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Agenda Items: ID#20-001047 (1-S)

Date: 8/20/2020

FRESNO CITY COUNCIL



Additional Information

Agenda Related Item(s) – ID#20-001047 (1-S)

Item(s)

Actions pertaining to Animal Control Facility Project: (Council District 4):

1. Approve Consent to Assignment, for a Business Alliance between Northstar General Inc., and Quiring General, LLC., allowing Quiring to Act as General Contractor and provide bonds for the project
2. Approve Side Agreement with Quiring General, LLC.

Contents: Signed Agreement

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

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BUSINESS ALLIANCE AGREEMENT

This Business Alliance Agreement (“BAA”) is made as of Aug 17th, 2020 by and between Northstar General, Inc., a California corporation (“Northstar”) and Quiring General, LLC, a California limited liability company (“QG”) on the basis of the following facts and understandings:

RECITALS:

- A. WHEREAS, Northstar has a contract (the “Contract”) for construction of an animal shelter facility (the “Project”) with the City of Fresno (the “City”) which requires them to provide certain bonds (the “Bonds”); and
- B. WHEREAS, Northstar has been unable to secure the required Bonds; and
- C. WHEREAS, QG is familiar with the Project and its basic design, is willing to assist Northstar with the Project, and has available staff to perform the work; and
- D. WHEREAS, QG is willing to provide the Bonds, provided they are assigned the Project as its licensed general contractor; and
- E. WHEREAS, QG is willing to accept the assignment of the Contract if the City is willing to authorize its assignment to QG as provided below.

AGREEMENT:

NOW, THEREFORE, Northstar and QG hereby agree to enter into this Business Alliance Agreement as follows:

1. **Assignment to QG.** Northstar hereby assigns the Contract to QG, provided the City is willing to authorize the assignment to QG, and QG is able to confirm in its sole discretion the adequacy of the Project budget and other Project requirements after final subcontractor bidding. QG may also decline the assignment if the budget schedule plans are determined to be inadequate by QG in its sole discretion.
2. **Services of the Parties.** Northstar, and specifically Tim Simons (“Simons”), will remain involved in the Project to assist in the transition of the Project to QG and to provide project management by Simons as reasonably required by QG. Northstar and Simons will act in the best interest of the Project and will assist QG by providing historical information and input throughout the duration of the Project. Items provided by Northstar to QG include, but are not limited to, the following: all Project information related to the Project’s history and development; all pricing information, including any budgets, bids, quotes, or other pricing information developed by subcontractors, suppliers, consultants, or Northstar; all information pertaining to any and all commitments, agreements, and contracts already in place or pending; and input on Project logistics, sequencing and schedule. Northstar will provide preconstruction services, submit and manage the plans through the permitting process. Further, Northstar will remain involved in the execution of the Project and will be part of the Project’s management team and supply project management consulting as may be necessary and mutually agreed. QG will be assigned all rights and obligations of the Contract to serve as general

contractor for the Project. QG will provide personnel and services for preconstruction as may be needed, construction and delivery of the Project. QG will provide all bonding and insurance for the Project as required under the Contract and will be reimbursed for such costs as provided under the Contract. QG will provide accounting and administrative services for the Project. Payment for work of the Project shall be made directly to QG as a consequence of the assignment.

3. **Allocation of Fees Under Contract.** Any fees available to the general contractor as a result of the Project (the “Fees”) shall be equitably divided between Northstar and QG as mutually agreed.

4. **Relationship.** Each party agrees to devote such time, services and personnel as may be required for the timely, economical and efficient completion of the Project; provided, however, that neither QG nor Northstar shall be required to hire personnel or subcontractors to provide work or construction-related services to the Project unless otherwise specifically agreed to in writing. The parties agree that their relationship under this BAA is limited only to the Project and is not intended to create or otherwise recognize any agency, partnership or business organization other than the alliance to fulfill the obligations of the general contractor under the Contract. No party has the authority or right to bind the other party to any financial or contractual obligation not contemplated under the Contract or to represent or make any claim of any relationship beyond the terms of this BAA. No party shall have any fiduciary or other obligation to present or offer to the other any other business opportunity other than the Project and each party is at liberty to enter into additional construction contracts or agreements with the City or any other party without obligation to the other party.

5. **Limits of Liability.** Except as otherwise provided for herein, no party will be liable to the other party for any indirect, special, incidental or consequential damages, such as loss of revenue, cost of capital, loss of business reputation or opportunity, or loss of anticipated profits due to the other party's acts or omissions in performing this BAA.

6. **Term of BAA.** Subject to Paragraph 1, this BAA shall remain in full force and effect throughout the term of the Contract, including any warranty periods applicable to the Project. In the event either party defaults under this BAA, including without limitation, the failure of such party to provide services or personnel required of it under this BAA, the non-defaulting party may elect to perform such services on behalf of the defaulting party and deduct all costs associated with such matters from the defaulting party's entitlement to payment, if any. Without limiting the foregoing, in the event of a default by either party, the non-defaulting party shall have all rights and remedies available to it under law and equity.

7. **Indemnity.** Each party (each, an “Indemnifying Party”) will defend, indemnify and hold the other party free and harmless of all claims, demands, actions, losses or liability resulting from or relating to a breach or default by the Indemnifying Party under this BAA or the Contract.

8. **Attorney's Fees.** In the event legal action is instituted by any party to enforce the terms of this BAA or which arises out of the execution of this BAA, the prevailing party in such legal action will be entitled to receive from the other party the prevailing party's reasonable attorneys' fees and court costs, including the costs of appeal as may be determined by the court in which the action is brought.

9. **Confidentiality.** During the term of this BAA, the parties may exchange proprietary or other confidential information. The following information will be considered proprietary or confidential: (i) information furnished in writing and clearly marked or designated as proprietary or confidential; or (ii) information whose proprietary or confidential nature is apparent from the context of the disclosure or nature of the information disclosed, including but not limited to financial information, pricing and estimating information, proposal costs, proposal information, written policies and procedures, contract forms, and training programs and manuals. Confidential information received by one party from the other will not be disclosed, released, discussed, furnished, transferred or otherwise made known to third parties or utilized by the receiving party other than for the purpose of completing the Project and/or communicating with the City and its representatives. Confidential information received by one party from another will be kept and maintained by the receiving party in a secure location and under the control of an employee with an obligation and responsibility to maintain its secrecy and who will restrict disclosure of and access to such Information to persons with a need to know. The restrictions in this paragraph will not apply if such information (a) is or becomes in the public domain; (b) is known to the receiving party prior to receipt; (c) is authorized for disclosure by the written approval of the disclosing party; or (d) is lawfully derived by the receiving party from a source other than the disclosing party without restriction as to the use or disclosure of the information. Upon termination of this BAA and upon the request of the disclosing party, all such confidential information will be promptly destroyed or returned to the party which provided it; however, each recipient party may retain one copy in its secured server in accordance with such party's corporate policies. These foregoing restrictions will cease to apply for a period of one year after termination of this BAA.

10. **Inurement.** This BAA shall be binding upon and inure to the benefit of the parties' respective heirs, successors and assigns.

11. **Entire Agreement.** This BAA sets forth the entire understanding between the parties with respect to the subject matter hereof. This BAA supersedes any previous agreements and understandings between the parties with respect to the subject matter hereof.

12. **Governing Law.** This BAA shall be governed by and construed and enforced in accordance with the laws of the State of California without regard to its principles of conflicts of laws.

IN WITNESS HEREOF, this BAA has been executed as of the date set forth hereinabove.

QUIRING GENERAL, LLC, a California
limited liability company

NORTHSTAR GENERAL, INC., a
California corporation

By: 

By: 

Printed Name: Joshua Sherfield

Printed Name: Tim Simons

Its: CEO

Its: President