



PUBLIC WORKS

CITY OF  
**PALO  
ALTO**

PO Box 10250  
Palo Alto, CA 94303  
650.329.2151

November 7, 2013

Mr. Tom Maxwell  
President and CEO  
Flintco Pacific, Inc.  
401 Derek Place  
Roseville, CA 95678

**VIA CERTIFIED MAIL AND ELECTRONIC MAIL**

Re: Mitchell Park Library and Community Center Project, Palo Alto  
Palo Alto Contract No. C11136473

**NOTICE TO CORRECT DEFECTIVE WORK AND CLARIFY CORPORATE STATUS**

Dear <sup>Tom</sup> Mr. Maxwell:

The City has observed a decided decrease in the pace of work at the Mitchell Park Library. Defective work is not being corrected. Progress toward completion is unsatisfactory. Flintco does not appear to be taking the steps needed to obtain a Temporary Certificate of Occupancy for the Library and Community Center. This is needed to allow staff to occupy the buildings prior to opening the buildings to the public as expected early next year.

There are several substantial problems at the site. Testing of the Fire Alarm System has now failed three times. We understand that the fans installed underneath the floors were put at the wrong settings, and that the floors have to be taken up to correct the error before HVAC balancing can be completed. There are also two roof leaks that have been identified, but have not been corrected. There is no excuse for Flintco's lack of effort to correct these problems. Flintco's current level of effort is unacceptable.

In addition, it recently came to the City's attention that Flintco appears to be transitioning to a new entity called "Flint Builders, Inc." It appears that this is something that Flintco has been working on for some time, yet the City has never been notified.

The City needs Flintco to devote the necessary personnel to complete the project, and explain Flintco's intentions concerning this new entity.

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## 1. Notice of Defective Work and Timetable for Correction

We have been advised that the average subcontractor trade labor on site has dropped to approximately 15 to 16 workers per day. Flintco's average manpower is approximately 4 to 5 workers on the site. Many of these workers do not work for an entire shift. There has been little effort to address the large number of defective work issues that have been identified.

In light of all of the problems Flintco has had with retaining subcontractors and getting them on site to work, combined with how far behind Flintco is with its completion of the Project, this level of staffing will not result in substantial completion of the Library Building (Building A) by the most recent date promised by Flintco of November 27, 2013.

In our recent meetings, Flintco promised that completion of the Library Building would reach the point of having a Certificate of Temporary Occupancy in a few weeks. In light of the large number of significant corrective work items, many of which have a life/safety component, it does not appear that Flintco will reach this milestone when promised.

Representatives of the City have come and inspected the progress of work. There are many areas that Flintco and its subcontractors could be working on, but Flintco appears either unable or unwilling to commit an adequate amount of personnel to complete the Project any time soon.

On May 2, 2013, June 17, 2013, and July 12, 2013, City expressed similar concerns about Flintco's lack of adequate personnel and meager efforts toward reaching completion. In response to these notices, Flintco acknowledged it was having problems keeping the Project staffed, and undertook efforts to increase staffing. Those personnel gains now appear to have been lost. Some of the items referenced in the City's earlier notifications remain unresolved. There is no apparent reason for Flintco reducing the number of personnel working on the Project.

As a consequence, please be advised that, pursuant to section 12.2.2 and 12.2.3 of the Contract's General Conditions, this correspondence constitutes formal notification of defective work in need of correction, and the establishment of time frames for action. If these actions are not taken and deadlines met, the City anticipates issuing a Default Notice pursuant to section 15.2 of the Contract.

The City was expecting completion of work activities enough to gain Temporary Certificate of Occupancy for the Library Building by November 27, 2013. Items necessary to be completed for this Temporary Certificate of Occupancy have been discussed for many weeks during the Owner Architect & Contractor weekly meetings. There are specific items that must be completed for a Temporary Certificate of Occupancy to be issued.

The work in need of immediate correction for Temporary Occupancy of the Library Building is listed below.

1) Testing and Balancing (TAB) – In order for the heating and air conditioning systems to pass inspection, they need to be tested and balanced. Testing and balancing activities have been at a

halt awaiting completion of other construction work. This is a critical item, and there is no good reason for Flintco not to complete this work promptly. Final testing and balancing must be complete by November 15, 2013.

2) Waterproofing of Building "A" Shower Rooms – The shower stall in Room A132 was built incorrectly. The shower stall must meet the Americans with Disabilities Act's ("ADA") clearance requirements in order to pass inspection. Correction of the tile work to provide adequate clearance must be completed no later than November 18, 2013.

3) Fire Rated Doors – Fire rated doors must be functional, complete with all hardware and operational by November 12, 2013.

4) Fire Alarm Systems – The fire alarm system has failed inspection three times. The fire system still lacks the required duct smoke detectors. The entire system must be operational and must pass inspection by November 12, 2013.

5) Fire Sprinklers – We understand that the Fire Sprinkler system is now complete. The Fire Sprinkler system must pass inspection by November 12, 2013.

6) Fire Extinguisher Cabinets (FECs) – Some of the required fire extinguisher cabinets have not been installed. All fire extinguisher cabinets must be installed in order to pass inspection. This work must be complete by November 8, 2013.

7) ADA slope repairs – Pavement slope must be corrected to meet the slope required by the ADA. This work must be complete by November 8, 2013.

8) Restroom Accessories/ ADA Sink Clearances – The troughs in the sinks and the locations of faucets must be corrected to meet ADA clearance requirements. There are restroom accessories that have not been installed. The restrooms must be completed in order to pass final inspection. All of this work must be completed by November 12, 2013.

9) Overflow drains – The overflow drains were not installed correctly. Flintco needs to fix the overflow drains by no later than November 12, 2013.

10) Water Leaks – A rain storm in September 2013 revealed two water leaks. Flintco has not investigated the leak at the north east corner of the Library (Building A) or the south west corner of the Multi-Purpose Room in the Community Center (Building C). Investigation and any required repair work must be completed by November 25, 2013.

11) Pavers – The exterior pavers in many areas have been set incorrectly, and present a tripping hazard. Broken pavers throughout the site must be replaced. The City cannot permit public access to the Library while these conditions exist. This work and permanent lock seal must be complete by November 25, 2013.

12) Stairways – Stairways throughout the Library are incomplete. Stairway #1 must be completed to meet code. Stairway #2 handrails and guardrails must be replaced to meet code. This work must be complete by November 25, 2013.

13) Lighting – Lighting has not been completed in numerous areas of the Library. Some electrical lighting fixtures are not working. Flintco must complete all lighting and ensure Title 24 compliance by November 13, 2013.

14) Final Inspections - The work must be complete for final inspection. Flintco is required to call for final inspection by no later than November 25, 2013.

Meeting all of the above requirements and time frames is necessary to avoid having a Notice of Default issued to Flintco and its surety. In addition the City will need a firm commitment from Flintco to have Temporary Occupancy of the Community Center Buildings (Buildings B and C) by the end of 2013. Continued lack of diligence on Flintco's part is likely to result in termination of the Contract.


The deadlines set forth in this letter are not to be considered time extensions or changes in the contract completion deadlines. The City continues its accounting of liquidated damages for late completion, and reserves all rights under its contract as being in full force and effect.

## **2. Flintco Pacific, Inc.'s Apparent Transition to Flint Builders**

The City observes that employees of Flintco Pacific are identifying themselves as employees of Flint Builders. Flint Builder's website states that in 2013, "the Flint family transferred control of the Pacific Division to John Stump, establishing Flint Builders, Inc." The website also claims that Mr. Stump is the President of Flint Builders, Inc. The physical address listed on the website is the same as the one employed by Flintco Pacific, Inc.

When the City previously raised questions about the sale of Flintco to Alberici Constructors, Inc., Flintco advised the City that it transferred its California operations to Flintco Pacific, Inc. There was no disclosure at that time, or subsequently, that Flint Builders, Inc. took over control of Flintco Pacific, Inc. The City was not notified of Flintco's desire to set up a new company. Please note that any assignment of the Mitchell Park contract is subject to City approval under Section 12 of the Contract. The City formally requests confirmation of the ownership and asset structure of the company with whom the City is doing business. Please provide this information by no later than November 15, 2013.

Sincerely,

  
J. Michael Sartor,  
Director, Public Works  
City of Palo Alto

cc:

John Stump, Senior Vice President of Flintco Pacific

Mark D. Wood, Fidelity and Deposit Company of Maryland, Bond Number  
PRF08975391/82198910

Alex Dam, Federal Insurance Company, Bond Number PRF08975391/82198910

Jim Hamel, Zurich American Insurance Company

Tom Tripp, Turner Construction

James Keene, City Manager, City of Palo Alto

Phil Bobel, Assistant Director, Public Works, City of Palo Alto

Molly S. Stump, City Attorney, City of Palo Alto