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October 27, 2014

Bryan B. Chambers  
Deputy Gila County Attorney/Civil Bureau Chief  
1400 East Ash Street  
Globe, AZ 85501

**Re: Carson Construction, Inc. Notice of Claim to Gila County regarding the Pine Creek Canyon Road Construction Project**

Dear Bryan:

This letter responds to your e-mail of October 15, 2014, regarding the timeliness of Carson's claim against Gila County. First, Carson disagrees with your contention that Carson's claim accrued on January 4, 2013. While Carson was able to quantify some of its damages at that point, that letter did not signify accrual of Carson's claim. Rather, Carson's claim accrued in August 2014 when the parties reached a stalemate on the voluntary exchange of information relative to Carson's request for an equitable adjustment of the contract. On August 26, 2014, Carson informed the Gila County Public Works Department that if it did not provide certain requested information by August 29, 2014, Carson would deem the parties' negotiations over and would proceed to take actions to enforce its rights. At the earliest, the claim accrued on August 26, 2014.

Even assuming that Carson's claim accrued on January 4, 2013, Carson's Notice of Claim is still timely. Because a Notice of Claim and Statute of limitations defenses are procedural, they are "subject to waiver, estoppel, and equitable tolling." *See, Pritchard v. State*, 163 Ariz. 427, 432, 788 P.2d 1178, 1183 (1990). Waiver, Estoppel and Equitable Tolling would all apply to the facts of this case.

Waiver may be found when a governmental entity has taken substantial action to litigate the merits of the claim that would not have been necessary had the entity promptly raised the defense. *Jones v. Cochise County*, 218 Ariz. 372, 379-80, 187 P.3d 97, 104-05 (App. 2008). Here, the Public Works' Department's actions constitute a waiver of any statute of limitations defense to Carson's claim. Assuming *arguendo* that the claim accrued on January 4, 2013, Carson would have had to have timely sued the County on or before July 3, 2013. However, both before and after July 3, 2013, the Public Works Department engaged in settlement negotiations, conducted meetings with Carson, and exchanged with and requested additional information from Carson relative to its ongoing investigation of Carson's request for additional

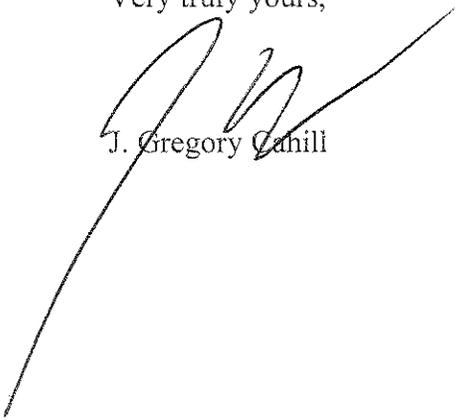
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compensation. Settlement negotiations alone are insufficient to establish waiver without further investigation into the claim or some offer to settle. *Id.* By requesting additional information and further investigating the claim after July 3, 2013, the Public Works' Department acted inconsistently with any contention that the claim accrued on January 4, 2013.

Equitable estoppel may be found to apply against a governmental entity where the government engaged in affirmative conduct inconsistent with a position it later adopted that is adverse to the claimant, the claimants actually and reasonably relied on the government's prior conduct, the government's repudiation of its prior conduct caused the claimant to suffer a substantial detriment, and applying estoppel against the government would neither unduly damage the public interest nor substantially and adversely affect the exercise of governmental powers. *Valencia Energy Co. v. Ariz. Dep't of Revenue*, 191 Ariz. 565, 576-78, 959 P.2d 1256, 1267-69 (1998). The same facts addressed above would establish that the County would be equitably estopped from asserting the statute of limitations defense to Carson's claim. Carson continued to provide information and engage in discussions with the Public Works Department in reliance of the Public Works Department's continued investigation of Carson's claim.

Whether the claim accrued on August 26, 2014 or January 4, 2013, Carson's Notice of Claim is timely and Carson intends on proceeding. Please let us know if further information is needed.

Very truly yours,



J. Gregory Cahill

JGC:tlf

cc: Carson Construction

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