiveness.

Vandert respectfully requests that the City deny the protest of Golden Coast Construction and proceed with award of Contract No. C-10030-1 to Vandert Construction, Inc. as the lowest responsive and responsible bidder.

Respectfully submitted,

VANDERT CONSTRUCTION, INC.

Kenneth Nguyen

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