

**SUBMITTAL TO THE BOARD OF DIRECTORS OF THE  
REDEVELOPMENT AGENCY  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

942



**FROM:** Redevelopment Agency

**SUBMITTAL DATE:**  
October 17, 2008

**SUBJECT:** Thermal Sheriff Station and Aviation Complex Non-Responsibility/Debarment Hearing and Project Award

**RECOMMENDED MOTION:** That the Board of Directors:

1. Hold a Non-Responsibility Hearing regarding ASR Constructors, Inc., the apparent low bidder, and make findings, including debarment, if appropriate; and
2. Award contract to the appropriate contractor based on the findings resulting from the Non-Responsibility Hearing.

**BACKGROUND:** The Thermal Sheriff Station and Aviation Facility plans were approved by the Board and authorized to be bid out on April 1, 2008. Eight bids were received by the Clerk of the Board on May 21, 2008. On July 15, 2008, the Board rejected all bids and authorized rebidding of the project. The second bid opening was held on August 5, 2008, and the apparent low bidder was ASR Constructors, Inc. Award of the contract to ASR Constructors, Inc., was originally scheduled on the October 7, 2008 Board Agenda. A bid protest by the second low bidder J.D. Diffenbaugh was submitted under letter dated October 6, 2008. This was preceded by a phone call received on October 2, 2008, from J.D. Diffenbaugh's counsel.  
(continued on page 2)

*Robin Zimpfer*

RZ:DL:CC:AR

Robin Zimpfer  
Executive Director

S:\EDA Administration\ANNA's Files\RDA-Thermal\Thermal Sheriff's Station\BOD Form 11-Thermal Sheriffs Station and Aviation Complex Debarment Hearing & Project

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	N/A
	Annual Net County Cost:	\$ 0	For Fiscal Year:	08-09

**COMPANION ITEM ON BOARD OF SUPERVISORS AGENDA:** No

<b>SOURCE OF FUNDS:</b> Desert Communities Project Area RDA Funds	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:**

APPROVE

BY: *Jennifer L. Sargent*  
Jennifer L. Sargent

**County Executive Office Signature**

- Policy
- Consent
- Policy
- Consent

Dept Recomm.:  
Per Exec. Ofc.:

**Prev. Agn. Ref.:** Items 4.4, 7/15/08 and 4.2, 2/5/08; 3.9, 5/17/05; Item 3.3, 3/26/05

**District:** 4

**Agenda Number:**

4.6

FORM APPROVED COUNTY COUNSEL  
BY: *H.S. V. V. V.* 10/20/08  
DATE: MARSHAL VICTOR  
Departmental Concurrence

**BACKGROUND** (continued):

The protest was reviewed by counsel, and due to the allegations made, it was determined that the issues raised required the scheduling of a non-responsibility hearing.

The concept of non-responsibility is set forth in the Public Contract Code. The code requires that the County award public works contracts to the lowest responsible bidder. A "responsible" bidder is defined in the Code as a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the public works contract.

The Board has the documentary evidence before it, attached to this Form 11. The law provides that the bidder who is facing a determination of non-responsibility, in this case ASR Constructors, Inc., be apprised of the evidence relating to its "responsibility," be provided with a copy of all such evidence, and be provided an opportunity to refute such evidence by written submission or oral evidence. This is the hearing scheduled before the Board today. Upon making findings in the Non-Responsibility Hearing, the Board may also consider debarring ASR Constructors, Inc., from bidding on Agency projects for a limited period of time if it wishes.

After receipt and consideration of all evidence, the Board should make findings regarding the responsibility and/or debarment of ASR Constructors, Inc., to perform the project and may then award the construction contract in accordance with the findings or continue the matter to a later agenda if desired.

STEPHEN J. DENSMORE  
ROGER P. HEYMAN

OF COUNSEL  
JAMES K.T. HUNTER  
GINA F. BRANDT

**HEYMAN • DENSMORE LLP**

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October 16, 2008

*Via Facsimile (w/out exhibits) &  
Fed Ex (w/exhibits)*

ASR Constructors, Inc.  
5230 Wilson Street  
Riverside, California 92509  
Attention: Alan Regatti, President

RE: Palm Desert Sheriff Station Bid  
Thermal Sheriff Station and Aviation Complex Bid  
Debarment

Dear ASR Constructors, Inc.:

This office is Special Counsel to the County of Riverside on the matters subject of this notice.

The County of Riverside ("County") hereby notifies you that the County will hold a hearing before the County Board of Supervisors on October 28, 2008 to determine whether or not ASR Constructors, Inc. ("ASR") is a responsible bidder for the purposes of (1) the award of the construction contract for the Palm Desert Sheriff Station, (2) the award of the construction contract for the Thermal Sheriff Station and Aviation Complex, and (3) debarment for a determined period of time. The hearing will be held in Room 120 at 4080 Lemon Street, Riverside, California. The hearing will commence at the completion of any other business at the 1:30 p.m. session of the Board of Supervisors' meeting.

The documents, evidence and facts that the County has or has received which reflect upon the non-responsibility of ASR, and which will be presented to the Board of Supervisors prior to the hearing, consist of the following:

1. The Bid Protests dated October 6, 2008 submitted by Jaynes Corporation of California and J.D. Diffenbaugh, both of which were based upon letters of that date from their respective counsel and the declarations and documentary evidence attached thereto as Exhibits 1 through 20. The Bid Protests and Exhibits were provided to you and picked up by you on October 9, 2008, but another copy is attached hereto as Exhibit A.

Alan Regatti, President  
ASR Constructors, Inc.  
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2. ASR's bid on the Palm Desert Sheriff Station Project. ASR presumably has a copy of its own bid but another copy is attached hereto as Exhibit B.
3. Jaynes' bid on the Palm Desert Sheriff Station Project (Exhibit C).
4. The City of Hesperia Staff Report and Attachments A through F thereto re the Award of the Contract for Fire Station No. 305. ASR had that Staff Report and attachments as of October 7, 2008 but another copy is attached hereto as Exhibit D.
5. The oral testimony and argument made during the Hesperia Fire Station No. 305 hearing on October 7, 2008, a hearing which ASR attended but which can be viewed on the City of Hesperia's website.
6. The untrue statement made by Alan Regatti to the Hesperia City Counsel at the October 7, 2008 non-responsibility hearing that "Today, this morning, the [Riverside] Supervisors awarded me the Thermal Sheriff Station, \$35 million job."
7. The March 2, 2007 Findings of Fact and Conclusions of Law by the Public Works Hearing Officer for the Val Verde Unified School District and the three year debarment of ASR as a result thereof. ASR had the Findings on or about March 2, 2007 but another copy is attached hereto as Exhibit E. The County understands that the Val Verde debarment may be retracted as a matter of settlement of pending litigation but also understands from counsel for the Val Verde School District that no new evidence was presented to, or came to the knowledge of, the Val Verde School District after March 2, 2007 relating to those findings of fact.
8. The May 2006 Report and Findings of the Board of the San Jacinto Unified School District re the non-responsibility and debarment of ASR. ASR had a copy when it was issued in 2006 but another copy is attached hereto as Exhibit F. The County understands from counsel for the District that the Superior Court has recently upheld the District's finding of non-responsibility and overturned the imposition of debarment for a five year period.

Alan Regatti, President  
ASR Constructors, Inc.  
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You may inspect, and copy any or all of, the files and records constituting or relating to the County's Requests for Bids and Bids for construction of the Thermal Sheriff Station and the Palm Desert Sheriff Station and Aviation Complex at any time during County's normal business hours prior to the October 28, 2008 hearing.

You may submit, and are encouraged to submit, written arguments, documents and declarations that you believe refute the documents, declarations and arguments *set forth above* and attached hereto and/or which you believe demonstrate that you are a responsible bidder. Regardless of whether you had submitted writings, you will be given the opportunity to present argument, information and testimony at the hearing and to rebut any oral testimony or argument presented at the hearing. You may be represented by, and/or appear through, legal counsel.

To arrange for inspection and copying, or if you have any questions or concerns about the procedure or the hearing, please call Roger P. Heyman at (818) 703-9494.

Very truly yours,

HEYMAN • DENSMORE LLP



Roger P. Heyman

RPH:lms  
Enclosures

ROBERT J. MARKS  
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October 6, 2008

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MERRILL, SCHULTZ &  
BENNETT, LTD.

OUR FILE NUMBER

968.022

**URGENT BID PROTEST**

**VIA ELECTRONIC MAIL  
AND OVERNITE EXPRESS**

Ms. Nancy Romero  
Clerk of the Board  
County of Riverside  
County Administrative Center  
4080 Lemon Street - 1st Floor  
Riverside, California 92501

**VIA ELECTRONIC MAIL  
AND OVERNITE EXPRESS**

Mr. Frank J. Gonzales  
Project Manager III  
County of Riverside  
Department of Facilities Management  
3133 Mission Inn Avenue  
Riverside, California 92507-4199

Re: *Agency: County of Riverside*  
*Project: Palm Desert Sheriff Station*  
*Protestor: Jaynes Corporation of California*  
*Bid Date: October 1, 2008*

Dear Ms. Romero and Mr. Gonzales:

1. **Introduction**

Jaynes Corporation of California protests award of the County's Palm Desert Sheriff Station project ("Project") to the apparent low bidder, ASR Constructors, Inc., on the basis ASR's bid is void as it violated the rules of public policy and the express Noncollusion Affidavit required in the County's bid documents.

Specifically, ASR fraudulently interfered with the competitive bidding of the Project by forging revisions to subcontractor quotes and sending them to Jaynes in the last hours of the bid day. ASR misrepresented itself as two subcontractors and sought to rig the bidding process to frustrate competition.

Jaynes is concurrently pursuing other legal remedies against ASR for its fraudulent activity but based on controlling law the County must reject ASR's bid and should debar ASR from future public projects based on a finding of non-responsibility.

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2. Factual Background

ASR and Jaynes are both significant public works contractors, each performing or having performed projects throughout Riverside County in the last five years. On February 1, 2006, both ASR and Jaynes submitted bids to the County of Riverside for the County's Perris Sheriff Station and Family Care Clinic. Jaynes protested the bid of ASR on the basis ASR's bid contained many irregularities. On May 21, 2008, both ASR and Jaynes submitted bids for the County's Thermal Sheriff Station and Air Complex. Jaynes again protested award to ASR based on blatant irregularities in ASR's bid for that project. Since the above two protests, ASR has interfered with and/or harassed Jaynes in the bidding process to dissuade Jaynes from competing against ASR.

A prime bid to the County is submitted based on the prime bidder's receipt and review of many subcontractor and supplier bids. Subcontractor participation is critical to a prime bidder's competitiveness. In order to garner broad based subcontractor participation, Jaynes uses a service known as "Isqft" (pronounced "I square foot"). Isqft is a bid solicitation/advertising service used by Jaynes to notify subcontractors via the internet and electronic mail it is bidding a project and request subcontractors notify Jaynes pre-bid if they are interested in and intend to submit a bid to Jaynes for a project. Jaynes uses the received information to compile its master bid and to assure on bid day it receives as much subcontractor competition as possible so it can deliver the lowest possible bid to the County. (Declaration of Jaynes Vice President of Estimating, Debbie Luhnnow at Tab 1, ¶ 3.)

A sample Isqft solicitation by Jaynes is enclosed at Tab 2. The recipient of an Isqft invitation can respond online, or print and facsimile return it to Jaynes. If printed, the solicitation will reveal the recipients "user name" and "password," unless redacted. See upper right hand corner of sample solicitation at Tab 2.

ASR operates out of its office at 5230 Wilson Street, Riverside, California 92509. Enclosed at Tab 3 are printouts from the Contractors State License Board identifying the two companies, ASR and T.S. Steel, Inc. ("T.S. Steel"), residing at the same address. Since at least July 2008, Jaynes has been receiving disruptive and harassing responses to bid solicitations from ASR and its roommate, T.S. Steel. Notably, T.S. Steel's Isqft "user name" and "password" is "697-792-172." Enclosed at Tab 4 are printouts from Isqft evidencing T.S. Steel's ownership of this password. (Declaration of Jaynes Vice President of Estimating, Debbie Luhnnow at Tab 1, ¶ 13.)

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Enclosed at Tabs 5, 6 and 7 are three exemplars of ASR's handy work interfering with Jaynes bidding of projects in July, August and September 2008. (Declaration of Jaynes Vice President of Estimating, Debbie Luhnnow at Tab 1, ¶ 13.) Although the author did not take credit for these three documents, and did attempt to white out identifiers, Jaynes has concluded through phone records, Isqft, handwriting comparison by an expert, and fax sample analysis by an expert, that these documents are traceable back to ASR. (See Declaration of Questioned Documents and Handwriting Expert James A. Black, at Tab 8, ¶ 1-8.) (Declaration of Jaynes Vice President of Estimating, Debbie Luhnnow at Tab 1, ¶ 13.) The handwriting expert has confirmed the most offensive response at Tab 5 was authored by Alan Regotti, President of ASR. (See Tabs 3, 5 and 8, ¶ 6-8.) Also, on the document at Tab 7, ASR forgot to white out the T.S. Steel user name and password, and at Tab 6, the "T" of T.S. Steel was not fully deleted. In any case, Jaynes' expert has concluded all three were authored by Alan Regotti. (See Tab 8, ¶ 6-8.)

The three documents at Tabs 5, 6 and 7 illustrate ASR's anti-competition tactics and call into question whether ASR is a "responsible bidder" as required of public work contract recipients under California Public Contract Code sections 20111 and 1103.

### 3. The Instant Project

Receipt, review and choosing subcontractor bids to include in a general contractor's bid is a time consuming and critical process. (Declaration of Debbie Luhnnow, at Tab 1, ¶ 4.) On every bid, Jaynes receives last minute price cuts from subcontractor bidders who want to assure their position on Jaynes' subcontractor list for a project. (Declaration of Debbie Luhnnow, at Tab 1, ¶ 4.) This process was no different on the Project. (Declaration of Debbie Luhnnow, at Tab 1, ¶ 4.)

For the Project, Jaynes received subcontractor bids from AA Fire Protection (Fire Sprinkler) and Olympic Air Conditioning, Inc. (HVAC). (Declaration of Debbie Luhnnow, at Tab 1, ¶ 8.) Jaynes received the AA Fire bid in the amount of \$289,000.00 at 11:10 a.m. for the 2:00 p.m. bid. (Declaration of Debbie Luhnnow, at Tab 1, ¶ 8 and AA Fire bid with fax time of 11:10 a.m. at Tab 9.) Jaynes received the Olympic bid in the amount of \$2,540,000.00 at 1:11 p.m. for the 2:00 p.m. bid. (Declaration of Debbie Luhnnow, at Tab 1, ¶ 8 and Olympic bid with fax time of 1:11 p.m. at Tab 10.) Each was the low bid received by Jaynes for their respective trades. (Declaration of Debbie Luhnnow, at Tab 1, ¶ 8.)

As the 2:00 p.m. bid deadline clicked closer Jaynes received the typical influx of last minute subcontractor bids and price cuts to existing bids. (Declaration of Debbie Luhnnow, at Tab 1, ¶ 4.) In addition, Jaynes received two "anomaly" bids from Olympic and AA Fire which disrupted Jaynes' orderly preparation and submission of its bid. (Declaration of Jaynes Vice President of Estimating, Debbie Luhnnow at Tab 1, ¶ 9-11.)

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First, at 1:10 p.m., two hours after the initial bid, Jaynes received a supplemental bid from AA Fire raising AA Fire's bid price from \$289,000.00 to \$323,000.00. (Declaration of Debbie Luhnnow, at Tab 1, ¶ 9 and the revised bid purporting to be from AA Fire at Tab 11.) This was an anomaly as prices usually go down, not up, closer to bid time. AA Fire did not submit this revised higher bid! (Declaration of Jaynes Vice President of Estimating, Debbie Luhnnow at Tab 1, ¶ 14.) The fax header (Tab 11) is notably blocked out on this document but the handwriting and/or fax machine of the sender (ASR) has been matched to other documents penned by and/or from ASR principals. (See Declaration of James A. Black enclosed at Tab 8, ¶ 6-8.) So, ASR forged a subcontractor bid to increase the subcontractor bid price and then sent it to Jaynes to cause Jaynes to increase its bid price to the County! (See Tabs 8, 9 and 11.)

ASR repeated this outrageous conduct with respect to the Olympic bid. ASR took the Olympic bid it received, handwrote "withdraw" on it, and then faxed it to Jaynes at 1:56 p.m., four minutes before the bid deadline, so Jaynes would increase its bid price based on the withdrawal of Olympic's low HVAC bid. Enclosed at Tab 12 is the Olympic bid with the handwritten "withdraw" on it. ASR was not as careful covering its tracks with respect to the Olympic bid. First, the document at Tab 12 shows the prior ASR fax number as the earlier recipient of the Olympic bid at 1:02 p.m. Olympic verified it submitted its bid to ASR and only ASR, at 1:02 p.m., and provided Jaynes with copy of its phone records of this. Enclosed at Tab 13 is Olympic's phone record showing it sent the bid to ASR's fax at 1:02 p.m. Enclosed at Tab 14 is a Declaration of Brian K. Hwang of Olympic stating this fact and that Olympic did not withdraw its bid. Enclosed at Tab 15 is a copy of ASR's website showing ASR's fax number is 951-779-6588. (Declaration of Jaynes Vice President of Estimating, Debbie Luhnnow at Tab 1, ¶ 9; see also Tab 8, ¶ 6-9.) Thus, unquestionably, ASR interfered again with the competitive bidding process by falsifying a subcontractor bid withdrawal and sending it to Jaynes four minutes before the bid deadline! This outrageous conduct is unprecedented and requires the voiding of ASR's bid for the Project.

4. Fairness In Public Bidding – The  
Responsiveness And Responsibility Requirements

The competitiveness of public bidding is jealously guarded by California law:

The purpose of requiring governmental entities to open the contracts process to public bidding is to eliminate favoritism, fraud and corruption; avoid misuse of public funds; and stimulate advantageous market place competition. [Citations] Because of the potential for abuse arising from deviations from strict adherence to standards which promote these public benefits, the letting of public contracts universally receives close judicial

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scrutiny and contracts awarded without strict compliance with bidding requirements will be set aside. This preventative approach is applied even where it is certain there was in fact no corruption or adverse effect upon the bidding process, and the deviations would save the entity money. [Citations] The importance of maintaining integrity in government and the ease with which policy goals underlying the requirement for open competitive bidding may be surreptitiously undercut, mandate strict compliance with bidding requirements. [Citations]

(*Konica Business Machines U.S.A. Inc. v. Regents of University of California* (1988) 206 Cal.App.3d 449, 456-7 [emphasis added].) These principles are effectuated through the responsiveness and responsibility bidding requirements.

The County must award the Project to the lowest responsive and responsible bidder. A responsive bid is one that complies with the requirements of the specifications. It is a basic rule of competitive bidding that bids must conform to the specifications, and if a bid does not so conform, it may not be accepted. (See *Valley Crest Landscape, Inc. v. City Council of the City of Davis* (1996) 41 Cal.App.4th 1432, 1440; *Konica Business Machines U.S.A. v. The Regents of the University of California, supra*, 206 Cal.App.3d 449.) A public entity may not waive a bid irregularity if the irregularity may have affected the amount of the bid or given a bidder an advantage or benefit not allowed to the other bidders. (*Valley Crest Landscape, Inc. v. City Council of the City of Davis, supra*, 41 Cal.App.4th at pp. 1440-41.)

The County must also determine the successful bidder is "responsible." (Pub. Contract Code, § 20111.) To be responsible, the bidder must "demonstrate[] the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to perform the public works contract." (Pub. Contract Code, §1103 [emphasis added]; *D.H. Williams Construction, Inc. v. Clovis Unified School District* (2007) 146 Cal.App.4th 757, 764.) "A determination that a bidder is responsible [or not] is a complex matter dependant, often, on information received outside the bidding process...." (*Taylor Bus. Service, Inc. v. San Diego Bd. Of Education* (1987) 195 Cal.App.3d 1331, 1341-1342.) In other words, the County must determine whether the bidder is fit to be trusted with public safety and taxpayer dollars, and the County may consider both the bidding process and outside factors in making that determination.

5. The ASR Bid Must Be Rejected

A. ASR Enjoyed A Competitive Advantage Over The Other Bidders

As noted above and without fail, in the hours and minutes leading up to a bid submission, each bidder fields an unbroken stream of phone calls and faxes from subcontractors, as the subcontractors attempt to undercut one another to secure a position

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on the prime bidder's subcontractor listing.<sup>1</sup> During the final phase, each bidder must evaluate the last minute subcontractor bids, assuring the sub-bids are accurate, cover the full scope of work to be subcontracted, and are reasonably calculated and submitted by a subcontractor that is licensed and qualified to competently and timely complete the relevant scope of work. (See Declaration of Debbie Luhnnow Tab 1, ¶ 4.)

In the final phase of the bid for the Project, Jaynes was unable to effectively field and evaluate adjustments to the numerous subcontractor bids because Jaynes representatives were evaluating, attempting to cover for, and ultimately confirming the falsity of the forged documents faxed to Jaynes by ASR. (Declaration of Debbie Luhnnow, at Tab 1, ¶¶ 9-11.) As noted above, *Valley Crest* forbids a public entity from waiving a bidding irregularity that may have given a bidder a competitive advantage over the other bidders. Without a doubt, the critical distractions endured by Jaynes arising out of ASR's fraudulent "modified" and "withdrawn" subcontract bids actually resulted in Jaynes' disadvantage and ASR's competitive advantage. Consequently, the County may not accept the ASR bid under California law. Thus, the County must reject ASR's bid.

B. ASR Patently Violated Its Noncollusion Affidavit

The Bid Documents required each bidder to sign under oath and include with its bid a Noncollusion Affidavit, a true and correct copy of which is enclosed at Tab 16. In doing so, each bidder warranted, among other things:

[T]hat the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract [or] anyone interested in the proposed contract.

ASR signed the Affidavit and included it in its bid. (See ASR bid on file with the County for the Project.)

ASR's fraudulent faxes fall squarely within the proscriptive language of the Affidavit. ASR "directly...communicated with [Jaynes] to fix the bid price of...[an]other bidder [i.e., Jaynes]." (See Tabs 8, 9, 11 and 16.) ASR's patent violation of its Noncollusion Affidavit warrants rejection of ASR's bid. ASR's bid is not responsive because the affidavit is invalid and was violated. ASR's bid must be rejected.

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<sup>1</sup> The process of a general contractor receiving bids is so competitive the Legislature enacted Public Contract Code section 4100, et seq., the "Subletting And Subcontracting Fair Practice Act" to maintain fair competition.

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C. Any Contract Between ASR And The County Would Be Void

California law has long mandated that, where a bidder is awarded a public contract after attempting to inhibit competitive bidding for the contract, the contract is void as a matter of public policy. (*Morgan, et al. v. Gove, et al.* (1929) 206 Cal. 627 [holding construction contract void as a result of bidder's attempt to "suppress[] competitive bidding for the work"].) Further, a contract awarded to a bidder after the bidder's interference with the competitive bidding process is void whether or not the interference actually secured the award. (*Id.* at p. 633.) The successful bidder's attempt to suppress competition alone voids the contract.

Here, ASR impersonated two subcontractors in an attempt to inflate the price of its closest competitor, Jaynes. (See Tabs 1, 8, 9 and 11.) The moment ASR hit the start button on its fax machine, any subsequent County contract awarded to ASR for the Project became void as a matter of law. (*Id.*) As such, award of the Project to ASR would essentially be a nugatory act. Thus, ASR's bid must be rejected.

D. ASR Is Not A Responsible Contractor

As noted above, local agency public works contracts may only be awarded to "responsible" bidders. (Pub. Contract Code, §§ 1103, 20111.) An agency may only determine a bidder to be responsible if the bidder demonstrates "the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract." (Pub. Contract Code, § 1103.)

ASR clearly fails this test based on either of the following grounds: (1) ASR's repeated harassment of Jaynes as shown by the unprofessional responses to Jaynes' invitations to bid (Tabs 5, 6, 7, 1 and 8); and (2) the conclusive proof of ASR's attempts to thwart the competitive bidding process by defrauding both Jaynes and the County with its fraudulent subcontractor bids (Tabs 9, 10, 11, 1 and 8). ASR's actions reveal itself as a contractor that falls well short of the fitness and trustworthiness requirements of the Public Contract Code. Further and as long-understood by Jaynes and others who have dealt with ASR, ASR's "nonresponsible" behavior is the rule and not the exception. An exemplar of findings and determinations that ASR is not a "responsible" contractor by public entities is enclosed at Tab 20. We encourage the County to thoroughly review these documents, as the enclosures are particularly specific and enlightening.

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6. Conclusion

ASR's despicable conduct in violation of the basic premise of competitive bidding cannot be tolerated by the County. First, the County must reject the ASR bid as nonresponsive and void as against public policy for ASR's interference with the competitive bidding process, breach of the noncollusion affidavit and based on the California Supreme Court's holding in *Morgan, et al. v. Gove, et al., supra*, 206 Cal. 627. Second, the County, like other public agencies have already done, should immediately hold a responsibility hearing, find ASR not "responsible" and debar ASR from bidding future County projects based on its failure to meet the minimum standards set forth in Public Contract Code sections 1103 and 20111.

Once ASR's bid is rejected, the County may and should award the Project to Jaynes as it is the true lowest responsible and responsive bidder. Jaynes requests notice of any hearing by the County Board of Supervisors of this protest and the opportunity to present further evidence. Thank you for your consideration and attention to this matter.

Very truly yours,

  
P. Randolph Finch Jr., of  
MARKS, GOLIA & FINCH, LLP

Enclosures

PRF:aec/PRF48249

cc: Jaynes Corporation of California  
Attn: Mr. Richard Cohen, Executive Vice President (via e-mail only)  
Ms. Debbie Luhnnow, Chief Estimator (via e-mail only)  
Jaynes Corporation  
Attn: James M. Rosel, Esq., Vice President & Corporate Counsel (via e-mail only)  
County of Riverside - The Office of County Counsel  
Attn: Marsha L. Victor, Esq. (via e-mail only)  
Riverside County Board of Supervisors  
Attn: Mr. John F. Tavaglione, Supervisor (via Overnight Express)  
Mr. Jeff Stone, Vice-Chairman (via Overnight Express)  
Mr. Bob Buster, Supervisor (via Overnight Express)  
Mr. Roy Wilson, Chairman (via Overnight Express)  
Mr. Marion Ashley, Supervisor (via Overnight Express)  
Riverside County Sheriff - Administration  
Attn: Sheriff Stanley Sniff (via Overnight Express)  
Riverside County Sheriff - Palm Desert Station  
Attn: Captain Daniel Wilham (via Overnight Express)



1 telephone standby right outside the place for prime bid submission, i.e. the County. Then, as  
2 final numbers are received, the bid runner is called and given the final information to fill in on  
3 the bid form, including the final prime bid amount and the final list of subcontractors whose  
4 bid price is greater than one-half of one percent of the prime bid amount as required by Public  
5 Contract Code section 4104. This process accounts for numerous strike outs and changes on  
6 the subcontractor list included on a typical prime bid. Receipt, review and choosing  
7 subcontractor bids to include in a general contractor's bid is a time consuming, critical and last  
8 minute process. This process was no different on the Project.

9           5. Jaynes followed the above process and prepared and submitted a bid to be the  
10 prime contractor to the County of Riverside for the Project.

11           6. As Vice President of Estimating I was tasked with the general oversight,  
12 preparation and submission of Jaynes bid for the Project.

13           7. Bids for the Project were due to the County by 2:00 p.m. on October 1, 2008.

14           8. For the Project, Jaynes received subcontractor bids from AA Fire Protection  
15 Inc. (Fire Sprinkler) and Olympic Air Conditioning, Inc. (HVAC). Jaynes received the AA  
16 Fire bid in the amount of \$289,000.00 at 11:10 a.m. for the 2:00 p.m. bid. Jaynes received the  
17 Olympic bid in the amount of \$2,540,000.00 at 1:11 p.m. for the 2:00 p.m. bid. Each was the  
18 low bid received by Jaynes for their respective trades. True and correct copies of the bids  
19 received at 11:10 a.m. and 1:11 p.m., are attached to Jaynes' October 6, 2008 bid protest  
20 regarding the Project at Tabs 9 and 10, respectively.

21           9. Shortly before the 2:00 p.m. bid submission deadline, Jaynes received forged  
22 copies of bids from two of its subcontractors, i.e. AA Fire and Olympic purporting to revise  
23 one subcontractor bid and withdraw the other. True and correct copies of the purported AA  
24 Fire price increase bid and the Olympic withdrawal are attached to Jaynes' October 6, 2008 bid  
25 protest regarding the Project at Tabs 11 and 12, respectively. The AA Fire revised price was  
26 received at 1:10 p.m. and the Olympic withdrawal was received at 1:56 p.m., four minutes

27 // // // //

28 // // // //

1 before the bid due date. I later learned the documents were forged and faxed from ASR  
2 Constructors, Inc., ("ASR") by analyzing the fax headers on the documents and speaking with  
3 the AA Fire and Olympic estimators who confirmed the documents were forgeries.

4 10. In the hours and minutes preceding the bid submission deadline for the Project,  
5 Jaynes personnel and I were unable to effectively field and evaluate last minute subcontractor  
6 bids because we were busy evaluating and investigating the documents faxed to Jaynes by  
7 ASR and purportedly from Olympic and AA Fire and determining how to revise Jaynes' bid  
8 price to account for these then believed to be legitimate price changes.

9 11. The inefficiency Jaynes experienced arising out of the forged ASR faxes  
10 adversely impacted Jaynes' ability to compete for the Project.

11 12. The documents attached to Jaynes' October 6, 2008 bid protest regarding the  
12 Project at Tabs 17 and 18 are true and correct copies of bid documents received by the County  
13 of Riverside on previous County projects which I obtained from the County in response to  
14 Public Records Act requests.

15 13. In my capacity at Jaynes I have custody of all Isqft bid solicitation responses  
16 received by Jaynes. Attached to the Jaynes' October 6, 2008 bid protest at Tabs 5, 6 and 7 are  
17 three offensive bid solicitations I received at Jaynes. I investigated the user name and  
18 password of the document at Tab 7 and confirmed the holder of that password and user name is  
19 T.S. Steel, who resides at ASR's office/yard. True and correct copies of Contractor's State  
20 License Board website printouts showing the residence of ASR and T.S. Steel are attached at  
21 Tab 2 to the October 6, 2008 protest by Jaynes regarding the above project and at Tab 3 is a  
22 true and correct copy of a printout from Isqft showing T.S. Steel owns the password and user  
23 name shown on Tab 7.

24 I declare under penalty of perjury under the laws of the state of California that the  
25 foregoing is true and correct to the best of my knowledge and belief. Executed this 6th day of  
26 October 2008, in San Diego, California.

27   
28 Debbie Luhn

968.022/DRJ147.aec



# Jaynes Corporation of California Invitation to Bid

Phone Number: 619-233-4080

Fax Number: 619-233-4080

Attention: Cal Brehmer

User Name: 18860

Company: C & C Waterproofing, Inc.

Password: 18860

Date: Tuesday, September 16, 2008 6:49 PM EST.

Your company has been issued an invitation to bid on the project identified below for Jaynes Corporation of California.

<b>PROJECT</b>	Science Building at El Cajon Valley HS		
<b>LOCATION</b>	1035 E. Madison Ave El Cajon, CA		
<b>BID DATE</b>	Tuesday, October 21, 2008	<b>TIME</b>	02:00 PM PT
<b>START DATE</b>	TBD	<b>END DATE</b>	TBD
<b>PROJECT CONTACT</b>	Derrick Schmitte - Estimator		

**DESCRIPTION**

Site work and selective demo necessary to furnish and install complete an approximately 14,000 SF Science Building. Work includes concrete, landscaping, asphalt paving, utilities, structural steel framing roofing and associated new building finishes.

**PROJECT NOTES**

PREVAILING WAGES

ESTIMATE: \$5.0-5.5 Mil

Duration: 307 Calendar Days

3% DVBE Requirement

Jaynes Corporation is requesting bids from SBE/SDB/WOSB/HUBZONE/DVBE/VOSB

**PLANS, INSURANCE & BONDING**

Plan availability: Online for viewing, downloading, printing via iSqFt, or on CD-Rom, or for viewing in the Jaynes Planroom. Plans are available for purchase through iSqFt in full and partial sets. A VERY limited number of plans are available from Jaynes on a rotating basis. Borrowed plans must be returned within 3 business days. If you are interested in bidding this project please fax back your Invitation to Bid or log on to iSqFt and respond to the ITB. If you are responding via fax, please respond to the following:

BIDDING  HAVE PLANS  BORROW PLANS

NOT BIDDING

Please verify your company contact information, and your email address, to expedite future bid invitations. A bond may be required. The bond cost to be paid by the subcontractor. Please include bond rate on your quote. Contact Jaynes for any assistance in obtaining bonding, lines of credit or insurance. A waiver of subrogation will be required and is to be included in subcontractor cost. Jaynes Corporation of California is an equal opportunity employer.



07100 Dampproofing and Waterproofing



Department of Consumer Affairs  
**Contractors State License Board**

**Contractor's License Detail - License # 615395**

**DISCLAIMER:** A license status check provides information taken from the CSLB license database. Before relying on this information, you should be aware of the following limitations.

- CSLB complaint disclosure is restricted by law (B&P 7124.6). If this entity is subject to public complaint disclosure, a link for complaint disclosure will appear below. Click on the link or button to obtain complaint and/or legal action information.
- Per B&P 7071.17, only construction related civil judgments reported to the CSLB are disclosed.
- Arbitrations are not listed unless the contractor fails to comply with the terms of the arbitration.
- Due to workload, there may be relevant information that has not yet been entered onto the Board's license database.

<b>License Number:</b>	615395	<b>Extract Date:</b>	10/03/2008														
<b>Business Information:</b>	A S R CONSTRUCTORS INC 5230 WILSON STREET RIVERSIDE, CA 92509 Business Phone Number: (951) 779-6580																
<b>Entity:</b>	Corporation																
<b>Issue Date:</b>	03/16/1991																
<b>Reissue Date:</b>	08/16/1999																
<b>Expire Date:</b>	08/31/2009																
<b>License Status:</b>	This license is current and active. All information below should be reviewed.																
<b>Classifications:</b>	<table border="1"><thead><tr><th>CLASS</th><th>DESCRIPTION</th></tr></thead><tbody><tr><td>B</td><td>GENERAL BUILDING CONTRACTOR</td></tr><tr><td>A</td><td>GENERAL ENGINEERING CONTRACTOR</td></tr><tr><td>C27</td><td>LANDSCAPING</td></tr><tr><td>C-8</td><td>CONCRETE</td></tr><tr><td>C29</td><td>MASONRY</td></tr><tr><td>C51</td><td>STEEL, STRUCTURAL</td></tr></tbody></table>			CLASS	DESCRIPTION	B	GENERAL BUILDING CONTRACTOR	A	GENERAL ENGINEERING CONTRACTOR	C27	LANDSCAPING	C-8	CONCRETE	C29	MASONRY	C51	STEEL, STRUCTURAL
CLASS	DESCRIPTION																
B	GENERAL BUILDING CONTRACTOR																
A	GENERAL ENGINEERING CONTRACTOR																
C27	LANDSCAPING																
C-8	CONCRETE																
C29	MASONRY																
C51	STEEL, STRUCTURAL																
<b>Bonding:</b>	<b>CONTRACTOR'S BOND</b> This license filed Contractor's Bond number 81893 in the amount of \$12,500 with the bonding company AMERICAN CONTRACTORS INDEMNITY COMPANY. <b>Effective Date:</b> 01/01/2007 <b>Contractor's Bonding History</b> <b>BOND OF QUALIFYING INDIVIDUAL</b> The Responsible Managing Officer (RMO) ALAN LEE REGOTTY certified that he/she owns 10 percent or more of the voting stock/equity of the corporation. A 1. bond of qualifying individual is not required. <b>Effective Date:</b> 01/08/2007 <b>BQI's Bonding History</b>																
<b>Workers' Compensation:</b>	This license has workers compensation insurance with the REDWOOD FIRE AND CASUALTY INSURANCE CO <b>Policy Number:</b> W7A34741 <b>Effective Date:</b> 10/01/2007 <b>Expire Date:</b> 10/01/2008																

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Department of Consumer Affairs  
**Contractors State License Board**

**Contractor's License Detail (Personnel List)**

Contractor License #: 615395  
Contractor Name: A S R CONSTRUCTORS INC

*Click on the person's name to see a more detailed page of information on that person.*

NAME	TITLE	ASSOCIATION DATE	DISASSOCIATION DATE	CLASS	MORE CLASS
<a href="#">ALAN LEE REGOTTI</a>	RMO	03/16/1991		B	More
<a href="#">STACEY DEANNE REGOTTI</a>	OFFICER	08/16/1999			

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Department of Consumer Affairs  
**Contractors State License Board**

**Contractor's License Detail - License # 762706**

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- CSLB complaint disclosure is restricted by law (B&P 7124.6). If this entity is subject to public complaint disclosure, a link for complaint disclosure will appear below. Click on the link or button to obtain complaint and/or legal action information.
- Per B&P 7071.17, only construction related civil judgments reported to the CSLB are disclosed.
- Arbitrations are not listed unless the contractor fails to comply with the terms of the arbitration.
- Due to workload, there may be relevant information that has not yet been entered onto the Board's license database.

License Number:	762706	Extract Date:	10/03/2008
Business Information:	<p>T S STEEL INC                  5230 WILSON #C                  RIVERSIDE, CA 92509                  Business Phone Number: (951) 682-2031</p>		
Entity:	Corporation		
Issue Date:	05/06/1999		
Reissue Date:	05/13/2002		
Expire Date:	05/31/2010		
License Status:	This license is current and active. All information below should be reviewed.		
Classifications:	CLASS	DESCRIPTION	
	C60	STEEL REINFORCING	
Bonding:	<p>CONTRACTOR'S BOND                  This license filed Contractor's Bond number 1031940 in the amount of \$12,500 with the bonding company SURETY COMPANY OF THE PACIFIC.                  Effective Date: 01/01/2007                  Contractor's Bonding History                  BOND OF QUALIFYING INDIVIDUAL                  The Responsible Managing Officer (RMO) TERRY JAMES SHANKS certified that he/she owns 10 percent or more of the voting stock/equity of the corporation. A bond of qualifying individual is not required.                  1.                  Effective Date: 05/13/2002</p>		
Workers' Compensation:	<p>This license has workers compensation insurance with the MAJESTIC INSURANCE COMPANY                  Policy Number: C20080618801                  Effective Date: 06/01/2008                  Expire Date: 06/01/2009                  Workers' Compensation History</p>		
Miscellaneous Information:	DATE	DESCRIPTION	
	05/13/2002	LICENSE REISSUED TO ANOTHER ENTITY	

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Department of Consumer Affairs  
**Contractors State License Board**

**Contractor's License Detail (Personnel List)**

Contractor License #: 762706  
Contractor Name: T S STEEL INC

*Click on the person's name to see a more detailed page of information on that person.*

NAME	TITLE	ASSOCIATION DATE	DISASSOCIATION DATE	CLASS	MORE CLASS
<a href="#">JERRY JAMES SHANKS</a>	RMO/CEO/PRES	05/06/1999		C50	More
<a href="#">LEA SHANKS HERNANDEZ</a>	OFFICER	05/13/2002			
<a href="#">JOE DENNIS HERNANDEZ</a>	OFFICER	05/13/2002			
<a href="#">JOAN LYNN ROBINSON</a>	OFFICER	05/13/2002			

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Save my username on this computer.

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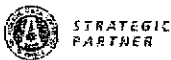
View the ITB Quick Start Guide and Technical Set-up Guide.

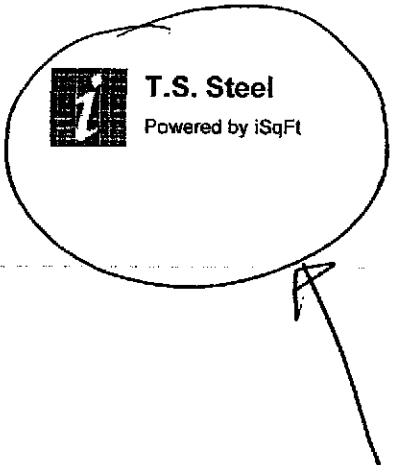
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Ensure iSqFt Mail Delivery

Find out how to configure your email settings to make sure you don't miss out on business opportunities sent from iSqFt.





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07-23-2008 10:00

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P. 1



# Jaynes Corporation of California

## Invitation to Bid

Phone Number: 916-233-4000

Fax Number: 916-233-4000

Attention:

User Name:

Company:

Password:

Date: Wednesday, July 23, 2008 12:00 PM EST.

Your company has been issued an invitation to bid on the project identified below for Jaynes Corporation of California.

<b>PROJECT</b>	Rebid - Thermal Sheriff Station and Aviation Compl		
<b>LOCATION</b>	THERMAL, CA		
<b>BID DATE</b>	Tuesday, August 5, 2008	<b>TIME</b>	02:00 PM PT
<b>START DATE</b>	TBD	<b>END DATE</b>	TBD
<b>PROJECT CONTACT</b>	Craig Noel - Senior Estimator		

**DESCRIPTION**

**BID BREAKDOWN REQUIRED:**

1. Site Development
2. Aviation Hangars
3. Sheriff Station

**PROJECT NOTES**

PREVAILING WAGE PROJECT  
ESTIMATE: \$40 MIL

DURATION: 462 CALENDAR DAYS

**PLANS, INSURANCE & BONDING**

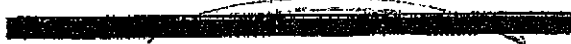
Plan availability: Online for viewing, downloading, printing via ISqFt, or on CD-Rom, or for viewing in the Jaynes Planroom. Plans are available for purchase through ISqFt in full and partial sets. A VERY limited number of plans are available from Jaynes on a rotating basis. Borrowed plans must be returned within 3 business days. If you are interested in bidding this project please fax back your invitation to Bid or log on to ISqFt and respond to the ITB. If you are responding via fax, please respond to the following:  
BIDDING  HAVE PLANS  BORROW PLANS

NOT BIDDING

Please verify your company contact information, and your email address, to expedite future bid invitations. A bond may be required. The bond cost to be paid by the subcontractor. Please include bond rate on your quote. Contact Jaynes for any assistance in obtaining bonding, lines of credit or insurance. A waiver of subrogation will be required and is to be included in subcontractor cost. Jaynes Corporation of California is an equal opportunity employer.

**INVITE NOTES**

Bid documents are available on CD-Rom through Jaynes Corporation, please send your request to Michelle Conrow at michellec@jaynescorp.com you must provide your physical address and overnight account#.



03200 Concrete Reinforcement

Go Fuck Yourself!  
you Bids over yours!





# Jaynes Corporation of California

## Invitation to Bid

Phone Number: 619-233-4090

Fax Number: 619-233-4090

Attention: Estimator

User Name: 697-792-172

Company:

Password: 697-792-172

Date: Monday, September 08, 2008 8:00 PM EST.

Your company has been issued an invitation to bid on the project identified below for Jaynes Corporation of California.

PROJECT	Palm Desert Sheriff Station		
LOCATION	PALM DESERT, CA		
BID DATE	Wednesday, September 24, 2008	TIME	02:00 PM PT
START DATE	TBD	END DATE	TBD
PROJECT CONTACT	Carson Allen - Senior Estimator <b>JP WHAT</b>		

### DESCRIPTION

3 new buildings(82,000SF)-Sheriff Station,Evidence warehouse,Central Plant-earthwork,site utilities,landscaping,Masonry exterior walls with wood roof framing,steel columns,translucent skylights,Preengineered Fabric Shade Structures with fuel station,solatubes,solar panels

### PROJECT NOTES

PREVAILING WAGE PROJECT  
ESTIMATE: \$35,000,000

Jaynes Corporation is requesting bids from SBE/SDB/WOSB/HUBZONE/DVBE/WOSB

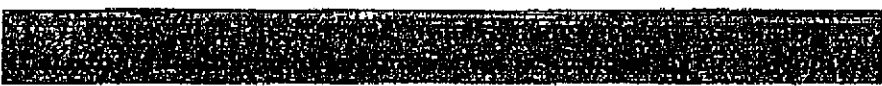
### PLANS, INSURANCE & BONDING

Plan availability: Online for viewing, downloading, printing via iSqFt, or on CD-Rom, or for viewing in the Jaynes Planroom. Plans are available for purchase through iSqFt in full and partial sets. A VERY limited number of plans are available from Jaynes on a rotating basis. Borrowed plans must be returned within 3 business days. If you are interested in bidding this project please fax back your Invitation to Bid or log on to iSqFt and respond to the ITB if you are responding via fax, please respond to the following.

BIDDING  HAVE PLANS  BORROW PLANS   
NOT BIDDING  **YOU: J PAKS**

Please verify your company contact information, and your email address, to expedite future bid invitations. A bond may be required. The bond cost to be paid by the subcontractor. Please include bond rate on your quote. Contact Jaynes for any assistance in obtaining bonding, lines of credit or insurance. A waiver of subrogation will be required and is to be included in subcontractor cost. Jaynes Corporation of California is an equal opportunity employer.

Kiss MY ASS!  
You Bozo's



For help accessing this project, please refer to <http://www.isqft.com/support> or call us at 800.364.2059.

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DECLARATION OF JAMES A. BLACK

I, James A. Black, declare as follows:

1. I am an Examiner of Questioned Documents and Handwriting Expert in private practice since 1981. A short summary of my qualifications in these areas is attached to this declaration as Exhibit "A," which is my curriculum vitae prepared by me and accurately stating my qualifications.

2. I have completed a preliminary review of questioned documents and exemplar documents provided to me by Marks, Golia & Finch, LLP, attorneys for Jaynes Corporation of California ("Jaynes") which are attached to the October 6, 2008 Jaynes bid protest regarding the Palm Desert Sheriff Station ("Protest") at Tabs 5, 6, 7, 11, 12, 17, 18 and 19. I make this declaration based on my review of these documents to summarize my conclusions and if called as a witness in court or other tribunal I could and would competently testify as set forth below.

3. The two exemplar documents reviewed by me as baseline documents of Alan Regotti of ASR Constructors, Inc. ("ASR") purport to be bid packages submitted by ASR to the County of Riverside, and a letter, and are attached to the Protest at Tabs 17, 18 and 19. Both exemplars contain facsimile machine headers and handwriting which I have analyzed.

4. Three of five of the questioned documents, at Tab 5, 6 and 7 of the Protest, purport to be Jaynes' invitations to bid for various projects, and include both facsimile headers and handwritten notes, which I have analyzed.

5. The remaining two questioned documents, at Tabs 11 and 12 of the Protest, purport to be bids from subcontractors AA Fire Protection, Inc., and Olympic Air Conditioning, Inc. Each contains facsimile headers and handwritten notes, which I have analyzed.

6. Based on my review and analysis, it is my expert opinion that the documents attached to the Protest at Tabs 5, 6, 7, 11 and 12 (the invitations to bid and suspect subcontractor bids) were faxed from the same brand and model fax machine, and it is likely they were faxed from the exact same fax machine. This opinion is based on the facsimile headers appearing on each and my experience in evaluating such matters.



**EXHIBIT "A"**

## JAMES A. BLACK EXAMINER OF QUESTIONED DOCUMENTS

### QUALIFICATIONS

James A. Black is an Examiner of Questioned Documents and Handwriting Identification Expert in private practice since 1981. He has a Bachelor of Science degree from the California State University at Long Beach and has completed additional studies in the biological and physical sciences at the same institution.

Prior to starting his own practice, he studied document examination full time for two years in the Los Angeles office of his father, David A. Black, of Sellers and Black. David A. Black was a prominent document examiner in Southern California for over forty years. During this training period all aspects of questioned documents examination were studied, including handwriting and handprinting examination, identification of writer(s), typewriters and other mechanical impressions, copy machines, erasures and other forms of alteration, obliterated writing and their decipherment, paper and inks, and numerous other document problems. James Black completed, under David Black's direction, the course of study prescribed by the United States Army.

James A. Black has qualified as an expert witness on numerous occasions in the identification of handwriting, signatures and questioned document matters in Superior Courts of the counties of Los Angeles, Orange, Kern, San Bernardino and others, as well as Federal Court, The Court of the State Bar of California, The Administrative Law Court of the Medical Board of the State of California and others. Mr. Black has been retained by governmental agencies such as the California Department of Justice, the California Franchise Tax Board and the United States Department of Justice. Mr. Black is the contract document examiner for the police departments of the cities of Fullerton and Orange. He has lectured at the Forensic Evidence seminar of the California Association of Public Defenders and is a guest lecturer at the Department of Criminal Justice at the California State University at Long Beach. A review of Mr. Black's credentials and experience by a committee of Los Angeles County Superior Court judges resulted in his appointment to the Panel of Experts assisting the Court in providing expertise to prosecutors and defense counsel.

James A. Black is a member of the International Association for Identification, a Fellow of the Questioned Documents Section of The American Academy of Forensic Sciences and is a former chairman of the Questioned Documents Subcommittee of the Forensic Sciences Committee of the American Society of Testing and Materials.

Five articles published in *The Journal of Forensic Identification* and in the *Journal of Forensic Sciences* were written by James Black.

James A. Black conducts examinations in a laboratory using scientific instruments which include microscopes, a multi-spectral imaging system, grids, filters, scientific measuring instruments, photographic equipment, an ESDA, a library of over one hundred volumes of books relating to documentary evidence and an extensive typewriter library. Specialized training in computer technology and its application to questioned documents examinations has been completed. The cumulative volume of his caseload is thousands of cases and hundreds of trials.

PMB 152, 24331 MUIRLANDS BOULEVARD, SUITE 4, LAKE FOREST, CALIFORNIA  
92630

(949) 380-1733 Telecopier: (949) 380-0187 black.james@worldnet.att.net







10-01-2008 13:10

PAGE 1

**AA FIRE PROTECTION, INC**

20605 Lummis Street  
Chattworth, CA 91311-4502  
Phone (915) 885-6362 Fax (818) 885-7506  
Lic. #766198

**REVISED**

30

Proposal Submitted to  
General Contractor:

Job Address:  
PALM DESERT SHERIFF STATION  
73700 GERALD FORD DR  
PALM DESERT, CA 92260

We hereby propose to furnish the materials and perform the labor necessary for the installation of the Fire Sprinkler System for the above project. Fire Sprinkler Systems will be completed as per plans and specifications and in accordance with NFPA 13 and city Fire Department codes.

Exclusions: Fire Service, Fire Hydrant, Fire Alarm System, painting, patching, electrical wiring, fire hose equipment, fire extinguisher, saw cutting of pavement, patching of pavement, water meter gong, backflow preventor, fire pumps, jockey pumps, sleeves, insulation, fire cycle, rack system, fire watch, underground work.

Starting Point: from the riser up 6 inches above ground inside the Building.

All materials are guaranteed to be as specified, and the above work to be performed in accordance with the drawing and specifications submitted for the above work and completed in substantial workmanlike manner for the sum of ~~Three hundred and thirty thousand and no/100ths~~ **323,000** with payments to be made as work progress.

Date: 10/1/08

Note: This proposal will automatically expire if not accepted within 90 days.

If accepted, this proposal should be incorporated as part of the contract.

**323,000**

Any Alteration or deviation from the above specifications involving extra costs, will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance upon above work. Workman's compensation and public Liability insurance on above work to be taken out by AA Fire Protection, Inc. NO BID BOND, NO PERFORMANCE BOND, NO PAYMENT BOND, NO PERSONAL GUARANTEE will be provided by AA Fire Protection Inc.

**ACCEPTANCE OF PROPOSAL**

AA Fire Protection, Inc. shall only recognize acceptance of proposal before timely receipt of a written acceptance.

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above. Acceptance of proposal shall only mean AA Fire Protection, Inc. will negotiate in good faith for the execution of a constructed agreement at the proposed price for the work to be performed. AA Fire Protection, Inc shall not be bound to perform the work unless and until written construction agreement is signed by all parties.

Accepted: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

10-01-2008 14:02

UL-1-2000 01:02 FROM ULYSSE THINAK

000-000-0000

10:1501 (796088)

PAGE1  
P.1

1:56pm.

ASR #



LIC. # 636037

### OLYMPIC AIR CONDITIONING INC.

12106 PARK STREET • CERRITOS, CA 90703  
TEL: (562) 802-3464 • FAX: (562) 802-3494

### PROPOSAL

*Withdrawn*

DATE: Oct 1, 2008

RE: Palm Desert Sheriff Station  
Per Drawing M-001 thru M-709  
Spec. 15010 thru 15990. 17100; Commissioning. Addendum #1-5.

1. **Equipment**

- 7EA: AHU-1 thru AHU-7. Outdoor Air Handler Units w/economizer. Isolation Roof Curb. VFD
- 2EA: MAU-1,2. Make-up Air Handler Units w/economizer. Isolation Roof Curb. VFD
- 2EA: CH-1,2. Water Cold Screw Type Chiller.
- 14EA: FCU-1 thru FCU-14. Fan Coil Units
- 53EA: VAV Box
- 22EA: EF-1 thru EF-22. Exhaust Fan
- 1EA: GV-1. Gravity Intake Vent
- 1EA: CT-1. BAC Cooling Tower
- 1EA: Furo Flux Basin Cleaner
- 1EA: Water Treatment System
- 10EA: Variable Frequency Drives for Pumps
- 10EA: PHWP-1,2. SHWP-1,2. PCWP-1,2. SCWP-1,2. CP-1,2. Pumps
- 2EA: B-1,2. Boiler
- 2EA: ET-1,2. Expansion Tank
- 2EA: AS-1,2. Air Separator
- 2EA: Chemical Feeder

2. **Duct Work**

3. **Hot Water and Chilled Water Piping**

4. **Air Inlet and Outlet(410psc)**

5. **DDC- Control**

6. **Commissioning and Start-up**

7. **Test, Adjust & Balance**

8. **Commissioning Test**

10-01-2008 14:03

OCT-1-2008 01:02P FROM:OLYMPIAIRINC

562-882-3494

TO:19517796588

PAGE2  
P.2

ASR-II



Contract Amount: \$2,540,000.00

**Excludes**

- all of Carpentry work, Patching, Painting, Roofing
- all of Opening on Roof and Wall
- City Permit Fee
- Provided Roof Curb by Olympic and Installed by General Contractor
- Bond
- Housekeeping pad

Brian K. Hwang / President

OLYMPIC AIR CONDITIONING, INC Lic.C-20, C-38 #636037 Exp.6/30/2010

**\*\*\* Certified DBE/MBE/SBE Contractor**

OCT-1-2008 02:20P FROM:OLYMPIAIRINC

562-802-3494

TO:16192344098

P.1

Sent Journal

Date : OCT-1-2008 WED 02:01PM  
Name : OLYMPIAIRINC  
Tel. : 562-802-3494

No.	Fax Name/Number	Start Time	Time	Mode	Pages	Result
331	17607967750	09-22 11:00AM	00'52"	G3	1	Ok
332	8686115	09-24 10:21AM	01'01"	ECM	1	Ok
333	13237311997	09-24 10:24AM	00'35"	ECM	1	Ok
334	18587157201	09-24 01:20PM	00'44"	ECM	2	Ok
335	19099314840	09-24 03:21PM	00'00"	ECM	0	Stop Pressed
336	16262912019	09-24 03:22PM	00'20"	FCM	1	Ok
337	17146939509	09-24 03:23PM	00'19"	ECM	1	Ok
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341	18606226947	09-24 03:49PM	00'20"	ECM	1	Ok
342	13237261644	09-24 03:50PM	00'31"	ECM	1	Ok
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344	16269560620	09-24 03:52PM	00'19"	ECM	1	Ok
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346	13102145151	09-24 03:54PM	00'19"	ECM	1	Ok
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352	17144332329	10-01 01:01PM	00'00"	ECM	0	Stop Pressed
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368	17607756057	10-01 01:50PM	00'00"	ECM	0	Stop Pressed
369	17607756057	10-01 01:51PM	00'00"	ECM	0	Stop Pressed
370	17607756057	10-01 01:51PM	00'00"	ECM	0	Stop Pressed

SR  
I

To: James Corp.  
Attn: Chip.

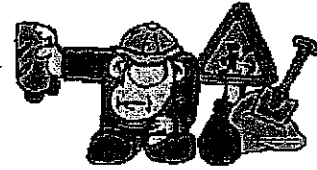




# ASR

## CONSTRUCTORS, INC.

LIC#615395


[Home](#)
[Current Jobs](#)
[Upcoming Bids](#)

### Our Mission

We are firmly dedicated to being the leading, self performing General Contractor in the Inland Counties. With the unique ability to carry out upwards of seven different trades ASR provides diverse, quality craftsmanship at an unmatched value. It is our goal to build the schools, parks and other vital infrastructure needed to enable California to take its place as a world leader in the 21<sup>st</sup> century.

### Our Company

In just over 8 years ASR Constructors has completed over 500 public works projects. With a portfolio of completed projects that includes the Riverside Community College Athletic Complex, the Repplier Aquatic Park in Banning, the Larry D. Smith Correctional Facility, and the Multi-purpose Buildings at Cabrillo, Citrus, Foothill Knolls, Magnolia, Sycamore and Valencia Elementary Schools we are qualified for and capable of performing just about any project. Whether it be Architectural, Structural or Retrofit construction, ASR is up to the task. With some members of our staff possessing over 30 years of experience in Public Contracting we are capable of successfully navigating even the most difficult of projects through to completion.

Telephone: (951)779-6580 space FAX: (951)779-6588 space ADDRESS: 5238 Wilson Street Riverside, CA 92509 Space EMAIL: Website Administrator



**NONCOLLUSION AFFIDAVIT TO BE EXECUTED BY BIDDER AND  
SUBMITTED WITH BID**

State of California ) ss.  
County of Riverside )

\_\_\_\_\_, being first duly sworn, deposes and says:

That he or she is \_\_\_\_\_ of \_\_\_\_\_  
the party making the foregoing bid; that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

\_\_\_\_\_  
Signature

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Signature of officer administering oath

**CONTRACTOR'S PROPOSAL**

TO THE GOVERNING BOARD OF THE COUNTY OF RIVERSIDE:

Date: 2/1/06

Bidder: ASR CONSTRUCTORS, INC.

The undersigned, having carefully examined the proposed site and the Plans and Specifications, the Notice Inviting Bids, the Instructions to Bidders, the Agreement Form, the Bond Forms, the General Conditions for the

PERKINS SHERIFF STATION & FAMILY CARE CLINIC, hereby

proposes and agrees to furnish all tools, equipment, services, apparatus, facilities, transportation, labor and materials necessary to complete the work in strict conformity with the Plans and Specifications, including all work specified in Addenda numbered and dated:

Addendum No. <u>1</u>	Date <u>12/27/05</u>	# <u>4</u>	<u>1/23/06</u>
Addendum No. <u>2</u>	Date <u>1/9/06</u>	# <u>5</u>	<u>1/25/06</u>
Addendum No. <u>3</u>	Date <u>1/17/06</u>		

including all applicable taxes, permits, licenses, and Course of Construction Insurance.

for the total base bid sum of Twenty million seven hundred eighty three thousand (\$ 20,783,000.00).

**Bid Alternates:**  
Each Bid alternate shall be priced and itemized in a manner that each Alternate may be individually accepted, or rejected in their entirety, without combining or adding other components to complete the required scope of work for each Alternate.

Deductive Alternate 1 - Site Walkway, identified Alternate # 1 on Sheet A - 100; Provide separate price for detailing the 4" thick x 6' wide medium broom finish walkway. The walkway will have control joints @ 10' o/c and have 6" 6" 10/10 WWM. The side walk will have HC aprons at all drive intersections.  
\$ 21,000.00 (deduct)

Deductive Alternate 2 - Corridors 024, 040, 056, 083, 115 & 118 at the Sheriff Station and corridor 020 of Forensics, in lieu of the specified Slate Flooring, substitute VCT flooring as identified on Sheet # 1-112A, 1-112B & 1-113 in pattern as identified on Sheet # 1-112.1, of the bid documents.  
\$ 49,000.00 (Deduct)

Deductive Alternate 3 - Locker Rooms 042, 042A, 043, 048, 048A, 048B & 048C of the Sheriff Station in lieu of the specified Ceramic Tile, substitute epoxy resin flooring. Product shall be StonCor, Stortec UTF.  
\$ 0 (deduct)

Deductive Alternate 4 - Lobby 001 & Corridor 006 of the Health Clinic in lieu of ceramic tile as

identified on the bid documents, substitute VCT flooring as identified on Sheet I-111.2 & I-111.3.

\$ 16,500.00 Product

**UNIT PRICES:**

1. Specification Section 2210 – Unsuitable Soil	Cost Per Cubic Yard \$	<u>5.85</u>
2. Specification Section 2221 – Unsuitable Soil	Cost Per Cubic Yard \$	<u>6.15</u>
3. Specification Section 2221 – Rock Excavation	Unit <u>C/Y</u> Cost \$	<u>12.00</u>
4. Specification Section 02222 – Unsuitable Soil	Cost Per Cubic Yard \$	<u>6.15</u>
5. Specification Section 02222 – Rock Excavation	Unit <u>C/Y</u> Cost \$	<u>30.00</u>

AND;

Excluding Course of Construction Insurance for the total sum of:

Base bid \$ 20,663,000.00 dollars, (\$ 20,663,000.00 including all applicable taxes, permits, licenses, and twenty million six hundred sixty three thousand)

Excluding Course of Construction Insurance

Alternate 1	\$	<u>1,000</u>	_____
Alternate 2	\$	<u>1,000</u>	_____
Alternate 3	\$	<u>1,000</u>	_____
Alternate 4	\$	<u>1,000</u>	_____
Alternate 5	\$	<del>1,000</del> <u>N.A.</u>	_____

Bids must be submitted on all items. Failure to bid on all items may result in the bid being rejected as non-responsive. The basis for award will be the qualified bidder with the lowest total of the Base Bid and all alternates. Alternates may be accepted in any order after award of the bid and will be added to the contract amount.

ASB

DESIGNATION OF SUBCONTRACTORS

In compliance with Section 4104 of the Public Contract Code the undersigned submits the following complete list of each Subcontractor who will perform work or labor or render service in or about the construction/installation in an amount in excess of 1/2 of 1% of said total bid.

<u>PORTION OF THE WORK</u>	<u>SUBCONTRACTOR</u>	<u>ADDRESS</u>
<del>AR. [scribble]</del>	<del>[scribble]</del>	<del>[scribble]</del>
<del>AR. [scribble]</del>		
<del>AR. [scribble]</del>		
ROUGH CARPENTRY	INFINITY	MERRIS
ACOUSTIC TILE	RODGERS	SAN DIEGO
CORNER TILE	COLIVAN	LOS ANGELES
<del>AR. [scribble]</del>	<del>[scribble]</del>	<del>[scribble]</del>
<del>AR. [scribble]</del>	<del>[scribble]</del>	<del>[scribble]</del>
LATH & PLASTER/DRYWALL	CASPER	SAN BERNARDINO
RESILIENT FLOOR	SPOTRA	SAN ANGELO
INSULATION	DITCHMORE	TUSTIN
FIRE SPRINKLER	DARTM	SAN BERNARDINO
PLUMBING	DILKE	IRVINE
HVAC	FRANKLIN	CALIFORNIA
<del>AR. [scribble]</del>	<del>[scribble]</del>	<del>[scribble]</del>

AWARD OF CONTRACT

The undersigned fully understands that a Contract is formed upon the acceptance of this Proposal by the



Owner and the undersigned further agrees that upon request he will promptly execute and deliver to Owner a written memorial of the Contract together with the required Payment and Performance Bonds and proof of insurance.

**BID GUARANTEE**

The enclosed certified or cashier's check or bidder's bond on approved form, made payable to the Owner in the amount of ten percent of the total bid submitted herewith, is hereby given as a guarantee that the bidder will execute and deliver the above mentioned written memorial and required bonds and insurance if awarded the contract, and in the event that the undersigned fails or refuses to execute and deliver said documents, such check or bond is to be charged with the costs of the damages experienced by the Owner as a result of such failure or refusal, including but not limited to publication costs, the difference in money between the amount of the bid of the said principal and the amount for which obligee may legally contract with another party to perform the said work if such amount be in excess of the former, building lease or rental costs, transportation costs and additional salary costs that result from the delay due to the principal's default on the awarded contract. In no event, however, shall the Surety's liability exceed the penal sum hereof.

Name of Bidder: ASR CONSTRUCTORS, INC.  
Type of Organization: CORPORATION  
Signature By: [Signature]  
Title of Signer: PRESIDENT  
Address of Bidder: 5230 WILSON ST  
RIVERSIDE CA 92504

Affix Seal

Corporation

Telephone No.: 951 779 6580  
Contractor's License No.: 615395  
Classification: A,B,C-27,C-29 Expiration Date: 8/07

**LICENSURE STATEMENTS ARE MADE UNDER PENALTY OF PERJURY**

If bidder is a corporation, and signer is not President or Secretary, attach a certified copy of By-Laws or resolution authorizing execution. If bidder is a corporation, affix corporate seal. If signer is an agent, attach Power of Attorney. If bidder is not an individual, list names of other persons authorized to bind the organization.

**NONCOLLUSION AFFIDAVIT TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID**

State of California )  
County of Riverside ) ss.

ALAN REEDER being first duly sworn, deposes and says:

That he or she is PRESIDENT of ASR CONSTRUCTORS, INC.  
the party making the foregoing bid; that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

[Signature]  
Signature

Subscribed and sworn to before me this 1 day of FEBRUARY 2006

[Signature]  
Signature of officer administering oath



Bid Bond

KNOWN TO ALL MEN BY THESE PRESENTS, that we, the undersigned ASR CONSTRUCTORS INC., as Principal; and FEDERAL INSURANCE COMPANY, as Surety, are hereby held and firmly bound unto the County of Riverside, hereinafter called the "Owner", in the sum of TEN PERCENT OF THE TOTAL AMOUNT\* Dollars (\$10% OF BID) for the payment of such sum, well and truly to be made, do hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns. \*OF THE BID—

WHEREAS, the said Principal is herewith submitting its Proposal for the PERRIS SHERIFF STATION AND FAMILY CARE CLINIC

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the aforesaid Principal shall be awarded the Contract upon said Proposal and shall, within the required number of days after the notice of such award, execute a written memorial of the awarded Contract and submit the required Labor and Material Payment and faithful Performance Bond and proof of insurance, then this obligation shall be null and void; and in the event that the Principal fails and/or refuses to execute and deliver said documents this Bond will be charged with the costs of the damages experienced by the Owner as a result of such refusal, including but not limited to, publication cost, the difference in money between the amount of the bid of the said Principal and the amount for which the obligee may legally contract with another party to perform the said work if such amount be in excess of the former; building lease or rental costs, transportation cost, and additional salary costs that result from the delay due to the Principal's default on the awarded Contract. In no event however, shall the Surety's liability exceed the penal sum hereof.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of the time within which the Owner may accept such bid; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the above bounded parties have executed this instrument under their separate seals this 11TH day of JANUARY, 2005; the name and corporate seal of each corporate party being hereto affixed and these present duly signed by its undersigned representative, pursuant to authority of its governing body.

ASR CONSTRUCTORS INC.  
 (Firm Name - Principal)  
5230 WILSON ST RIVERSIDE, CA 92509  
 (Business Address)  
 By [Signature]  
 (Original Signature)  
President  
 (Title)

Affix Seal  
 if  
 Corporation

FEDERAL INSURANCE COMPANY  
 (Corporation Name - Surety)  
801 S. FIGUEROA SUITE 2400 LOS ANGELES, CA 90017  
 (Business Address)  
 By [Signature]  
 (Original Signature) BROOKE LAFFENZ, ATTORNEY-IN-FACT  
 ATTORNEY-IN-FACT

Affix  
 Corporate  
 Seal

AGREEMENT FORM

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by and between

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

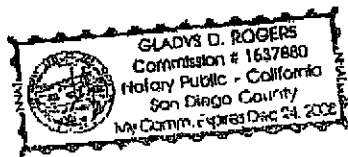
County of SAN DIEGO

} ss.

On 11 JANUARY 2006 before me, GLADYS D. ROGERS, NOTARY PUBLIC  
Date Name and Title of Officer (i.e., "Jane Doe, Notary Public")  
personally appeared BROOKE LAFRENZ  
Name(s) of Signer(s)

personally known to me

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

*[Signature]*  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

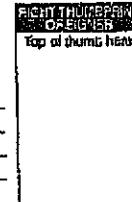
**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_  
 Individual  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Attorney in Fact  
 Trustee  
 Guardian or Conservator  
 Other: \_\_\_\_\_



Signer Is Representing: SURETY

Signer's Name: \_\_\_\_\_  
 Individual  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Attorney in Fact  
 Trustee  
 Guardian or Conservator  
 Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_



Chubb  
Surety

POWER  
OF  
ATTORNEY

Federal Insurance Company  
Vigilant Insurance Company  
Pacific Indemnity Company

Attn: Surety Department  
16 Mountain View Road  
Warren, NJ 07059

Know All by These Presents, That FEDERAL INSURANCE COMPANY, an Indiana corporation, VIGILANT INSURANCE COMPANY, a New York corporation, and PACIFIC INDEMNITY COMPANY, a Washington corporation, do each hereby constitute and appoint Larry D. Cogdill, Ingrid Erika Crosby, Brooke Lalrenz, Michael W. Thomas and Jeanette Seidl of San Diego, California

each as their true and lawful Attorney-in-Fact in all acts under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bill bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY have each executed and attested these presents and affixed their corporate seals on this 15th day of November, 2004.

*Kenneth C. Wendel*  
Kenneth C. Wendel, Assistant Secretary

*John P. Smith*  
John P. Smith, Vice President

STATE OF NEW JERSEY  
County of Somerset

On this 15th day of November, 2004

before me, a Notary Public of New Jersey, personally came Kenneth C. Wendel, to me known to be Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY, the companies which executed the foregoing Power of Attorney, and the said Kenneth C. Wendel, being by me duly sworn, did depose and say that he is Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were lawfully affixed by authority of the By-Laws of said Companies; and that he signed said Power of Attorney as Assistant Secretary of said Companies by the authority; and that he is acquainted with John P. Smith, and knows him to be Vice President of said Companies; and that the signature of John P. Smith, subscribed to said Power of Attorney is in the genuine handwriting of John P. Smith, and was thereto subscribed by authority of said By-Laws and in deponent's presence.

Notarial Seal



KATHERINE KALBACHER  
NOTARY PUBLIC OF NEW JERSEY  
No. 2316485  
Commission Expires July 8, 2009

*Katherine Kalbacher*  
Notary Public

CERTIFICATION

Extract from the By-Laws of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY:

"All powers of attorney for and on behalf of the Company may and shall be executed in the name and on behalf of the Company, either by the Chairman or the President or a Vice President or an Assistant Vice President, jointly with the Secretary or an Assistant Secretary, under their respective designations. The signature of such officers may be engraved, printed or lithographed. The signature of each of the following officers: Chairman, President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Assistant Secretaries or Attorneys-in-Fact, for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached."

I, Kenneth C. Wendel, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY (the "Companies") do hereby certify that

- (1) the foregoing extract of the By-Laws of the Companies is true and correct,
- (2) the Companies are duly licensed and authorized to transact surety business in all 50 of the United States of America and the District of Columbia and are authorized by the U.S. Treasury Department; further, Federal and Vigilant are licensed in Puerto Rico and the U.S. Virgin Islands, and Federal is licensed in American Samoa, Guam, and each of the Provinces of Canada except Prince Edward Island; and
- (3) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seal of said Companies at Warren, NJ this 11th day of JANUARY, 2006



*Kenneth C. Wendel*  
Kenneth C. Wendel, Assistant Secretary

IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT ADDRESS LISTED ABOVE, OR BY Telephone (808) 903-3483 Fax (808) 903-3688 e-mail: surety@chubb.com

### CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA )  
COUNTY OF RIVERSIDE )

On 2/1/2006 before me, MINH QUANG TRAN  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared, ALAN ROBERT

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature] (SEAL)  
NOTARY PUBLIC SIGNATURE



#### OPTIONAL INFORMATION

THIS OPTIONAL INFORMATION SECTION IS NOT REQUIRED BY LAW BUT MAY BE BENEFICIAL TO PERSONS RELYING ON THIS NOTARIZED DOCUMENT.

TITLE OR TYPE OF DOCUMENT \_\_\_\_\_

DATE OF DOCUMENT \_\_\_\_\_ NUMBER OF PAGES \_\_\_\_\_

SIGNER(S) OTHER THAN NAMED ABOVE \_\_\_\_\_

SIGNER'S NAME \_\_\_\_\_ SIGNER'S NAME \_\_\_\_\_

RIGHT THUMBPRINT

--

RIGHT THUMBPRINT

--

Thermal Sheriff Station and Aviation Complex - Thermal, California

**BID FORM**

SECTION I - BID FORMS

BID FOR THE  
THERMAL SHERIFF STATION AND AVIATION COMPLEX

TO THE REDEVELOPEMNT AGENCY

Date

5/21/08

FOR THE COUNTY OF RIVERSIDE

Bidder

ASR CONSTRUCTORS, INC.

The undersigned, having carefully examined the proposed site and the Notice Inviting Bids, Instructions to Bidders, Bid Form, Bid Bond, Agreement, Letter of Intent, Notice to Proceed & Commencement of Work, Performance Bond, Payment Bond, General Conditions of the Contract, Supplementary General Conditions of the Contract, Summary of Work/Project Description, General Requirements, the Plans and Specifications plus any Addenda, for the Construction of the Thermal Sheriff Station and Aviation Complex, Thermal, California, hereby proposes and agrees to furnish all tools, equipment, services, apparatus, facilities, transportation, labor and materials necessary to complete the construction in strict conformity with the Specifications and Construction Documents, including all work specified in Addenda numbered and dated:

Addendum No. <u>1</u>	Date <u>4/23/08</u>
Addendum No. <u>2</u>	Date <u>4/25/08</u>
Addendum No. <u>3</u>	Date <u>5/9/08</u>
Addendum No. <u>4</u>	Date <u>5/14/08</u>

AND:

1. For the total sum including all applicable taxes, permits and licenses as follows:

\$ 9,200,000.00  
(Total Site Development per Mead & Hunt in Figures)

\$ 8,500,000.00  
(Total Aviation Hangers per Mead & Hunt in Figures) <sup>0.71</sup>

\$ ~~18,030,000.00~~ 15,063,000.00  
(Total Sheriff Station per HDR, Inc. in Figures)

\$ 140,000.00  
(Allowance Item #1, Book 4 - Site Development, Section 012100, 28,000 Square yards of subgrade soil treatment per spec, included in Total Base Bid, in Figures)

\$ 75,000.00  
(Alternate 1 - Extended Warranty, identified Alternate No. 1 in Book 1 - Sheriff's Station, Section 01030, Subsection 1.3 A; Provide pricing for the 5 year Service Contract and Extended Warranty, beyond the minimum 1 year warranty period required for this project as specified in Section 17200, in Figures)

MAY-28-2008 WED 01:44 PM

ECONOMIC DEVELOPMENT

FAX NO. 863 2551

P. 03

Thermal Sheriff Station and Aviation Complex - Thermal, California

\$ 195,000.00  
(COC Insurance, Included in Total Base Bid, in Figures)

\$ 33,173,000.00  
(Total Lump Sum Base Bid)

THIRTY-THREE MILLION, ONE HUNDRED SEVENTY-THREE THOUSAND & 00/100  
(Total Lump Sum Base Bid in Words)

Contract Duration: 462 calendar days.

Bids must be submitted on all Items. Failure to Bid on all Items may result in the Bid being rejected as non-responsive.

MAY-28-2008 WED 01:44 PM

ECONOMIC DEVELOPMENT

FAX NO. 7 863 2551

P. 04

Thermal Sheriff Station and Aviation Complex - Thermal, California

Designation of subcontractors in compliance with section 4104 of the government code, the undersigned submits the following list of each subcontractor who will perform work or labor or render services as part in or about the construction in an amount in excess of 1/2 of 1% of said total bid.

<u>WORK</u>	<u>SUBCONTRACTOR</u>	<u>ADDRESS</u>
REBAR	TS STEEL	5230 WILSON ST RIVERSIDE, CA. 92509
FOUNDATION PILES	FOUNDATION PILE INC.	P.O. 1167 FONTANA, CA.
ROUGH CARPENTRY	INFINITY	2020 GASTON RD, PALMIS, CA. 92570
CASEWORK	BELTINO MANUF.	1696 MILL ST COLTON, CA. 92534
ROOFING	APPLIED ROOF	211 PEARL ST. COCONA, CA.
<del>REDACTED</del>		
LATH & PLASTER	CASTON PLASTER	354 S. ALLEN ST SAN BERNARDINO, CA, 92408
CARPENTRY RESILIENT	RICCARDI	780 E. FRANCIS ST. #H ONTARIO, CA. 91761
PAINT	SAINBOUS & McMICHAEL	P.O. Box 349 RIVERSIDE, CA.
SHADE STRUCTURE	SHADE STRUCTURES USA	PALM DESERT, CA.
METAL BUILDING	C.W.C.	RIVERSIDE, CA.
FUEL SYSTEMS	BOVEY	COCONA, CA.
FIRE SPRINKLER	DAANT	1598 N. H' ST, SAN BERNARDINO, CA. 92405
PLUMBING	DUKE	5230 WILSON ST. #B RIVERSIDE, CA. 92509

ASK CONSTRUCTORS



MAY-28-2008 WED 01:45 PM

ECONOMIC DEVELOPMENT

FAX NO. 863 2551

P. 06

Thermal Sheriff Station and Aviation Complex • Thermal, California

SECTION II - BID FORMS

AWARD OF CONTRACT

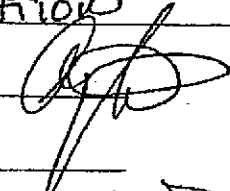
The undersigned fully understands that a Contract is formed upon the acceptance of this bid by the Owner, and the undersigned further agrees that upon request he will promptly execute and deliver to Owner a written memorial of the contract together with the required labor, material and performance bonds, and insurance policies.

BID GUARANTEE

The enclosed certified or cashier's check or bid bond on approved form, made payable to the Owner in the amount of ten percent (10%) of the total bid including all additive alternates submitted herewith, is hereby given as a guarantee that the Bidder will execute and deliver the above mentioned written memorial and required bonds if awarded the contract, and in the event that the undersigned fails or refuses to execute and deliver said documents, such check or bond is to be charged with the costs of the damages experienced by the Owner as a result of such failure or refusal, including but not limited to publication costs, the difference in money between the amount of the bid of the said Principal and the amount for which obligee may legally contract with another party to perform the said work if such amount be in excess of the former, building lease or rental costs, transportation costs and additional salary costs that result from the delay due to the Principal's default on the awarded contract. In no event, however, shall the Surety's liability exceed the penal sum hereof.

Name of Bidder ASR CONSTRUCTORS, Inc.

Type of Organization CORPORATION

Signed By ALAN REBOTT 

Title of Signer PRESIDENT

Address of Bidder 5230 WILSON ST RIVERSIDE CA 92509

Telephone Number 951 779 6580 FAX Number 951 779 6588

Contractor's License Number 615395 Classification A,B,C8,C-27,C-29,C-51

Expiration Date 8/09 (Bidder certifies under penalty of perjury that the license information herein is true.)

If Bidder is a corporation, and signer is not President or Secretary, attach certified copy of By-laws or resolution authorizing execution. If Bidder is a corporation, affix corporate seal. If signer is an agent, attach Power of Attorney. If Bidder is not an individual, list names of other persons authorized to bind the organization.

MAY-28-2008 WED 01:46 PM

ECONOMIC DEVELOPMENT

FAX NO. 863 2551

P. 07

• Thermal Sheriff Station and Aviation Complex • Thermal, California

SECTION III -- BID FORMS

BID FOR Thermal Sheriff Station and Aviation Complex, Thermal, California

TO THE REDEVELOPMENT AGENCY FOR THE COUNTY OF RIVERSIDE,

In accordance with The Owner's NOTICE INVITING BIDDERS, the undersigned BIDDER hereby proposes to furnish all materials, equipment, tools, labor and incidentals required for the above stated project as set forth in the Plans, Specifications and contract documents and any addenda thereto, and to perform all work in the manner and time prescribed therein.

BIDDER declares that this bid is based upon careful examination of the site, Project Manual, Exhibits and Addendum(s) 1-74, INSTRUCTIONS TO BIDDERS, and all other contract documents. If this bid is accepted for award, BIDDER agrees to enter into a contract with Owner at the lump sum prices set forth in the following BID SCHEDULE. BIDDER understands that failure to enter into a contract in the manner and time prescribed will result in forfeiture to Owner of the BID BOND accompanying this bid.

BIDDER understands that a bid is required for the entire work. It is agreed that the lump sum prices bid include all appurtenant expenses, bonds, taxes, royalties, transportation and fees.

If awarded the Contract, the undersigned further agrees that in the event of the BIDDER'S default in executing the required contract and filing the necessary bonds and insurance certificates within four (4) calendar days after the date of the Owner's notice of award of contract to the BIDDER, the proceeds of the security accompanying this bid shall become the property of the Owner and this bid and the acceptance hereof may, at the Owner's option, be considered null and void.

The Redevelopment Agency reserves the right, after opening bids, to reject all bids or to make an award to the lowest responsive, responsible Bidder.

MAY-28-2008 WED 01:47 PM ECONOMIC DEVELOPEM FAX NO. 863 2551 P. 08  
MAY-23-2008(FRI) 11:59 ASR

**ASR CONSTRUCTORS, INC.**

STATE LICENSE NO. 615395  
5230 Wilson Street Riverside, CA, 92509  
951-779-6580 Fax 951-779-6588

**FAX  
TRANSMITTAL**

TO: Riverside County Economic Development Agency  
ATTN: Joaquin Tijerina  
DATE: 5/23/08  
RE: Thermal Sheriff Station and Aviation Complex Bid Protest  
FAX NO.: 760 863 2551

NO of PAGES: 33

Hi Joaquin:

Please find the attached Bid Protest Correspondence for the Thermal Sheriff Station and Aviation Complex.

Marc Berry, Operations Manager

ASR CONSTRUCTORS, INC.

MAY-28-2008 WED 01:47 PM

ECONOMIC DEVELOPMENT

FAX NO. 863 2551  
(760) 331130200

P. 09  
F. 002/033

**ASR CONSTRUCTORS, INC.**

STATE LICENSE NO. 615395  
5230 Wilson Street Riverside, CA. 92509  
951-779-6580 Fax 951-779-6588

May 23, 2008

RDK Consulting Inc.  
7777 Girard Ave, Suite 206  
La Jolla, CA 92037

ASR CONSTRUCTORS  
MAY 23 2008  
FAXED

ASR CONSTRUCTORS  
MAY 23 2008  
FAXED

ATTN: Mr. Gary Ousley

RE: Thermal Sheriff Station and Aviation Complex Bid Protest

Dear Mr. Ousley:

Please accept this notice as a formal protest of the apparent low bid submitted by J D Diffenbaugh Inc. due to the following issues and subletting infractions:

1. Instruction to Bidding Item 14 Qualification of Bidders states no award will be made to any Bidder who cannot give satisfactory assurance to the Redevelopment Agency as to his own ability to carry out the contract, both financial standing and by reason of his previous experience as a contractor on work of the nature contemplated in the contract. The Bidder may be required to submit his record of work of similar nature to that proposed under these specifications, and unfamiliarity with the type may be sufficient cause for rejection of Bid. It is our belief that the current officers of J D Diffenbaugh have no experience in constructing Public Works correctional or Law Enforcements Facilities.

Subcontracting and subletting infractions.

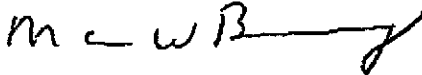
1. J D Diffenbaugh has failed to comply with item 16 of the Instructions to Bidders. Based on J D Diffenbaugh total bid of \$32,751,507, any subcontractors submitting a bid in excess of 1/2 of 1% should be listed. Failure to list a subcontractor for a portion of the work means that the prime Bidder will do that portion of the work.
2. J D Diffenbaugh has failed to list a subcontractor for Specifications Section 09220 Portland Cement Plaster and 09201 Metal Furring and Lathing the value of the section of work well exceeds the \$163767.54 listing percentage. All bids submitted to ASR constructors exceed \$500,000 for the lath and plaster scope of work. Specification Section 09220 Portland Cement Plaster Article 1.1 Quality Assurance Paragraph C. Applicator qualifications Section 1. More than 5 years successful experience in cement plastering works on similar size projects. J D Diffenbaugh has no contractor license

C-35 for Lath and Plasters. It is our belief that J D Diffenbaugh has no Lath and Plaster in house experience.

3. J D Diffenbaugh has failed to list a subcontractor for Specifications Section 15590 Fuel Oil Systems. The plans, specifications, and Riverside County Compliance Notes clearly states that the contractor performing the work shall possess a current General Engineering A with a Hazardous Certification from the Contractor State License Board. The value of the fueling system is in excess of 1/2 of 1%. The value of the ASR's subcontractor H.B. Covey is \$288,000. J D Diffenbaugh holds no Hazardous Certification from the State of California nor does any of its listed underground subcontractor Jaccobbson Engineering or RCR Plumbing. J D Diffenbaugh has no qualifications nor has it listed a qualified subcontractor for the Fueling Systems.
4. J D Diffenbaugh has failed to list a subcontractor for Specifications Section 09902 Exterior Paint or Section 09904 Interior Paint. The listed subcontractor for ASR value is \$361,200 which exceeds the 1/2 of 1% listing requirements as stated in the Instructions to Bidders.
5. J D Diffenbaugh has failed to list a subcontractor for Specifications Section 12340 Architectural Casework or Section 123500 Plastic Laminate Casework. The value of the Casework exceeds the 1/2 of 1% listing requirements. The Specifications for Plastic Laminate Casework requires WIC Certified Compliance Certificate. J D Diffenbaugh has no WIC certification.

Based on the above referenced issues JD Diffenbaugh clearly had an unfair bid advantage on the Thermal Sheriff Station and Aviation Complex Project. We feel J D Diffenbaugh's bid should be deemed non responsive due to the bidding infractions, licensing issues and project qualifications and experiences.

Respectfully,



Marc W. Berry  
Operations Manager  
ASR Constructors, Inc.

Check A License: Contractor's License Detail



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Contractors State License Board

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How to Participate

**DISCLAIMER:** A license status check provides information taken from the CSLB license database. Before relying on this information, you should be aware of the following limitations.

- CSLB complaint disclosure is required by law (BSP 1124.5). If it is only subject to public complaint disclosure, a link for complaint disclosure will appear below. Click on the link or button to obtain complaint and/or legal action information.
- Per BSP 1001.37, only construction related civil judgments reported to the CSLB are disclosed. Arbitrations are not listed unless the contractor fails to comply with the terms of the arbitration.
- Due to workload, there may be relevant information that has not yet been entered onto the Board's license database.

License Number: 181905 Expiry Date: 05/29/2008

Business Information:  
J D DIFFENBAUGH INC  
6005 AIRPORT DR  
NOVEMBER, CA 92044

Business Phone Number: (951) 951-4999

Entity: Corporation

State Date: 05/29/1958

Expire Date: 05/29/2008

License Status: This license is current and active. All information below should be reviewed.

Classification:

CLASS DESCRIPTION

A GENERAL ENGINEERING CONTRACTOR

B GENERAL BUILDING CONTRACTOR

D-1 CONCRETE

C-1 LANDSCAPING

CONTRACTOR'S BOND

This license has Contractor's bond number 05809251 in the amount of \$75,000 with the bonding company FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

Effective Date: 01/01/2007

Contractor's Bonding History

BOND OF QUALIFYING INDIVIDUAL

1. The Responsible Managing Officer (RMO) MARVIN JACK HARRINGTON JR certified that he/she owns 10 percent or more of the voting stock/equity of the corporation. A bond of qualifying individual is not required.

Effective Date: 05/29/2008

CSLB Ratings History

Workers' Compensation

This license has workers compensation insurance with the THE TRAVELERS ACCIDENT COMPANY.

Policy Number: VT0870177208

Effective Date: 01/01/2008

Expire Date: 01/01/2009

Workers' Compensation History

Parameters listed on this license (shown) or (less restricted) are listed on other licenses.

JD DIFFENBAUGH

MAY-28-2008 WED 01:51 PM ECONOMIC DEVELOPMENT

FAX NO. 760 863 2551

P. 12 P. 805/033



Department of Consumer Affairs  
Contractors State License Board

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**DISCLAIMER:** A license status check provides information taken from the CSLB license database. Before relying on this information, you should be aware of the following limitations.

- CSLB complaint disclosure is restricted by law (BPC 7124.5). If this entity is subject to public complaint disclosure, a link for complaint disclosure will appear below. Click on the link or button to obtain complaint and/or legal action information.
- Per BAP 7071.17, only construction-related civil judgments reported to the CSLB are disclosed. Arbitrations are not listed unless the contractor fails to comply with the terms of the arbitration.
- Due to workload, there may be relevant information that has not yet been entered onto the Board's license database.

License Number: 538428      Expiration Date: 05/22/2008  
 Business Information: R C R PLUMBING AND MECHANICAL INC  
 19420 MAGNOLIA AVENUE  
 RIVERSIDE, CA 92505  
 Business Phone Number: (951) 373-6000

Entity: Corporation  
 Issue Date: 05/10/07  
 Expiry Date: 05/22/08  
 License Status: This license is current and active. All information below should be reviewed.

Classifications:

CLASS	DESCRIPTION
C30	PLUMBING
C10	FIRE PROTECTION CONTRACTORS

Bonding: **LIBERTY MUTUAL INSURANCE COMPANY**  
 This license holder Contractor's Bond number 834028462 in the amount of \$12,000 with the bonding company LIBERTY MUTUAL INSURANCE COMPANY.  
 Effective Date: 05/10/07  
 Contractor's Bonding History  
 BOARD OF QUALIFYING INDIVIDUAL

- The Responsible Managing Officer (RMO) ROBERT CHARLES RICHY is certified that he/she owns 10 percent or more of the voting stock/ownership of the corporation. A bond of qualifying individual is not required.  
 Effective Date: 05/20/07  
 RMO's Bonding History

Workers' Compensation: This license holder workers compensation insurance with the ABCH INSURANCE COMPANY, INC  
 Policy Number: 771101165300  
 Effective Date: 11/01/07  
 Expiry Date: 11/01/08  
 Workers' Compensation History

Miscellaneous Information:

DATE	DESCRIPTION
02/01/2007	CLASS C30 REMOVED
11/01/2007	CLASS C10 REMOVED PER REQUEST
05/20/2007	CLASS C15 & C20 REMOVED

Personnel listed on this license (current or disassembled) are listed on other licenses.

R C R PLUMBING

From: H. S. 3 TEMECULA

9096996129

05/15/2005 14:12 #080 P.028/041

DEC-10-2003 01:16P FROM:

TO: 6996129

P: 1/2



**douglas s. barnhart, inc.**

Wednesday, December 10, 2003

Mr. Al. Regot  
ASR Constructors  
5230 Wilson Street  
Riverside, CA 92509

**ASR CONSTRUCTORS**

**DEC 10 2003**

**RECEIVED**

**FAXED**  
12-10-03

RE: Final Releases  
Dezurent Number GEN-0031  
French Valley Charter School & Vail Misc. - 1048

Dear Mr. Regot,

Thank you for your additional final releases you faxed to us on the 1st phase of French Valley. We are still in need of a few more as you can see from the attached list.

If you can not provide final release from the listed contractors that you will need to provide us with a bond that is executed by an officer of the ASR Company.

You will also need to provide us with a release from the State of California on the issue of wages paid by Pro-ten Mechanical and J & B Surveying.

There is also the issue of the sag in the sewer main that is causing the system to back up. Given the fact that ASR has not fixed the problem the District will have to contract to repair same and deduct these cost from the final retention.

Respectfully,

douglas s. barnhart, inc.

Daniel Ray Crown, CCM  
Construction Manager

*YOUR A FOOL!*

cc: Dave Callahan - TVUSD  
deb main office  
Reeds

Post Office Box 270399, San Diego, California 92188-2399, (619) 365-8200, FAX (619) 365-8201  
www.dsbconstruct.com

12/10/2003 18:20 #126 P.001

9096996129

From: H. S. 3 TEMECULA



# City of Hesperia

Incorporated 1958

September 19, 2008

Mr. Alan Regotti, President  
**ASR CONSTRUCTORS, INC.**  
5230 Wilson Street  
Riverside, CA 92509

**RE:** Fire Station No. 305 (C.O. No. 6518)

Dear Mr. Regotti:

The purpose of this letter is to inform you of the status of your bid submittal for the above-referenced project. At yesterday's bid opening, ASR Constructors, Inc. was the apparent low bidder of the fifteen bids received; however, after carrying out due diligence on your company's ability to be the lowest "responsible" bidder, pursuant to Public Contract Code §1103 (... a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract), City staff has determined ASR Constructors, Inc. does not meet this requirement based on the following:

- The *Findings of Fact and Conclusions of Law* issued and published by Val Verde Unified School District, which indicates ASR Constructors, Inc.'s lack of fitness to perform public works contracts (copy attached);
- A report submitted to the Riverside Community College District Resources Committee for the Quadrangle Modernization Project at the Riverside City Campus, which indicates a lack of trustworthiness to perform public works contracts (copy attached);
- Actions by the San Jacinto Unified School District Board of Trustees finding ASR Constructors, Inc. to be non-responsible, due to a lack of fitness or capacity to perform public works contracts;
- Unfavorable verbal responses during reference checks and the City's own public works field inspection staff, which have personally experienced hostility and unprofessional behavior from ASR Constructors' employees while constructing a new school within the City of Hesperia.

Mike Leouard, Mayor  
Therston "Smitty" Smith, Mayor Pro Tem  
Ted Houeyett, Council Member  
Ed Puck, Council Member  
Rita Vogler, Council Member  
Mike Podgracz, City Manager

9700 Seventh Avenue  
Hesperia, CA 92345  
760-947-1000  
TD 760-947-1119

[www.cityofhesperia.us](http://www.cityofhesperia.us)



City of Hesperia

Fire Station No. 305 (C.O. No. 6518)  
September 19, 2008  
Page 2

This letter is to provide you an opportunity to respond to our findings. If you disagree with this assessment, please submit written evidence that rebuts this due diligence, and clearly demonstrates your firm is qualified to perform the Work as a responsible bidder no later than 5:00 p.m., September 30, 2008. Without such evidence, City staff will be compelled to recommend award of the contract to the second lowest bidder.

You may reach me at (760) 947-1202 if you have any questions or concerns.

Sincerely,

David R. Burkett  
Project Construction Manager

Attachments

cc Mike Podgracz, City Manager  
Brian Johnson, Assistant City Manager  
Scott Priester, Director of Development Services  
Eric Dunn, City Attorney  
Vicki Soderquist, City Clerk

RIVERSIDE COMMUNITY COLLEGE DISTRICT  
RESOURCES COMMITTEE

Report No.: VI-B-3

Date: September 16, 2008

Subject: Quadrangle Modernization Project – Payment Status

Background: On November 15, 2005, the Board of Trustees awarded a contract to ASR Constructors, Inc. for the Quadrangle Modernization Project at the Riverside City Campus. During the course of construction the Board has approved change orders bringing the total contract award to \$16,310,419. The project is nearing completion and closeout.

On August 19, 2008 Brent Bechtel of BECO Electric Company, Inc., a subcontractor to ASR Constructors, Inc., appeared before the Board to claim that he was owed \$366,483 for work that BECO Electric Company, Inc. had completed on the Quadrangle Modernization Project.

Staff has reviewed all Payment Applications for the project and District records show that the District has paid all invoices submitted by ASR Constructors, Inc. through August 19, 2008. (Payment Application Journal Attached).

Staff has also reviewed all Quadrangle Modernization Project files to determine if BECO Electric Company, Inc. had used the contractual protections that are available to all subcontractors to inform the District of payment problems. BECO Electric Company, Inc. has not filed a "Final Stop Notice" that would notify the District that there were payment issues. Further, BECO Electric Company, Inc. has not contacted District staff regarding non-payment by ASR Constructors, Inc.

The following Stop Notices, from ASR Constructors, Inc. subcontractors, are currently on file: All County Environmental in the amount of \$134,032.00 for asbestos abatement; California Field Ironworkers Trust Funds on behalf of Socal Ironworks in the amount of \$45,718.19 for non-payment of fringe benefits for Socal Ironworks employees. The District will be holding back the value of these Stop Notices, and any other Stop Notices the District may receive, until Release of Stop Notices are received from the subcontractors.

District Staff is working with ASR Constructors, Inc. to closeout the project and communicate past due payment claims by subcontractors.

Information Only.

Irving G. Hendrick  
Interim Chancellor

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**SAN JACINTO UNIFIED SCHOOL DISTRICT  
BOARD OF TRUSTEES AND THE BOARD OF TRUSTEES  
SITTING AS THE BOARD OF DIRECTORS  
OF THE SAN JACINTO UNIFIED SCHOOL DISTRICT  
SCHOOL FACILITIES CORPORATION**

## **AGENDA**

**Meeting:** REGULAR MEETING - PUBLIC SESSION  
**Date:** October 11, 2005

**Time:** 6:00 p.m. - Closed Session  
**Place:** Management Conference Room  
2045 S. San Jacinto Avenue, San Jacinto

**Time:** 6:00 p.m. - Public Session  
**Place:** Board Room  
2045 South San Jacinto Avenue, San Jacinto

**1. CALL TO ORDER - PUBLIC SESSION**

**1.1 Call to Order**

**2. CLOSED SESSION**

**2.1 Conference with Legal Counsel – Review Liability Claim**

*Review liability claim pursuant to Government Code Section 54961 (ASR Constructors, Inc.).*

**2.2 Conference with Legal Counsel – Site Acquisition**

*Parcel Nos. 431-240-005, 431-250-005, and 431-250-008.*

**2.3 Conference with Labor Negotiator**

*Employee Organizations: SJTA and CSEA  
District Negotiators: Byron Isaac, Joe Busek, Myrna Rohr*

**2.4 Public Employee Disciplines/Dismissal/Release**

FYT -  
Sent to us  
By Contract Compliance  
Kathy Eng.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After consideration of the evidence and testimony proffered and received during a public hearing conducted on January 10, 2007, the Public Works Hearing Officer for the Val Verde Unified School District hereby issues his Findings of Fact and Conclusions of Law.

### Findings of Fact

1. On November 16, 2006, Val Verde Unified School District's ("District") counsel, Public Agency Law Group ("PALG"), sent a letter to ASR Constructors, Inc. ("ASR"), providing notice to ASR that the District intended to find ASR to be a non-responsible contractor lacking the trustworthiness, quality, fitness and/or capacity to satisfactorily perform District construction projects for the next five (5) years. The basis for the District's intended finding was identified in the text of the fifteen (15) page letter and the several hundred pages of Project documents that were forwarded to ASR under cover of the letter. In addition, the letter notified ASR that it was invited to attend a hearing on December 8, 2006 at which time ASR would be afforded an opportunity to rebut the information that had been provided and to otherwise present evidence that ASR was a responsible contractor.

2. On November 28, 2006, counsel for ASR, Timothy Liebaert, Esq., sent a letter to the District's counsel, PALG, stating his belief that there were "substantial legal impediments to the District's proposed action" and further stating that the District was without the authority to hold the hearing or to find ASR to be non-responsible for a period of five years. After stating that ASR would file a Petition for Writ of Mandate, accompanied by a request for a Temporary Restraining Order and a Complaint for Declaratory Relief if the District did not agree to abandon its proposed action, Mr. Liebaert stated that "In the alternative, ASR has determined that in order to dispense with this issue, that if the District agrees to abandon its proposed action that ASR would agree to refrain from submitting a bid to the District for a period of 36 months from the date of execution of any such agreement".

3. On November 30, 2006, a Settlement Agreement Between Val Verde Unified School District and ASR Constructors, Inc. regarding the Responsibility Hearing was emailed to Mr. Liebaert by PALG.

4. On December 13, 2006, after ASR failed to return the signed Settlement Agreement or otherwise indicate that it would do so, the District's counsel, PALG, sent a letter to Mr. Liebaert, dated December 13, 2006, which again provided notice to ASR that the District intended to find ASR to be a non-responsible contractor lacking the trustworthiness, quality, fitness and/or capacity to satisfactorily perform District construction projects for the next five (5) years. The basis for the District's intended finding was identified in the text of the fifteen (15) page letter which also incorporated the several hundred pages of Project documents that had previously been forwarded to ASR under cover of the nearly identical November 16, 2006 letter. In addition, the

December 13, 2006 letter notified ASR that it was invited to attend a hearing on January 10, 2006 at which time ASR would be afforded an opportunity to rebut the information contained in the letter and in the previously provided documents and to otherwise present evidence that ASR was a responsible contractor.

5. On January 10, 2007, at approximately 1:25 p.m., the Responsibility Hearing commenced with Val Verde Unified School District's Superintendent, Dr. Fred Workman, presiding as the District's Public Works Hearing Officer appointed by the District's Board of Education. The hearing was also attended by Mike Boyd of Val Verde Unified School District, Sandee Hackett of Val Verde Unified School District, Todd Butcher of Val Verde Unified School District, Keith Berlin of Public Agency Law Group, Jeff Ray of PCM3, Chris Williams of PCM3, Doug Henning of PCM3, Henry Sylvia of DC Architects, Richard Duncan of DC Architects, Keith Berry of ASR, Michael Tran of ASR, Alan Regotti of ASR and Tim Liebaert of Robinson & Liebaert as ASR's counsel.

6. During the course of the hearing, sworn testimony was presented by Jeff Ray, Chris Williams, Doug Henning, Alan Regotti and Michael Tran. In addition, the December 13, 2006 letter and the several hundred pages of Project documents that had been previously provided to ASR under cover of the November 16, 2006 letter were entered into the record for the hearing. Approximately thirty-five (35) pages of documents provided by ASR were also entered into the record.

7. Jeff Ray testified that, in his review of the December 13, 2006 letter, he had determined that the representations made in the letter were correct and truthful. Chris Williams testified that he had reviewed the December 13, 2006 letter and found the statements to be truthful, accurate and correct. Doug Henning testified that he had read the letter, was familiar with its contents, and understood and believed that the facts contained in the letter were truthful, accurate and correct.

8. The December 13, 2006 letter stated that the District's finding of non-responsibility is based upon the District's determination that ASR lacks the trustworthiness, quality, fitness and/or capacity to satisfactorily perform District construction projects as demonstrated by ASR's performance on multiple District construction projects as follows:

**Mead Valley Elementary School Project - Gross Failure to Perform the Asphalt Installation in a Workmanlike Manner**

ASR was awarded the Bid Package #1 Contract for the Mead Valley Elementary School Project. ASR's Contract scope included asphalt work to be installed in the Mead Valley Elementary School play area during the Modernization portion of the Project in the Summer of 2002.

The initial asphalt installation performed by or on behalf of ASR was not performed in a workmanlike manner as it contained ripples and divots and had

various drainage problems. ASR agreed that corrective asphalt work would be performed during the Summer of 2003. Although various portions of the asphalt were removed and replaced during the Summer of 2003, the repair work on the northeast side of the new Kitchen Building was defective and in need of further repair. It was agreed that ASR would perform further repair work during the 2003 Christmas break.

The asphalt in the problem area was removed and replaced over the 2003 Christmas break. When the staff and students returned on January 5, 2004, it was determined that the newly repaired asphalt was also installed in an unworkmanlike manner with ripples, divots and an otherwise unacceptable surface.

On January 10, 2004, without providing any notice to PCM3 or the District, ASR reentered the Project site and sealed the asphalt with a new slurry coat. Neither PCM3, the District, nor the School staff had any knowledge that the work had been performed prior to the staff and students returning to the School on Monday, January 12, 2004. At that time, because the asphalt slurry coat was not yet dried, the black bituminous sealant was tracked over finish flatwork and onto the interior floor surfaces of the School building. In addition, several of the children stained their clothes with the sealant that they picked up on their shoes.

Although ASR continued to perform additional asphalt repairs in January 2004, the quality of the asphalt repairs remained unsatisfactory with asphalt chipping, crumbling, and being tracked into the buildings. Finally, due to the poor quality of the original asphalt installation, and ASR's inability to accomplish the necessary repairs, it became necessary for the District to take over the work on January 21, 2004.

#### Val Verde High School Project - Gross Failure to Timely Complete Landscape Contract Scope

ASR contracted to perform Bid Package #16 which included the Landscaping and Irrigation scope for the Val Verde High School Project. ASR took several months beyond the scheduled Punch List completion date to finish the landscaping and irrigation scope and commence ASR's maintenance period. The Punch List scope was not completed until more than four months after the scheduled date and almost a month after school had already commenced.

On March 26, 2004, ASR was notified, in a Fax from PCM3, that the District was dissatisfied with the appearance of the landscaping and the lack of maintenance for the landscaping that had been installed. On May 2, 2004, PCM3 faxed a Punch List to ASR for Landscaping and irrigation to be completed by May 14, 2004. On May 7, 2004, PCM3 sent a Fax to ASR notifying ASR that they had not yet commenced their Punch List scope and requesting that ASR

adjust its manpower to ensure that the punch list work was timely completed. ASR was reminded in the May 7, 2004 Fax that the maintenance period would not commence until the Punch List was completed and signed off. On May 27, 2004, PCM3 sent a Fax to ASR reminding ASR that the Punch List scope was to be completed on May 14, 2004 and ASR still had not contacted PCM3 for ASR's Punch List walk through. On May 27, 2004, PCM3 sent a second Fax to ASR notifying ASR that a Punch List walk through would be performed on June 1, 2004, but that the current state of landscaping and irrigation would not be sufficient to result in sign-off unless further remedial measures were taken.

On June 4, 2004, PCM3 sent a Fax to ASR with a revised Landscaping Punch List. On June 8, 2004, PCM3 sent a Fax to ASR notifying ASR that the turf was in poor condition, that there were still numerous outstanding Punch List items and that the maintenance period would not begin until the Punch List scope was completed. On June 28, 2004, PCM3 sent a Fax to ASR notifying ASR that the Punch List was sitting idle and that there were various problems with the irrigation system settings.

On July 20, 2004, PCM3 sent a Fax to ASR stating that the Punch List work needed to be completed immediately and reiterating that the District was very displeased with the condition of the landscaping. In the July 20, 2004 Fax, PCM3 told ASR that if swift corrective action was not taken, the completion of the work would be taken over by the District. On July 28, 2004, PCM3 sent a letter to ASR providing ASR with 24 Hour Notice to immediately commence all incomplete landscaping and irrigation work. In the July 28, 2004 letter, ASR was again told that if ASR failed to provide adequate materials and manpower, the District would take over and/or supplement the work. In the July 28, 2004 letter, ASR was reminded that the Punch List scope was 11 weeks overdue and that students were scheduled to arrive soon, on August 23, 2004. On July 30, 2004, PCM3 faxed a letter to ASR, from the Landscape Architect, indicating that many of the items from the first pre-maintenance Punch List, dated 4/29/04, still had not been addressed and identifying numerous items that still needed to be dealt with.

On August 17, 2004, PCM3 sent a Fax to ASR notifying ASR that a further Punch List walk through was scheduled for 8/26/04. On September 9, 2004, PCM3 sent a letter to ASR noting that several of ASR's Contract scope and Punch List scope items still remained outstanding. On September 14, 2004, PCM3 sent a Fax to ASR notifying ASR that a final walk through was now scheduled for 9/15/04 to determine if ASR's work was sufficiently completed to commence the maintenance period. On September 16, 2004, almost a month after school had commenced and four months after the scheduled date, ASR finally completed the landscaping scope and the maintenance period was able to commence.

**Columbia Elementary School Project – Failure to Install Asphalt in Conformity with the Project Plans and Specifications; Poor Quality Concrete Patch Work**

ASR was awarded the Contract for Bid Package #1 - General Construction on the Columbia Elementary School Project. ASR's contract scope required that ASR install asphalt at various locations on the Project with a thickness of not less than three inches. On August 21, 2004, a Non-Compliance Notice was issued after an Asphalt sample revealed that the asphalt was only two inches thick. After a subsequent inspection, where core samples were taken in four separate locations of the Project on September 27, 2004, it was found that the asphalt, at the sampled locations, ranged in thickness from 1&7/8 inches to 2&3/4 inches with an average thickness of less than 2&1/4 inches.

There were also problems with the extremely poor quality concrete patch work provided by ASR at the Columbia Elementary School Project. On May 25, 2006, PCM3 sent a letter to ASR, notifying ASR that several areas of patched concrete at the school site were cracking, falling, and resulting in trip hazards. ASR refused to repair its defective concrete patch work faxing back PCM3's letter with the following handwritten message:

*"DAN, I BELIEVE THAT THE ONE YEAR WARRANTY HAS EXPIRED FOR THIS JOB. MT"*

**Lasselle Elementary School Project – Gross Failure to Timely Complete Grading; Failure to Perform Grading Scope in Conformity with the Project Plans and Specifications**

ASR was awarded the contract for Bid Package #1 - General Construction on the Lasselle Elementary School Project. ASR's Contract scope included grading and, with regard to the grading work, ASR had substantial problems maintaining the schedule. Rough grading had been scheduled to be completed on October 8, 2004 and fine grading was scheduled to be completed on October 22, 2004. Nevertheless, ASR's grading scope fell more than six months behind schedule and ASR's delayed completion of grading impacted the progress of other prime contractors on the Project. After the Project was completed, the School began to experience significant drainage problems in the ball field areas. It was subsequently determined that the drainage problems were caused by ASR's failure to grade those areas in conformity with the Project plans and specifications. Necessary grading repairs have been estimated to cost in excess of \$190,000.00. To date, the grading in those areas still remains out of compliance with the Project plans and specifications.

**Rainbow Ridge Elementary School Addition Project – Gross Failure to Timely Provide Acceptable Elevator Submittals and Timely Perform Elevator Installation Scope**

ASR was awarded the Contract for Bid Package #1 - General Construction for the Rainbow Ridge Elementary School Addition Project. Included in the scope of ASR's Contract was the installation of a hydraulic elevator. Despite the fact that ASR was required to submit hydraulic elevator submittals by June 20, 2005, ASR failed to provide adequate submittals until January, 2006, more than six months after the required date. In addition, after the hydraulic elevator submittals were approved, ASR's installation of the elevators was not timely.

The timeline regarding ASR's hydraulic elevator submittals was as follows. ASR's first set of hydraulic elevator submittals were forwarded to the architect on May 19, 2005 and were returned to ASR on June 3, 2005 with architect comments and the directive to "revise and resubmit". On June 17, 2005, PCM3 sent a Fax to ASR requesting an update on the status of ASR providing its elevator re-submittals and shop drawings. On July 20, 2005, after ASR substituted its elevator subcontractor, ASR was informed that submittals provided by its new elevator subcontractor, Mitsubishi, were incomplete and deviated from the Project requirements. On July 28, 2005, PCM3 forwarded the architect's review comments to ASR and requested that ASR submit elevator shop drawings and calculations ASAP. On August 10, 2005, PCM3 faxed to ASR a list of outstanding Project submittals/re-submittals, noting that the elevator submittal was a "CRITICAL DEFERRED APPROVAL ITEM" "due for this project over seven weeks ago" and requesting that ASR immediately expedite the submission of the re-submittal. PCM3 resent its August 10 Fax to ASR on August 12, 2005, August 16, 2005 and August 23, 2005. On August 24, 2005, ASR's elevator re-submittals were forwarded to the architect for review and comment. On September 13, 2005, ASR's elevator re-submittals were returned to ASR with the architect's comments and the request that ASR revise and resubmit them. On October 10, 2005, PCM3 sent a Fax to ASR inquiring as to the status of the elevator re-submittals, explaining that they were needed for DSA submission, and stating that ASR's elevator subcontractor was taking too long. On October 18, 2005, PCM3 sent a letter to ASR giving ASR 72 hour notice to re-submit the elevator re-submittals and notifying ASR that the District intended to assess liquidated damages for the late elevator submittals. On October 25, 2005, PCM3 sent a follow up Fax to ASR reiterating that the elevator re-submittals were critical to the Project, that they were late, and that ASR was being assessed liquidated damages for the late submittals. On November 3, 2005, elevator re-submittals were forwarded to the architect. On November 9, 2005, ASR's elevator re-submittals were returned to ASR with the architect's comments and a request that ASR revise and resubmit them ASAP. On January 4, 2006, more than six months after the elevator submittals were originally due, new elevator re-submittals were forwarded to the architect. Those re-submittals were ultimately approved by the architect and by DSA.

Following approval of the elevator submittals, ASR's installation of the elevators was not timely performed. On April 12, 2006, PCM3 sent a fax to ASR

stating that ASR's elevator subcontractor's projected elevator installation date, in June, 2006, was unacceptable and requesting that ASR have its elevator subcontractor deliver and install the elevators by early May, 2006. On April 18, 2006, ASR sent a letter to its elevator subcontractor noting that ASR expected to see its elevator subcontractor on site, commencing the elevator installation, in the third week of May. In the April 18, 2006 letter, ASR further noted that the duration for the elevator subcontractor's work would be four to five weeks and that the schedule would not be able to accommodate further delays. On the morning of May 15, 2006, PCM3 sent a Fax to ASR noting that PCM3 had not seen ASR's elevator subcontractor on site and requesting that ASR confirm that the elevator subcontractor would be on site that day. On May 25, 2006, PCM3 faxed a letter to ASR confirming ASR's representation that the elevator installation would commence on June 5, 2006. In the May 25, 2006 letter, PCM3 noted that the "sign off" date for the elevator was April 28, 2006, that the elevator installation was significantly behind schedule, and that the elevator installation needed to be completed in a timely fashion as the school was scheduled to open on August 17, 2006. On June 5, 2006, ASR sent a letter to its elevator subcontractor noting that the elevator installation had not yet commenced as promised and that the date had already been moved back multiple times. In the June 5, 2006 letter, ASR further noted that the elevator subcontractor was now stating that materials would not be on site until June 16, 2006, or June 20, 2006, and that the installation would take four weeks to complete, which would mean that installation would be completed by July 20, 2006. ASR further noted that July 20, 2006 was the date that the elevator subcontractor must finish the job (including inspection and sign off) as the District would be moving into the Project the last week of July. Subsequently, elevator installation by ASR's elevator subcontractor commenced on July 16, 2006. On August 10, 2006, the elevator failed state inspection. The elevator finally passed inspection on August 18, 2006, the day after school started at the Rainbow Ridge Elementary School.

**Rainbow Ridge Elementary School Addition Project - Gross Failure to Timely Perform Roof Framing Scope; Failure to Perform Roof Framing Scope in Conformity with the Project Plans and Specifications**

ASR was awarded the Contract for Bid Package #1 - General Construction on the Rainbow Ridge Elementary School Addition Project. ASR's Contract scope included framing for the Project. ASR quickly fell behind schedule during the framing process. Initially, there were manpower problems with ASR's framing subcontractor. On October 11, 2005, PCM3 sent a Fax to ASR noting that ASR was already 13 days behind the revised framing start date of 9/26/05 and that ASR's framing subcontractor would need to "man-up and begin the framing operations." On October 19, 2005, PCM3 faxed a letter to ASR noting that the framing scope was scheduled to be completed by December 16, 2005 and that it was necessary for ASR's framing subcontractor to provide adequate manpower to ensure timely completion of the framing. On October 20, 2005, PCM3 faxed to

ASR a third written notice of insufficient manpower for framing operations at Rainbow Ridge Elementary School. On November 16, 2005 PCM3 faxed a letter to ASR noting that the framing progress was behind schedule and that ASR's framing subcontractor would need to immediately increase manpower. On November 22, 2005, PCM3 faxed a letter to ASR acknowledging that ASR's framing subcontractor's manpower had increased, but that there were delays in ASR providing rough framing and that therefore, ASR would be responsible for cost impacts submitted by other prime contractors as a result of those delays.

ASR's framing delays on the Rainbow Ridge Elementary School Addition Project were exacerbated by ASR's failure to frame in conformity with the Project plans and specifications and by ASR's delay in correcting its nonconforming work. On December 19, 2005, the Project Inspector noted that there were several problems with the Project framing including the framing subcontractor's use of multiple pieces of filler blocking in lieu of solid blocking as required. In the Project Inspector's Items of Concern No. 6, dated December 29, 2005, the Project Inspector noted eleven different items of concern with the Project framing which included, among other things, ASR's framing subcontractor's use of multiple pieces of wood fillers, in lieu of one solid shape piece, at the location of the roof top equipment platforms. After ASR failed to correct the problem, on January 6, 2006, PCM3 submitted an RFI, on ASR's behalf, requesting that the architect approve a corrective solution for the non-conforming installation. The architect's RFI response was faxed to ASR on January 16, 2006. ASR was directed to immediately implement the suggested modification so as not to further delay the Project. At the weekly Project meeting on January 31, 2006, ASR represented that the HVAC blocking would be completed that same day and ready for inspection the following day. In the Project Inspector's Items of Concern No. 8, dated February 3, 2006, the Project Inspector noted eight different items of concern with the Project framing which included, among other things, ASR's framing subcontractor's failure to correct the non-conforming HVAC platform blocking installation. On February 7, 2006, ASR was again sent a notice that ASR's framing subcontractor was not adequately manning the Project and needed to mobilize a larger crew. On February 23, 2006, PCM3 faxed a letter to ASR providing a chronology of the HVAC platform blocking problem and noting that the Project schedule had been severely impacted because ASR had failed to provide framing in conformity with the Project plans and specifications or in conformity with the corrective measures provided by the Project architect. ASR finally corrected the HVAC platform blocking problem on March 6, 2006.

Due to ASR's failure to timely complete the roof top framing as scheduled on the Rainbow Ridge Elementary School Addition Project, the casework delivery and installation dates had to be pushed back several weeks. As a result, substantial storage fees were incurred by Stolo Cabinets, the casework contractor for the Project. As a result of those storage fees, Stolo Cabinets submitted a request to the District for a Change Order in the amount of \$5,709.00. ASR was

notified that the Stolo Cabinets storage Change Order amount would be back charged against ASR's Contract.

**Rainbow Ridge Elementary School Addition Project - Failure to Provide Irrigation Controller in Conformity with Project Plans and Specifications**

ASR was awarded the Contract for Bid Package #1 - General Construction, which included the landscaping scope on the Rainbow Ridge Elementary School Addition Project. As part of the General Construction Contract scope, on or about July 1, 2005, ASR was directed to install the specified automatic irrigation controller manufactured by United Green Tech. Nevertheless, in August, 2006, the District learned that ASR had disregarded the Project plans and specifications and had installed an irrigation controller at Rainbow Ridge Elementary School that was not the specified product and was not manufactured by United Green Tech. On August 23, 2006, PCM3 notified ASR, by Fax, that the controller installed by ASR was not manufactured by United Green Tech and PCM3 directed ASR to provide the specified controller as required per the plans. To date, the irrigation controller installed by ASR has not been replaced and remains in non-conformity with the Project plans and specifications.

**Triple Crown Elementary School Project - Gross Failure to Perform Asphalt Installation in Conformity with Project Plans and Specifications; Gross Failure to Perform Asphalt Installation in a Workmanlike Manner**

ASR was awarded the Bid Package #1 - General Construction Contract for the Triple Crown Elementary School Project. ASR's Contract scope included, among other things, the installation of asphalt paving on both the school site and on portions of the surrounding off site property owned by the City of Perris. The quality of the onsite and offsite asphalt paving provided by ASR was severely deficient and failed to comply with the Contract plans and specifications at over ninety locations. Much of the asphalt paving installed by ASR was not smooth and contained undulations, ruts and depressions which have impeded the flow of water. In addition, ASR failed to maintain the specified grade at numerous locations. In many areas, the asphalt installed by ASR overlapped with existing concrete and/or caused damage to other work in place. In addition, in some areas, ASR failed to install base materials and/or asphalt which was the required thickness. In general, much of the asphalt paving work installed by ASR, both onsite and offsite, was of substandard quality and installed in an unworkmanlike manner. There are many photographs that are being forwarded with this letter which substantiate the poor quality of ASR's asphalt paving for the Triple Crown Elementary School Project.

**Triple Crown Elementary School Project - Failure to Install Plumbing in Conformity with Project Plans and Specifications**

ASR was awarded the Bid Package #2 - Plumbing Contract for the Triple Crown Elementary School Project. ASR's plumbing installations were not performed in conformity with the Project plans and specifications and were not performed in a workmanlike manner. The Plumbing Contract scope included the installation of sewer lines and a separate Storm Drain System. On August 16, 2006, after ASR had installed the sewer lines and Storm Drain System, there was a sewer backup in the Administration Building which resulted in three separate rooms being flooded with raw sewage waste water and sustaining various damage. The sewer backup was cleared by an independent Roto-Rooter Contractor that same day. On August 17, 2006, PCM3 sent a letter to ASR documenting the problem and explaining that, when the Roto-Rooter contractor was clearing the blockage, it appeared as though the sewer line and Storm Drain System were somehow connected, indicating that the underground wet utility systems (Storm Drain and Sewer) were not correctly installed and were not installed in conformity with the As-Built drawings provided by ASR. PCM3 requested that ASR immediately address the problem. On August 25, 2006, there was a second sewer backup along the north side of the Administration building where sewage began backing up into the Storm Drain System catch basin. On August 26, 2006, ASR apparently realized that it had connected the Storm Drain System catch basin to the sewer line and the Sewer cleanout, with the Sewer cleanout cover box, to the Storm Drain System. At that time, ASR dug out the catch basin and the Sewer cleanout and reinstalled each of them in the reverse locations.

**Triple Crown Elementary School Project - Failure to Provide a Recovery Schedule as Repeatedly Requested and as Required Pursuant to the Project Plans and Specifications**

After ASR fell behind on the Triple Crown Elementary School Project, ASR flagrantly ignored the Project plans and specifications by failing to comply with repeated requests for ASR to submit a recovery schedule. The Project Specifications required, in Paragraph 1.04A.1.c. of Section 01041-2, that "upon written notice by CONSTRUCTION MANAGER, PRIME CONTRACTOR shall, within three (3) calendar days, provide a complete recovery schedule, including manpower loading, resource loading, detailing how the PRIME CONTRACTOR and his subcontractors will recover PRIME CONTRACTOR'S original scheduled milestone dates." Nevertheless, ASR never complied with that contractual requirement. On June 30, 2005, PCM3 sent a letter to ASR noting that ASR was continuing to fall behind schedule and starting to delay other contractors. In the June 30, 2005 letter, PCM3 requested that ASR provide an updated recovery construction schedule as required by the Project Specifications. On July 8, 2005, PCM3 faxed a second letter to ASR noting that ASR was falling

further behind and had failed to provide the recovery schedule as requested. In the July 8, 2005 letter, PCM3 renewed its request that ASR provide a recovery schedule as required. On July 13, 2005, PCM3 faxed a third letter to ASR noting that ASR was falling further behind and documenting that ASR had still failed to provide any recovery schedule as requested. On March 30, 2006, PCM3 faxed a letter to ASR noting that ASR had not finished importing soil, which was to be completed on July 15, 2005, and that ASR had not finished grading the site, which was to be completed on August 12, 2005. In the March 30, 2006 letter, PCM3 again requested that ASR submit a recovery schedule as required by the Project Specifications. On April 3, 2006, PCM3 faxed a letter to ASR with a copy of a letter from the electrical contractor that identified several incomplete items in ASR's contract scope that were delaying the electrical contractor. In the April 3, 2006 letter, PCM3 noted that ASR still had failed to comply with its contractual obligation to provide a recovery schedule as requested. On July 12, 2006, PCM3 faxed a letter to all of the prime contractors on the Project, including ASR, requesting that each prime contractor with incomplete scope provide a recovery schedule within three (3) days as required by the Project Specifications. On June 21, 2006, PCM3 faxed a letter to ASR noting that ASR still had not submitted a recovery schedule as required by the Project Specifications and renewing PCM3's request that ASR provide a recovery schedule. Despite the many requests that were made by PCM3, as the Project Construction Manager, ASR never complied with its contractual obligation to provide a recovery schedule.

All Projects -- Grossly Unprofessional and Antagonistic Conduct/Communications

Throughout the various Projects that ASR has had with Val Verde Unified School District, ASR has frequently conducted itself in an unprofessional manner, writing and faxing antagonistic, insulting, demeaning and disparaging letters and comments in response to reasonable inquiries that ASR received from PCM3, the Project Construction Manager. Examples of ASR's unprofessional communications are as follows:

1) In a response to a letter, dated August 16, 2004, that PCM3 sent to ASR on the Columbia Elementary School Project, ASR penned:

***"YOU PEOPLE ARE IN DEEP SHIT ON THE PROJECT YOU SHOULD TRY TO TONE DOWN YOUR THREATS! M Berry"***

2) In a letter, dated January 27, 2005, that ASR sent to PCM3 on the Val Verde High School Project, ASR wrote the following:

*"I don't believe anyone in any letter accused you personally of secreting a tape recording device in one of your orifices."*

*"...you are a bright young man and I am sure that you will go far in your daddy's company..."*

*"The behavior of you and your client fall well below the threshold of dignity."*

*"...still you behave as a spoiled child, always with your hand out like a street urchin."*

*"I don't think there exists any one of the 450 employees of ASR that has anything good to say and nothing but negative experiences with PCM3".*

*"Doug, the negative sentiment of you and your company is so strong that it is alarming at times."*

*"The negative perception of you shared by reputable trades, honest suppliers, superior contractors and unfortunately even your own work associates would be laughable if it wasn't for the fact that this type of perception influences bids..."*

*"You may even think that your 'rudeness' would be perceived as directness and decisiveness, as opposed to bad parenting."*

*"...short of sending you to your room and no tv for a month, I am somewhat perplexed by your continued behavior."*

In reference to other Projects that did not involve the District and PCM3, ASR wrote:

*"the sheer delight of not having to associate with despicable, selfish, inexperienced and insecure individuals is also a pleasure."*

ASR concluded the letter as follows:

*"I sympathize for you Doug in some way, I have witnessed the paranoia and distrust that happens in firms, who have been threatened with the loss of their 'cash cow'. The memos and the directives about who you are allowed to speak with and the questions from 'superiors' on 'what did so and so say to you and what did you say to them?' I have seen the reaction of companies that have and are being investigated for fraud and incompetence (or other negative actions) and the finger-pointing that pursues. Everyone thinking that if they make a bigger 'stink' than someone else their job is a bit more secure. Except for one thing, you don't fall into any of those categories, your (sic) family."*

3) In response to a letter, dated February 9, 2005, from Doug Henning at PCM3 to ASR, directing ASR to perform certain warranty work on the Val Verde High School Project, ASR penned a reply in the margins on PCM3's letter and faxed it back with the following:

***"DEPUTY DOUG! INCORRECT! IT ISN'T WARRANTY WORK I WILL REPAIR IT AND BILL YOUR CLIENT FOR THE DAMAGE YOUR CLIENT DR. SOD CONTINUES TO CREATE MORE PROBLEMS! Marc Berry"***

4) In response to a Fax, dated January 26, 2005, from Doug Henning at PCM3 to ASR, notifying ASR that a copy of the tape recording from the day's in service session was available to be picked up, ASR penned a reply on PCM3's Fax and faxed it back with the following:

***"WHICH EMPLOYEES WERE HIDING THE TAPE RECORDERS UNDER THEIR ARM? M Berry"***

5) In response to a Fax, dated January 4, 2005, from PCM3 to ASR, asking ASR to confirm that a scheduled date for an owner instruction session for the controller

assemblies and irrigation booster pumps was acceptable, ASR penned a reply on PCM3's Fax and faxed it back with the following:

*"YOUR AN EXPERT AT SHUTTING IT OFF ALREADY. M. Berry"*

6) In response to a letter, dated November 2, 2004, from PCM3 to ASR, explaining that the District was interested in assuming the remaining landscape maintenance period and requesting a credit for the unused portion of time, ASR penned a reply on PCM3's letter and faxed it back with the following:

*"PASS! YOU OWE ME FOR THE DAMAGE AND SABOTAGE."*

7) In a Fax to Doug Henning at PCM3, received September 27, 2004, ASR wrote the following:

*"NOBODY IN THIS FIRM HAS ANY CONFIDENCE THAT YOU TELL THE TRUTH ABOUT ANYTHING! M Berry"*

8) In response to a letter, dated September 16, 2004, from PCM3 to ASR, acknowledging that the District had accepted the landscaping scope of work as complete for Val Verde High School, ASR penned a reply in black marker on PCM3's letter and faxed it back with the following:

*"HOW ABOUT COSTS DUE TO THE LACK OF WATER BY THE DISTRICT AND PCM FRAUD. M Berry"*

9) In response to a Fax, dated August 16, 2004, from Doug Henning at PCM3 to ASR, regarding the fact that school would be in session at Val Verde High School on 8/23/04 and reminding ASR that maintenance and irrigation cannot be performed during school hours on school days and requesting that the irrigation schedule be changed so that the campus was not wet during the day, ASR penned a reply in black marker on PCM3's Fax and faxed it back with the following:

*"CAN'T WARRANTY UNDER THIS CONDITION"*

10) On the March Middle School Project, PCM3 received a letter, dated June 22, 2005, from the plumbing prime contractor, JPI, which stated, in part, "Today, at approximately 10:00 a.m., our onsite Foreman was verbally attacked by the steel subcontractor working for ASR. This attack was threatening bodily injury to Dave King as well as our company. In addition, scrap steel was maliciously dumped into our pipe trench by the same company... We are asking PCM3 to assist in keeping this type of behavior off projects as this, especially when we are working so close to kids in school. We will refrain from notifying the local police at this time hoping PCM3 can resolve this issue in a timely manner." ASR penned a reply on a copy of JPI's letter and faxed it back to PCM3 with the following:

*"TOTAL LIES BY JPI. BUT WHAT'S NEW! JPI MAN WAS OUT OF LINE. JPI IS A POOR PRIME. M Berry"*

11) In response to a Fax, dated November 4, 2005, from Sharon Sass at PCM3 notifying ASR that its general liability insurance certificate for the March Middle School Project was due to expire on November 23, 2005 and requesting that ASR

have its carrier submit current certificates listing the appropriate additional insureds, ASR penned a reply in black marker on PCM3's Fax and faxed it back with the following:

*"IT WILL BE RENEWED AND REISSUED BEFORE 11-23-05, ONLY A CONTRACTOR WOULD UNDERSTAND THE RENEWAL PROCESS. M. Berry"*

12) In response to a Fax, dated December 15, 2005, from Doug Henning at PCM3 to ASR, stating that a T&M pricing sheet on the March Middle School Project would not be processed until all related credits were submitted, ASR penned a reply on PCM3's Fax and faxed it back with the following:

*"STOP ALL WORK! M Berry"*

13) In response to a Fax, dated May 20, 2006, from Doug Henning at PCM3 to ASR, requesting an update regarding March Middle School traffic signal scope and the dates when materials will be onsite and installation will commence and conclude, ASR penned a reply in black marker on PCM3's Fax and faxed it back with the following:

*"WHAT THE HELL IS THAT GUY DOING! M Berry."*

14) In a Fax, dated 8/22/06, from ASR to Chris Williams at PCM3 on the Triple Crown Elementary School Project, ASR wrote, among other things:

*"Since you obviously have only rudimentary knowledge of construction sequencing, let us school you a bit."*

15) In response to a letter sent by Chris Williams (of PCM3) to ASR on the Triple Crown Elementary School Project, on or about July 16, 2006, ASR penned a reply on Mr. Williams' letter and faxed it back with the following:

*"CHRIS I HAVE ADDED YOUR NAME TO MY LIST OF UNEXPERIENCED CM TRYING TO RUN JOBS. ONCE AGAIN PCM AND LACK OF EXPERIENCE IN BUILDING PRODUCT WILL COST THE DISTRICT ANOTHER CLAIM OR CHANGE ORDER. PCM3 SHOULD BE HELD ACCOUNTABLE. M Berry YOUR ORGANIZATION LACKS KNOWLEDGEABLE CONSTRUCTION MECHANICS"*

16) In response to a letter, dated August 8, 2006, from Chris Williams at PCM3 to ASR, regarding ASR's failure to remove a large amount of excess materials, trash and debris from the Triple Crown Elementary School Project as requested, and notifying ASR that the materials would be removed by the District and deducted from ASR's contract price, ASR penned a reply on Mr. Williams letter and faxed it back with the following:

*"WHERE'S THE NOTICE 24 HOURS. I WOULDN'T TRY IT. CHRIS DO YOU HAVE A LITTLE RED RADIO FLYER WAGON TO LOAD IT IN! Marc Berry"*

17) In response to a letter, dated August 5, 2005, from John Gostomski at PCM3 to ASR, regarding the need for ASR to install batter boards, as agreed, in order to avoid delaying the electrical prime contractor, ASR penned its short reply on Mr. Gostomski's letter and faxed it back with the following:

*"JOHNNY YOU'RE A BADDER BOY!"*

18) In response to a Fax, dated December 17, 2004, from Jeff Ray at PCM3 to ASR on the Lasselle Elementary School Project, forwarding copies of pencil drafts and requesting that ASR please address all future inquiries to Ken Englemen, ASR penned various replies in the margins of the fax and faxed it back with, among other things, the following:

*"YOUR NOT QUALIFIED TO KNOW. TOTALLY UNACCEPTABLE. M. Berry. I WILL REMOVE THE SUPERVISION IF YOU DON'T PAY!..."*

19) In response to a letter, dated December 22, 2004, from Ken Englemen at PCM3 to ASR on the Lasselle Elementary School Project, ASR penned various replies in the margins of the fax and faxed it back with, among other things, the following:

*"KEN YOU'RE A CLOWN M. Berry"*

9. After the introduction of the December 13, 2006 letter and the several hundred pages of supporting documents, Tim Liebaert commenced with introductory comments on ASR's behalf. During his introductory comments, Tim Liebaert stated that a lawsuit had been filed in Riverside Superior Court with respect to the hearing. He stated that the lawsuit contends that the hearing to determine whether a contractor is non-responsible is without legal authority in the absence of a bid having been submitted. He cited the City of Inglewood case and stated that ASR contends that in the absence of a bid under consideration on a particular Project, the District cannot convene a responsibility hearing for ASR. Mr. Liebaert denied that the Education Code provided the District with adequate authority to hold the hearing. Mr. Liebaert noted that ASR had requested a Temporary Restraining Order that was denied, but he stated his opinion that the refusal of the Court to issue a TRO did not mean that ASR's position lacked merit.

10. Mr. Liebaert further stated that the District lacked the authority to deem ASR a non-responsible contractor for a period of five (5) years. Mr. Liebaert stated that if the District were permitted to deem ASR non-responsible for a period of five (5) years, it would eliminate the purpose of the public bidding laws.

11. Mr. Liebaert stated his belief that the responsibility hearing was done for personal animus and was an abuse of public authority.

12. Mr. Liebaert stated that ASR had performed 25 contracts for the District and thereby saved the District 8 million dollars over the next lowest bidder. Mr. Liebaert further stated that ASR believed the value of the items identified in the December 13, 2006 letter had a value of one hundred thousand dollars or less.

13. Mr. Liebaert further stated that many of the items which have been identified as defective work were settled by mutual agreement. Mr. Liebaert gave his opinion that items which were previously settled should not form the basis for a finding that ASR is non-responsible.

14. Mr. Liebaert stated that he did not feel ASR was provided sufficient time to prepare a meaningful defense.

15. Mr. Liebaert stated that ASR is an established company in Riverside County with a great deal of history in the public works arena with many satisfied customers and hundreds of completed public works projects with the capacity and resources to satisfactorily perform public works contracts.

16. Alan Regotti testified regarding the first 27 pages of documents submitted by ASR. Mr. Regotti stated that he tried to put together documents showing that over a total of 25 jobs, ASR has been 7.8 million dollars less than the next low bidder. The first seven pages provide a summary and pages 8 through 27 are bid tables.

17. Mr. Regotti stated his belief that the District is tired of the abuse that ASR has laid upon PCM3 for what ASR contends is the inability to manage the job properly and Mr. Regotti denied that it had anything to do with ASR being a responsible bidder. Mr. Regotti noted that the District had identified eleven issues on six out of 25 projects and gave the opinion that the disputed issues were one hundred thousand dollars out of 55 million dollars worth of work. Mr. Regotti gave the further opinion that it was just a personality conflict that ASR has had with the CM firm. Mr. Regotti complained that he thought the CM personnel may be college educated, but he did not think that they were appropriately experienced and failed to listen to ASR when ASR told the CM how to coordinate the Project or what procedures to follow. Mr. Regotti complained that the CM firm was not sufficiently open-minded to accept ASR's suggestions on how the project should be run which Mr. Regotti said was frustrating for contractors like him. Mr. Regotti noted that he had been building schools in Southern California for thirty years seeing projects from start to finish and although he has tried to pass on his knowledge, the CM just wanted to follow what they learned in school or in their office and that was frustrating to ASR which is why Mr. Regotti's partner would write his "little essays". Mr. Regotti gave his opinion that the District should hire another management firm so that there is competition. Mr. Regotti described a project that ASR bid at Hesperia Unified School District where, according to Mr. Regotti, the Board decided to throw out the contractor's bids and put the Project out to rebid because, according to Mr. Regotti, the Board thought there was a conflict with the V.P. of the low bid contractor being married to Hesperia Unified's Director of Facilities. Mr. Regotti noted his belief that Sandee Hackett and Peggy Ray of Val Verde Unified School District are married to Greg Hackett and Jeff Ray of PCM3. Mr. Regotti gave his opinion that the District would be more critical of PCM3 if those relationships did not exist.

18. With regard to the Mead Valley Asphalt Installation Issues, Mr. Regotti stated that ASR was responsible for the asphalt, but thought that the problem area was not

where ASR had installed initial asphalt, but where ASR had to perform asphalt repairs. Mr. Regotti said that ASR had to put in a storm drain and a catch basin and it was not an easy job because the area was very flat. Mr. Regotti said that he walked the job at the end of the Project to see what could be done to remedy the problems and Todd Butcher from the District agreed that the District would accept a credit of \$5,000 instead. Mr. Regotti stated that monetary adjustments where ASR gave a credit for defective work was a typical situation or a common occurrence in the industry and on ASR Projects.

19. With regard to the Val Verde High School Landscape Issues, Mr. Regotti stated that he knew ASR "had some issues out there in the landscaping". Mr. Regotti said that ASR's lock was continually being cut on the timers, ASR could not get to the timers, the locks were changed and water was being turned on without ASR's knowledge. Mr. Regotti also gave the opinion that incompatible plants were placed together and there was a problem with the storm drain in the back of the school where the water did not drain properly and there was a pond in the northeast corner. Mr. Regotti characterized it as a pretty good landscape job that "might have been a little late". Mr. Regotti gave the opinion that the District was not impacted because the "landscape did not get finished a week before it did". Mr. Regotti also noted that it was a "no money issue" and he did not "think it cost the School District anything". It was Mr. Regotti's understanding that the District and the CM tampered with the clock setting of the irrigation control that led to over saturation of the field and some plants were damaged due to over-watering. Mr. Regotti said that "ASR replaced plants pursuant to the specifications at no additional cost to the District".

20. With regard to the Columbia Elementary School Asphalt and Concrete Issues, Mr. Regotti stated that the asphalt was found to be minimal and below the requirement in some locations and he did not know if it was because the subgrade wasn't prepared properly. Mr. Regotti said that instead of repaving the area, ASR offered a \$20,000 credit and an extended warranty. Michael Tran said that ASR had offered a \$7,000 to \$8,000 credit and the District counter-offered \$20,000 which ASR accepted. Mr. Regotti admitted that he considered this credit for ASR's non-conforming work to be "another one of those situations that [he considered] routine course". With regard to the concrete, Mr. Regotti said that some of it cracked because the plumbers and electricians had not properly compacted their trenches. Mr. Regotti said that after ASR repaired the concrete, more cracking appeared after the School District and others drove on it. Mr. Regotti denied that it was ASR's responsibility and further noted that when the District told ASR that it was a warranty issue it was after the warranty had expired.

21. With regard to the Lasselle Elementary School Grading Issues, Michael Tran stated that ASR had completed the rough grade, but then it rained and washed the rough grade away. Mr. Tran stated that ASR was to take dirt from one side of the Project and move it to the other, but ASR was delayed by the foundation installation for the portables. Mr. Tran said that there was still a problem with drainage issues, but that the landscaper had accepted the work and therefore, ASR had no further responsibility. Nevertheless, Mr. Tran said that ASR installed a storm drain with a catch basin to mitigate the drainage issues. Mr. Tran complained that ASR wanted to correct the

problems over the Summer and requested access from PCM3, but was not granted access until the Christmas break.

22. With regard to the Rainbow Ridge Elementary School Elevator Submittals and Installation Issues, Mr. Tran stated that the submittals were delayed because of ASR's subcontractor who ASR reminded about liquidated damages and told would be responsible for delay costs. Mr. Tran said that the installation inspection by the fire marshal was scheduled for the week before school started, but there was an issue with the handset provided by ASR's subcontractor not being in compliance with the District's requirements and there was not a dedicated line as required. They were able to bring back the fire marshal on Friday of the following week, one day after school opened and the elevator passed that inspection. Mr. Regotti testified that the absence of a dedicated phone line held up the elevator approval and, according to Mr. Regotti, the dedicated phone line was the coordination responsibility of the CM.

23. With regard to the Rainbow Ridge Elementary School Roof Framing Issues, Mr. Regotti stated that he did not think he had visited the job, but nevertheless thought that the issue was just the inspection service interpreting the plans differently than ASR's framing contractor and making the framing contractor redo portions of the work on the roof and the top wall plates. Mr. Regotti noted that the framing contractor nevertheless made the changes and the District back charged ASR \$5,700 for added storage costs that the District said resulted from the framing holding up the finishing of the building.

24. With regard to the Rainbow Ridge Elementary School Irrigation Controller Issue, Mr. Tran said that ASR performed the landscaping and the landscaper installed the incorrect controller which was not as specified. Mr. Tran stated his belief that, after ASR was notified by the CM, the controller was replaced within 2 weeks.

25. With regard to the Triple Crown Elementary School Asphalt Installation Issues, Mr. Regotti stated that it was a sloppy job that ASR agreed to correct. Mr. Regotti said that ASR made a few attempts to correct the asphalt work, but it was not a very good effort on ASR's part. Mr. Regotti apologized for the quality of the work and said that he hoped it had been corrected. Mr. Regotti explained that it was a new subcontractor and ASR's Superintendent was not paying close attention. Mr. Regotti remarked that "Hey, you get a lousy job every once in a while." Mr. Regotti admitted "this is probably one of the worst asphalt jobs we have ever performed..." Mr. Regotti said that ASR was standing behind the work and he thought ASR was even offering an extended warranty for the asphalt.

26. With regard to the Triple Crown Elementary School Plumbing Issues, Mr. Regotti stated that apparently ASR did get something crossed and he said he was sorry. Mr. Regotti explained that because ASR installs so many sewer and storm drains that ASR is "bound to get one of them wrong" every once in a while. Mr. Regotti said that once ASR was notified, they went out within a day or two.

27. With regard to the Triple Crown Elementary School Recovery Schedule Issues, Mr. Regotti stated that they did not have the complete or approved off-site plan until halfway through the Project and he questioned how a recovery schedule could be prepared "if you don't even know what you're doing yet".

28. With regard to the Unprofessional and Antagonistic Conduct/Communications Issues, Mr. Regotti explained that Marc Berry was very experienced in public works projects and that Mr. Berry's communications were just venting his built up frustration. Mr. Regotti gave his opinion that it was a personality conflict with "a little bit of lashing here with some of this felty work of Mr. Berry."

#### Conclusions of Law

A. There is no statute or other law which requires that a pending bid proposal must exist before the District can hold a responsibility hearing.

B. Applicable statutes (including, but not limited to Education Code Section 35160 et. seq.) and applicable caselaw provide sufficient authority for the District to have held the Responsibility Hearing for ASR on January 10, 2007.

C. There is no statute or other law which prohibits the District from deeming a contractor to be non-responsible for a period of multiple years.

D. Applicable statutes (including, but not limited to Education Code Section 35160 et. seq.) and applicable caselaw provide sufficient authority for the District to deem a contractor to be non-responsible for a period of multiple years.

E. The Responsibility Hearing that was held for ASR on January 10, 2007 resulted from ASR's previous performance on multiple District Projects and was not the result of any "personal animus".

F. Although the District has considered ASR's contention that, by being the low bidder on multiple Projects, ASR has saved the District 7-8 million dollars, the District finds that such cost savings fails to demonstrate trustworthiness, quality, fitness, capacity and experience for the purpose of determining whether ASR is a responsible contractor.

G. Although the District has considered ASR's contention that the estimated value of the issues that are the subject of the responsibility hearing is \$100,000, the District finds that ASR's estimated value is not accurate, that ASR's estimated value fails to take into account any non-monetary consequences resulting from ASR's Project performance, and that the aggregate consequences of ASR's Project performance have been significant.

H. Although the District has considered ASR's contention that items identified as defective work should not be considered if they were subsequently the subject of a credit or back charge, the District finds that, regardless of whether the District has received a credit or a back charge, defective work remains relevant and should be considered for the purpose of determining whether ASR is a responsible contractor.

I. The District finds that, despite ASR's contention that it was not provided adequate time to prepare for the Responsibility hearing, ASR was provided more than a reasonable amount of time to prepare.

J. With regard to the Issues that were the subject of the Responsibility Hearing Notice contained in the December 13, 2006 letter, based upon the documents entered into the Responsibility Hearing record and the testimony presented at the Responsibility Hearing, the District finds as follows:

1. **Mead Valley Elementary School Project - Unworkmanlike Asphalt Installation -**

The primary problems with the quality of the Asphalt Installation at Mead Valley Elementary School were related to the unworkmanlike manner of the installation which contained ripples, divots and an otherwise unacceptable surface. The problem was not, as represented by Mr. Regotti, solely related to inadequate slopeage. The District's decision to withhold \$5,000 for the defective work was only reached after ASR had tried unsuccessfully, on at least two separate occasions, to repair the defective asphalt during the Summer of 2003 and the 2003 Christmas Break.

2. **Val Verde High School - Failure to Timely Complete Landscape Contract Scope -**

Despite Mr. Regotti's statement that ASR "might have been a little late", it is well documented that ASR's Punch List scope was not completed and the maintenance period could not commence until four months after the scheduled date and almost a month after classes had begun at the school.

3. **Columbia Elementary School - Failure to Install Asphalt in Conformity with Plans and Specifications; Poor Quality Concrete Patch Work -**

Despite Mr. Regotti's statement that the asphalt was found to be below the requirement in some locations, the Project records substantiate that the asphalt was required to be a thickness of not less than three inches, but was found to be less than three inches at all of the locations where core samples were taken. In addition, although Mr. Regotti indicated that the problem may have resulted from improper subgrade preparation, it was part of ASR's scope to prepare the subgrade in the disputed area.

Furthermore, although Mr. Regotti stated that ASR agreed to give the District a \$20,000 credit and an extended warranty, the Project records do not support that such a credit or extended warranty was ever agreed upon or received by the District.

Despite Mr. Regotti's statement that the concrete patch work failures resulted from inadequate compaction and vehicular traffic, the Project records fail to support Mr. Regotti's statement.

4. Lasselle Elementary School - Failure to Timely Complete Grading; Failure to Perform Grading Scope in Conformity with Plans and Specifications -

Despite Mr. Tran's statement that the rough grading was timely completed before the rain washed it away, the Project records do not support Mr. Tran's statement and instead reflect that ASR's rough grading scope fell several months behind schedule before it was completed. Despite Mr. Tran's statement that ASR was hindered by its inability to move soil from one part of the Project to the other, the Project records indicate that ASR was to import dirt from offsite. Despite the fact that Mr. Tran noted the Landscaper had accepted the site absolving ASR from any responsibility for defective grading, ASR remained responsible for defective grading conditions.

5. Rainbow Ridge Elementary School - Failure to Timely Provide Acceptable Elevator Submittals; Failure to Timely Perform Elevator Installation Scope -

Adequate elevator submittals that could be approved by the Project architect were not provided until more than six months after the required date for the elevator submittals. Mr. Tran's statement that the elevator submittals were delayed because of ASR's subcontractor, does not absolve ASR of responsibility for such delay. The scheduled date for the Elevator "sign off" was April 28, 2006, but actual inspection approval of the elevator did not occur until August 18, 2006. Despite Mr. Tran's statement that the initial failed approval of the completed elevator resulted from the absence of a required hand set and the lack of a dedicated phone line, the Project records indicate that there was a working phone line in place when the inspection occurred. Any failure of ASR's subcontractor to provide a required handset or dialer would have been ASR's own responsibility.

6. Rainbow Ridge Elementary School - Failure to Timely Perform Roof Framing Scope; Failure to Perform Roof Framing Scope in Conformity with Plans and Specifications -

ASR failed to offer any explanation for the delayed progress of the Roof Framing Scope. Despite Mr. Regotti's characterization of the issue as just the inspection service interpreting the plans differently than ASR's framing contractor, the Project records indicate that ASR's framing

contractor failed to comply with the Project Plans and Specifications and, when the Project architect approved a corrective solution for the non-conforming installation, it took ASR approximately one and a half months to correct the problem thereby delaying for several weeks the District's ability to install fixtures, furnishings, etc. and otherwise occupy the building.

**7. Rainbow Ridge Elementary School - Failure to Provide Irrigation Controller in Conformity with Plans and Specifications -**

ASR initially failed to install an irrigation controller that was in conformity with the requirements of the Project Plans and Specifications. Subsequently, after ASR was notified of the non-conforming installation, ASR caused the irrigation controller to be replaced with a new controller that complied with the Project Plans and Specifications.

**8. Triple Crown Elementary School - Failure to Perform Asphalt Installation in Conformity with Plans and Specifications; Failure to Perform Asphalt Installation in a Workmanlike Manner -**

The Project records indicate that the quality of the onsite and offsite asphalt paving provided by ASR was deficient and failed to comply with the Contract plans and specifications at over ninety locations. The asphalt paving installed by ASR was not smooth and contained undulations, ruts and depressions that impeded the flow of water. In addition, ASR failed to maintain the specified grade at numerous locations. In many areas, the asphalt installed by ASR overlapped with existing concrete and/or caused damage to other work in place. In addition, in some areas, ASR failed to install base materials and/or asphalt which was the required thickness. Asphalt paving work installed by ASR, both onsite and offsite, was of substandard quality and installed in an unworkmanlike manner. Mr. Regotti admitted that it was a sloppy job and apologized saying that "you get a lousy job every once in a while". Mr. Regotti stated that it was "probably one of the worst asphalt jobs that we have ever performed".

**9. Triple Crown Elementary School - Failure to Install Plumbing in Conformity with Plans and Specifications -**

ASR's plumbing installation was not performed in conformity with the Project plans and specifications. ASR installed sewer lines and a Storm Drain System that allowed raw sewage to backup into the Administration Building and caused various damage. A week after the first backup occurred, and ASR was notified of the problem, there was a second sewer backup along the north side of the Administration building where raw sewage began backing up into the Storm Drain System catch basin. Mr. Regotti admitted that apparently ASR "did get something crossed". He gave his opinion that "it's bound to happen every once in a while."

10. Triple Crown Elementary School - Failure to Provide a Recovery Schedule as Repeatedly Requested and as Required Pursuant to the Plans and Specifications -

The Project CM requested in writing that ASR provide a Recovery Schedule on at least seven different occasions between June 30, 2005 and July 12, 2006. The Project Specifications required, in Paragraph 1.04A.1.c. of Section 01041-2, that "upon written notice by CONSTRUCTION MANAGER, PRIME CONTRACTOR shall, within three (3) calendar days, provide a complete recovery schedule, including manpower loading, resource loading, detailing how the PRIME CONTRACTOR and his subcontractors will recover PRIME CONTRACTOR'S original scheduled milestone dates." ASR never complied with that contractual requirement. Mr. Regotti's only explanation for ASR's failure to provide a recovery schedule as requested and required was to say that ASR did not have an approved or complete offsite plan until half way through the Project. Nevertheless, offsite issues fail to excuse or explain why ASR repeatedly failed to provide a recovery schedule for the onsite work.

11. All Projects -- Unprofessional and Antagonistic Conduct/Communications - Although ASR circulated numerous written faxes and correspondence that appear to be intentionally antagonistic and/or insulting, the explanation that Mr. Regotti provided was that his partner, Mr. Berry, is very experienced and gets frustrated. Mr. Regotti referred to it as a personality conflict. Nevertheless, the Project records do not appear to provide justification for ASR's unprofessional and antagonistic communications.

K. Based upon the documents and testimony entered into the record at the January 10, 2007 Responsibility Hearing for ASR Constructors, Inc., and further based upon the above Findings and Conclusions, Val Verde Unified School District hereby finds ASR Constructors, Inc. to be non-responsible. Therefore, ASR Constructors, Inc. is deemed not qualified to submit a bid proposal for any District project requiring that the contract shall be let to the lowest responsible bidder pursuant to Public Contract Code §20111. Val Verde Unified School District's above finding of non-responsibility shall remain in full force and effect for a period of thirty-six months from the date of these Findings of Fact and Conclusions of Law.

Dated: March 2, 2007



C. Fred Workman, Ed.D.  
Public Works Hearing Officer



THOMPSON & COLEGATE LLP  
ATTORNEYS AT LAW • ESTABLISHED 1915

H. L. THOMPSON  
(1884-1962)  
ROY W. COLEGATE  
(1906-1960)

October 6, 2008

**Reply to:**  
John A. Boyd  
jboyd@tclaw.net

**HAND DELIVERED - URGENT**

Ms. Cecilia Gil  
Clerk of the Board  
County of Riverside  
4080 Lemon Street, First Floor Annex  
Riverside, CA 92501

*Re: Thermal Sheriff Station and Aviation Complex  
Project ReBid August 5, 2008*

*Subject: J.D. Diffenbaugh's Protest of Award*

Dear Board:

Please be advised that J.D. Diffenbaugh is in receipt of the Bid Protest for the Palm Desert Sheriff Station ("Palm Desert Project"), submitted by Jaynes Corporation of California, dated October 6, 2008; and Diffenbaugh concurs with Jaynes' assessment that the County should debar ASR Constructors, Inc. from future public projects based on a finding of non-responsibility. Further, Diffenbaugh maintains that such a finding of non-responsibility must apply to ASR's bid of the Thermal Sheriff Station and Aviation Complex ("Thermal Project") and that ASR's bid on the Thermal Project must be deemed void as against the rules of public policy.

First, the Jaynes protest offers clear and substantial evidence that ASR acted fraudulently with respect to the Palm Desert Project, misrepresenting itself as two subcontractors and rigging the bidding process. In the protest, Jaynes alleges that ASR falsified information on two subcontractors' bids and then submitted them to Jaynes as "revised" and "withdraw[n]" bids minutes before the bid deadline in order to increase Jaynes' prime contract price to the County. In fact, the two subcontractors deny having made the purported changes to the bids. Jaynes supports these facts with copies of the forged documents, multiple declarations and handwriting

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Re: *Thermal Sheriff Station and Aviation Complex  
Project ReBid August 5, 2008  
Protest of Award*

analysis. It appears that the handwriting on the forged bids, as well as other offensive correspondence to Jaynes, belongs to ASR's president, Alan Regotti. (See Jaynes' Bid Protest for the Palm Desert Sheriff Station project, dated October 6, 2008, a copy of which is enclosed herein).

Second, Jaynes' protest provides further evidence that ASR's bad acts have caused various other entities to find ASR to be a non-responsible contractor lacking the trustworthiness, quality, fitness and/or capacity to satisfactorily perform construction projects for the last several years. This is supported by correspondence from the City of Hesperia; *Findings of Fact and Conclusions of Law* issued and published by Val Verde Unified School District; and Actions by the San Jacinto Unified School District Board of Trustees. (See Jaynes' Bid Protest for the Palm Desert Sheriff Station project, dated October 6, 2008, at Tab 20.)

The County must award public works projects, including the Thermal Project, to the lowest responsive and responsible bidder. This requires the County to determine that the successful bidder is "responsible." (Pub. Contract Code § 20101.) According to Public Contract Code section 1103, the term "responsible" refers to a bidder "who has demonstrated the attribute of *trustworthiness*, as well as quality, *fitness*, capacity, and experience to satisfactorily perform the public works contract. (Pub. Contract Code § 1103 [emphasis added]; *D.H. Williams Construction, Inc. v. Clovis Unified School District* (2007) 146 Cal.App.4<sup>th</sup> 757, 764.) "A determination that a bidder is responsible [or not] is a complex matter dependant, often, on information received outside the bidding process..." (*Taylor Bus. Service, Inc. v. San Diego Bd. Of Education* (1987) 195 Cal.App.3d 1331, 1341-1342.) As Jaynes aptly notes, the County must determine whether the bidder is fit to be trusted with public safety and taxpayer dollars, and the County may consider both the bidding process and outside factors in making that determination.

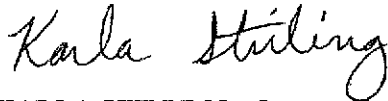
ASR has demonstrated that it is not a responsible contractor. On the contrary, it appears that ASR has engaged in activities explicitly prohibited by law, including abusing the competitive bid process, defrauding the County and fellow prime contractors, and compromising the integrity of affected subcontractors. This behavior warrants the County holding a responsibility hearing, finding ASR not "responsible" pursuant to Public Contract Code sections 1103 and 20101, and debarring ASR from bidding on future county projects, as other public entities have done.

Page 3

Re: *Thermal Sheriff Station and Aviation Complex  
Project ReBid August 5, 2008  
Protest of Award*

In light of the foregoing, we respectfully request that the County deem ASR's bid to be void and award the Thermal Sheriff Station and Aviation Complex project to J.D. Diffenbaugh, as its true lowest responsive and responsible bidder. We appreciate your attention to this very important matter. Please do not hesitate to contact the undersigned or the handling partner of our office, Mr. John Boyd, with any further inquiry.

Very truly yours,



KARLA STIRLING of  
THOMPSON & COLEGATE LLP  
(kstirling@tclaw.net)

Enclosure

KS:sb

cc: Anna Rodriguez, District Manager, Riverside County Economic Development Agency  
Gary Ousley, RDK Consulting  
Marsha L. Victor, Esq.

CONTRACTOR'S PROPOSAL

TO THE GOVERNING BOARD OF THE COUNTY OF RIVERSIDE:

Date: 10/1/08

Bidder: ASR CONSTRUCTORS, Inc.

The undersigned, having carefully examined the proposed site and the Plans and Specifications, the Notice Inviting Bids, the Instructions to Bidders, the Agreement Form, the Bond Forms, the General Conditions for the Palm Desert Sheriff Station hereby proposes and agrees to furnish all tools, equipment, services, apparatus, facilities, transportation, labor and materials necessary to complete the work in strict conformity with the Plans and Specifications, including all work specified in Addenda numbered and dated:

Addendum No. <u>1</u>	Date <u>9/15</u>
Addendum No. <u>2</u>	Date <u>9/15</u>
Addendum No. <u>3</u>	Date <u>9/18</u>
Addendum No. <u>4</u>	Date <u>9/23</u>
Addendum No. <u>5</u>	Date <u>9/25</u>
Addendum No. _____	Date _____

For the total Base Bid TWENTY MILLION ONE HUNDRED NINE THOUSAND dollars (\$ 20,197,000.00), including all applicable taxes, permits, licenses and insurances. (exclude Course of Construction Insurance.)

Alternate 1 - per section 01030 \$ <u>621,000.00</u>	(Add or Deduct state which)
	<u>ADD</u>
Alternate 2 - OCIP \$ <del>480,000.00</del> <u>390,000.00</u>	<input checked="" type="checkbox"/> Deduct <u>DEDUCT</u>

Unit Prices per Section 01024	(Add or Deduct, state which)
Unit Price 1 \$ <u>5.00 PER CUBIC YARD</u>	<u>ADD</u>
Unit Price 2 \$ <u>8.00 PER CUBIC YARD</u>	<u>ADD</u>
Unit Price 3 \$ <u>10.00 PER CUBIC YARD</u>	<u>ADD</u>

Bids must be submitted on all items. Failure to bid on all items may result in the bid being rejected as non-responsive. The basis for award will be the qualified bidder with the lowest total of the Base Bid and all alternates. Alternates may be awarded in any order after determination of the lowest responsible and responsive bidder.

**AWARD OF CONTRACT**

The undersigned fully understands that a Contract is formed upon the acceptance of this Proposal by the Owner and the undersigned further agrees that upon request he will promptly execute and deliver to Owner a written memorial of the Contract together with the required Payment and Performance Bonds and proof of insurance.

**BID GUARANTEE**

The enclosed certified or cashier's check or bidder's bond on approved form, made payable to the Owner in the amount of ten percent of the total bid submitted herewith, is hereby given as a guarantee that the bidder will execute and deliver the above mentioned written memorial and required bonds and insurance if awarded the contract, and in the event that the undersigned fails or refuses to execute and deliver said documents, such check or bond is to be charged with the costs of the damages experienced by the Owner as a result of such failure or refusal, including but not limited to publication costs, the difference in money between the amount of the bid of the said principal and the amount for which obligee may legally contract with another party to perform the said work if such amount be in excess of the former, building lease or rental costs, transportation costs and additional salary costs that result from the delay due to the principal's default on the awarded contract. In no event, however, shall the Surety's liability exceed the penal sum hereof.

Name of Bidder: ASR CONSTRUCTORS INC.  
Type of Organization: CORPORATION  
Signed By: [Signature]  
Title of Signer: PRESIDENT  
Address of Bidder: 5230 WILSON ST.  
RIVERSIDE CA 92509

Affix Seal  
If  
Corporation

Telephone No.: 951-779-6580  
Contractor's License No.: 615395  
Classification: ARC-8, C-27, C-29, C-51 Expiration Date: 8/09

**LICENSURE STATEMENTS ARE MADE UNDER PENALTY OF PERJURY**

If bidder is a corporation, and signer is not President or Secretary, attach a certified copy of By-Laws or resolution authorizing execution. If bidder is a corporation, affix corporate seal. If signer is an agent, attach Power of Attorney. If bidder is not an individual, list names of other persons authorized to bind the organization.

DESIGNATION OF SUBCONTRACTORS

In compliance with Section 4104 of the Public Contract Code the undersigned submits the following complete list of each Subcontractor who will perform work or labor or render service in or about the construction/installation in an amount in excess of 1/2 of 1% of said total bid.

<u>PORTION OF THE WORK</u>	<u>SUBCONTRACTOR</u>	<u>ADDRESS</u>
<del>RESTAURANT</del>	<del>XXXXXXXXXX</del>	<del>XXXXXXXXXX</del>
CASEWORK	BERTINO MANUF.	COLTON
<del>XXXXXXXXXX</del>	<del>XXXXXXXXXX</del>	<del>XXXXXXXXXX</del>
INSULATION	ALEKT	LA PUENTE
ALUM. STOREFRONT/GLAZING - GLAZCON		BERMUDA DUNES
<del>SHEET METAL</del>		
LATH, PASTER, GYPSUM	CASION	SAU BERNARDINO
ACOUSTICAL CEILING	COCHRAN	ALCEDIA, CA.
<del>XXXXXXXXXX</del>	<del>XXXXXXXXXX</del>	<del>XXXXXXXXXX</del>
PAINTING	TRIUMPH	RIVERSIDE
LOCKERS	ENGINEERED STORAGE	INDUSTRY
SHADE STRUCTURES	USA SHADE STRUCTURES	COSTA MESA
FUEL SYSTEM	PME	PLACENTA
FIRE SPRINKLERS	DAART	SAU BERNARDINO
PLUMBING	DUKE	RIVERSIDE
<del>XXXXXXXXXX</del>	<del>XXXXXXXXXX</del>	<del>XXXXXXXXXX</del>
<del>XXXXXXXXXX</del>	<del>XXXXXXXXXX</del>	<del>XXXXXXXXXX</del>
FLOOR		

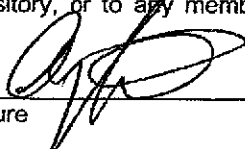


**NONCOLLUSION AFFIDAVIT TO BE EXECUTED BY BIDDER AND  
SUBMITTED WITH BID**

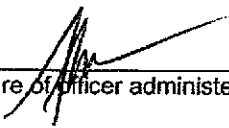
State of California ) ss.  
County of Riverside )

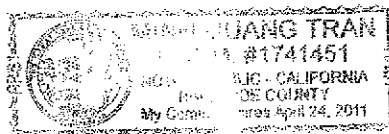
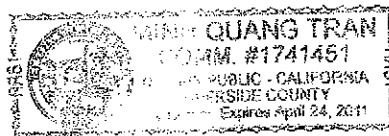
ALAN REZOTA, being first duly sworn, deposes and says:

That he or she is PRESIDENT of ASR CONSTRUCTORS, INC.  
the party making the foregoing bid; that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

  
\_\_\_\_\_  
Signature

Subscribed and sworn to before me this 1 day of OCTOBER, 2008.

  
\_\_\_\_\_  
Signature of officer administering oath



**Bid Bond**

KNOWN TO ALL MEN BY THESE PRESENTS, that we, the undersigned ASR CONSTRUCTORS INC., as Principal; and FEDERAL INSURANCE COMPANY, as Surety, are hereby held and firmly bound unto the County of Riverside, hereinafter called the "Owner", in the sum of TEN PERCENT OF TOTAL AMOUNT BID-- Dollars (\$ 10% OF BID-- ) for the payment of such sum, well and truly to be made, do hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

WHEREAS, the said Principal is herewith submitting its Proposal for the PALM DESERT SHERIFF STATION  
BID DATE: 24 SEPTEMBER 2008

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the aforesaid Principal shall be awarded the Contract upon said Proposal and shall, within the required number of days after the notice of such award, execute a written memorial of the awarded Contract and submit the required Labor and Material Payment and faithful Performance Bond and proof of insurance, then this obligation shall be null and void; and in the event that the Principal fails and/or refuses to execute and deliver said documents this Bond will be charged with the costs of the damages experienced by the Owner as a result of such refusal, including but not limited to, publication cost, the difference in money between the amount of the bid of the said Principal and the amount for which the obligee may legally contract with another party to perform the said work if such amount be in excess of the former; building lease or rental costs, transportation cost, and additional salary costs that result from the delay due to the Principal's default on the awarded Contract. In no event however, shall the Surety's liability exceed the penal sum hereof.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of the time within which the Owner may accept such bid; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the above bounded parties have executed this instrument under their separate seals this 25TH day of AUGUST, 2008, the name and corporate seal of each corporate party being hereto affixed and those present duly signed by its undersigned representative, pursuant to authority of its governing body.

ASR CONSTRUCTORS INC.  
(Firm Name - Principal)  
5230 WILSON ST RIVERSIDE CA 92509  
(Business Address)  
By [Signature]  
(Original Signature)  
President  
(Title)

Affix Seal  
if  
Corporation

FEDERAL INSURANCE COMPANY  
(Corporation Name - Surety)  
15 MOUNTAIN VIEW RD WARREN NJ 07059  
(Business Address)  
By [Signature]  
(Original Signature) COLETTE CHISHOLM, ATTORNEY-IN-FACT  
ATTORNEY-IN-FACT

Affix  
Corporate  
Seal

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of San Diego

On 25 August 2008 before me, B. Lafrenz, Notary Public

personally appeared Colette Chisholm



Place Notary Seal Above

who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature B. Lafrenz

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name:

- Individual
- Corporate Officer - Title(s):
- Partner -  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other:

Signer Is Representing: Surety Company

\_\_\_\_\_  
\_\_\_\_\_



Chubb  
Surety

POWER  
OF  
ATTORNEY

Federal Insurance Company  
Vigilant Insurance Company  
Pacific Indemnity Company

Attn: Surety Department  
15 Mountain View Road  
Warren, NJ 07059

Know All by These Presents, That FEDERAL INSURANCE COMPANY, an Indiana corporation, VIGILANT INSURANCE COMPANY, a New York corporation, and PACIFIC INDEMNITY COMPANY, a Wisconsin corporation, do each hereby constitute and appoint Colette Chisholm, Larry D. Cogdill, Brooke Lafrenz, Jeanette Seidl and Michael W. Thomas of San Diego, California

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY have each executed and attested these presents and affixed their corporate seals on this 8<sup>th</sup> day of February, 2008

Kenneth C. Wendel, Assistant Secretary

David B. Norris, Jr., Vice President

STATE OF NEW JERSEY

County of Somerset

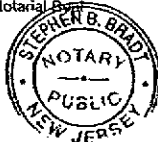
ss.

On this 8<sup>th</sup> day of February, 2008

before me, a Notary Public of New Jersey, personally came Kenneth C. Wendel, to me

known to be Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY, the companies which executed the foregoing Power of Attorney, and the said Kenneth C. Wendel, being by me duly sworn, did depose and say that he is Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of the By-Laws of said Companies; and that he signed said Power of Attorney as Assistant Secretary of said Companies by like authority, and that he is acquainted with David B. Norris, Jr., and knows him to be Vice President of said Companies; and that the signature of David B. Norris, Jr., subscribed to said Power of Attorney is in the genuine handwriting of David B. Norris, Jr., and was thereto subscribed by authority of said By-Laws and in deponent's presence.

Notarial Public



STEPHEN B. BRADT  
Notary Public, State of New Jersey  
No. 2321097  
Commission Expires Oct. 25, 2009

Notary Public

CERTIFICATION

Extract from the By-Laws of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY:

"All powers of attorney for and on behalf of the Company may and shall be executed in the name and on behalf of the Company, either by the Chairman or the President or a Vice President or an Assistant Vice President, jointly with the Secretary or an Assistant Secretary, under their respective designations. The signature of such officers may be engraved, printed or lithographed. The signature of each of the following officers: Chairman, President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached."

I, Kenneth C. Wendel, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY

(the "Companies") do hereby certify that

- (i) the foregoing extract of the By-Laws of the Companies is true and correct,
- (ii) the Companies are duly licensed and authorized to transact surety business in all 50 of the United States of America and the District of Columbia and are authorized by the U.S. Treasury Department; further, Federal and Vigilant are licensed in Puerto Rico and the U.S. Virgin Islands, and Federal is licensed in American Samoa, Guam, and each of the Provinces of Canada except Prince Edward Island; and
- (iii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Warren, NJ this

25 August 2008



Kenneth C. Wendel, Assistant Secretary

IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT ADDRESS LISTED ABOVE, OR BY Telephone (908) 903- 3493 Fax (908) 903- 3656

e-mail: surety@chubb.com

Palm Desert

SHERIFF ST

20,428,000

Bid No.

1.1a

RECEIVED RIVERSIDE COUNTY  
CLERK OF THE BOARD OF SUPERVISORS  
2008 OCT - 1 PM 1:58

SEALID BID RECEIVED  
CLERK OF THE BOARD OF SUPERVISORS

ASR CONSTRUCTION

5230 Wilson S

RIVERSIDE, CA.

**CONTRACTOR'S PROPOSAL**

TO THE GOVERNING BOARD OF THE COUNTY OF RIVERSIDE:

Date: 10/01/08

Bidder: Jaynes Corporation of California

The undersigned, having carefully examined the proposed site and the Plans and Specifications, the Notice Inviting Bids, the Instructions to Bidders, the Agreement Form, the Bond Forms, the General Conditions for the Palm Desert Sheriff Station hereby proposes and agrees to furnish all tools, equipment, services, apparatus, facilities, transportation, labor and materials necessary to complete the work in strict conformity with the Plans and Specifications, including all work specified in Addenda numbered and dated:

- Addendum No. 1 Date 09/15/08
- Addendum No. 2 Date 09/15/08
- Addendum No. 3 Date 09/18/08
- Addendum No. 4 Date 09/23/08
- Addendum No. 5 Date 09/25/08
- Addendum No. \_\_\_\_\_ Date \_\_\_\_\_

For the total Base Bid one RE twenty million seven hundred ~~thousand~~ <sup>thousand</sup> dollars ~~(\$20,710,000.00)~~ (\$21,650,000.00) RE  
 including all applicable taxes, permits, licenses and insurances (exclude Course of Construction Insurance.) ten ten thousand dollars \$1,710,000

Alternate 1 - per section 01030	\$ <u>470,000</u>	(Add or Deduct state which)
		<u>Add</u>
Alternate 2 - OCIP	\$ <u>395,000</u>	<u>Deduct</u>

<u>Unit Prices per Section 01024</u>		(Add or Deduct, state which)
Unit Price 1	\$ <u>53.00</u>	<u>Add</u>
Unit Price 2	\$ <u>53.00</u>	<u>Add</u>
Unit Price 3	\$ <u>53.00</u>	<u>Add</u>

Bids must be submitted on all items. Failure to bid on all items may result in the bid being rejected as non-responsive. The basis for award will be the qualified bidder with the lowest total of the Base Bid and all alternates. Alternates may be awarded in any order after determination of the lowest responsible and responsive bidder.

DESIGNATION OF SUBCONTRACTORS

In compliance with Section 4104 of the Public Contract Code the undersigned submits the following complete list of each Subcontractor who will perform work or labor or render service in or about the construction/installation in an amount in excess of 1/2 of 1% of said total bid.

<u>PORTION OF THE WORK</u>	<u>SUBCONTRACTOR</u>	<u>ADDRESS</u>
Earthwork	Southwest Grading	Murrietta
Landscape/Irrigation	<del>Passera PC</del> Real Escape	<del>Cascade Blvd PC</del> Spring Valley
Site Concrete Paving & Curbs	El Encino	Redlands
<del>Building Concrete PC</del> Building Concrete	Tidwell	Indio
Reinforcing Steel	<del>PC Davidson</del> <del>PC K Tidwell</del>	<del>San Marcos PC</del> Indio
Masonry	PK Neil	El Cajon
Stone Veneer	PK Neil	El Cajon
Structural Steel	<del>Palm Springs Steeling PC</del> White Steel	<del>Indio PC</del> <del>PC</del>

**DESIGNATION OF SUBCONTRACTORS**

In compliance with Section 4104 of the Public Contract Code the undersigned submits the following complete list of each Subcontractor who will perform work or labor or render service in or about the construction/installation in an amount in excess of 1/2 of 1% of said total bid.

<u>PORTION OF THE WORK</u>	<u>SUBCONTRACTOR</u>	<u>ADDRESS</u>
Wood Framing	D+S	Escondido
PVC Roofing	Ozone	San Clemente
Sheet Metal	Challenger	San Diego
Glass/Aluminum Storefront	<del>Glaziers</del> US Glass	<del>Berringer Plaza</del> Lake Forest <sup>CA</sup>
Plaster	L+M	Escondido
Gypsum Board	Standard	Carona
Ceramic/Porcelain Tile	Tile Trends	Newberry Park
Vinyl Flooring/Carpet	New Image	San Bernardino
Insulation	Masco	Rancho Cucamonga

**DESIGNATION OF SUBCONTRACTORS**

In compliance with Section 4104 of the Public Contract Code the undersigned submits the following complete list of each Subcontractor who will perform work or labor or render service in or about the construction/installation in an amount in excess of 1/2 of 1% of said total bid.

<u>PORTION OF THE WORK</u>	<u>SUBCONTRACTOR</u>	<u>ADDRESS</u>
Painting	<del>Peceano PC</del> DTE	<del>San Diego RC</del> Caula Vista
Fabric Shade Structures	USA Shades	Costa Mesa
Casework	SMI	Santa Ana
Fire Sprinklers	AA Fire	Chickworth
Plumbing	RCR	Riverside
HVAC	<del>Olympic Array</del> Olympic	<del>Cerritos West PC</del> Cerritos <del>Costa</del>
Hydronic Piping	Olympic	Cerritos
AST Fueling System	Western Pump	San Diego
Fuel Oil System	Western Pump	San Diego





**AWARD OF CONTRACT**

The undersigned fully understands that a Contract is formed upon the acceptance of this Proposal by the Owner and the undersigned further agrees that upon request he will promptly execute and deliver to Owner a written memorial of the Contract together with the required Payment and Performance Bonds and proof of insurance.

**BID GUARANTEE**

The enclosed certified or cashier's check or bidder's bond on approved form, made payable to the Owner in the amount of ten percent of the total bid submitted herewith, is hereby given as a guarantee that the bidder will execute and deliver the above mentioned written memorial and required bonds and insurance if awarded the contract, and in the event that the undersigned fails or refuses to execute and deliver said documents, such check or bond is to be charged with the costs of the damages experienced by the Owner as a result of such failure or refusal, including but not limited to publication costs, the difference in money between the amount of the bid of the said principal and the amount for which obligee may legally contract with another party to perform the said work if such amount be in excess of the former, building lease or rental costs, transportation costs and additional salary costs that result from the delay due to the principal's default on the awarded contract. In no event, however, shall the Surety's liability exceed the penal sum hereof.

Name of Bidder: Jaynes Corporation of California

Type of Organization: Corporation

Signed By: [Signature]

Title of Signer: Executive Vice-President

Address of Bidder: 111 Elm Street

Fourth Floor

San Diego, CA 92101

Telephone No.: 619-233-4080

Contractor's License No.: 787005

Classification: A, B, C-8 Expiration Date: 11/30/08

Affix Seal  
If  
Corporation

**LICENSURE STATEMENTS ARE MADE UNDER PENALTY OF PERJURY**

If bidder is a corporation, and signer is not President or Secretary, attach a certified copy of By-Laws or resolution authorizing execution. If bidder is a corporation, affix corporate seal. If signer is an agent, attach Power of Attorney. If bidder is not an individual, list names of other persons authorized to bind the organization.

JAYNES CORPORATION OF CALIFORNIA  
SECRETARY'S CERTIFICATE

I, Wayne Davenport, Secretary of Jaynes Corporation of California (formerly known as Kvaas Constructors, Inc.), a California corporation (the "Corporation"), hereby certify as follows:

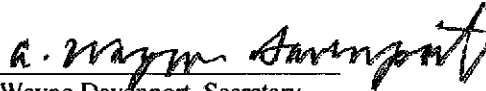
1. I am the duly elected, qualified and acting Secretary of the Corporation.
  
2. The following resolution was duly adopted by the Board of Directors of the Corporation at a meeting held on June 17, 2008. Such resolution has not been amended, modified or rescinded, and remains in full force and effect as of the date hereof:

WHEREAS: The Corporation is currently conducting and is expected to regularly conduct business with various agencies and owners (collectively "Owners") within the state of California, which business entails executing and delivering various documents and agreements with Owners, consistent with the Corporations objectives, and

WHEREAS: It is deemed to be in the best interests of the Corporation to authorize Richard Cohen, the Executive Vice President of the Corporation, to execute and deliver any and all documents and agreements with Owners that he deems necessary or advisable,

IT IS HEREBY RESOLVED: Richard Cohen, the Executive Vice President, is authorized and directed to execute and deliver any and all documents and agreements with Owners on behalf of the Corporation that either of them deems necessary or advisable, and to take such further action as is necessary to carry out the purpose and intent of this resolution as either one, in his discretion, deems advisable.

IN WITNESS WHEREOF, I have executed this Certificate as of September 11, 2008.

  
Wayne Davenport, Secretary

**NONCOLLUSION AFFIDAVIT TO BE EXECUTED BY BIDDER AND  
SUBMITTED WITH BID**

State of California ) ss.  
County of Riverside )

Richard Cohen, being first duly sworn, deposes and says:

That he or she is Executive Vice-President of Jaynes Corporation of CA the party making the foregoing bid; that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

  
\_\_\_\_\_  
Signature Richard Cohen, Executive VP

*see attached*

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Signature of officer administering oath

**CALIFORNIA JURAT WITH AFFIANT STATEMENT**

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-5 to be completed only by document signer[s], not Notary)

1 \_\_\_\_\_

2 \_\_\_\_\_

3 \_\_\_\_\_

4 \_\_\_\_\_

5 \_\_\_\_\_

6 \_\_\_\_\_

Signature of Document Signer No. 1 \_\_\_\_\_

Signature of Document Signer No. 2 (if any) \_\_\_\_\_

State of California

County of San Diego

Subscribed and sworn to (or affirmed) before me on this

1<sup>st</sup> day of October, 2008, by

(1) Richard Cohen  
Name of Signer

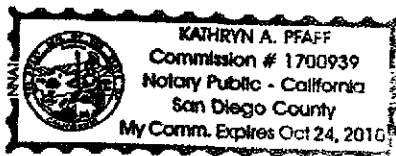
proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (.)

(and

(2) \_\_\_\_\_  
Name of Signer

proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Signature Kathryn A Pfaff  
Signature of Notary Public



Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Further Description of Any Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**RIGHT THUMBPRINT OF SIGNER #1**

Top of thumb here

**RIGHT THUMBPRINT OF SIGNER #2**

Top of thumb here

**Bid Bond**

KNOWN TO ALL MEN BY THESE PRESENTS, that we, the undersigned JAYNES CORPORATION OF CALIFORNIA, as Principal; and CONTINENTAL CASUALTY COMPANY, as Surety, are hereby held and firmly bound unto the County of Riverside, hereinafter called the "Owner", in the sum of TEN PERCENT (10%) OF THE AMOUNT BID Dollars (\$ \_\_\_\_\_) for the payment of such sum, well and truly to be made, do hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

WHEREAS, the said Principal is herewith submitting its Proposal for the PALM DESERT SHERIFF STATION

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the aforesaid Principal shall be awarded the Contract upon said Proposal and shall, within the required number of days after the notice of such award, execute a written memorial of the awarded Contract and submit the required Labor and Material Payment and faithful Performance Bond and proof of insurance, then this obligation shall be null and void; and in the event that the Principal fails and/or refuses to execute and deliver said documents this Bond will be charged with the costs of the damages experienced by the Owner as a result of such refusal, including but not limited to, publication cost, the difference in money between the amount of the bid of the said Principal and the amount for which the obligee may legally contract with another party to perform the said work if such amount be in excess of the former; building lease or rental costs, transportation cost, and additional salary costs that result from the delay due to the Principal's default on the awarded Contract. In no event however, shall the Surety's liability exceed the penal sum hereof.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of the time within which the Owner may accept such bid; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the above bounded parties have executed this instrument under their separate seals this 1ST day of OCTOBER, 2008, the name and corporate seal of each corporate party being hereto affixed and those present duly signed by its undersigned representative, pursuant to authority of its governing body.

JAYNES CORPORATION OF CALIFORNIA  
(Firm Name - Principal)

111 Elm Street, San Diego, California 92101  
(Business Address)

By [Signature]  
(Original Signature) Richard Cohen  
Executive Vice-President  
(Title)

Affix Seal  
If  
Corporation

CONTINENTAL CASUALTY COMPANY  
(Corporation Name - Surety)

320 Osuna NE, Suite G-1, Albuquerque, NM 87107  
(Business Address)

By [Signature]  
(Original Signature) CARL S. CONLEE, III  
ATTORNEY-IN-FACT

Affix  
Corporate  
Seal

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of NEW MEXICO

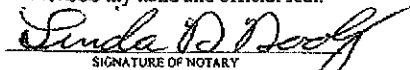
County of BERNALILLO

On 10/01/08 before me, LINDA D. DOOLEY, NOTARY PUBLIC,  
DATE NAME, TITLE OF OFFICER - e.g., "JANE DOE, NOTARY PUBLIC"

personally appeared CARL S. CONLEE, III  
NAME(S) OF SIGNER(S)

personally known to me - OR - \_\_\_\_\_ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

  
SIGNATURE OF NOTARY

Expires: JULY 22, 2012

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

**OPTIONAL SECTION**

TITLE OR TYPE OF DOCUMENT \_\_\_\_\_  
NUMBER OF PAGES\* \_\_\_\_\_ DATE OF DOCUMENT \_\_\_\_\_  
SIGNER(S) OTHER THAN NAMED ABOVE \_\_\_\_\_

**OPTIONAL SECTION - CAPACITY CLAIMED BY SIGNER**

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

INDIVIDUAL

\_\_\_\_ CORPORATE OFFICER(S)

TITLE(S)  
\_\_\_\_ PARTNER(S) \_\_\_\_\_ LIMITED  
\_\_\_\_ GENERAL

ATTORNEY-IN-FACT

\_\_\_\_ TRUSTEE(S)

\_\_\_\_ GUARDIAN/CONSERVATOR

OTHER \_\_\_\_\_

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)

CONTINENTAL CASUALTY

COMPANY

Though the data requested here is not required by law, could prevent fraudulent reattachment of this form.

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That Continental Casualty Company, an Illinois corporation, National Fire Insurance Company of Hartford, an Illinois corporation, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania corporation (herein called "the CNA Companies"), are duly organized and existing corporations having their principal offices in the City of Chicago, and State of Illinois, and that they do by virtue of the signatures and seals herein affixed hereby make, constitute and appoint

Robert L Brooks, Bart H Kinney III, Michael L Chrestman, Carl S Conlee III, Dean E Vigil, Sarah J Hamilton, David D Gebhardt, Sally L Nelson, Individually

of Albuquerque, NM, their true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on their behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind them thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of their corporations and all the acts of said Attorney, pursuant to the authority hereby given is hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law and Resolutions, printed on the reverse hereof, duly adopted, as indicated, by the Boards of Directors of the corporations.

In Witness Whereof, the CNA Companies have caused these presents to be signed by their Senior Vice President and their corporate seals to be hereto affixed on this 9th day of January, 2007.



Continental Casualty Company  
National Fire Insurance Company of Hartford  
American Casualty Company of Reading, Pennsylvania

Thomas P. Stillman Senior Vice President

State of Illinois, County of Cook, ss:

On this 9th day of January, 2007, before me personally came Thomas P. Stillman to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Chicago, State of Illinois; that he is a Senior Vice President of Continental Casualty Company, an Illinois corporation, National Fire Insurance Company of Hartford, an Illinois corporation, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania corporation described in and which executed the above instrument; that he knows the seals of said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed pursuant to authority given by the Boards of Directors of said corporations and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporations.



My Commission Expires March 15, 2009

Maria M. Medina Notary Public

CERTIFICATE

I, Mary A. Ribikawskis, Assistant Secretary of Continental Casualty Company, an Illinois corporation, National Fire Insurance Company of Hartford, an Illinois corporation, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania corporation do hereby certify that the Power of Attorney herein above set forth is still in force, and further certify that the By-Law and Resolution of the Board of Directors of the corporations printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporations this

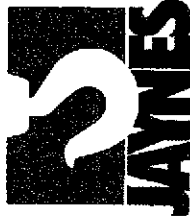
1st day of October, 2008



Continental Casualty Company  
National Fire Insurance Company of Hartford  
American Casualty Company of Reading, Pennsylvania

Mary A. Ribikawskis Assistant Secretary

21,785,000



JAYNES CORPORATION  
111 Elm Street, Fourth Floor  
San Diego, CA 92101-2649

SEALED BID DOCUMENTS DO NOT  
OPEN WITH REGULAR MAIL  
Palm Desert Sheriff Station  
Bid Date: October 1, 2008 @ 2:00PM

County of Riverside  
Clerk of the Board of Supervisors  
4080 Lemon Street  
Riverside, CA 92501

2008 OCT - 1 PM 1:59

RECEIVED RIVERSIDE COUNTY  
CLERK OF THE BOARD OF SUPERVISORS

City of Hesperia  
STAFF REPORT



**DATE:** October 7, 2008  
**TO:** Mayor and Council Members  
Chair and Board Members, Hesperia Fire Protection District  
**FROM:** For Mike Podegracz, City Manager [Signature]  
**BY:** Scott Priestler, Director of Development Services [Signature]  
David Burkett, Project Construction Manager [Signature]  
**SUBJECT:** Award Contract for Fire Station No. 305 (C.O. No. 6518)

---

**RECOMMENDED ACTION**

It is recommended that the Mayor and Council Members and the Chair and Board Members award a contract for Fire Station No. 305 (C.O. No. 6518) to R.C. Construction Services, Inc. in the amount of \$6,465,500.00; approve a 10% contingency in the amount of \$646,000.00 for a total amount of \$7,111,500.00; approve the design of the project represented by the plans and specifications; and authorize the City Manager to execute the contract.

**BACKGROUND**

The Public Safety Ad Hoc Committee was formed to review the emergency services provided by the City. The Public Safety Ad Hoc Committee determined that reconstruction of Fire Station No. 301 and construction of new Fire Station No. 305 were the City's top priorities.

The City's rapid growth in the western portion of the City has created the need to construct Station No. 305 in the area in addition to providing administrative offices for the San Bernardino County Fire Department. This fire station will be constructed jointly by the City of Hesperia and the County Fire Department. These facilities will be located westerly of Interstate 15, between Rancho Road and Main Street.

On June 29, 2006, staff sent a Request for Qualifications to 30 architectural firms with extensive experience in providing professional design services to large private corporations or government agencies. The City's selection panel, made up of two Council Members and City staff, interviewed the top three firms on September 14, 2006. After a careful review of the proposals and the presentations made by each firm, WLC Architects (WLC) was selected by the panel as the most qualified firm for meeting the needs of the City. During the past 20 months staff negotiated a land swap in order to construct the new fire station on a more suitable site, initiated a needs analysis, and started design of the new station. The design for Fire Station No. 305 was completed by WLC in early August 2008.

On June 17, 2008, the City Council adopted the Fiscal Year 2008-09 Capital Improvement Program (CIP), which included funding to finalize design and begin construction of Fire Station No. 305. This project is jointly funded by the City and the County of San Bernardino.

## ISSUES/ANALYSIS

Staff began advertisement for construction of this project on August 21, 2008. Bids were accepted and publicly read at 2:00 p.m. on September 18, 2008. A total of fifteen (15) contractors submitted bids (see Attachment A) and ASR Constructors, Inc. was identified as the apparent low bidder; however, during the standard due diligence on ASR Constructors, Inc. staff became concerned over the information that was being collected. Review of this information, court records, and a reference verification with other public agencies led staff to a preliminary determination that the contractor is "non-responsible." According to Section 1103 of the Public Contract Code, a "responsible" bidder is one "who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract." A range of factors may be used to determine bidder responsibility including performance history, reliable financial information, bonding and insurance capacity, public works experience, personnel, and litigation history.

Staff notified ASR Constructors, Inc. of the preliminary determination that it was non-responsible pursuant to the Public Contract Code §1103 via letter (see Attachment B). This was based on the following information collected during staff's due diligence work:

- A report submitted to the Riverside Community College District Resources Committee for the Quadrangle Modernization Project at the Riverside City Campus, which indicates a lack of trustworthiness to perform public works contracts (see Attachment C);
- Actions by the San Jacinto Unified School District Board of Trustees finding ASR Constructors, Inc. to be non-responsible, due to a lack of fitness or capacity to perform public works contracts (see Attachment D);
- The *Findings of Fact and Conclusions of Law* issued and published by Val Verde Unified School District, which indicates ASR Constructors, Inc.'s lack of fitness to perform public works contracts (see Attachment E);
- Unfavorable verbal responses during reference checks.

ASR Constructors, Inc. was given an opportunity to respond in writing and rebut the information contained within the documentation provided. ASR's legal counsel responded in a letter dated September 29, 2008 (see Attachment F). In rebuttal, staff believes that the response from ASR Constructors, Inc. is insufficient to alter the originally recommended determination. Among other issues, the records show that at least two other public agencies were so concerned about the contractor's performance they held hearings to bar the contractor from bidding on future projects. Litigation is ongoing in these cases. Although court records show the contractor prevailed on the future "debarment" issue in the San Jacinto Unified School District case, the court upheld the District's finding of non-responsibility on the current project that was being awarded.

Staff believes the record, as a whole, amounts to substantial evidence that ASR Constructors, Inc. is a non-responsible contractor for this project. Therefore, staff recommends that the City Council reject the bid submitted by ASR Constructors, Inc., as a non-responsible bidder, and award the contract for construction of Fire Station No. 305 to R.C. Construction Services, Inc., the second lowest bidder. R.C. Construction Services, Inc. has been in the Southern California construction industry since 1994 and has earned a reputation as a service-oriented company that produces first-class, quality projects, on schedule and within budget. R.C. Construction

Services, Inc. has extensive experience in both public works and private development projects. After completing due diligence staff believes R.C. Construction Services, Inc. has a reputation of professionalism and reliability and will meet the needs of City staff and the citizens of Hesperia. Staff has determined that R.C. Construction Services, Inc., the second lowest bidder, is a responsive/responsible bidder and recommends the award of this contract to them.

#### **FISCAL IMPACT**

The adopted FY 2008-09 Budget included \$7,000,000 in the Capital Improvement Plan to construct Fire Station No. 305 (C.O. No. 6518). Funding for this station will come from the Redevelopment Capital Fund, the County of San Bernardino, and the City. The proposed total project budget for this work is \$7,111,500.00. Construction will not be completed during this fiscal year; therefore the entire contract amount will not be encumbered. The balance of the project costs will be funded in the FY 2009-10 budget.

#### **ALTERNATIVE(S)**

1. Do not award the contract.
2. Provide alternative direction to staff.

#### **ATTACHMENT(S)**

1. Attachment A - Bid Results
2. Attachment B - Correspondence to ASR Constructors, Inc.
3. Attachment C - Staff Report to Riverside Community College District Resources Committee
4. Attachment D - San Jacinto Unified School District Agenda Items 5.1 and 9.4 from the Board of Trustees May 9, 2006 Regular Meeting
5. Attachment E - Val Verde Unified School District *Findings of Fact and Conclusions of Law*
6. Attachment F - Correspondence from ASR Constructors, Inc.

# ATTACHMENT A

**City of Hesperia  
Bid Results**

**Fire Station No. 305  
C.O. No. 6518**

**Date: Thursday - September 18, 2008  
Time: 2:00 p.m.**



<u>Contractor</u>	<u>Bid Amount \$</u>	<u>Addendum Acknowledged</u>	<u>Bid Security Instrument</u>
<u>Engineer's/Architects Est. of Probable Costs</u>	<u>\$9,605,000.00</u>	<u></u>	<u></u>
<u>ASR Constructors, Inc.</u>	<u>\$6,191,000.00</u>	<u>1</u>	<u>Bid Bond</u>
<u>Robert Clapper Construction Services, Inc.</u>	<u>\$6,465,500.00</u>	<u>1</u>	<u>Bid Bond</u>
<u>HCH Constructors-Managers, Inc.</u>	<u>\$6,658,000.00</u>	<u>1</u>	<u>Bid Bond</u>
<u>Tovey/Shultz Construction, Inc.</u>	<u>\$6,905,000.00</u>	<u>1</u>	<u>Bid Bond</u>
<u>Eberhardt Construction, Inc.</u>	<u>\$6,913,000.00</u>	<u>1</u>	<u>Bid Bond</u>
<u>Erickson-Hall Construction Co.</u>	<u>\$6,937,000.00</u>	<u>1</u>	<u>Bid Bond</u>
<u>Woodcliff Corporation</u>	<u>\$7,452,000.00</u>	<u>1</u>	<u>Bid Bond</u>
<u>ProWest Constructors</u>	<u>\$7,470,000.00</u>	<u>1</u>	<u>Bid Bond</u>
<u>AMG &amp; Associates, Inc.</u>	<u>\$7,554,000.00</u>	<u>1</u>	<u>Bid Bond</u>
<u>Harbor Construction Co., Inc.</u>	<u>\$7,738,000.00</u>	<u>1</u>	<u>Bid Bond</u>
<u>DJM Construction Company, Inc.</u>	<u>\$7,830,000.00</u>	<u>1</u>	<u>Bid Bond</u>
<u>Jergensen Construction</u>	<u>\$8,296,000.00</u>	<u>1</u>	<u>Bid Bond</u>
<u>Morillo Construction, Inc.</u>	<u>\$8,548,000.00</u>	<u>1</u>	<u>Bid Bond</u>
<u>Metro Builders &amp; Engineers Group, Ltd.</u>	<u>\$8,759,500.00</u>	<u>1</u>	<u>Bid Bond</u>
<u>R.I.C. Construction Company, Inc.</u>	<u>\$9,975,562.00</u>	<u>1</u>	<u>Bid Bond</u>

Tabulated by: David R. Burkett  
Deputy City Clerk  
Project Const. Mgr.



# City of Hesperia

## ATTACHMENT B

Incorporated 1988

September 19, 2008

Mr. Alan Regotti, President  
**ASR CONSTRUCTORS, INC.**  
5230 Wilson Street  
Riverside, CA 92509

**RE: Fire Station No. 305 (C.O. No. 6518)**

Dear Mr. Regotti:

The purpose of this letter is to inform you of the status of your bid submittal for the above-referenced project. At yesterday's bid opening, ASR Constructors, Inc. was the apparent low bidder of the fifteen bids received; however, after carrying out due diligence on your company's ability to be the lowest "responsible" bidder, pursuant to Public Contract Code §1103 (... a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract), City staff has determined ASR Constructors, Inc. does not meet this requirement based on the following:

- The *Findings of Fact and Conclusions of Law* issued and published by Val Verde Unified School District, which indicates ASR Constructors, Inc.'s lack of fitness to perform public works contracts (copy attached);
- A report submitted to the Riverside Community College District Resources Committee for the Quadrangle Modernization Project at the Riverside City Campus, which indicates a lack of trustworthiness to perform public works contracts (copy attached);
- Actions by the San Jacinto Unified School District Board of Trustees finding ASR Constructors, Inc. to be non-responsible, due to a lack of fitness or capacity to perform public works contracts;
- Unfavorable verbal responses during reference checks and the City's own public works field inspection staff, which have personally experienced hostility and unprofessional behavior from ASR Constructors' employees while constructing a new school within the City of Hesperia.

Mike Leonard, Mayor  
Thurston "Smitty" Smith, Mayor Pro Tem  
Tad Honeycutt, Council Member  
Ed Pack, Council Member  
Rita Vogler, Council Member

Mike Padegracci, City Manager

9700 Seventh Avenue  
Hesperia, CA 92345  
760-947-1000  
TD 760-947-1119

12-5  
COUNCIL

[www.cityofhesperia.us](http://www.cityofhesperia.us)



City of Hesperia

## ATTACHMENT B

Fire Station No. 305 (C.O. No. 6518)  
September 19, 2008  
Page 2

This letter is to provide you an opportunity to respond to our findings. If you disagree with this assessment, please submit written evidence that rebuts this due diligence, and clearly demonstrates your firm is qualified to perform the Work as a responsible bidder no later than 5:00 p.m., September 30, 2008. Without such evidence, City staff will be compelled to recommend award of the contract to the second lowest bidder.

You may reach me at (760) 947-1202 if you have any questions or concerns.

Sincerely,

David R. Burkett  
Project Construction Manager

#### Attachments

cc Mike Podegracz, City Manager  
Brian Johnson, Assistant City Manager  
Scott Priester, Director of Development Services  
Eric Dunn, City Attorney  
Vicki Soderquist, City Clerk

# ATTACHMENT C

## RIVERSIDE COMMUNITY COLLEGE DISTRICT RESOURCES COMMITTEE

Report No.: VI-B-3

Date: September 16, 2008

Subject: Quadrangle Modernization Project – Payment Status

Background: On November 15, 2005, the Board of Trustees awarded a contract to ASR Constructors, Inc. for the Quadrangle Modernization Project at the Riverside City Campus. During the course of construction the Board has approved change orders bringing the total contract award to \$16,310,419. The project is nearing completion and closeout.

On August 19, 2008 Brent Bechtel of BECO Electric Company, Inc., a subcontractor to ASR Constructors, Inc., appeared before the Board to claim that he was owed \$366,483 for work that BECO Electric Company, Inc. had completed on the Quadrangle Modernization Project.

Staff has reviewed all Payment Applications for the project and District records show that the District has paid all invoices submitted by ASR Constructors, Inc. through August 19, 2008. (Payment Application Journal Attached).

Staff has also reviewed all Quadrangle Modernization Project files to determine if BECO Electric Company, Inc. had used the contractual protections that are available to all subcontractors to inform the District of payment problems. BECO Electric Company, Inc. has not filed a "Final Stop Notice" that would notify the District that there were payment issues. Further, BECO Electric Company, Inc. has not contacted District staff regarding non-payment by ASR Constructors, Inc.

The following Stop Notices, from ASR Constructors, Inc. subcontractors, are currently on file: All County Environmental in the amount of \$134,032.00 for asbestos abatement; California Field Ironworkers Trust Funds on behalf of Socal Ironworks in the amount of \$45,718.19 for non-payment of fringe benefits for Socal Ironworks employees. The District will be holding back the value of these Stop Notices, and any other Stop Notices the District may receive, until Release of Stop Notices are received from the subcontractors.

District Staff is working with ASR Constructors, Inc. to closeout the project and communicate past due payment claims by subcontractors.

### Information Only.

Irving G. Hendrick  
Interim Chancellor

Prepared by: Aaron Brown  
Associate Vice Chancellor, Finance

Ruth Adams, Esq.  
Director, Contracts, Compliance and Legal Services

Dr. C. Michael Webster  
Riverside Community College District Planning Consultant  
Facilities Planning, Design and Construction

# ATTACHMENT D

# A G E N D A



## **SAN JACINTO UNIFIED SCHOOL DISTRICT**

*Dedicated to Educational Excellence*

### Mission Statement

To educate the diverse student body of San Jacinto Unified School District, it is our mission to develop excellence in all academic endeavors, personal growth, and moral development in order to graduate the highest caliber citizens for our community. This will be done in a safe, secure environment in partnership with students, parents, staff, and community.

## **BOARD OF TRUSTEES REGULAR MEETING MAY 9, 2006**

**BOARD OF TRUSTEES**  
Deborah Rex, President  
Willie Hamilton, Clerk  
Kenneth Cope, Member  
John Norman, Member  
John Schouten, Member

Dr. Shari Fox, District Superintendent

2045 S. San Jacinto Avenue, San Jacinto, CA 92583  
(951) 929-7700

# ATTACHMENT D

## BOARD REPORT

5/9/06

### 5.1 Public Hearing - Non-Responsibility Hearing – ASR

#### Description:

Staff has determined that ASR may be non-responsible with regard to its bids on the North Mountain Middle School Expansion project. As required by law, the Board of Trustees must conduct a public hearing to receive evidence regarding possible non-responsibility from District staff and the contractor.

Prepared by: Business/Facilities  
Information item: 5/9/06

Presenter:  
Joe Busek

12-9  
COUNCIL D

# ATTACHMENT D

## BOARD REPORT

5/9/06

9.4 North Mountain Middle School Classroom Expansion Bid Package 2 – Concrete and Bid Package 9 - Plumbing

Description:

A non-responsibility hearing regarding ASR Constructors, Inc. and ASR/Duke Constructors.

Fiscal Implications:

None at this time.

Recommended Action:

That the Board examine evidence and make a determination.

BOARD MOTION:

\_\_\_\_\_  
\_\_\_\_\_

Moved by:

Seconded by:

Vote: Debbi Rex \_\_\_\_\_  
Willie Hamilton \_\_\_\_\_  
Ken Cope \_\_\_\_\_  
John Norman \_\_\_\_\_  
John Schouten \_\_\_\_\_

Prepared by: Business/Facilities  
Action item: 5/9/06

Presenter:  
Joe Busek

12-10  
COUNCIL

# ATTACHMENT D

SAN JACINTO UNIFIED SCHOOL DISTRICT  
BOARD OF TRUSTEES AND THE BOARD OF TRUSTEES  
SITTING AS THE BOARD OF DIRECTORS  
OF THE SAN JACINTO UNIFIED SCHOOL DISTRICT  
SCHOOL FACILITIES CORPORATION

## AGENDA

Meeting: REGULAR MEETING - PUBLIC SESSION  
Date: October 11, 2005

Time: 5:00 p.m. - Closed Session  
Place: Management Conference Room  
2045 S. San Jacinto Avenue, San Jacinto

Time: 6:00 p.m. - Public Session  
Place: Board Room  
2045 South San Jacinto Avenue, San Jacinto

1. CALL TO ORDER - PUBLIC SESSION

1.1 Call to Order

2. CLOSED SESSION

2.1 Conference with Legal Counsel – Review Liability Claim

*Review liability claim pursuant to Government Code Section 54961 (ASR Constructors, Inc.).*

2.2 Conference with Legal Counsel – Site Acquisition

*Parcel Nos. 431-240-005, 431-250-005, and 431-250-008.*

2.3 Conference with Labor Negotiator

*Employee Organizations: SJTA and CSEA  
District Negotiators: Byron Isaac, Joe Busek, Myrna Rohr*

2.4 Public Employee Disciplines/Dismissal/Release

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*FYI -  
Sent to us  
By Contract Compliance  
Kathy Eng.*

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After consideration of the evidence and testimony proffered and received during a public hearing conducted on January 10, 2007, the Public Works Hearing Officer for the Val Verde Unified School District hereby issues his Findings of Fact and Conclusions of Law.

### Findings of Fact

1. On November 16, 2006, Val Verde Unified School District's ("District") counsel, Public Agency Law Group ("PALG"), sent a letter to ASR Constructors, Inc. ("ASR"), providing notice to ASR that the District intended to find ASR to be a non-responsible contractor lacking the trustworthiness, quality, fitness and/or capacity to satisfactorily perform District construction projects for the next five (5) years. The basis for the District's intended finding was identified in the text of the fifteen (15) page letter and the several hundred pages of Project documents that were forwarded to ASR under cover of the letter. In addition, the letter notified ASR that it was invited to attend a hearing on December 8, 2006 at which time ASR would be afforded an opportunity to rebut the information that had been provided and to otherwise present evidence that ASR was a responsible contractor.

2. On November 28, 2006, counsel for ASR, Timothy Liebaert, Esq., sent a letter to the District's counsel, PALG, stating his belief that there were "substantial legal impediments to the District's proposed action" and further stating that the District was without the authority to hold the hearing or to find ASR to be non-responsible for a period of five years. After stating that ASR would file a Petition for Writ of Mandate, accompanied by a request for a Temporary Restraining Order and a Complaint for Declaratory Relief if the District did not agree to abandon its proposed action, Mr. Liebaert stated that "In the alternative, ASR has determined that in order to dispense with this issue, that if the District agrees to abandon its proposed action that ASR would agree to refrain from submitting a bid to the District for a period of 36 months from the date of execution of any such agreement".

3. On November 30, 2006, a Settlement Agreement Between Val Verde Unified School District and ASR Constructors, Inc. regarding the Responsibility Hearing was emailed to Mr. Liebaert by PALG.

4. On December 13, 2006, after ASR failed to return the signed Settlement Agreement or otherwise indicate that it would do so, the District's counsel, PALG, sent a letter to Mr. Liebaert, dated December 13, 2006, which again provided notice to ASR that the District intended to find ASR to be a non-responsible contractor lacking the trustworthiness, quality, fitness and/or capacity to satisfactorily perform District construction projects for the next five (5) years. The basis for the District's intended finding was identified in the text of the fifteen (15) page letter which also incorporated the several hundred pages of Project documents that had previously been forwarded to ASR under cover of the nearly identical November 16, 2006 letter. In addition, the

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December 13, 2006 letter notified ASR that it was invited to attend a hearing on January 10, 2006 at which time ASR would be afforded an opportunity to rebut the information contained in the letter and in the previously provided documents and to otherwise present evidence that ASR was a responsible contractor.

5. On January 10, 2007, at approximately 1:25 p.m., the Responsibility Hearing commenced with Val Verde Unified School District's Superintendent, Dr. Fred Workman, presiding as the District's Public Works Hearing Officer appointed by the District's Board of Education. The hearing was also attended by Mike Boyd of Val Verde Unified School District, Sandee Hackett of Val Verde Unified School District, Todd Butcher of Val Verde Unified School District, Keith Berlin of Public Agency Law Group, Jeff Ray of PCM3, Chris Williams of PCM3, Doug Henning of PCM3, Henry Sylvia of DC Architects, Richard Duncan of DC Architects, Keith Berry of ASR, Michael Tran of ASR, Alan Regotti of ASR and Tim Liebaert of Robinson & Liebaert as ASR's counsel.

6. During the course of the hearing, sworn testimony was presented by Jeff Ray, Chris Williams, Doug Henning, Alan Regotti and Michael Tran. In addition, the December 13, 2006 letter and the several hundred pages of Project documents that had been previously provided to ASR under cover of the November 16, 2006 letter were entered into the record for the hearing. Approximately thirty-five (35) pages of documents provided by ASR were also entered into the record.

7. Jeff Ray testified that, in his review of the December 13, 2006 letter, he had determined that the representations made in the letter were correct and truthful. Chris Williams testified that he had reviewed the December 13, 2006 letter and found the statements to be truthful, accurate and correct. Doug Henning testified that he had read the letter, was familiar with its contents, and understood and believed that the facts contained in the letter were truthful, accurate and correct.

8. The December 13, 2006 letter stated that the District's finding of non-responsibility is based upon the District's determination that ASR lacks the trustworthiness, quality, fitness and/or capacity to satisfactorily perform District construction projects as demonstrated by ASR's performance on multiple District construction projects as follows:

**Mead Valley Elementary School Project - Gross Failure to Perform the Asphalt Installation in a Workmanlike Manner**

ASR was awarded the Bid Package #1 Contract for the Mead Valley Elementary School Project. ASR's Contract scope included asphalt work to be installed in the Mead Valley Elementary School play area during the Modernization portion of the Project in the Summer of 2002.

The initial asphalt installation performed by or on behalf of ASR was not performed in a workmanlike manner as it contained ripples and divots and had

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various drainage problems. ASR agreed that corrective asphalt work would be performed during the Summer of 2003. Although various portions of the asphalt were removed and replaced during the Summer of 2003, the repair work on the northeast side of the new Kitchen Building was defective and in need of further repair. It was agreed that ASR would perform further repair work during the 2003 Christmas break.

The asphalt in the problem area was removed and replaced over the 2003 Christmas break. When the staff and students returned on January 5, 2004, it was determined that the newly repaired asphalt was also installed in an unworkmanlike manner with ripples, divots and an otherwise unacceptable surface.

On January 10, 2004, without providing any notice to PCM3 or the District, ASR reentered the Project site and sealed the asphalt with a new slurry coat. Neither PCM3, the District, nor the School staff had any knowledge that the work had been performed prior to the staff and students returning to the School on Monday, January 12, 2004. At that time, because the asphalt slurry coat was not yet dried, the black bituminous sealant was tracked over finish flatwork and onto the interior floor surfaces of the School building. In addition, several of the children stained their clothes with the sealant that they picked up on their shoes.

Although ASR continued to perform additional asphalt repairs in January 2004, the quality of the asphalt repairs remained unsatisfactory with asphalt chipping, crumbling, and being tracked into the buildings. Finally, due to the poor quality of the original asphalt installation, and ASR's inability to accomplish the necessary repairs, it became necessary for the District to take over the work on January 21, 2004.

**Val Verde High School Project - Gross Failure to Timely Complete Landscape Contract Scope**

ASR contracted to perform Bid Package #16 which included the Landscaping and Irrigation scope for the Val Verde High School Project. ASR took several months beyond the scheduled Punch List completion date to finish the landscaping and irrigation scope and commence ASR's maintenance period. The Punch List scope was not completed until more than four months after the scheduled date and almost a month after school had already commenced.

On March 26, 2004, ASR was notified, in a Fax from PCM3, that the District was dissatisfied with the appearance of the landscaping and the lack of maintenance for the landscaping that had been installed. On May 2, 2004, PCM3 faxed a Punch List to ASR for Landscaping and irrigation to be completed by May 14, 2004. On May 7, 2004, PCM3 sent a Fax to ASR notifying ASR that they had not yet commenced their Punch List scope and requesting that ASR

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adjust its manpower to ensure that the punch list work was timely completed. ASR was reminded in the May 7, 2004 Fax that the maintenance period would not commence until the Punch List was completed and signed off. On May 27, 2004, PCM3 sent a Fax to ASR reminding ASR that the Punch List scope was to be completed on May 14, 2004 and ASR still had not contacted PCM3 for ASR's Punch List walk through. On May 27, 2004, PCM3 sent a second Fax to ASR notifying ASR that a Punch List walk through would be performed on June 1, 2004, but that the current state of landscaping and irrigation would not be sufficient to result in sign-off unless further remedial measures were taken.

On June 4, 2004, PCM3 sent a Fax to ASR with a revised Landscaping Punch List. On June 8, 2004, PCM3 sent a Fax to ASR notifying ASR that the turf was in poor condition, that there were still numerous outstanding Punch List items and that the maintenance period would not begin until the Punch List scope was completed. On June 28, 2004, PCM3 sent a Fax to ASR notifying ASR that the Punch List was sitting idle and that there were various problems with the irrigation system settings.

On July 20, 2004, PCM3 sent a Fax to ASR stating that the Punch List work needed to be completed immediately and reiterating that the District was very displeased with the condition of the landscaping. In the July 20, 2004 Fax, PCM3 told ASR that if swift corrective action was not taken, the completion of the work would be taken over by the District. On July 28, 2004, PCM3 sent a letter to ASR providing ASR with 24 Hour Notice to immediately commence all incomplete landscaping and irrigation work. In the July 28, 2004 letter, ASR was again told that if ASR failed to provide adequate materials and manpower, the District would take over and/or supplement the work. In the July 28, 2004 letter, ASR was reminded that the Punch List scope was 11 weeks overdue and that students were scheduled to arrive soon, on August 23, 2004. On July 30, 2004, PCM3 faxed a letter to ASR, from the Landscape Architect, indicating that many of the items from the first pre-maintenance Punch List, dated 4/29/04, still had not been addressed and identifying numerous items that still needed to be dealt with.

On August 17, 2004, PCM3 sent a Fax to ASR notifying ASR that a further Punch List walk through was scheduled for 8/26/04. On September 9, 2004, PCM3 sent a letter to ASR noting that several of ASR's Contract scope and Punch List scope items still remained outstanding. On September 14, 2004, PCM3 sent a Fax to ASR notifying ASR that a final walk through was now scheduled for 9/15/04 to determine if ASR's work was sufficiently completed to commence the maintenance period. On September 16, 2004, almost a month after school had commenced and four months after the scheduled date, ASR finally completed the landscaping scope and the maintenance period was able to commence.

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## Columbia Elementary School Project - Failure to Install Asphalt in Conformity with the Project Plans and Specifications; Poor Quality Concrete Patch Work

ASR was awarded the Contract for Bid Package #1 - General Construction on the Columbia Elementary School Project. ASR's contract scope required that ASR install asphalt at various locations on the Project with a thickness of not less than three inches. On August 21, 2004, a Non-Compliance Notice was issued after an Asphalt sample revealed that the asphalt was only two inches thick. After a subsequent inspection, where core samples were taken in four separate locations of the Project on September 27, 2004, it was found that the asphalt, at the sampled locations, ranged in thickness from 1&7/8 inches to 2&3/4 inches with an average thickness of less than 2&1/2 inches.

There were also problems with the extremely poor quality concrete patch work provided by ASR at the Columbia Elementary School Project. On May 25, 2006, PCM3 sent a letter to ASR, notifying ASR that several areas of patched concrete at the school site were cracking, failing, and resulting in trip hazards. ASR refused to repair its defective concrete patch work faxing back PCM3's letter with the following handwritten message:  
*"DAN, I BELIEVE THAT THE ONE YEAR WARRANTY HAS EXPIRED FOR THIS JOB. MT"*

## Lasselle Elementary School Project - Gross Failure to Timely Complete Grading; Failure to Perform Grading Scope in Conformity with the Project Plans and Specifications

ASR was awarded the contract for Bid Package #1 - General Construction on the Lasselle Elementary School Project. ASR's Contract scope included grading and, with regard to the grading work, ASR had substantial problems maintaining the schedule. Rough grading had been scheduled to be completed on October 8, 2004 and fine grading was scheduled to be completed on October 22, 2004. Nevertheless, ASR's grading scope fell more than six months behind schedule and ASR's delayed completion of grading impacted the progress of other prime contractors on the Project. After the Project was completed, the School began to experience significant drainage problems in the ball field areas. It was subsequently determined that the drainage problems were caused by ASR's failure to grade those areas in conformity with the Project plans and specifications. Necessary grading repairs have been estimated to cost in excess of \$190,000.00. To date, the grading in those areas still remains out of compliance with the Project plans and specifications.

## Rainbow Ridge Elementary School Addition Project - Gross Failure to Timely Provide Acceptable Elevator Submittals and Timely Perform Elevator Installation Scope

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ASR was awarded the Contract for Bid Package #1 - General Construction for the Rainbow Ridge Elementary School Addition Project. Included in the scope of ASR's Contract was the installation of a hydraulic elevator. Despite the fact that ASR was required to submit hydraulic elevator submittals by June 20, 2005, ASR failed to provide adequate submittals until January, 2006, more than six months after the required date. In addition, after the hydraulic elevator submittals were approved, ASR's installation of the elevators was not timely.

The timeline regarding ASR's hydraulic elevator submittals was as follows. ASR's first set of hydraulic elevator submittals were forwarded to the architect on May 19, 2005 and were returned to ASR on June 3, 2005 with architect comments and the directive to "revise and resubmit". On June 17, 2005, PCM3 sent a Fax to ASR requesting an update on the status of ASR providing its elevator re-submittals and shop drawings. On July 20, 2005, after ASR substituted its elevator subcontractor, ASR was informed that submittals provided by its new elevator subcontractor, Mitsubishi, were incomplete and deviated from the Project requirements. On July 28, 2005, PCM3 forwarded the architect's review comments to ASR and requested that ASR submit elevator shop drawings and calculations ASAP. On August 10, 2005, PCM3 faxed to ASR a list of outstanding Project submittals/re-submittals, noting that the elevator submittal was a "CRITICAL DEFERRED APPROVAL ITEM" "due for this project over seven weeks ago" and requesting that ASR immediately expedite the submission of the re-submittal. PCM3 resent its August 10 Fax to ASR on August 12, 2005, August 16, 2005 and August 23, 2005. On August 24, 2005, ASR's elevator re-submittals were forwarded to the architect for review and comment. On September 13, 2005, ASR's elevator re-submittals were returned to ASR with the architect's comments and the request that ASR revise and resubmit them. On October 10, 2005, PCM3 sent a Fax to ASR inquiring as to the status of the elevator re-submittals, explaining that they were needed for DSA submission, and stating that ASR's elevator subcontractor was taking too long. On October 18, 2005, PCM3 sent a letter to ASR giving ASR 72 hour notice to re-submit the elevator re-submittals and notifying ASR that the District intended to assess liquidated damages for the late elevator submittals. On October 25, 2005, PCM3 sent a follow up Fax to ASR reiterating that the elevator re-submittals were critical to the Project, that they were late, and that ASR was being assessed liquidated damages for the late submittals. On November 3, 2005, elevator re-submittals were forwarded to the architect. On November 9, 2005, ASR's elevator re-submittals were returned to ASR with the architect's comments and a request that ASR revise and resubmit them ASAP. On January 4, 2006, more than six months after the elevator submittals were originally due, new elevator re-submittals were forwarded to the architect. Those re-submittals were ultimately approved by the architect and by DSA.

Following approval of the elevator submittals, ASR's installation of the elevators was not timely performed. On April 12, 2006, PCM3 sent a fax to ASR

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stating that ASR's elevator subcontractor's projected elevator installation date, in June, 2006, was unacceptable and requesting that ASR have its elevator subcontractor deliver and install the elevators by early May, 2006. On April 18, 2006, ASR sent a letter to its elevator subcontractor noting that ASR expected to see its elevator subcontractor on site, commencing the elevator installation, in the third week of May. In the April 18, 2006 letter, ASR further noted that the duration for the elevator subcontractor's work would be four to five weeks and that the schedule would not be able to accommodate further delays. On the morning of May 15, 2006, PCM3 sent a Fax to ASR noting that PCM3 had not seen ASR's elevator subcontractor on site and requesting that ASR confirm that the elevator subcontractor would be on site that day. On May 25, 2006, PCM3 faxed a letter to ASR confirming ASR's representation that the elevator installation would commence on June 5, 2006. In the May 25, 2006 letter, PCM3 noted that the "sign off" date for the elevator was April 28, 2006, that the elevator installation was significantly behind schedule, and that the elevator installation needed to be completed in a timely fashion as the school was scheduled to open on August 17, 2006. On June 5, 2006, ASR sent a letter to its elevator subcontractor noting that the elevator installation had not yet commenced as promised and that the date had already been moved back multiple times. In the June 5, 2006 letter, ASR further noted that the elevator subcontractor was now stating that materials would not be on site until June 16, 2006, or June 20, 2006, and that the installation would take four weeks to complete, which would mean that installation would be completed by July 20, 2006. ASR further noted that July 20, 2006 was the date that the elevator subcontractor must finish the job (including inspection and sign off) as the District would be moving into the Project the last week of July. Subsequently, elevator installation by ASR's elevator subcontractor commenced on July 16, 2006. On August 10, 2006, the elevator failed state inspection. The elevator finally passed inspection on August 18, 2006, the day after school started at the Rainbow Ridge Elementary School.

**Rainbow Ridge Elementary School Addition Project - Gross Failure to Timely Perform Roof Framing Scope; Failure to Perform Roof Framing Scope in Conformity with the Project Plans and Specifications**

ASR was awarded the Contract for Bid Package #1 - General Construction on the Rainbow Ridge Elementary School Addition Project. ASR's Contract scope included framing for the Project. ASR quickly fell behind schedule during the framing process. Initially, there were manpower problems with ASR's framing subcontractor. On October 11, 2005, PCM3 sent a Fax to ASR noting that ASR was already 13 days behind the revised framing start date of 9/26/05 and that ASR's framing subcontractor would need to "man-up and begin the framing operations." On October 19, 2005, PCM3 faxed a letter to ASR noting that the framing scope was scheduled to be completed by December 16, 2005 and that it was necessary for ASR's framing subcontractor to provide adequate manpower to ensure timely completion of the framing. On October 20, 2005, PCM3 faxed to

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ASR a third written notice of insufficient manpower for framing operations at Rainbow Ridge Elementary School. On November 16, 2005 PCM3 faxed a letter to ASR noting that the framing progress was behind schedule and that ASR's framing subcontractor would need to immediately increase manpower. On November 22, 2005, PCM3 faxed a letter to ASR acknowledging that ASR's framing subcontractor's manpower had increased, but that there were delays in ASR providing rough framing and that therefore, ASR would be responsible for cost impacts submitted by other prime contractors as a result of those delays.

ASR's framing delays on the Rainbow Ridge Elementary School Addition Project were exacerbated by ASR's failure to frame in conformity with the Project plans and specifications and by ASR's delay in correcting its nonconforming work. On December 19, 2005, the Project Inspector noted that there were several problems with the Project framing including the framing subcontractor's use of multiple pieces of filler blocking in lieu of solid blocking as required. In the Project Inspector's Items of Concern No. 6, dated December 29, 2005, the Project Inspector noted eleven different items of concern with the Project framing which included, among other things, ASR's framing subcontractor's use of multiple pieces of wood fillers, in lieu of one solid shape piece, at the location of the roof top equipment platforms. After ASR failed to correct the problem, on January 6, 2006, PCM3 submitted an RFI, on ASR's behalf, requesting that the architect approve a corrective solution for the non-conforming installation. The architect's RFI response was faxed to ASR on January 16, 2006. ASR was directed to immediately implement the suggested modification so as not to further delay the Project. At the weekly Project meeting on January 31, 2006, ASR represented that the HVAC blocking would be completed that same day and ready for inspection the following day. In the Project Inspector's Items of Concern No. 8, dated February 3, 2006, the Project Inspector noted eight different items of concern with the Project framing which included, among other things, ASR's framing subcontractor's failure to correct the non-conforming HVAC platform blocking installation. On February 7, 2006, ASR was again sent a notice that ASR's framing subcontractor was not adequately manning the Project and needed to mobilize a larger crew. On February 23, 2006, PCM3 faxed a letter to ASR providing a chronology of the HVAC platform blocking problem and noting that the Project schedule had been severely impacted because ASR had failed to provide framing in conformity with the Project plans and specifications or in conformity with the corrective measures provided by the Project architect. ASR finally corrected the HVAC platform blocking problem on March 6, 2006.

Due to ASR's failure to timely complete the roof top framing as scheduled on the Rainbow Ridge Elementary School Addition Project, the casework delivery and installation dates had to be pushed back several weeks. As a result, substantial storage fees were incurred by Stolo Cabinets, the casework contractor for the Project. As a result of those storage fees, Stolo Cabinets submitted a request to the District for a Change Order in the amount of \$5,709.00. ASR was

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notified that the Stolo Cabinets storage Change Order amount would be back charged against ASR's Contract.

## Rainbow Ridge Elementary School Addition Project - Failure to Provide Irrigation Controller in Conformity with Project Plans and Specifications

ASR was awarded the Contract for Bid Package #1 - General Construction, which included the landscaping scope on the Rainbow Ridge Elementary School Addition Project. As part of the General Construction Contract scope, on or about July 1, 2005, ASR was directed to install the specified automatic irrigation controller manufactured by United Green Tech. Nevertheless, in August, 2006, the District learned that ASR had disregarded the Project plans and specifications and had installed an irrigation controller at Rainbow Ridge Elementary School that was not the specified product and was not manufactured by United Green Tech. On August 23, 2006, PCM3 notified ASR, by Fax, that the controller installed by ASR was not manufactured by United Green Tech and PCM3 directed ASR to provide the specified controller as required per the plans. To date, the irrigation controller installed by ASR has not been replaced and remains in non-conformity with the Project plans and specifications.

## Triple Crown Elementary School Project - Gross Failure to Perform Asphalt Installation in Conformity with Project Plans and Specifications; Gross Failure to Perform Asphalt Installation in a Workmanlike Manner

ASR was awarded the Bid Package #1 - General Construction Contract for the Triple Crown Elementary School Project. ASR's Contract scope included, among other things, the installation of asphalt paving on both the school site and on portions of the surrounding off site property owned by the City of Perris. The quality of the onsite and offsite asphalt paving provided by ASR was severely deficient and failed to comply with the Contract plans and specifications at over ninety locations. Much of the asphalt paving installed by ASR was not smooth and contained undulations, ruts and depressions which have impeded the flow of water. In addition, ASR failed to maintain the specified grade at numerous locations. In many areas, the asphalt installed by ASR overlapped with existing concrete and/or caused damage to other work in place. In addition, in some areas, ASR failed to install base materials and/or asphalt which was the required thickness. In general, much of the asphalt paving work installed by ASR, both onsite and offsite, was of substandard quality and installed in an unworkmanlike manner. There are many photographs that are being forwarded with this letter which substantiate the poor quality of ASR's asphalt paving for the Triple Crown Elementary School Project.

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## Triple Crown Elementary School Project - Failure to Install Plumbing in Conformity with Project Plans and Specifications

ASR was awarded the Bid Package #2 - Plumbing Contract for the Triple Crown Elementary School Project. ASR's plumbing installations were not performed in conformity with the Project plans and specifications and were not performed in a workmanlike manner. The Plumbing Contract scope included the installation of sewer lines and a separate Storm Drain System. On August 16, 2006, after ASR had installed the sewer lines and Storm Drain System, there was a sewer backup in the Administration Building which resulted in three separate rooms being flooded with raw sewage waste water and sustaining various damage. The sewer backup was cleared by an independent Roto-Rooter Contractor that same day. On August 17, 2006, PCM3 sent a letter to ASR documenting the problem and explaining that, when the Roto-Rooter contractor was clearing the blockage, it appeared as though the sewer line and Storm Drain System were somehow connected, indicating that the underground wet utility systems (Storm Drain and Sewer) were not correctly installed and were not installed in conformity with the As-Built drawings provided by ASR. PCM3 requested that ASR immediately address the problem. On August 25, 2006, there was a second sewer backup along the north side of the Administration building where sewage began backing up into the Storm Drain System catch basin. On August 26, 2006, ASR apparently realized that it had connected the Storm Drain System catch basin to the sewer line and the Sewer cleanout, with the Sewer cleanout cover box, to the Storm Drain System. At that time, ASR dug out the catch basin and the Sewer cleanout and reinstalled each of them in the reverse locations.

## Triple Crown Elementary School Project - Failure to Provide a Recovery Schedule as Repeatedly Requested and as Required Pursuant to the Project Plans and Specifications

After ASR fell behind on the Triple Crown Elementary School Project, ASR flagrantly ignored the Project plans and specifications by failing to comply with repeated requests for ASR to submit a recovery schedule. The Project Specifications required, in Paragraph 1.04A.1.c. of Section 01041-2, that "upon written notice by CONSTRUCTION MANAGER, PRIME CONTRACTOR shall, within three (3) calendar days, provide a complete recovery schedule, including manpower loading, resource loading, detailing how the PRIME CONTRACTOR and his subcontractors will recover PRIME CONTRACTOR'S original scheduled milestone dates." Nevertheless, ASR never complied with that contractual requirement. On June 30, 2005, PCM3 sent a letter to ASR noting that ASR was continuing to fall behind schedule and starting to delay other contractors. In the June 30, 2005 letter, PCM3 requested that ASR provide an updated recovery construction schedule as required by the Project Specifications. On July 8, 2005, PCM3 faxed a second letter to ASR noting that ASR was falling

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further behind and had failed to provide the recovery schedule as requested. In the July 8, 2005 letter, PCM3 renewed its request that ASR provide a recovery schedule as required. On July 13, 2005, PCM3 faxed a third letter to ASR noting that ASR was falling further behind and documenting that ASR had still failed to provide any recovery schedule as requested. On March 30, 2006, PCM3 faxed a letter to ASR noting that ASR had not finished importing soil, which was to be completed on July 15, 2005, and that ASR had not finished grading the site, which was to be completed on August 12, 2005. In the March 30, 2006 letter, PCM3 again requested that ASR submit a recovery schedule as required by the Project Specifications. On April 3, 2006, PCM3 faxed a letter to ASR with a copy of a letter from the electrical contractor that identified several incomplete items in ASR's contract scope that were delaying the electrical contractor. In the April 3, 2006 letter, PCM3 noted that ASR still had failed to comply with its contractual obligation to provide a recovery schedule as requested. On July 12, 2006, PCM3 faxed a letter to all of the prime contractors on the Project, including ASR, requesting that each prime contractor with incomplete scope provide a recovery schedule within three (3) days as required by the Project Specifications. On June 21, 2006, PCM3 faxed a letter to ASR noting that ASR still had not submitted a recovery schedule as required by the Project Specifications and renewing PCM3's request that ASR provide a recovery schedule. Despite the many requests that were made by PCM3, as the Project Construction Manager, ASR never complied with its contractual obligation to provide a recovery schedule.

**All Projects – Grossly Unprofessional and Antagonistic Conduct/Communications**

Throughout the various Projects that ASR has had with Val Verde Unified School District, ASR has frequently conducted itself in an unprofessional manner, writing and faxing antagonistic, insulting, demeaning and disparaging letters and comments in response to reasonable inquiries that ASR received from PCM3, the Project Construction Manager. Examples of ASR's unprofessional communications are as follows:

1) In a response to a letter, dated August 16, 2004, that PCM3 sent to ASR on the Columbia Elementary School Project, ASR penned:

***"YOU PEOPLE ARE IN DEEP SHIT ON THE PROJECT YOU SHOULD TRY TO TONE DOWN YOUR THREATS! M Berry"***

2) In a letter, dated January 27, 2005, that ASR sent to PCM3 on the Val Verde High School Project, ASR wrote the following:

*"I don't believe anyone in any letter accused you personally of secreting a tape recording device in one of your orifices."*

*"...you are a bright young man and I am sure that you will go far in your daddy's company..."*

*"The behavior of you and your client fall well below the threshold of dignity."*

*"...still you behave as a spoiled child, always with your hand out like a street urchin."*

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*"I don't think there exists any one of the 450 employees of ASR that has anything good to say and nothing but negative experiences with PCM3".*

*"Doug, the negative sentiment of you and your company is so strong that it is alarming at times."*

*"The negative perception of you shared by reputable trades, honest suppliers, superior contractors and unfortunately even your own work associates would be laughable if it wasn't for the fact that this type of perception influences bids..."*

*"You may even think that your 'rudeness' would be perceived as directness and decisiveness, as opposed to bad parenting."*

*"...short of sending you to your room and no tv for a month, I am somewhat perplexed by your continued behavior."*

In reference to other Projects that did not involve the District and PCM3, ASR wrote:

*"the sheer delight of not having to associate with despicable, selfish, inexperienced and insecure individuals is also a pleasure."*

ASR concluded the letter as follows:

*"I sympathize for you Doug in some way, I have witnessed the paranoia and distrust that happens in firms, who have been threatened with the loss of their 'cash cow'. The memos and the directives about who you are allowed to speak with and the questions from 'superiors' on 'what did so and so say to you and what did you say to them?' I have seen the reaction of companies that have and are being investigated for fraud and incompetence (or other negative actions) and the finger-pointing that pursues. Everyone thinking that if they make a bigger 'stink' than someone else their job is a bit more secure. Except for one thing, you don't fall into any of those categories, your (sic) family."*

3) In response to a letter, dated February 9, 2005, from Doug Henning at PCM3 to ASR, directing ASR to perform certain warranty work on the Val Verde High School Project, ASR penned a reply in the margins on PCM3's letter and faxed it back with the following:

***"DEPUTY DOUG! INCORRECT! IT ISN'T WARRANTY WORK I WILL REPAIR IT AND BILL YOUR CLIENT FOR THE DAMAGE YOUR CLIENT DR. SOD CONTINUES TO CREATE MORE PROBLEMS! Marc Berry"***

4) In response to a Fax, dated January 26, 2005, from Doug Henning at PCM3 to ASR, notifying ASR that a copy of the tape recording from the day's in service session was available to be picked up, ASR penned a reply on PCM3's Fax and faxed it back with the following:

***"WHICH EMPLOYEES WERE HIDING THE TAPE RECORDERS UNDER THEIR ARM? M Berry"***

5) In response to a Fax, dated January 4, 2005, from PCM3 to ASR, asking ASR to confirm that a scheduled date for an owner instruction session for the controller

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assemblies and irrigation booster pumps was acceptable, ASR penned a reply on PCM3's Fax and faxed it back with the following:

*"YOUR AN EXPERT AT SHUTTING IT OFF ALREADY. M. Berry"*

6) In response to a letter, dated November 2, 2004, from PCM3 to ASR, explaining that the District was interested in assuming the remaining landscape maintenance period and requesting a credit for the unused portion of time, ASR penned a reply on PCM3's letter and faxed it back with the following:

*"PASS! YOU OWE ME FOR THE DAMAGE AND SABOTAGE."*

7) In a Fax to Doug Henning at PCM3, received September 27, 2004, ASR wrote the following:

*"NOBODY IN THIS FIRM HAS ANY CONFIDENCE THAT YOU TELL THE TRUTH ABOUT ANYTHING! M Berry"*

8) In response to a letter, dated September 16, 2004, from PCM3 to ASR, acknowledging that the District had accepted the landscaping scope of work as complete for Val Verde High School, ASR penned a reply in black marker on PCM3's letter and faxed it back with the following:

*"HOW ABOUT COSTS DUE TO THE LACK OF WATER BY THE DISTRICT AND PCM FRAUD. M Berry"*

9) In response to a Fax, dated August 16, 2004, from Doug Henning at PCM3 to ASR, regarding the fact that school would be in session at Val Verde High School on 8/23/04 and reminding ASR that maintenance and irrigation cannot be performed during school hours on school days and requesting that the irrigation schedule be changed so that the campus was not wet during the day, ASR penned a reply in black marker on PCM3's Fax and faxed it back with the following:

*"CAN'T WARRANTY UNDER THIS CONDITION"*

10) On the March Middle School Project, PCM3 received a letter, dated June 22, 2005, from the plumbing prime contractor, JPI, which stated, in part, "Today, at approximately 10:00 a.m., our onsite Foreman was verbally attacked by the steel subcontractor working for ASR. This attack was threatening bodily injury to Dave King as well as our company. In addition, scrap steel was maliciously dumped into our pipe trench by the same company... We are asking PCM3 to assist in keeping this type of behavior off projects as this, especially when we are working so close to kids in school. We will refrain from notifying the local police at this time hoping PCM3 can resolve this issue in a timely manner." ASR penned a reply on a copy of JPI's letter and faxed it back to PCM3 with the following:

*"TOTAL LIES BY JPI. BUT WHAT'S NEW! JPI MAN WAS OUT OF LINE. JPI IS A POOR PRIME. M Berry"*

11) In response to a Fax, dated November 4, 2005, from Sharon Sass at PCM3 notifying ASR that its general liability insurance certificate for the March Middle School Project was due to expire on November 23, 2005 and requesting that ASR

**ATTACHMENT E**

have its carrier submit current certificates listing the appropriate additional insureds, ASR penned a reply in black marker on PCM3's Fax and faxed it back with the following:

***"IT WILL BE RENEWED AND REISSUED BEFORE 11-23-05, ONLY A CONTRACTOR WOULD UNDERSTAND THE RENEWAL PROCESS.  
M. Berry"***

12) In response to a Fax, dated December 15, 2005, from Doug Henning at PCM3 to ASR, stating that a T&M pricing sheet on the March Middle School Project would not be processed until all related credits were submitted, ASR penned a reply on PCM3's Fax and faxed it back with the following:

***"STOP ALL WORK! M Berry"***

13) In response to a Fax, dated May 20, 2006, from Doug Henning at PCM3 to ASR, requesting an update regarding March Middle School traffic signal scope and the dates when materials will be onsite and installation will commence and conclude, ASR penned a reply in black marker on PCM3's Fax and faxed it back with the following:

***"WHAT THE HELL IS THAT GUY DOING! M Berry."***

14) In a Fax, dated 8/22/06, from ASR to Chris Williams at PCM3 on the Triple Crown Elementary School Project, ASR wrote, among other things:

***"Since you obviously have only rudimentary knowledge of construction sequencing, let us school you a bit."***

15) In response to a letter sent by Chris Williams (of PCM3) to ASR on the Triple Crown Elementary School Project, on or about July 16, 2006, ASR penned a reply on Mr. Williams' letter and faxed it back with the following:

***"CHRIS I HAVE ADDED YOUR NAME TO MY LIST OF UNEXPERIENCED CM TRYING TO RUN JOBS. ONCE AGAIN PCM AND LACK OF EXPERIENCE IN BUILDING PRODUCT WILL COST THE DISTRICT ANOTHER CLAIM OR CHANGE ORDER. PCM3 SHOULD BE HELD ACCOUNTABLE. M Berry YOUR ORGANIZATION LACKS KNOWLEDGEABLE CONSTRUCTION MECHANICS"***

16) In response to a letter, dated August 8, 2006, from Chris Williams at PCM3 to ASR, regarding ASR's failure to remove a large amount of excess materials, trash and debris from the Triple Crown Elementary School Project as requested, and notifying ASR that the materials would be removed by the District and deducted from ASR's contract price, ASR penned a reply on Mr. Williams letter and faxed it back with the following:

***"WHERE'S THE NOTICE 24 HOURS. I WOULDN'T TRY IT. CHRIS DO YOU HAVE A LITTLE RED RADIO FLYER WAGON TO LOAD IT IN! Marc Berry"***

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17) In response to a letter, dated August 5, 2005, from John Gostomski at PCM3 to ASR, regarding the need for ASR to install batter boards, as agreed, in order to avoid delaying the electrical prime contractor, ASR penned its short reply on Mr. Gostomski's letter and faxed it back with the following:

*"JOHNNY YOU'RE A BADDER BOY!"*

18) In response to a Fax, dated December 17, 2004, from Jeff Ray at PCM3 to ASR on the Lasselle Elementary School Project, forwarding copies of pencil drafts and requesting that ASR please address all future inquiries to Ken Englemen, ASR penned various replies in the margins of the fax and faxed it back with, among other things, the following:

*"YOUR NOT QUALIFIED TO KNOW. TOTALLY UNACCEPTABLE. M. Berry. I WILL REMOVE THE SUPERVISION IF YOU DON'T PAY!..."*

19) In response to a letter, dated December 22, 2004, from Ken Englemen at PCM3 to ASR on the Lasselle Elementary School Project, ASR penned various replies in the margins of the fax and faxed it back with, among other things, the following:

*"KEN YOU'RE A CLOWN M. Berry"*

9. After the introduction of the December 13, 2006 letter and the several hundred pages of supporting documents, Tim Liebaert commenced with introductory comments on ASR's behalf. During his introductory comments, Tim Liebaert stated that a lawsuit had been filed in Riverside Superior Court with respect to the hearing. He stated that the lawsuit contends that the hearing to determine whether a contractor is non-responsible is without legal authority in the absence of a bid having been submitted. He cited the City of Inglewood case and stated that ASR contends that in the absence of a bid under consideration on a particular Project, the District cannot convene a responsibility hearing for ASR. Mr. Liebaert denied that the Education Code provided the District with adequate authority to hold the hearing. Mr. Liebaert noted that ASR had requested a Temporary Restraining Order that was denied, but he stated his opinion that the refusal of the Court to issue a TRO did not mean that ASR's position lacked merit.

10. Mr. Liebaert further stated that the District lacked the authority to deem ASR a non-responsible contractor for a period of five (5) years. Mr. Liebaert stated that if the District were permitted to deem ASR non-responsible for a period of five (5) years, it would eliminate the purpose of the public bidding laws.

11. Mr. Liebaert stated his belief that the responsibility hearing was done for personal animus and was an abuse of public authority.

12. Mr. Liebaert stated that ASR had performed 25 contracts for the District and thereby saved the District 8 million dollars over the next lowest bidder. Mr. Liebaert further stated that ASR believed the value of the items identified in the December 13, 2006 letter had a value of one hundred thousand dollars or less.

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13 Mr. Liebaert further stated that many of the items which have been identified as defective work were settled by mutual agreement. Mr. Liebaert gave his opinion that items which were previously settled should not form the basis for a finding that ASR is non-responsible.

14 Mr. Liebaert stated that he did not feel ASR was provided sufficient time to prepare a meaningful defense.

15 Mr. Liebaert stated that ASR is an established company in Riverside County with a great deal of history in the public works arena with many satisfied customers and hundreds of completed public works projects with the capacity and resources to satisfactorily perform public works contracts.

16 Alan Regotti testified regarding the first 27 pages of documents submitted by ASR. Mr. Regotti stated that he tried to put together documents showing that over a total of 25 jobs, ASR has been 7.8 million dollars less than the next low bidder. The first seven pages provide a summary and pages 8 through 27 are bid tables.

17 Mr. Regotti stated his belief that the District is tired of the abuse that ASR has laid upon PCM3 for what ASR contends is the inability to manage the job properly and Mr. Regotti denied that it had anything to do with ASR being a responsible bidder. Mr. Regotti noted that the District had identified eleven issues on six out of 25 projects and gave the opinion that the disputed issues were one hundred thousand dollars out of 55 million dollars worth of work. Mr. Regotti gave the further opinion that it was just a personality conflict that ASR has had with the CM firm. Mr. Regotti complained that he thought the CM personnel may be college educated, but he did not think that they were appropriately experienced and failed to listen to ASR when ASR told the CM how to coordinate the Project or what procedures to follow. Mr. Regotti complained that the CM firm was not sufficiently open-minded to accept ASR's suggestions on how the project should be run which Mr. Regotti said was frustrating for contractors like him. Mr. Regotti noted that he had been building schools in Southern California for thirty years seeing projects from start to finish and although he has tried to pass on his knowledge, the CM just wanted to follow what they learned in school or in their office and that was frustrating to ASR which is why Mr. Regotti's partner would write his "little essays". Mr. Regotti gave his opinion that the District should hire another management firm so that there is competition. Mr. Regotti described a project that ASR bid at Hesperia Unified School District where, according to Mr. Regotti, the Board decided to throw out the contractor's bids and put the Project out to rebid because, according to Mr. Regotti, the Board thought there was a conflict with the V.P. of the low bid contractor being married to Hesperia Unified's Director of Facilities. Mr. Regotti noted his belief that Sandee Hackett and Peggy Ray of Val Verde Unified School District are married to Greg Hackett and Jeff Ray of PCM3. Mr. Regotti gave his opinion that the District would be more critical of PCM3 if those relationships did not exist.

18 With regard to the Mead Valley Asphalt Installation Issues, Mr. Regotti stated that ASR was responsible for the asphalt, but thought that the problem area was not

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where ASR had installed initial asphalt, but where ASR had to perform asphalt repairs. Mr. Regotti said that ASR had to put in a storm drain and a catch basin and it was not an easy job because the area was very flat. Mr. Regotti said that he walked the job at the end of the Project to see what could be done to remedy the problems and Todd Butcher from the District agreed that the District would accept a credit of \$5,000 instead. Mr. Regotti stated that monetary adjustments where ASR gave a credit for defective work was a typical situation or a common occurrence in the industry and on ASR Projects.

19. With regard to the Val Verde High School Landscape Issues, Mr. Regotti stated that he knew ASR "had some issues out there in the landscaping". Mr. Regotti said that ASR's lock was continually being cut on the timers, ASR could not get to the timers, the locks were changed and water was being turned on without ASR's knowledge. Mr. Regotti also gave the opinion that incompatible plants were placed together and there was a problem with the storm drain in the back of the school where the water did not drain properly and there was a pond in the northeast corner. Mr. Regotti characterized it as a pretty good landscape job that "might have been a little late". Mr. Regotti gave the opinion that the District was not impacted because the "landscape did not get finished a week before it did". Mr. Regotti also noted that it was a "no money issue" and he did not "think it cost the School District anything". It was Mr. Regotti's understanding that the District and the CM tampered with the clock setting of the irrigation control that led to over saturation of the field and some plants were damaged due to over-watering. Mr. Regotti said that "ASR replaced plants pursuant to the specifications at no additional cost to the District".

20. With regard to the Columbia Elementary School Asphalt and Concrete Issues, Mr. Regotti stated that the asphalt was found to be minimal and below the requirement in some locations and he did not know if it was because the subgrade wasn't prepared properly. Mr. Regotti said that instead of repaving the area, ASR offered a \$20,000 credit and an extended warranty. Michael Tran said that ASR had offered a \$7,000 to \$8,000 credit and the District counter-offered \$20,000 which ASR accepted. Mr. Regotti admitted that he considered this credit for ASR's non-conforming work to be "another one of those situations that [he considered] routine course". With regard to the concrete, Mr. Regotti said that some of it cracked because the plumbers and electricians had not properly compacted their trenches. Mr. Regotti said that after ASR repaired the concrete, more cracking appeared after the School District and others drove on it. Mr. Regotti denied that it was ASR's responsibility and further noted that when the District told ASR that it was a warranty issue it was after the warranty had expired.

21. With regard to the Lasselle Elementary School Grading Issues, Michael Tran stated that ASR had completed the rough grade, but then it rained and washed the rough grade away. Mr. Tran stated that ASR was to take dirt from one side of the Project and move it to the other, but ASR was delayed by the foundation installation for the portables. Mr. Tran said that there was still a problem with drainage issues, but that the landscaper had accepted the work and therefore, ASR had no further responsibility. Nevertheless, Mr. Tran said that ASR installed a storm drain with a catch basin to mitigate the drainage issues. Mr. Tran complained that ASR wanted to correct the

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problems over the Summer and requested access from PCM3, but was not granted access until the Christmas break.

22. With regard to the Rainbow Ridge Elementary School Elevator Submittals and Installation Issues, Mr. Tran stated that the submittals were delayed because of ASR's subcontractor who ASR reminded about liquidated damages and told would be responsible for delay costs. Mr. Tran said that the installation inspection by the fire marshal was scheduled for the week before school started, but there was an issue with the handset provided by ASR's subcontractor not being in compliance with the District's requirements and there was not a dedicated line as required. They were able to bring back the fire marshal on Friday of the following week, one day after school opened and the elevator passed that inspection. Mr. Regotti testified that the absence of a dedicated phone line held up the elevator approval and, according to Mr. Regotti, the dedicated phone line was the coordination responsibility of the CM.

23. With regard to the Rainbow Ridge Elementary School Roof Framing Issues, Mr. Regotti stated that he did not think he had visited the job, but nevertheless thought that the issue was just the inspection service interpreting the plans differently than ASR's framing contractor and making the framing contractor redo portions of the work on the roof and the top wall plates. Mr. Regotti noted that the framing contractor nevertheless made the changes and the District back charged ASR \$5,700 for added storage costs that the District said resulted from the framing holding up the finishing of the building.

24. With regard to the Rainbow Ridge Elementary School Irrigation Controller Issue, Mr. Tran said that ASR performed the landscaping and the landscaper installed the incorrect controller which was not as specified. Mr. Tran stated his belief that, after ASR was notified by the CM, the controller was replaced within 2 weeks.

25. With regard to the Triple Crown Elementary School Asphalt Installation Issues, Mr. Regotti stated that it was a sloppy job that ASR agreed to correct. Mr. Regotti said that ASR made a few attempts to correct the asphalt work, but it was not a very good effort on ASR's part. Mr. Regotti apologized for the quality of the work and said that he hoped it had been corrected. Mr. Regotti explained that it was a new subcontractor and ASR's Superintendent was not paying close attention. Mr. Regotti remarked that "Hey, you get a lousy job every once in a while." Mr. Regotti admitted "this is probably one of the worst asphalt jobs we have ever performed..." Mr. Regotti said that ASR was standing behind the work and he thought ASR was even offering an extended warranty for the asphalt.

26. With regard to the Triple Crown Elementary School Plumbing Issues, Mr. Regotti stated that apparently ASR did get something crossed and he said he was sorry. Mr. Regotti explained that because ASR installs so many sewer and storm drains that ASR is "bound to get one of them wrong" every once in a while. Mr. Regotti said that once ASR was notified, they went out within a day or two.

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27. With regard to the Triple Crown Elementary School Recovery Schedule Issues, Mr. Regotti stated that they did not have the complete or approved off-site plan until halfway through the Project and he questioned how a recovery schedule could be prepared "if you don't even know what you're doing yet".

28. With regard to the Unprofessional and Antagonistic Conduct/Communications Issues, Mr. Regotti explained that Marc Berry was very experienced in public works projects and that Mr. Berry's communications were just venting his built up frustration. Mr. Regotti gave his opinion that it was a personality conflict with "a little bit of lashing here with some of this felty work of Mr. Berry."

## Conclusions of Law

A. There is no statute or other law which requires that a pending bid proposal must exist before the District can hold a responsibility hearing.

B. Applicable statutes (including, but not limited to Education Code Section 35160 et. seq.) and applicable caselaw provide sufficient authority for the District to have held the Responsibility Hearing for ASR on January 10, 2007.

C. There is no statute or other law which prohibits the District from deeming a contractor to be non-responsible for a period of multiple years.

D. Applicable statutes (including, but not limited to Education Code Section 35160 et. seq.) and applicable caselaw provide sufficient authority for the District to deem a contractor to be non-responsible for a period of multiple years.

E. The Responsibility Hearing that was held for ASR on January 10, 2007 resulted from ASR's previous performance on multiple District Projects and was not the result of any "personal animus".

F. Although the District has considered ASR's contention that, by being the low bidder on multiple Projects, ASR has saved the District 7-8 million dollars, the District finds that such cost savings fails to demonstrate trustworthiness, quality, fitness, capacity and experience for the purpose of determining whether ASR is a responsible contractor.

G. Although the District has considered ASR's contention that the estimated value of the issues that are the subject of the responsibility hearing is \$100,000, the District finds that ASR's estimated value is not accurate, that ASR's estimated value fails to take into account any non-monetary consequences resulting from ASR's Project performance, and that the aggregate consequences of ASR's Project performance have been significant.

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H. Although the District has considered ASR's contention that items identified as defective work should not be considered if they were subsequently the subject of a credit or back charge, the District finds that, regardless of whether the District has received a credit or a back charge, defective work remains relevant and should be considered for the purpose of determining whether ASR is a responsible contractor.

I. The District finds that, despite ASR's contention that it was not provided adequate time to prepare for the Responsibility hearing, ASR was provided more than a reasonable amount of time to prepare.

J. With regard to the Issues that were the subject of the Responsibility Hearing Notice contained in the December 13, 2006 letter, based upon the documents entered into the Responsibility Hearing record and the testimony presented at the Responsibility Hearing, the District finds as follows:

1. Mead Valley Elementary School Project - Unworkmanlike Asphalt Installation -

The primary problems with the quality of the Asphalt Installation at Mead Valley Elementary School were related to the unworkmanlike manner of the installation which contained ripples, divots and an otherwise unacceptable surface. The problem was not, as represented by Mr. Regotti, solely related to inadequate slopeage. The District's decision to withhold \$5,000 for the defective work was only reached after ASR had tried unsuccessfully, on at least two separate occasions, to repair the defective asphalt during the Summer of 2003 and the 2003 Christmas Break.

2. Val Verde High School - Failure to Timely Complete Landscape Contract Scope -

Despite Mr. Regotti's statement that ASR "might have been a little late", it is well documented that ASR's Punch List scope was not completed and the maintenance period could not commence until four months after the scheduled date and almost a month after classes had begun at the school.

3. Columbia Elementary School - Failure to Install Asphalt in Conformity with Plans and Specifications; Poor Quality Concrete Patch Work -

Despite Mr. Regotti's statement that the asphalt was found to be below the requirement in some locations, the Project records substantiate that the asphalt was required to be a thickness of not less than three inches, but was found to be less than three inches at all of the locations where core samples were taken. In addition, although Mr. Regotti indicated that the problem may have resulted from improper subgrade preparation, it was part of ASR's scope to prepare the subgrade in the disputed area.

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Furthermore, although Mr. Regotti stated that ASR agreed to give the District a \$20,000 credit and an extended warranty, the Project records do not support that such a credit or extended warranty was ever agreed upon or received by the District.

Despite Mr. Regotti's statement that the concrete patch work failures resulted from inadequate compaction and vehicular traffic, the Project records fail to support Mr. Regotti's statement.

**4. Lasselle Elementary School - Failure to Timely Complete Grading; Failure to Perform Grading Scope in Conformity with Plans and Specifications -**

Despite Mr. Tran's statement that the rough grading was timely completed before the rain washed it away, the Project records do not support Mr. Tran's statement and instead reflect that ASR's rough grading scope fell several months behind schedule before it was completed. Despite Mr. Tran's statement that ASR was hindered by its inability to move soil from one part of the Project to the other, the Project records indicate that ASR was to import dirt from offsite. Despite the fact that Mr. Tran noted the Landscaper had accepted the site absolving ASR from any responsibility for defective grading, ASR remained responsible for defective grading conditions.

**5. Rainbow Ridge Elementary School - Failure to Timely Provide Acceptable Elevator Submittals; Failure to Timely Perform Elevator Installation Scope -**

Adequate elevator submittals that could be approved by the Project architect were not provided until more than six months after the required date for the elevator submittals. Mr. Tran's statement that the elevator submittals were delayed because of ASR's subcontractor, does not absolve ASR of responsibility for such delay. The scheduled date for the Elevator "sign off" was April 28, 2006, but actual inspection approval of the elevator did not occur until August 18, 2006. Despite Mr. Tran's statement that the initial failed approval of the completed elevator resulted from the absence of a required hand set and the lack of a dedicated phone line, the Project records indicate that there was a working phone line in place when the inspection occurred. Any failure of ASR's subcontractor to provide a required handset or dialer would have been ASR's own responsibility.

**6. Rainbow Ridge Elementary School - Failure to Timely Perform Roof Framing Scope; Failure to Perform Roof Framing Scope in Conformity with Plans and Specifications -**

ASR failed to offer any explanation for the delayed progress of the Roof Framing Scope. Despite Mr. Regotti's characterization of the issue as just the inspection service interpreting the plans differently than ASR's framing contractor, the Project records indicate that ASR's framing

# ATTACHMENT E

contractor failed to comply with the Project Plans and Specifications and, when the Project architect approved a corrective solution for the non-conforming installation, it took ASR approximately one and a half months to correct the problem thereby delaying for several weeks the District's ability to install fixtures, furnishings, etc. and otherwise occupy the building.

7. Rainbow Ridge Elementary School - Failure to Provide Irrigation Controller in Conformity with Plans and Specifications -

ASR initially failed to install an irrigation controller that was in conformity with the requirements of the Project Plans and Specifications. Subsequently, after ASR was notified of the non-conforming installation, ASR caused the irrigation controller to be replaced with a new controller that complied with the Project Plans and Specifications.

8. Triple Crown Elementary School - Failure to Perform Asphalt Installation in Conformity with Plans and Specifications; Failure to Perform Asphalt Installation in a Workmanlike Manner -

The Project records indicate that the quality of the onsite and offsite asphalt paving provided by ASR was deficient and failed to comply with the Contract plans and specifications at over ninety locations. The asphalt paving installed by ASR was not smooth and contained undulations, ruts and depressions that impeded the flow of water. In addition, ASR failed to maintain the specified grade at numerous locations. In many areas, the asphalt installed by ASR overlapped with existing concrete and/or caused damage to other work in place. In addition, in some areas, ASR failed to install base materials and/or asphalt which was the required thickness. Asphalt paving work installed by ASR, both onsite and offsite, was of substandard quality and installed in an unworkmanlike manner. Mr. Regotti admitted that it was a sloppy job and apologized saying that "you get a lousy job every once in a while". Mr. Regotti stated that it was "probably one of the worst asphalt jobs that we have ever performed".

9. Triple Crown Elementary School - Failure to Install Plumbing in Conformity with Plans and Specifications -

ASR's plumbing installation was not performed in conformity with the Project plans and specifications. ASR installed sewer lines and a Storm Drain System that allowed raw sewage to backup into the Administration Building and caused various damage. A week after the first backup occurred, and ASR was notified of the problem, there was a second sewer backup along the north side of the Administration building where raw sewage began backing up into the Storm Drain System catch basin. Mr. Regotti admitted that apparently ASR "did get something crossed". He gave his opinion that "it's bound to happen every once in a while."

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**10. Triple Crown Elementary School - Failure to Provide a Recovery Schedule as Repeatedly Requested and as Required Pursuant to the Plans and Specifications**

The Project CM requested in writing that ASR provide a Recovery Schedule on at least seven different occasions between June 30, 2005 and July 12, 2006. The Project Specifications required, in Paragraph 1.04A.1.c. of Section 01041-2, that "upon written notice by CONSTRUCTION MANAGER, PRIME CONTRACTOR shall, within three (3) calendar days, provide a complete recovery schedule, including manpower loading, resource loading, detailing how the PRIME CONTRACTOR and his subcontractors will recover PRIME CONTRACTOR'S original scheduled milestone dates." ASR never complied with that contractual requirement. Mr. Regotti's only explanation for ASR's failure to provide a recovery schedule as requested and required was to say that ASR did not have an approved or complete offsite plan until half way through the Project. Nevertheless, offsite issues fail to excuse or explain why ASR repeatedly failed to provide a recovery schedule for the onsite work.

**11. All Projects - Unprofessional and Antagonistic Conduct/Communications** - Although ASR circulated numerous written faxes and correspondence that appear to be intentionally antagonistic and/or insulting, the explanation that Mr. Regotti provided was that his partner, Mr. Berry, is very experienced and gets frustrated. Mr. Regotti referred to it as a personality conflict. Nevertheless, the Project records do not appear to provide justification for ASR's unprofessional and antagonistic communications.

K. Based upon the documents and testimony entered into the record at the January 10, 2007 Responsibility Hearing for ASR Constructors, Inc., and further based upon the above Findings and Conclusions, Val Verde Unified School District hereby finds ASR Constructors, Inc. to be non-responsible. Therefore, ASR Constructors, Inc. is deemed not qualified to submit a bid proposal for any District project requiring that the contract shall be let to the lowest responsible bidder pursuant to Public Contract Code §20111. Val Verde Unified School District's above finding of non-responsibility shall remain in full force and effect for a period of thirty-six months from the date of these Findings of Fact and Conclusions of Law.

Dated: March 2, 2007

  
C. Fred Workman, Ed.D.  
Public Works Hearing Officer

# ATTACHMENT F

LAW OFFICES OF  
**RITCHIE KLINKERT & McCALLION**

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OF COUNSEL

September 29, 2008

Mike Podegracz  
City Manager  
City of Hesperia  
9700 Seventh Avenue  
Hesperia, CA 92345

Re: Fire Station No. 305 (C.C. No. 6518)

Dear Sir or Madam:

This firm is counsel for ASR Constructors, Inc. ("ASR"), the low bidder on Fire Station No. 305 (C.C No. 6518). This letter, with accompanying exhibits, is sent in response to your letter of September 19, 2008, in which you communicate your purported finding ASR is a non-responsible bidder and announce ASR will not be awarded the contract.

ASR demands that you immediately rescind your finding of non-responsibility and award the contract to ASR as the low bidder. Your summary determination of ASR's non-responsibility is contrary to California law regarding the awarding of public contracts and constitutes a violation of ASR's right to due process.

Furthermore, ASR disputes the factual basis for your summary finding. It is apparent that no independent inquiry has been conducted by the City and that the City's personnel have no personal knowledge of any of the factual issues that purportedly support the summary conclusion of non-responsibility.

For instance, one of the cited bases for your finding of non-responsibility is described generally as "Actions by the San Jacinto Unified School District Board of Trustees finding ASR Constructors, Inc. to be non-responsible, due to a lack of fitness or capacity to perform public works contracts." The "actions" you allude to were contested by ASR in a petition for writ of mandate which was recently ruled on by the Riverside Superior Court in case No. RIC 453332. In her decision, Judge Gloria Connor Trask ruled predominantly in favor of ASR and struck down the five-year debarment imposed by the San Jacinto Unified District, finding that the debarment was an abuse of the district's discretion.

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Mike Podegracz  
September 29, 2008  
Page Two

Similarly, the "Findings of Fact and Conclusions of Law issued by the Val Verde Unified School District" and subsequent debarment were the subject of a Petition for Writ of Mandate also filed in the Riverside Superior Court. The issues addressed by the Writ have now been resolved and the Val verde Unified School District will be rescinding its finding of non-responsibility.


The remainder of your stated reasons for not awarding the contract to ASR fail to demonstrate anything that would support a finding of non-responsibility. The payment issues raised referred to in the report concerning the Quadrangle Modernization Project are explained in the attached correspondence from Alan Regotti of ASR (Exhibit 1) and Brent Bechtel, the President of Becco Electric Company, Inc. (Exhibit 2). Your letter also refers to "unfavorable verbal responses" from references and the City's own inspection staff. This is purely undocumented hearsay which is contrary to ASR's own inquiry (Letter of David Thompson, Exhibit 3) and contrary to the numerous letters of recommendation that ASR has obtained (Exhibits 4-7) from public entities in close proximity to Hesperia, including the Hesperia Unified School District.

The overwhelming truth is that ASR is a highly competent and responsible bidder that is more than qualified to build Fire Station No. 305. Attached to this letter as Exhibit 8 is a memorandum which sets forth the qualifications of ASR and a representative sample of 48 public works projects ASR has performed which equate to more than \$200 million worth of work. Many of these referenced projects are in the near vicinity of Hesperia and ASR encourages the City to visit these sites and see firsthand the high quality work performed by ASR. Representative photographs are also included for your review.

If you do not rescind the improper finding by October 1, 2008, we are authorized to proceed with immediate legal action to enforce ASR's rights and to take all steps necessary to prevent award of the contract and commencement of construction.

We are hopeful that this situation will be remedied without the need for litigation. Thank you for your prompt attention to this matter.

Sincerely,

  
James E. Klinkert  
Paul J. Gutierrez

cc: Mike Leonard, Mayor  
Thurston Smith, Mayor Pro Tem  
Ed Pack, Council Member  
Rita Vogler, Council Member  
David R. Burkett

**ATTACHMENT F**

**EXHIBIT 1**

**12-37  
COUNCIL**

2025 RELEASE UNDER E.O. 14176

# ATTACHMENT F

## ASR CONSTRUCTORS, INC.

STATE LICENSE NO. 615395  
5230 Wilson Street, Riverside, CA 92509  
951.779.6580 Fax 951.779.6588

September 26, 2008

City of Hesperia  
9700 Seventh Ave.  
Hesperia, CA 92345

ATTN: Mr. Mike Podegracz – City Manager

Re: City of Hesperia Correspondence dated September 19, 2008 in reference  
to Fire Station No. 305

Dear Mr. Podegracz:

We are in receipt of the city's correspondence of September 19, 2008 in reference to ASR's capacity to construct Fire Station No. 305. We take exception to Mr. Burkett's opinion of our capability to so perform the project. The information brought forward by Mr. Burkett has no merit to ASR's capabilities.

The correspondence in reference to the Beco Electric issue at Riverside Community College has nothing to do with trustworthiness. It actually concerns an owner not paying change orders timely. Please see Beco's letter of September 26, 2008 attached hereto. Beco attended the meeting on ASR's behalf to pursue the change order payments on the project.

The So Cal Iron issues are as follows. So Cal Iron abandoned the project, ASR paid all suppliers and self performed to completion of the project. ASR is not signatory to the California Field Ironworkers Union. Thus we are negotiating settlement of the claim caused by So Cal Iron.

So Cal Iron workers provided no benefit reports to the union on the project putting ASR in the position of having to supply daily reports to verify the claim settlement. ASR has contacted the Field Ironworkers in excess of 4 times in the last two months to resolve this claim. ASR has Release of Stop Notice Bonds on all issues. Riverside Community College's original staff members for this project are no longer with the college, thus creating additional delays.

We have no knowledge of any verbal hostility with the City of Hesperia's Inspection Staff (Please see attached letter from Dave Thompson). It is my belief that Mr. Burkett did not perform a diligent review of ASR's capability. It appears he was perhaps misinformed in that regard.

We have enclosed a partial list of completed and current projects for your review, contact name and numbers are also enclosed for your convenience. Please be advised that ASR has performed and completed a total of 730 projects over the last nine (9) years. Many of these projects are in the high desert communities.

# ATTACHMENT F

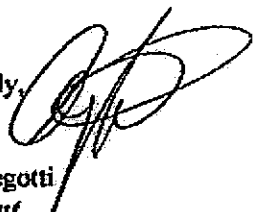
Mr. Podegrucz  
Sept. 26, 2008  
Page two

We invite the city to walk some or all of the projects with our staff to determine the capability of ASR. Oak Hills High School is within the city of Hesperia sphere of influence and is currently under construction. The value is \$75,000,000.00 and is available for inspection by the city of Hesperia at your convenience.

Cypress Elementary School, Green Tree Country Club, Shadow Ridge Park and Fire Station # 5 are also very close to the Hesperia city limits and are also available for visits at your request.

We are certain that, in your quest for due diligence, you will find this information useful. We remain at your disposal, as the lowest qualified bidder on the above-referenced project to assist you in any way we can.

Sincerely,



Alan Regotti  
*President*  
ASR Constructors, Inc.

**ATTACHMENT F**

**EXHIBIT 2**

**12-40  
COUNCIL**

2025 RELEASE UNDER E.O. 14176

# Beco Electric Company Incorporated

State Lic. No. 371773

(951) 371-6111  
(951) 734-4154 Fax

1128 Quarry Street  
Corona, California 92879

ASR CONSTRUCTORS

SEP 26 2008

RECEIVED

## FAX COVER SHEET

To: Mark Berry

Date: 9/26/08 Time: 8:00 AM

Number of Pages (please verify page count) 1

RE: RCC Guard Remodel

From: BRENT BECHTEL

Thank you for your help in trying to get us payment on  
 The Guard Building Project. As discussed the reason  
 for my going before the board meeting was to inform  
 them about the lack of response and progress by  
 the district and the Construction Manager in processing  
 Change Orders and final Acceptance of a project they now  
 use! As we both know just looking at the Letters  
 and Job meeting reports this has been a problem from  
 early on and has just been compounded by massive turn  
 over of new people in the District. I intend to be  
 present at the next board meeting and if necessary speak to  
 them about their lack of progress. Thanks Again for your help!

Brent Bechtel President



# ATTACHMENT F

## ASR CONSTRUCTORS, INC.

STATE LICENSE NO. 815395  
5230 Wilson Street, Riverside, CA 92509  
951.779.6580 Fax 951.779.6588

September 26, 2008

To: City of Hesperia  
Attn: Mike Podęgracz  
Re: Fire Station # 305

Sir-

In response to David Burkett's letter, dated September 19, 2008, rejecting the ASR Constructor's bid on Fire Station #305. I offer the following on point no. 4; hostile and unprofessional behavior:

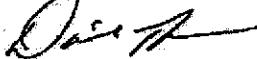
I am the project manager for ASR's Hesperia Unified School District projects. I have dealt personally with the city's public works field staff.

At the start of Cedar Middle School Project, there were unforeseen conditions which required fairly quick action by all parties in order to keep one residence supplied with domestic water. This required us to break into a pressurized line. ASR was so directed by Hesperia's Dwaine Latimer. We felt it put our field personnel in an unsafe condition. We disputed and debated that issue and were able to work through it with Mr. Latimer. This was not hostile or unprofessional.

I have canvassed ASR employees this week and taken the liberty to contact Hesperia's Dwaine Latimer and Michael Baldewicz concerning any hostile and unprofessional behavior. None of the above could report any such behavior to me.

I find the statement made by Mr. Burkett to be unfounded and without merit.

Sincerely,



David Thompson  
Project Manager  
ASR Constructors, Inc.

**ATTACHMENT F**

**EXHIBIT 4**

**12-44  
COUNCIL**

# ATTACHMENT F



## HESPERIA UNIFIED SCHOOL DISTRICT

15576 Main Street, Hesperia, CA 92345-3482

Phone (760) 244-4411 Fax 244-2806

**Mark A. McKinney**  
Superintendent

**Joy Vasilukas**  
Assistant Superintendent  
Educational Services

**Karen Kelly**  
Assistant Superintendent  
Personnel Services

**David McLaughlin**  
Interim Asst. Superintendent  
Business Services

**Board of Trustees**  
Hank Blank  
Dr. Robert E. Kirk  
Francis Minton  
Helen "Jo" Rogers  
Helen Rogers

**Elementary Schools**  
Central 927-5143

Cottonwood 919-1352

Cypress Academy 919-2596

Earl Lytle 919-0535

Hollyhock 919-6151

Joshua Circle 244-6133

Jupiter 244-4161

Kingston 244-1369

Linn Street 244-0912

Maple 244-3204

Mesa Academy 244-6706

Mesa Grande 244-3709

Mesa Vista Trails 919-5119

Mission Crest 919-6232

Oxford Academy 919-8161

Topaz 244-4621

**Secondary Schools**

Canyon Ridge 244-6553

Cedarville 244-6293

Hesperia High 244-9356

Ranchero Middle 919-6473

AEC, ROP 244-4771

Desert Trails 919-6169

Canyon Ridge High 244-6553

Hesperia High 244-9356

McJannet High 919-2799

Edwards High 919-4777

September 25, 2008

To Whom It May Concern:

I would like to take this opportunity to express my support for ASR Constructors.

ASR has proven its ability to handle a large volume of construction projects. Currently, they are working on five projects for Hesperia Unified, with a total value of over \$117 million. ASR Constructors is a large, stable company with appropriate staffing to handle the jobs awarded to them. We have also been pleased with their diligence in responding to inquiries and providing additional details as needed.

If you have any specific questions regarding the scope of work ASR has done for our district, please feel free to contact our Interim Assistant Superintendent of Business Services, Mr. David McLaughlin. He may be reached at (760) 244-4411, x7238 or by e-mail at [david.mclaughlin@hesperia.org](mailto:david.mclaughlin@hesperia.org).

Sincerely,

  
Mark A. McKinney  
Superintendent

**ATTACHMENT F**

**EXHIBIT 5**



Upland Unified School District  
390 N. Euclid Avenue  
Upland, CA 91786-4763  
www.upland.k12.ca.us  
(909) 985-1864

## ATTACHMENT F

**Gary Rutherford, Ed.D., Superintendent**  
**Assistant Superintendents:**  
Steve Cary, Business Services  
Sherri L. Black, Human Resources  
Linda Kominski, Ed.D., Educational Services

January 28, 2008

To Whom It May Concern:

We have worked with ASR constructors, Inc. on many of our projects and can't say enough good things about the professional and knowledgeable people we have had assigned to us from ASR. Their experience has been invaluable in the execution of each of our projects. I can truly offer my highest recommendation for the firm and the individuals we have had the opportunity to work with.

If you have any specific questions please don't hesitate to contact me at (909) 985-1864 X223.

Sincerely,

Steve Cary  
Assistant Superintendent  
Business Services

SC/jd

**ATTACHMENT F**

**EXHIBIT 6**

**12-48  
COUNCIL**

Shawn Judson, Ed.D.  
Superintendent  
Douglas M. Clafin  
Assistant Superintendent of Business Services  
Rebecca M. Lawrence  
Assistant Superintendent of Instruction/Pupil Services  
Heldi M. Seehnel  
Assistant Superintendent of Personnel  
Jylia Kordich  
Administrator of Special Programs



# ATTACHMENT F

Board of Trustees  
Brynna Cadman  
Cathline Fort  
David W. Long  
Mark H. Murphy  
Cecilia L. Solorio

6061 East Avenue, Etiwanda, California 91739  
[www.etiwanda.k12.ca.us](http://www.etiwanda.k12.ca.us)  
(909) 899-2451 FAX (909) 899-9463

January 28, 2008

To Whom It May Concern:

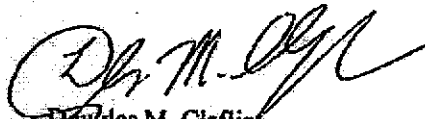
Please accept this letter of reference and endorsement for ASR Constructors, Inc. During the past 15 years, the Etiwanda School District has experienced an enormous amount of residential and commercial development. With such demand in growth, the District has required strong working relationships with its contractors. In many of our facilities projects, ASR Constructors has been an important and integral part of our team.

ASR Constructors has demonstrated the ability to meet the demands of an aggressive construction schedule and work cooperatively with our construction teams. Additionally, they have displayed their competency and expertise in many areas of construction and have often provided recommendations that have saved the District time and money.

The District has a long-standing, professional relationship with ASR Constructors and appreciates the dedication that they have demonstrated in ensuring that the students of Etiwanda have extraordinary school facilities. Should you have any questions, it would be our pleasure to assist you.

Sincerely,

  
Melinda K. Colgrove  
Manager, Facilities & Risk Services

  
Douglas M. Clafin  
Assistant Superintendent, Business

HWDRD\DOC\Letter of Ref ASR.doc cc

**ATTACHMENT F**

**EXHIBIT 7**

**12-50  
COUNCIL**

# ATTACHMENT F



## HESPERIA UNIFIED SCHOOL DISTRICT

15576 Main Street, Hesperia, CA 92345-3482  
Phone (760) 244-4411 Fax 244-2806

Mark A. McKinney  
Superintendent

Judy VanLukas  
Assistant Superintendent  
Educational Services

Karen Kelly  
Assistant Superintendent  
Personnel Services

David McLaughlin  
Interim Asst. Superintendent  
Business Services

Board of Trustees  
Hardy Black  
Dr. Robert F. Kirk  
Bruce Nelson  
Ira "Joe" Rogers  
Helen Rogers

Elementary Schools  
Central 947-3143

Cottonwood 919-1359  
Cypress Academy 919-2396  
Earlhypter 949-2515  
Hollyvale 947-4481  
Joshua Circle 214-4133  
Juniper 214-4141  
Kingston 214-3269  
Lime Street 214-2512  
Maple 214-3016  
Mesa Academy 214-4306  
Mesa Grande 214-3709  
Mesquite Trails 919-3141  
Mission Crest 911-6266  
Oxford Academy 914-4361  
Topaz 214-4422

Secondary Schools

Canyon Ridge 214-6553  
Cedar Middle 214-6293  
Hesperia Jr. High 214-4355  
Ranchero Middle 914-4173  
AIC, ROP 214-1771  
Desert Trails 914-3169  
Canyon Ridge High 214-6553  
Hesperia High 214-4295  
McJannet High 914-3799  
Sulbana High 917-4777

September 25, 2008


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Sincerely,

  
Mark A. McKinney  
Superintendent

**ATTACHMENT F**

**EXHIBIT 5**



Upland Unified School District  
390 N. Euclid Avenue  
Upland, CA 91786-4763  
[www.upland.k12.ca.us](http://www.upland.k12.ca.us)  
(909) 985-1864

## ATTACHMENT F

Gary Rutherford, Ed.D., Superintendent

Assistant Superintendents:

Steve Cary, Business Services

Sherri L. Black, Human Resources

Linda Kaminaki, Ed.D., Educational Services

January 28, 2008

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If you have any specific questions please don't hesitate to contact me at (909) 985-1864 X223.

Sincerely,

A handwritten signature in black ink that reads "Steve Cary". The signature is written in a cursive style.

Steve Cary  
Assistant Superintendent  
Business Services

SC/jd

**ATTACHMENT F**

**EXHIBIT 6**

**12-48  
COUNCIL**

2025 RELEASE UNDER E.O. 14176

Shawn Judson, Ed.D.  
Superintendent  
Douglas H. Claflin  
Assistant Superintendent of Business Services  
Rebecca M. Lawrence  
Assistant Superintendent of Instruction/Pupil Services  
Heidi H. Soehnel  
Assistant Superintendent of Personnel  
JyMa Kordich  
Administrator of Special Programs



## ATTACHMENT F

Board of Trustees  
Bryna Cadman  
Cathline Fort  
David W. Long  
Mark H. Murphy  
Cecilia L. Solorio

6061 East Avenue, Etiwanda, California 91739  
[www.etiwanda.k12.ca.us](http://www.etiwanda.k12.ca.us)  
(909) 899-2451 FAX (909) 899-9463

January 28, 2008

### To Whom It May Concern:


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Sincerely,

  
Melinda K. Colgrove  
Manager, Facilities & Risk Services

  
Douglas M. Claflin  
Assistant Superintendent, Business

H:\WD\DDOC\Letter of Ref ASR.doc

**ATTACHMENT F**

**EXHIBIT 7**

**12-50  
COUNCIL**

CITY OF  
**VICTORVILLE**



# ATTACHMENT F

760-955-5000  
FAX 760-245-7243  
email: [vville@ci.victorville.ca.us](mailto:vville@ci.victorville.ca.us)  
14343 Civic Drive  
P.O. Box 5001  
Victorville, California 92393-5001

September 22, 2008

To Whom it May Concern:

ASR Contractors is currently working for the City of Victorville on three (3) projects:  
Green Tree Golf Course Clubhouse, Sunset Ridge Park and Sunset Ridge Fire Station.

The Green Tree project is 95% completed and the Sunset Ridge projects are  
approximately 25% completed.

To date the City of Victorville has had no inspection issues with ASR Contractors. They  
have followed the directions given to them.

Sincerely,



Jan Gargan  
Director, Community Services Department

JG/am

**ATTACHMENT F**

**EXHIBIT 8**

**12-52  
COUNCIL**

# ATTACHMENT F

## ASR CONSTRUCTORS, INC.

---

STATE LICENSE NO. 616395  
5230 Wilson Street, Riverside, CA 92509  
951.779.6580 Fax 951.779.6588

September 26, 2008

### ASR Constructors, Inc. In-House Services and Self-Performed Trades

ASR holds California License B, A, C-27, C-8, C-29 and C-51; and performs the following division of work in-house:

- 1) Demolition
- 2) Erosion Control
- 3) Rough Grading
- 4) Finish Grading
- 5) Asphalt Paving
- 6) Striping
- 7) Site Concrete
- 8) Structural Concrete
- 9) Unit Masonry, Stone Work
- 10) Crib Wall Construction
- 11) Epoxy Flooring
- 12) Ceramic Tile
- 13) Miscellaneous Metals
- 14) Structural Steel
- 15) Material Handling and Trucking
- 16) Rough Carpentry
- 17) Finish Carpentry
- 18) Storm Drain, Water Lines, Gas Services, Fire Lines
- 19) Landscape and Irrigation
- 20) Sports Surfaces

and many other aspects of construction work.

ASR has a six acre construction facility in Riverside which contains an automated structural steel shop and full service mechanics bays. ASR maintains control of their projects by subcontracting very little of the scope of their work.

Alan Regotti

# ATTACHMENT F

## Victor Elementary School District

Contact: Dale Eiter 760-245-1691

- 1) Challenger School  
\$ 131,000
- 2) Ridge Crest Elementary School  
\$ 1,086,000
- 3) Park View Elementary Site Improvements  
\$ 690,000
- 4) Seneca Elementary School  
\$ 231,000
- 5) Parkview Elementary Multipurpose Building  
\$ 518,000

## City of Victorville Projects

Contact: John Gurgan 760-955-5256

- 1) Green Tree Country Club Addition  
\$ 8,000,000
- 2) Fire Station #5 & Sunset Ridge Park  
\$ 5,900,000

## Victorville Community College Projects

Contact: Bill McCarthy 909-522-8278

- 1) Speech and Drama Addition  
\$ 1,800,000
- 2) New Gymnasium  
\$ 1,300,000

## County of Riverside Facilities Management Projects

Contact: Mr. Bob Bill and Mr. Chuck Waltman 951-955-4728

- 1) Larry Smith Correctional Facility
- 2) Admittance Facility and Housing Unit #1  
\$ 6,975,000
- 3) Housing Unit #2  
\$ 4,300,000
- 4) Perris Sheriff and Family Care Facility  
\$ 23,000
- 5) Perris Car Wash and Fueling Facility  
\$ 1,200,000

# ATTACHMENT F

## Etiwanda School District

Contact: Melinda Colgrove

909-899-2451

- 1) John Golden Elementary School  
\$ 2,500,000
- 2) Colony Elementary School  
\$ 1,890,000
- 3) Miller Elementary School  
\$ 4,100,000
- 4) West Heritage Elementary School  
\$ 890,000
- 5) Summit Intermediate  
\$ 1,876,000
- 6) New Transportation Facility  
\$ 1,600,000
- 7) Etiwanda Intermediate School  
\$ 1,733,000
- 8) Windrows Administration Remodel  
\$ 420,000
- 9) Heritage Intermediate School  
\$ 813,000
- 10) Summit Intermediate Parking Lot  
\$ 238,000
- 11) Salaris Elementary School  
\$ 300,000

## Upland Unified School District

Contact: Mike Jacques

909-985-1864

- 1) Multipurpose Building @ 6 Sites  
\$ 12,800,000
- 2) Upland High School Additions  
\$ 3,738,000
- 3) Upland Junior High Addition  
\$ 2,983,000
- 4) Upland High School Stadium  
\$ 1,793,000
- 5) 3 Elementary School Modernizations  
\$ 3,860,000
- 6) Upland High School Modernization  
\$ 4,800,000
- 7) Foot Hill Schools Modernizations  
\$ 825,000
- 8) Pioneer Jr High School  
\$ 1,570,000
- 9) Upland High School Administration Building  
\$ 893,000
- 10) Upland High School New Parking Lot  
\$ 323,000

# ATTACHMENT F

## ASR CONSTRUCTORS, INC.

---

STATE LICENSE NO. 616395  
5230 Wilson Street, Riverside, CA 92509  
951.779.6580 Fax 951.779.6588

September 26, 2008

### Projects and References

#### Hesperia Unified School District Projects

Contact: Mark A McKinney 760-244-4411

- 1) Mesquite Trails Elementary School Addition  
\$ 1,537,000
- 2) Cedar Middle School  
\$ 18,600,000
- 3) Mission Crest Elementary School  
\$ 13,650,000
- 4) Hesperia Middle School Lunch Shelters  
\$ 123,000
- 5) Hesperia High School New Portables  
\$ 1,500,000
- 6) Hesperia High Science Building  
\$ 3,570,000
- 7) Oak Hills High School  
\$ 75,450,000

#### Apple Valley Unified School District Projects

Contact: Lynette Kachelmeyer 760-247-8001

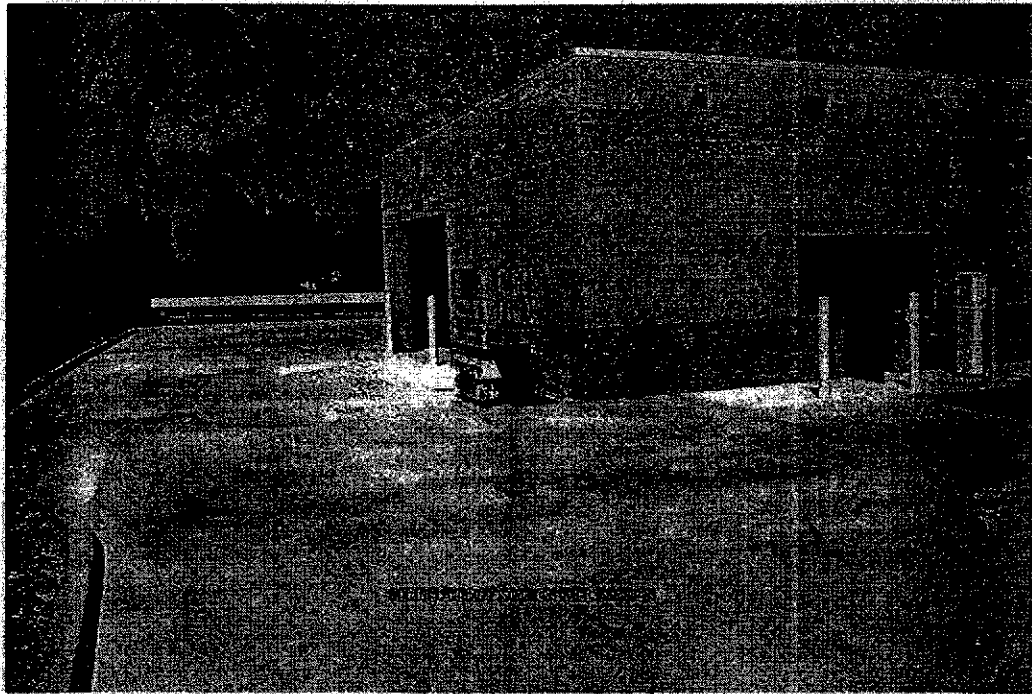
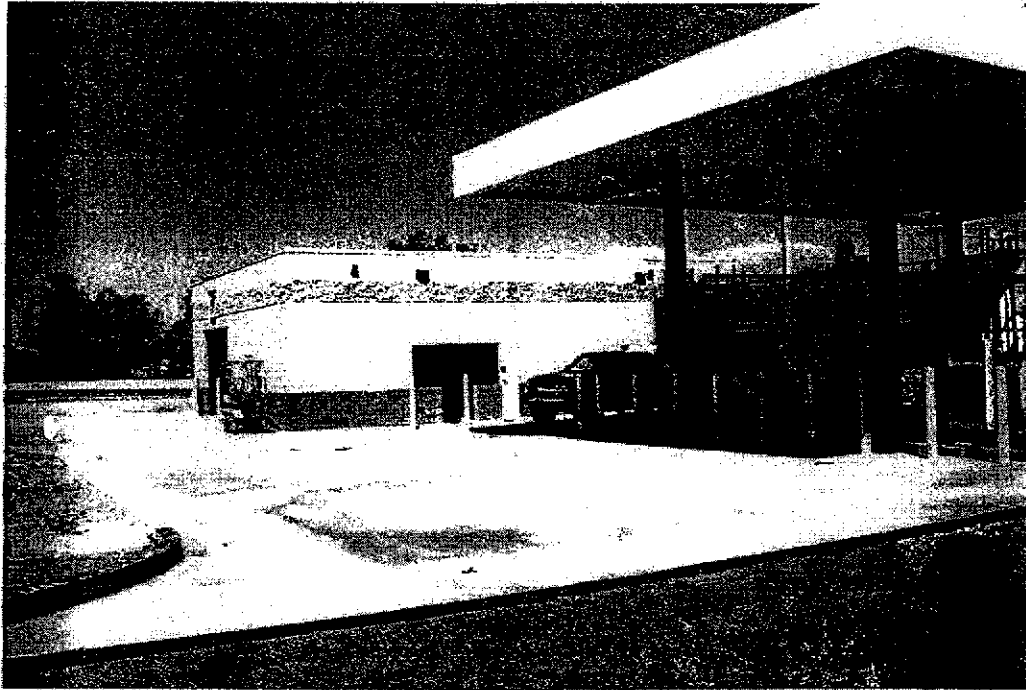
- 1) Rio Vista Bathroom Facility  
\$ 525,000
- 2) Vanguard Academy School  
\$ 1,800,000
- 3) Vanguard Multipurpose Building  
\$ 725,000
- 4) Sitting Bull Elementary & Middle School  
\$ 2,023,000
- 5) Sitting Bull Elementary & Middle School Classroom Additions  
\$ 991,000
- 6) Sitting Bull Middle School Multipurpose Building  
\$ 1,313,000

**ATTACHMENT F**

**PHOTOGRAPHS**

**12-57  
COUNCIL**

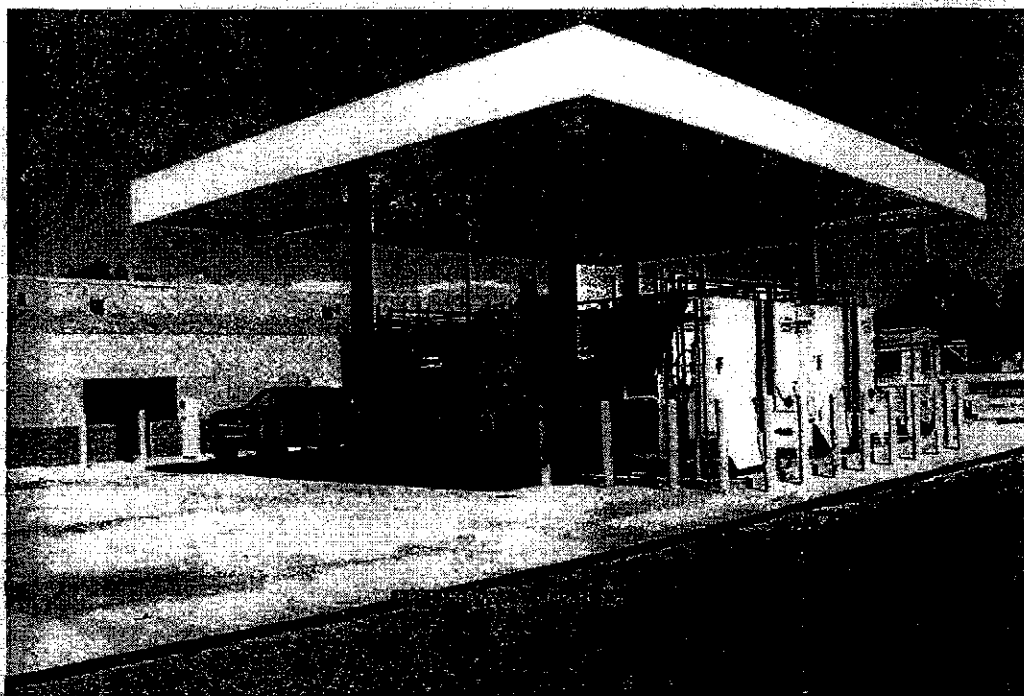
# ATTACHMENT F



**PERRIS SHERIFF STATION FUEL  
STATION**

**12-58  
COUNCIL**

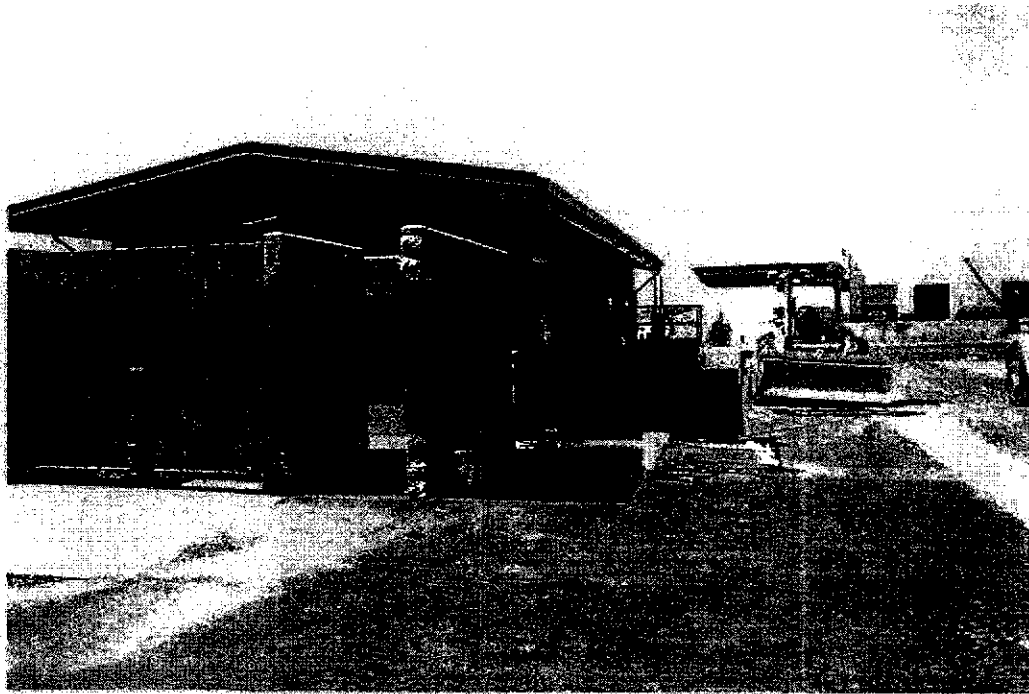
**ATTACHMENT F**



**PERRIS SHERIFF STATION FUEL  
STATION**

12-59  
COUNCIL

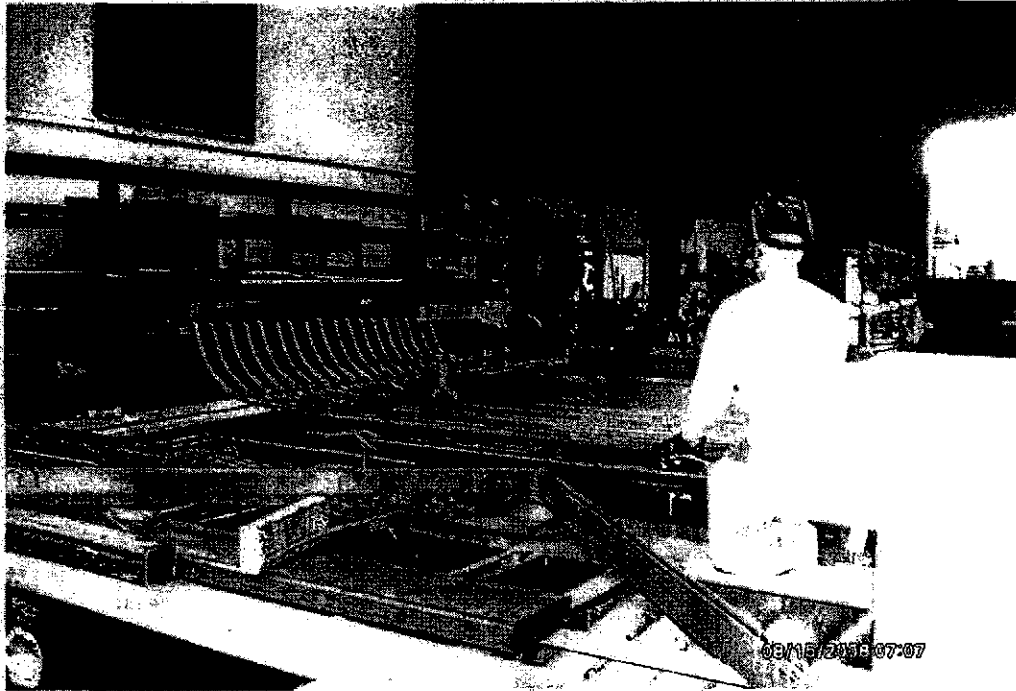
# ATTACHMENT F



**PEDLEY TRANSPORTATION FACILITY  
FUEL ISLAND**

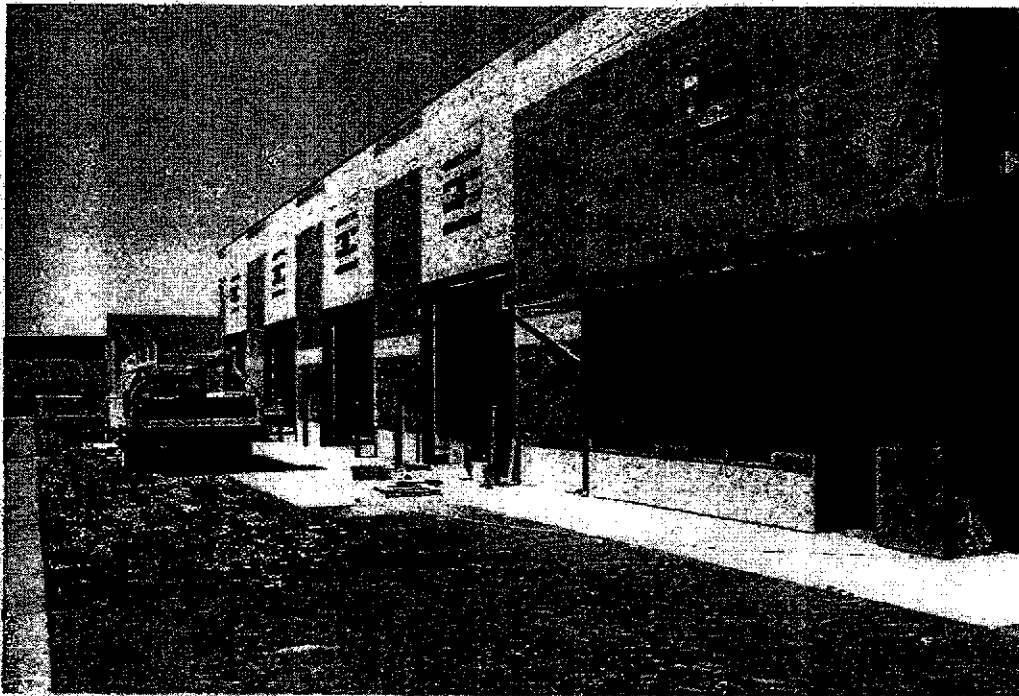
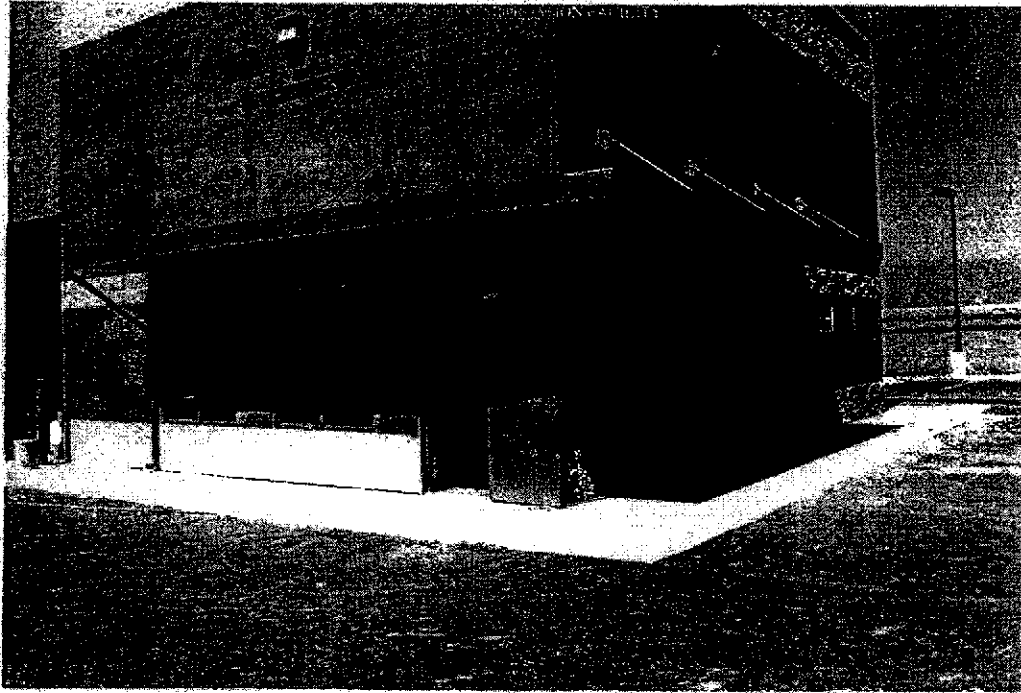
12-60  
COUNCIL

# ATTACHMENT F



**ASR STEEL FABRICATION SHOP**

# ATTACHMENT F



**PEDLEY TRANSPORTATION FACILITY**

12-62  
COUNCIL

# ATTACHMENT F



**PERRIS SHERIFF STATION**

12-63  
COUNCIL

# ATTACHMENT F

ASR STEEL FABRICATION SHOP



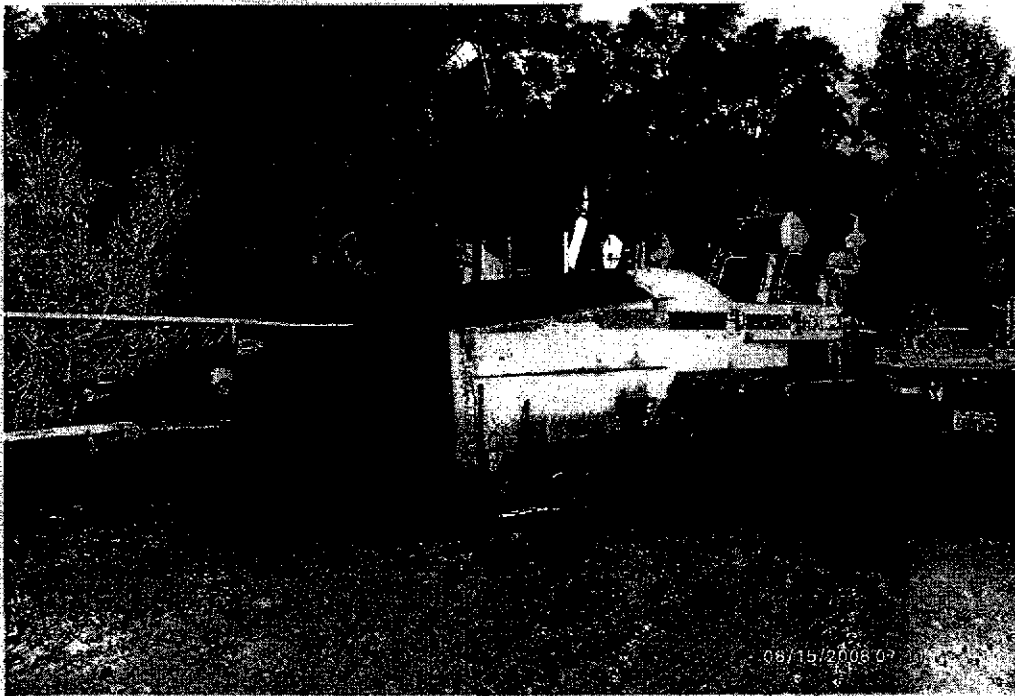
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ASR STEEL FABRICATION SHOP

# ATTACHMENT F



**ASR EQUIPMENT**

**12-65  
COUNCIL**

# ATTACHMENT F



**ASR EQUIPMENT**

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After consideration of the evidence and testimony proffered and received during a public hearing conducted on January 10, 2007, the Public Works Hearing Officer for the Val Verde Unified School District hereby issues his Findings of Fact and Conclusions of Law.

### Findings of Fact

1. On November 16, 2006, Val Verde Unified School District's ("District") counsel, Public Agency Law Group ("PALG"), sent a letter to ASR Constructors, Inc. ("ASR"), providing notice to ASR that the District intended to find ASR to be a non-responsible contractor lacking the trustworthiness, quality, fitness and/or capacity to satisfactorily perform District construction projects for the next five (5) years. The basis for the District's intended finding was identified in the text of the fifteen (15) page letter and the several hundred pages of Project documents that were forwarded to ASR under cover of the letter. In addition, the letter notified ASR that it was invited to attend a hearing on December 8, 2006 at which time ASR would be afforded an opportunity to rebut the information that had been provided and to otherwise present evidence that ASR was a responsible contractor.
2. On November 28, 2006, counsel for ASR, Timothy Liebaert, Esq., sent a letter to the District's counsel, PALG, stating his belief that there were "substantial legal impediments to the District's proposed action" and further stating that the District was without the authority to hold the hearing or to find ASR to be non-responsible for a period of five years. After stating that ASR would file a Petition for Writ of Mandate, accompanied by a request for a Temporary Restraining Order and a Complaint for Declaratory Relief if the District did not agree to abandon its proposed action, Mr. Liebaert stated that "In the alternative, ASR has determined that in order to dispense with this issue, that if the District agrees to abandon its proposed action that ASR would agree to refrain from submitting a bid to the District for a period of 36 months from the date of execution of any such agreement".
3. On November 30, 2006, a Settlement Agreement Between Val Verde Unified School District and ASR Constructors, Inc. regarding the Responsibility Hearing was emailed to Mr. Liebaert by PALG.
4. On December 13, 2006, after ASR failed to return the signed Settlement Agreement or otherwise indicate that it would do so, the District's counsel, PALG, sent a letter to Mr. Liebaert, dated December 13, 2006, which again provided notice to ASR that the District intended to find ASR to be a non-responsible contractor lacking the trustworthiness, quality, fitness and/or capacity to satisfactorily perform District construction projects for the next five (5) years. The basis for the District's intended finding was identified in the text of the fifteen (15) page letter which also incorporated the several hundred pages of Project documents that had previously been forwarded to ASR under cover of the nearly identical November 16, 2006 letter. In addition, the

December 13, 2006 letter notified ASR that it was invited to attend a hearing on January 10, 2006 at which time ASR would be afforded an opportunity to rebut the information contained in the letter and in the previously provided documents and to otherwise present evidence that ASR was a responsible contractor.

5. On January 10, 2007, at approximately 1:25 p.m., the Responsibility Hearing commenced with Val Verde Unified School District's Superintendent, Dr. Fred Workman, presiding as the District's Public Works Hearing Officer appointed by the District's Board of Education. The hearing was also attended by Mike Boyd of Val Verde Unified School District, Sandee Hackett of Val Verde Unified School District, Todd Butcher of Val Verde Unified School District, Keith Berlin of Public Agency Law Group, Jeff Ray of PCM3, Chris Williams of PCM3, Doug Henning of PCM3, Henry Sylvia of DC Architects, Richard Duncan of DC Architects, Keith Berry of ASR, Michael Tran of ASR, Alan Regotti of ASR and Tim Liebaert of Robinson & Liebaert as ASR's counsel.

6. During the course of the hearing, sworn testimony was presented by Jeff Ray, Chris Williams, Doug Henning, Alan Regotti and Michael Tran. In addition, the December 13, 2006 letter and the several hundred pages of Project documents that had been previously provided to ASR under cover of the November 16, 2006 letter were entered into the record for the hearing. Approximately thirty-five (35) pages of documents provided by ASR were also entered into the record.

7. Jeff Ray testified that, in his review of the December 13, 2006 letter, he had determined that the representations made in the letter were correct and truthful. Chris Williams testified that he had reviewed the December 13, 2006 letter and found the statements to be truthful, accurate and correct. Doug Henning testified that he had read the letter, was familiar with its contents, and understood and believed that the facts contained in the letter were truthful, accurate and correct.

8. The December 13, 2006 letter stated that the District's finding of non-responsibility is based upon the District's determination that ASR lacks the trustworthiness, quality, fitness and/or capacity to satisfactorily perform District construction projects as demonstrated by ASR's performance on multiple District construction projects as follows:

**Mead Valley Elementary School Project - Gross Failure to Perform the Asphalt Installation in a Workmanlike Manner**

ASR was awarded the Bid Package #1 Contract for the Mead Valley Elementary School Project. ASR's Contract scope included asphalt work to be installed in the Mead Valley Elementary School play area during the Modernization portion of the Project in the Summer of 2002.

The initial asphalt installation performed by or on behalf of ASR was not performed in a workmanlike manner as it contained ripples and divots and had

various drainage problems. ASR agreed that corrective asphalt work would be performed during the Summer of 2003. Although various portions of the asphalt were removed and replaced during the Summer of 2003, the repair work on the northeast side of the new Kitchen Building was defective and in need of further repair. It was agreed that ASR would perform further repair work during the 2003 Christmas break.

The asphalt in the problem area was removed and replaced over the 2003 Christmas break. When the staff and students returned on January 5, 2004, it was determined that the newly repaired asphalt was also installed in an unworkmanlike manner with ripples, divots and an otherwise unacceptable surface.

On January 10, 2004, without providing any notice to PCM3 or the District, ASR reentered the Project site and sealed the asphalt with a new slurry coat. Neither PCM3, the District, nor the School staff had any knowledge that the work had been performed prior to the staff and students returning to the School on Monday, January 12, 2004. At that time, because the asphalt slurry coat was not yet dried, the black bituminous sealant was tracked over finish flatwork and onto the interior floor surfaces of the School building. In addition, several of the children stained their clothes with the sealant that they picked up on their shoes.

Although ASR continued to perform additional asphalt repairs in January 2004, the quality of the asphalt repairs remained unsatisfactory with asphalt chipping, crumbling, and being tracked into the buildings. Finally, due to the poor quality of the original asphalt installation, and ASR's inability to accomplish the necessary repairs, it became necessary for the District to take over the work on January 21, 2004.

#### Val Verde High School Project – Gross Failure to Timely Complete Landscape Contract Scope

ASR contracted to perform Bid Package #16 which included the Landscaping and Irrigation scope for the Val Verde High School Project. ASR took several months beyond the scheduled Punch List completion date to finish the landscaping and irrigation scope and commence ASR's maintenance period. The Punch List scope was not completed until more than four months after the scheduled date and almost a month after school had already commenced.

On March 26, 2004, ASR was notified, in a Fax from PCM3, that the District was dissatisfied with the appearance of the landscaping and the lack of maintenance for the landscaping that had been installed. On May 2, 2004, PCM3 faxed a Punch List to ASR for Landscaping and irrigation to be completed by May 14, 2004. On May 7, 2004, PCM3 sent a Fax to ASR notifying ASR that they had not yet commenced their Punch List scope and requesting that ASR

adjust its manpower to ensure that the punch list work was timely completed. ASR was reminded in the May 7, 2004 Fax that the maintenance period would not commence until the Punch List was completed and signed off. On May 27, 2004, PCM3 sent a Fax to ASR reminding ASR that the Punch List scope was to be completed on May 14, 2004 and ASR still had not contacted PCM3 for ASR's Punch List walk through. On May 27, 2004, PCM3 sent a second Fax to ASR notifying ASR that a Punch List walk through would be performed on June 1, 2004, but that the current state of landscaping and irrigation would not be sufficient to result in sign-off unless further remedial measures were taken.

On June 4, 2004, PCM3 sent a Fax to ASR with a revised Landscaping Punch List. On June 8, 2004, PCM3 sent a Fax to ASR notifying ASR that the turf was in poor condition, that there were still numerous outstanding Punch List items and that the maintenance period would not begin until the Punch List scope was completed. On June 28, 2004, PCM3 sent a Fax to ASR notifying ASR that the Punch List was sitting idle and that there were various problems with the irrigation system settings.

On July 20, 2004, PCM3 sent a Fax to ASR stating that the Punch List work needed to be completed immediately and reiterating that the District was very displeased with the condition of the landscaping. In the July 20, 2004 Fax, PCM3 told ASR that if swift corrective action was not taken, the completion of the work would be taken over by the District. On July 28, 2004, PCM3 sent a letter to ASR providing ASR with 24 Hour Notice to immediately commence all incomplete landscaping and irrigation work. In the July 28, 2004 letter, ASR was again told that if ASR failed to provide adequate materials and manpower, the District would take over and/or supplement the work. In the July 28, 2004 letter, ASR was reminded that the Punch List scope was 11 weeks overdue and that students were scheduled to arrive soon, on August 23, 2004. On July 30, 2004, PCM3 faxed a letter to ASR, from the Landscape Architect, indicating that many of the items from the first pre-maintenance Punch List, dated 4/29/04, still had not been addressed and identifying numerous items that still needed to be dealt with.

On August 17, 2004, PCM3 sent a Fax to ASR notifying ASR that a further Punch List walk through was scheduled for 8/26/04. On September 9, 2004, PCM3 sent a letter to ASR noting that several of ASR's Contract scope and Punch List scope items still remained outstanding. On September 14, 2004, PCM3 sent a Fax to ASR notifying ASR that a final walk through was now scheduled for 9/15/04 to determine if ASR's work was sufficiently completed to commence the maintenance period. On September 16, 2004, almost a month after school had commenced and four months after the scheduled date, ASR finally completed the landscaping scope and the maintenance period was able to commence.

**Columbia Elementary School Project – Failure to Install Asphalt in Conformity with the Project Plans and Specifications; Poor Quality Concrete Patch Work**

ASR was awarded the Contract for Bid Package #1 - General Construction on the Columbia Elementary School Project. ASR's contract scope required that ASR install asphalt at various locations on the Project with a thickness of not less than three inches. On August 21, 2004, a Non-Compliance Notice was issued after an Asphalt sample revealed that the asphalt was only two inches thick. After a subsequent inspection, where core samples were taken in four separate locations of the Project on September 27, 2004, it was found that the asphalt, at the sampled locations, ranged in thickness from 1&7/8 inches to 2&3/4 inches with an average thickness of less than 2&1/2 inches.

There were also problems with the extremely poor quality concrete patch work provided by ASR at the Columbia Elementary School Project. On May 25, 2006, PCM3 sent a letter to ASR, notifying ASR that several areas of patched concrete at the school site were cracking, failing, and resulting in trip hazards. ASR refused to repair its defective concrete patch work faxing back PCM3's letter with the following handwritten message:

*"DAN, I BELIEVE THAT THE ONE YEAR WARRANTY HAS EXPIRED FOR THIS JOB. MT"*

**Lasselle Elementary School Project – Gross Failure to Timely Complete Grading; Failure to Perform Grading Scope in Conformity with the Project Plans and Specifications**

ASR was awarded the contract for Bid Package #1 - General Construction on the Lasselle Elementary School Project. ASR's Contract scope included grading and, with regard to the grading work, ASR had substantial problems maintaining the schedule. Rough grading had been scheduled to be completed on October 8, 2004 and fine grading was scheduled to be completed on October 22, 2004. Nevertheless, ASR's grading scope fell more than six months behind schedule and ASR's delayed completion of grading impacted the progress of other prime contractors on the Project. After the Project was completed, the School began to experience significant drainage problems in the ball field areas. It was subsequently determined that the drainage problems were caused by ASR's failure to grade those areas in conformity with the Project plans and specifications. Necessary grading repairs have been estimated to cost in excess of \$190,000.00. To date, the grading in those areas still remains out of compliance with the Project plans and specifications.

**Rainbow Ridge Elementary School Addition Project – Gross Failure to Timely Provide Acceptable Elevator Submittals and Timely Perform Elevator Installation Scope**

ASR was awarded the Contract for Bid Package #1 - General Construction for the Rainbow Ridge Elementary School Addition Project. Included in the scope of ASR's Contract was the installation of a hydraulic elevator. Despite the fact that ASR was required to submit hydraulic elevator submittals by June 20, 2005, ASR failed to provide adequate submittals until January, 2006, more than six months after the required date. In addition, after the hydraulic elevator submittals were approved, ASR's installation of the elevators was not timely.

The timeline regarding ASR's hydraulic elevator submittals was as follows. ASR's first set of hydraulic elevator submittals were forwarded to the architect on May 19, 2005 and were returned to ASR on June 3, 2005 with architect comments and the directive to "revise and resubmit". On June 17, 2005, PCM3 sent a Fax to ASR requesting an update on the status of ASR providing its elevator re-submittals and shop drawings. On July 20, 2005, after ASR substituted its elevator subcontractor, ASR was informed that submittals provided by its new elevator subcontractor, Mitsubishi, were incomplete and deviated from the Project requirements. On July 28, 2005, PCM3 forwarded the architect's review comments to ASR and requested that ASR submit elevator shop drawings and calculations ASAP. On August 10, 2005, PCM3 faxed to ASR a list of outstanding Project submittals/re-submittals, noting that the elevator submittal was a "CRITICAL DEFERRED APPROVAL ITEM" "due for this project over seven weeks ago" and requesting that ASR immediately expedite the submission of the re-submittal. PCM3 resent its August 10 Fax to ASR on August 12, 2005, August 16, 2005 and August 23, 2005. On August 24, 2005, ASR's elevator re-submittals were forwarded to the architect for review and comment. On September 13, 2005, ASR's elevator re-submittals were returned to ASR with the architect's comments and the request that ASR revise and resubmit them. On October 10, 2005, PCM3 sent a Fax to ASR inquiring as to the status of the elevator re-submittals, explaining that they were needed for DSA submission, and stating that ASR's elevator subcontractor was taking too long. On October 18, 2005, PCM3 sent a letter to ASR giving ASR 72 hour notice to re-submit the elevator re-submittals and notifying ASR that the District intended to assess liquidated damages for the late elevator submittals. On October 25, 2005, PCM3 sent a follow up Fax to ASR reiterating that the elevator re-submittals were critical to the Project, that they were late, and that ASR was being assessed liquidated damages for the late submittals. On November 3, 2005, elevator re-submittals were forwarded to the architect. On November 9, 2005, ASR's elevator re-submittals were returned to ASR with the architect's comments and a request that ASR revise and resubmit them ASAP. On January 4, 2006, more than six months after the elevator submittals were originally due, new elevator re-submittals were forwarded to the architect. Those re-submittals were ultimately approved by the architect and by DSA.

Following approval of the elevator submittals, ASR's installation of the elevators was not timely performed. On April 12, 2006, PCM3 sent a fax to ASR

stating that ASR's elevator subcontractor's projected elevator installation date, in June, 2006, was unacceptable and requesting that ASR have its elevator subcontractor deliver and install the elevators by early May, 2006. On April 18, 2006, ASR sent a letter to its elevator subcontractor noting that ASR expected to see its elevator subcontractor on site, commencing the elevator installation, in the third week of May. In the April 18, 2006 letter, ASR further noted that the duration for the elevator subcontractor's work would be four to five weeks and that the schedule would not be able to accommodate further delays. On the morning of May 15, 2006, PCM3 sent a Fax to ASR noting that PCM3 had not seen ASR's elevator subcontractor on site and requesting that ASR confirm that the elevator subcontractor would be on site that day. On May 25, 2006, PCM3 faxed a letter to ASR confirming ASR's representation that the elevator installation would commence on June 5, 2006. In the May 25, 2006 letter, PCM3 noted that the "sign off" date for the elevator was April 28, 2006, that the elevator installation was significantly behind schedule, and that the elevator installation needed to be completed in a timely fashion as the school was scheduled to open on August 17, 2006. On June 5, 2006, ASR sent a letter to its elevator subcontractor noting that the elevator installation had not yet commenced as promised and that the date had already been moved back multiple times. In the June 5, 2006 letter, ASR further noted that the elevator subcontractor was now stating that materials would not be on site until June 16, 2006, or June 20, 2006, and that the installation would take four weeks to complete, which would mean that installation would be completed by July 20, 2006. ASR further noted that July 20, 2006 was the date that the elevator subcontractor must finish the job (including inspection and sign off) as the District would be moving into the Project the last week of July. Subsequently, elevator installation by ASR's elevator subcontractor commenced on July 16, 2006. On August 10, 2006, the elevator failed state inspection. The elevator finally passed inspection on August 18, 2006, the day after school started at the Rainbow Ridge Elementary School.

**Rainbow Ridge Elementary School Addition Project – Gross Failure to Timely Perform Roof Framing Scope; Failure to Perform Roof Framing Scope in Conformity with the Project Plans and Specifications**

ASR was awarded the Contract for Bid Package #1 - General Construction on the Rainbow Ridge Elementary School Addition Project. ASR's Contract scope included framing for the Project. ASR quickly fell behind schedule during the framing process. Initially, there were manpower problems with ASR's framing subcontractor. On October 11, 2005, PCM3 sent a Fax to ASR noting that ASR was already 13 days behind the revised framing start date of 9/26/05 and that ASR's framing subcontractor would need to "man-up and begin the framing operations." On October 19, 2005, PCM3 faxed a letter to ASR noting that the framing scope was scheduled to be completed by December 16, 2005 and that it was necessary for ASR's framing subcontractor to provide adequate manpower to ensure timely completion of the framing. On October 20, 2005, PCM3 faxed to

ASR a third written notice of insufficient manpower for framing operations at Rainbow Ridge Elementary School. On November 16, 2005 PCM3 faxed a letter to ASR noting that the framing progress was behind schedule and that ASR's framing subcontractor would need to immediately increase manpower. On November 22, 2005, PCM3 faxed a letter to ASR acknowledging that ASR's framing subcontractor's manpower had increased, but that there were delays in ASR providing rough framing and that therefore, ASR would be responsible for cost impacts submitted by other prime contractors as a result of those delays.

ASR's framing delays on the Rainbow Ridge Elementary School Addition Project were exacerbated by ASR's failure to frame in conformity with the Project plans and specifications and by ASR's delay in correcting its nonconforming work. On December 19, 2005, the Project Inspector noted that there were several problems with the Project framing including the framing subcontractor's use of multiple pieces of filler blocking in lieu of solid blocking as required. In the Project Inspector's Items of Concern No. 6, dated December 29, 2005, the Project Inspector noted eleven different items of concern with the Project framing which included, among other things, ASR's framing subcontractor's use of multiple pieces of wood fillers, in lieu of one solid shape piece, at the location of the roof top equipment platforms. After ASR failed to correct the problem, on January 6, 2006, PCM3 submitted an RFI, on ASR's behalf, requesting that the architect approve a corrective solution for the non-conforming installation. The architect's RFI response was faxed to ASR on January 16, 2006. ASR was directed to immediately implement the suggested modification so as not to further delay the Project. At the weekly Project meeting on January 31, 2006, ASR represented that the HVAC blocking would be completed that same day and ready for inspection the following day. In the Project Inspector's Items of Concern No. 8, dated February 3, 2006, the Project Inspector noted eight different items of concern with the Project framing which included, among other things, ASR's framing subcontractor's failure to correct the non-conforming HVAC platform blocking installation. On February 7, 2006, ASR was again sent a notice that ASR's framing subcontractor was not adequately manning the Project and needed to mobilize a larger crew. On February 23, 2006, PCM3 faxed a letter to ASR providing a chronology of the HVAC platform blocking problem and noting that the Project schedule had been severely impacted because ASR had failed to provide framing in conformity with the Project plans and specifications or in conformity with the corrective measures provided by the Project architect. ASR finally corrected the HVAC platform blocking problem on March 6, 2006.

Due to ASR's failure to timely complete the roof top framing as scheduled on the Rainbow Ridge Elementary School Addition Project, the casework delivery and installation dates had to be pushed back several weeks. As a result, substantial storage fees were incurred by Stolo Cabinets, the casework contractor for the Project. As a result of those storage fees, Stolo Cabinets submitted a request to the District for a Change Order in the amount of \$5,709.00. ASR was

notified that the Stolo Cabinets storage Change Order amount would be back charged against ASR's Contract.

**Rainbow Ridge Elementary School Addition Project – Failure to Provide Irrigation Controller in Conformity with Project Plans and Specifications**

ASR was awarded the Contract for Bid Package #1 - General Construction, which included the landscaping scope on the Rainbow Ridge Elementary School Addition Project. As part of the General Construction Contract scope, on or about July 1, 2005, ASR was directed to install the specified automatic irrigation controller manufactured by United Greer Tech. Nevertheless, in August, 2006, the District learned that ASR had disregarded the Project plans and specifications and had installed an irrigation controller at Rainbow Ridge Elementary School that was not the specified product and was not manufactured by United Green Tech. On August 23, 2006, PCM3 notified ASR, by Fax, that the controller installed by ASR was not manufactured by United Green Tech and PCM3 directed ASR to provide the specified controller as required per the plans. To date, the irrigation controller installed by ASR has not been replaced and remains in non-conformity with the Project plans and specifications.

**Triple Crown Elementary School Project – Gross Failure to Perform Asphalt Installation in Conformity with Project Plans and Specifications; Gross Failure to Perform Asphalt Installation in a Workmanlike Manner**

ASR was awarded the Bid Package #1 - General Construction Contract for the Triple Crown Elementary School Project. ASR's Contract scope included, among other things, the installation of asphalt paving on both the school site and on portions of the surrounding off site property owned by the City of Perris. The quality of the onsite and offsite asphalt paving provided by ASR was severely deficient and failed to comply with the Contract plans and specifications at over ninety locations. Much of the asphalt paving installed by ASR was not smooth and contained undulations, ruts and depressions which have impeded the flow of water. In addition, ASR failed to maintain the specified grade at numerous locations. In many areas, the asphalt installed by ASR overlapped with existing concrete and/or caused damage to other work in place. In addition, in some areas, ASR failed to install base materials and/or asphalt which was the required thickness. In general, much of the asphalt paving work installed by ASR, both onsite and offsite, was of substandard quality and installed in an unworkmanlike manner. There are many photographs that are being forwarded with this letter which substantiate the poor quality of ASR's asphalt paving for the Triple Crown Elementary School Project.

**Triple Crown Elementary School Project – Failure to Install Plumbing in Conformity with Project Plans and Specifications**

ASR was awarded the Bid Package #2 - Plumbing Contract for the Triple Crown Elementary School Project. ASR's plumbing installations were not performed in conformity with the Project plans and specifications and were not performed in a workmanlike manner. The Plumbing Contract scope included the installation of sewer lines and a separate Storm Drain System. On August 16, 2006, after ASR had installed the sewer lines and Storm Drain System, there was a sewer backup in the Administration Building which resulted in three separate rooms being flooded with raw sewage waste water and sustaining various damage. The sewer backup was cleared by an independent Roto-Rooter Contractor that same day. On August 17, 2006, PCM3 sent a letter to ASR documenting the problem and explaining that, when the Roto-Rooter contractor was clearing the blockage, it appeared as though the sewer line and Storm Drain System were somehow connected, indicating that the underground wet utility systems (Storm Drain and Sewer) were not correctly installed and were not installed in conformity with the As-Built drawings provided by ASR. PCM3 requested that ASR immediately address the problem. On August 25, 2006, there was a second sewer backup along the north side of the Administration building where sewage began backing up into the Storm Drain System catch basin. On August 26, 2006, ASR apparently realized that it had connected the Storm Drain System catch basin to the sewer line and the Sewer cleanout, with the Sewer cleanout cover box, to the Storm Drain System. At that time, ASR dug out the catch basin and the Sewer cleanout and reinstalled each of them in the reverse locations.

**Triple Crown Elementary School Project – Failure to Provide a Recovery Schedule as Repeatedly Requested and as Required Pursuant to the Project Plans and Specifications**

After ASR fell behind on the Triple Crown Elementary School Project, ASR flagrantly ignored the Project plans and specifications by failing to comply with repeated requests for ASR to submit a recovery schedule. The Project Specifications required, in Paragraph 1.04A.1.c. of Section 01041-2, that "upon written notice by CONSTRUCTION MANAGER, PRIME CONTRACTOR shall, within three (3) calendar days, provide a complete recovery schedule, including manpower loading, resource loading, detailing how the PRIME CONTRACTOR and his subcontractors will recover PRIME CONTRACTOR'S original scheduled milestone dates." Nevertheless, ASR never complied with that contractual requirement. On June 30, 2005, PCM3 sent a letter to ASR noting that ASR was continuing to fall behind schedule and starting to delay other contractors. In the June 30, 2005 letter, PCM3 requested that ASR provide an updated recovery construction schedule as required by the Project Specifications. On July 8, 2005, PCM3 faxed a second letter to ASR noting that ASR was falling

further behind and had failed to provide the recovery schedule as requested. In the July 8, 2005 letter, PCM3 renewed its request that ASR provide a recovery schedule as required. On July 13, 2005, PCM3 faxed a third letter to ASR noting that ASR was falling further behind and documenting that ASR had still failed to provide any recovery schedule as requested. On March 30, 2006, PCM3 faxed a letter to ASR noting that ASR had not finished importing soil, which was to be completed on July 15, 2005, and that ASR had not finished grading the site, which was to be completed on August 12, 2005. In the March 30, 2006 letter, PCM3 again requested that ASR submit a recovery schedule as required by the Project Specifications. On April 3, 2006, PCM3 faxed a letter to ASR with a copy of a letter from the electrical contractor that identified several incomplete items in ASR's contract scope that were delaying the electrical contractor. In the April 3, 2006 letter, PCM3 noted that ASR still had failed to comply with its contractual obligation to provide a recovery schedule as requested. On July 12, 2006, PCM3 faxed a letter to all of the prime contractors on the Project, including ASR, requesting that each prime contractor with incomplete scope provide a recovery schedule within three (3) days as required by the Project Specifications. On June 21, 2006, PCM3 faxed a letter to ASR noting that ASR still had not submitted a recovery schedule as required by the Project Specifications and renewing PCM3's request that ASR provide a recovery schedule. Despite the many requests that were made by PCM3, as the Project Construction Manager, ASR never complied with its contractual obligation to provide a recovery schedule.

#### All Projects – Grossly Unprofessional and Antagonistic Conduct/Communications

Throughout the various Projects that ASR has had with Val Verde Unified School District, ASR has frequently conducted itself in an unprofessional manner, writing and faxing antagonistic, insulting, demeaning and disparaging letters and comments in response to reasonable inquiries that ASR received from PCM3, the Project Construction Manager. Examples of ASR's unprofessional communications are as follows:

1) In a response to a letter, dated August 16, 2004, that PCM3 sent to ASR on the Columbia Elementary School Project, ASR penned:

*"YOU PEOPLE ARE IN DEEP SHIT ON THE PROJECT YOU SHOULD TRY TO TONE DOWN YOUR THREATS! M Berry".*

2) In a letter, dated January 27, 2005, that ASR sent to PCM3 on the Val Verde High School Project, ASR wrote the following:

*"I don't believe anyone in any letter accused you personally of secreting a tape recording device in one of your orifices."*

*"...you are a bright young man and I am sure that you will go far in your daddy's company..."*

*"The behavior of you and your client fall well below the threshold of dignity."*

*"...still you behave as a spoiled child, always with your hand out like a street urchin."*

*"I don't think there exists any one of the 450 employees of ASR that has anything good to say and nothing but negative experiences with PCM3".  
"Doug, the negative sentiment of you and your company is so strong that it is alarming at times."*

*"The negative perception of you shared by reputable trades, honest suppliers, superior contractors and unfortunately even your own work associates would be laughable if it wasn't for the fact that this type of perception influences bids..."*

*"You may even think that your 'rudeness' would be perceived as directness and decisiveness, as opposed to bad parenting."*

*"...short of sending you to your room and no tv for a month, I am somewhat perplexed by your continued behavior."*

In reference to other Projects that did not involve the District and PCM3, ASR wrote:

*"the sheer delight of not having to associate with despicable, selfish, inexperienced and insecure individuals is also a pleasure."*

ASR concluded the letter as follows:

*"I sympathize for you Doug in some way, I have witnessed the paranoia and distrust that happens in firms, who have been threatened with the loss of their 'cash cow'. The memos and the directives about who you are allowed to speak with and the questions from 'superiors' on 'what did so and so say to you and what did you say to them?' I have seen the reaction of companies that have and are being investigated for fraud and incompetence (or other negative actions) and the finger-pointing that pursues. Everyone thinking that if they make a bigger 'stink' than someone else their job is a bit more secure. Except for one thing, you don't fall into any of those categories, your (sic) family."*

3) In response to a letter, dated February 9, 2005, from Doug Henning at PCM3 to ASR, directing ASR to perform certain warranty work on the Val Verde High School Project, ASR penned a reply in the margins on PCM3's letter and faxed it back with the following:

***"DEPUTY DOUG! INCORRECT! IT ISN'T WARRANTY WORK I WILL REPAIR IT AND BILL YOUR CLIENT FOR THE DAMAGE YOUR CLIENT DR. SOD CONTINUES TO CREATE MORE PROBLEMS! Marc Berry"***

4) In response to a Fax, dated January 26, 2005, from Doug Henning at PCM3 to ASR, notifying ASR that a copy of the tape recording from the day's in service session was available to be picked up, ASR penned a reply on PCM3's Fax and faxed it back with the following:

***"WHICH EMPLOYEES WERE HIDING THE TAPE RECORDERS UNDER THEIR ARM? M Berry"***

5) In response to a Fax, dated January 4, 2005, from PCM3 to ASR, asking ASR to confirm that a scheduled date for an owner instruction session for the controller

assemblies and irrigation booster pumps was acceptable, ASR penned a reply on PCM3's Fax and faxed it back with the following:

*"YOUR AN EXPERT AT SHUTTING IT OFF ALREADY. M. Berry"*

6) In response to a letter, dated November 2, 2004, from PCM3 to ASR, explaining that the District was interested in assuming the remaining landscape maintenance period and requesting a credit for the unused portion of time, ASR penned a reply on PCM3's letter and faxed it back with the following:

*"PASS! YOU OWE ME FOR THE DAMAGE AND SABOTAGE."*

7) In a Fax to Doug Henning at PCM3, received September 27, 2004, ASR wrote the following:

*"NOBODY IN THIS FIRM HAS ANY CONFIDENCE THAT YOU TELL THE TRUTH ABOUT ANYTHING! M Berry"*

8) In response to a letter, dated September 16, 2004, from PCM3 to ASR, acknowledging that the District had accepted the landscaping scope of work as complete for Val Verde High School, ASR penned a reply in black marker on PCM3's letter and faxed it back with the following:

*"HOW ABOUT COSTS DUE TO THE LACK OF WATER BY THE DISTRICT AND PCM FRAUD. M Berry"*

9) In response to a Fax, dated August 16, 2004, from Doug Henning at PCM3 to ASR, regarding the fact that school would be in session at Val Verde High School on 8/23/04 and reminding ASR that maintenance and irrigation cannot be performed during school hours on school days and requesting that the irrigation schedule be changed so that the campus was not wet during the day, ASR penned a reply in black marker on PCM3's Fax and faxed it back with the following:

*"CAN'T WARRANTY UNDER THIS CONDITION"*

10) On the March Middle School Project, PCM3 received a letter, dated June 22, 2005, from the plumbing prime contractor, JPI, which stated, in part, "Today, at approximately 10:00 a.m., our onsite Foreman was verbally attacked by the steel subcontractor working for ASR. This attack was threatening bodily injury to Dave King as well as our company. In addition, scrap steel was maliciously dumped into our pipe trench by the same company... We are asking PCM3 to assist in keeping this type of behavior off projects as this, especially when we are working so close to kids in school. We will refrain from notifying the local police at this time hoping PCM3 can resolve this issue in a timely manner." ASR penned a reply on a copy of JPI's letter and faxed it back to PCM3 with the following:

*"TOTAL LIES BY JPI. BUT WHAT'S NEW! JPI MAN WAS OUT OF LINE. JPI IS A POOR PRIME. M Berry"*

11) In response to a Fax, dated November 4, 2005, from Sharon Sass at PCM3 notifying ASR that its general liability insurance certificate for the March Middle School Project was due to expire on November 23, 2005 and requesting that ASR

have its carrier submit current certificates listing the appropriate additional insureds, ASR penned a reply in black marker on PCM3's Fax and faxed it back with the following:

*"IT WILL BE RENEWED AND REISSUED BEFORE 11-23-05, ONLY A CONTRACTOR WOULD UNDERSTAND THE RENEWAL PROCESS.  
M. Berry"*

12) In response to a Fax, dated December 15, 2005, from Doug Henning at PCM3 to ASR, stating that a T&M pricing sheet on the March Middle School Project would not be processed until all related credits were submitted, ASR penned a reply on PCM3's Fax and faxed it back with the following:

*"STOP ALL WORK! M Berry"*

13) In response to a Fax, dated May 20, 2006, from Doug Henning at PCM3 to ASR, requesting an update regarding March Middle School traffic signal scope and the dates when materials will be onsite and installation will commence and conclude, ASR penned a reply in black marker on PCM3's Fax and faxed it back with the following:

*"WHAT THE HELL IS THAT GUY DOING! M Berry."*

14) In a Fax, dated 8/22/06, from ASR to Chris Williams at PCM3 on the Triple Crown Elementary School Project, ASR wrote, among other things:

*"Since you obviously have only rudimentary knowledge of construction sequencing, let us school you a bit."*

15) In response to a letter sent by Chris Williams (of PCM3) to ASR on the Triple Crown Elementary School Project, on or about July 16, 2006, ASR penned a reply on Mr. Williams' letter and faxed it back with the following:

*"CHRIS I HAVE ADDED YOUR NAME TO MY LIST OF UNEXPERIENCED CM TRYING TO RUN JOBS. ONCE AGAIN PCM AND LACK OF EXPERIENCE IN BUILDING PRODUCT WILL COST THE DISTRICT ANOTHER CLAIM OR CHANGE ORDER. PCM3 SHOULD BE HELD ACCOUNTABLE. M Berry YOUR ORGANIZATION LACKS KNOWLEDGEABLE CONSTRUCTION MECHANICS"*

16) In response to a letter, dated August 8, 2006, from Chris Williams at PCM3 to ASR, regarding ASR's failure to remove a large amount of excess materials, trash and debris from the Triple Crown Elementary School Project as requested, and notifying ASR that the materials would be removed by the District and deducted from ASR's contract price, ASR penned a reply on Mr. Williams letter and faxed it back with the following:

*"WHERE'S THE NOTICE 24 HOURS. I WOULDN'T TRY IT. CHRIS DO YOU HAVE A LITTLE RED RADIO FLYER WAGON TO LOAD IT IN! Marc Berry"*

17) In response to a letter, dated August 5, 2005, from John Gostomski at PCM3 to ASR, regarding the need for ASR to install batter boards, as agreed, in order to avoid delaying the electrical prime contractor, ASR penned its short reply on Mr. Gostomski's letter and faxed it back with the following:

*"JOHNNY YOU'RE A BADDER BOY!"*

18) In response to a Fax, dated December 17, 2004, from Jeff Ray at PCM3 to ASR on the Lasselle Elementary School Project, forwarding copies of pencil drafts and requesting that ASR please address all future inquiries to Ken Englemen, ASR penned various replies in the margins of the fax and faxed it back with, among other things, the following:

*"YOUR NOT QUALIFIED TO KNOW. TOTALLY UNACCEPTABLE. M. Berry. I WILL REMOVE THE SUPERVISION IF YOU DON'T PAY!..."*

19) In response to a letter, dated December 22, 2004, from Ken Englemen at PCM3 to ASR on the Lasselle Elementary School Project, ASR penned various replies in the margins of the fax and faxed it back with, among other things, the following:

*"KEN YOU'RE A CLOWN M. Berry"*

9. After the introduction of the December 13, 2006 letter and the several hundred pages of supporting documents, Tim Liebaert commenced with introductory comments on ASR's behalf. During his introductory comments, Tim Liebaert stated that a lawsuit had been filed in Riverside Superior Court with respect to the hearing. He stated that the lawsuit contends that the hearing to determine whether a contractor is non-responsible is without legal authority in the absence of a bid having been submitted. He cited the City of Inglewood case and stated that ASR contends that in the absence of a bid under consideration on a particular Project, the District cannot convene a responsibility hearing for ASR. Mr. Liebaert denied that the Education Code provided the District with adequate authority to hold the hearing. Mr. Liebaert noted that ASR had requested a Temporary Restraining Order that was denied, but he stated his opinion that the refusal of the Court to issue a TRO did not mean that ASR's position lacked merit.

10. Mr. Liebaert further stated that the District lacked the authority to deem ASR a non-responsible contractor for a period of five (5) years. Mr. Liebaert stated that if the District were permitted to deem ASR non-responsible for a period of five (5) years, it would eliminate the purpose of the public bidding laws.

11. Mr. Liebaert stated his belief that the responsibility hearing was done for personal animus and was an abuse of public authority.

12. Mr. Liebaert stated that ASR had performed 25 contracts for the District and thereby saved the District 8 million dollars over the next lowest bidder. Mr. Liebaert further stated that ASR believed the value of the items identified in the December 13, 2006 letter had a value of one hundred thousand dollars or less.

13. Mr. Liebaert further stated that many of the items which have been identified as defective work were settled by mutual agreement. Mr. Liebaert gave his opinion that items which were previously settled should not form the basis for a finding that ASR is non-responsible.

14. Mr. Liebaert stated that he did not feel ASR was provided sufficient time to prepare a meaningful defense.

15. Mr. Liebaert stated that ASR is an established company in Riverside County with a great deal of history in the public works arena with many satisfied customers and hundreds of completed public works projects with the capacity and resources to satisfactorily perform public works contracts.

16. Alan Regotti testified regarding the first 27 pages of documents submitted by ASR. Mr. Regotti stated that he tried to put together documents showing that over a total of 25 jobs, ASR has been 7.8 million dollars less than the next low bidder. The first seven pages provide a summary and pages 8 through 27 are bid tables.

17. Mr. Regotti stated his belief that the District is tired of the abuse that ASR has laid upon PCM3 for what ASR contends is the inability to manage the job properly and Mr. Regotti denied that it had anything to do with ASR being a responsible bidder. Mr. Regotti noted that the District had identified eleven issues on six out of 25 projects and gave the opinion that the disputed issues were one hundred thousand dollars out of 55 million dollars worth of work. Mr. Regotti gave the further opinion that it was just a personality conflict that ASR has had with the CM firm. Mr. Regotti complained that he thought the CM personnel may be college educated, but he did not think that they were appropriately experienced and failed to listen to ASR when ASR told the CM how to coordinate the Project or what procedures to follow. Mr. Regotti complained that the CM firm was not sufficiently open-minded to accept ASR's suggestions on how the project should be run which Mr. Regotti said was frustrating for contractors like him. Mr. Regotti noted that he had been building schools in Southern California for thirty years seeing projects from start to finish and although he has tried to pass on his knowledge, the CM just wanted to follow what they learned in school or in their office and that was frustrating to ASR which is why Mr. Regotti's partner would write his "little essays". Mr. Regotti gave his opinion that the District should hire another management firm so that there is competition. Mr. Regotti described a project that ASR bid at Hesperia Unified School District where, according to Mr. Regotti, the Board decided to throw out the contractor's bids and put the Project out to rebid because, according to Mr. Regotti, the Board thought there was a conflict with the V.P. of the low bid contractor being married to Hesperia Unified's Director of Facilities. Mr. Regotti noted his belief that Sandee Hackett and Peggy Ray of Val Verde Unified School District are married to Greg Hackett and Jeff Ray of PCM3. Mr. Regotti gave his opinion that the District would be more critical of PCM3 if those relationships did not exist.

18. With regard to the Mead Valley Asphalt Installation Issues, Mr. Regotti stated that ASR was responsible for the asphalt, but thought that the problem area was not

where ASR had installed initial asphalt, but where ASR had to perform asphalt repairs. Mr. Regotti said that ASR had to put in a storm drain and a catch basin and it was not an easy job because the area was very flat. Mr. Regotti said that he walked the job at the end of the Project to see what could be done to remedy the problems and Todd Butcher from the District agreed that the District would accept a credit of \$5,000 instead. Mr. Regotti stated that monetary adjustments where ASR gave a credit for defective work was a typical situation or a common occurrence in the industry and on ASR Projects.

19. With regard to the Val Verde High School Landscape Issues, Mr. Regotti stated that he knew ASR "had some issues out there in the landscaping". Mr. Regotti said that ASR's lock was continually being cut on the timers, ASR could not get to the timers, the locks were changed and water was being turned on without ASR's knowledge. Mr. Regotti also gave the opinion that incompatible plants were placed together and there was a problem with the storm drain in the back of the school where the water did not drain properly and there was a pond in the northeast corner. Mr. Regotti characterized it as a pretty good landscape job that "might have been a little late". Mr. Regotti gave the opinion that the District was not impacted because the "landscape did not get finished a week before it did". Mr. Regotti also noted that it was a "no money issue" and he did not "think it cost the School District anything". It was Mr. Regotti's understanding that the District and the CM tampered with the clock setting of the irrigation control that led to over saturation of the field and some plants were damaged due to over-watering. Mr. Regotti said that "ASR replaced plants pursuant to the specifications at no additional cost to the District".

20. With regard to the Columbia Elementary School Asphalt and Concrete Issues, Mr. Regotti stated that the asphalt was found to be minimal and below the requirement in some locations and he did not know if it was because the subgrade wasn't prepared properly. Mr. Regotti said that instead of repaving the area, ASR offered a \$20,000 credit and an extended warranty. Michael Tran said that ASR had offered a \$7,000 to \$8,000 credit and the District counter-offered \$20,000 which ASR accepted. Mr. Regotti admitted that he considered this credit for ASR's non-conforming work to be "another one of those situations that [he considered] routine course". With regard to the concrete, Mr. Regotti said that some of it cracked because the plumbers and electricians had not properly compacted their trenches. Mr. Regotti said that after ASR repaired the concrete, more cracking appeared after the School District and others drove on it. Mr. Regotti denied that it was ASR's responsibility and further noted that when the District told ASR that it was a warranty issue it was after the warranty had expired.

21. With regard to the Lasselle Elementary School Grading Issues, Michael Tran stated that ASR had completed the rough grade, but then it rained and washed the rough grade away. Mr. Tran stated that ASR was to take dirt from one side of the Project and move it to the other, but ASR was delayed by the foundation installation for the portables. Mr. Tran said that there was still a problem with drainage issues, but that the landscaper had accepted the work and therefore, ASR had no further responsibility. Nevertheless, Mr. Tran said that ASR installed a storm drain with a catch basin to mitigate the drainage issues. Mr. Tran complained that ASR wanted to correct the

problems over the Summer and requested access from PCM3, but was not granted access until the Christmas break.

22. With regard to the Rainbow Ridge Elementary School Elevator Submittals and Installation Issues, Mr. Tran stated that the submittals were delayed because of ASR's subcontractor who ASR reminded about liquidated damages and told would be responsible for delay costs. Mr. Tran said that the installation inspection by the fire marshal was scheduled for the week before school started, but there was an issue with the handset provided by ASR's subcontractor not being in compliance with the District's requirements and there was not a dedicated line as required. They were able to bring back the fire marshal on Friday of the following week, one day after school opened and the elevator passed that inspection. Mr. Regotti testified that the absence of a dedicated phone line held up the elevator approval and, according to Mr. Regotti, the dedicated phone line was the coordination responsibility of the CM.

23. With regard to the Rainbow Ridge Elementary School Roof Framing Issues, Mr. Regotti stated that he did not think he had visited the job, but nevertheless thought that the issue was just the inspection service interpreting the plans differently than ASR's framing contractor and making the framing contractor redo portions of the work on the roof and the top wall plates. Mr. Regotti noted that the framing contractor nevertheless made the changes and the District back charged ASR \$5,700 for added storage costs that the District said resulted from the framing holding up the finishing of the building.

24. With regard to the Rainbow Ridge Elementary School Irrigation Controller Issue, Mr. Tran said that ASR performed the landscaping and the landscaper installed the incorrect controller which was not as specified. Mr. Tran stated his belief that, after ASR was notified by the CM, the controller was replaced within 2 weeks.

25. With regard to the Triple Crown Elementary School Asphalt Installation Issues, Mr. Regotti stated that it was a sloppy job that ASR agreed to correct. Mr. Regotti said that ASR made a few attempts to correct the asphalt work, but it was not a very good effort on ASR's part. Mr. Regotti apologized for the quality of the work and said that he hoped it had been corrected. Mr. Regotti explained that it was a new subcontractor and ASR's Superintendent was not paying close attention. Mr. Regotti remarked that "Hey, you get a lousy job every once in a while." Mr. Regotti admitted "this is probably one of the worst asphalt jobs we have ever performed..." Mr. Regotti said that ASR was standing behind the work and he thought ASR was even offering an extended warranty for the asphalt.

26. With regard to the Triple Crown Elementary School Plumbing Issues, Mr. Regotti stated that apparently ASR did get something crossed and he said he was sorry. Mr. Regotti explained that because ASR installs so many sewer and storm drains that ASR is "bound to get one of them wrong" every once in a while. Mr. Regotti said that once ASR was notified, they went out within a day or two.

27. With regard to the Triple Crown Elementary School Recovery Schedule Issues, Mr. Regotti stated that they did not have the complete or approved off-site plan until halfway through the Project and he questioned how a recovery schedule could be prepared "if you don't even know what you're doing yet".

28. With regard to the Unprofessional and Antagonistic Conduct/Communications Issues, Mr. Regotti explained that Marc Berry was very experienced in public works projects and that Mr. Berry's communications were just venting his built up frustration. Mr. Regotti gave his opinion that it was a personality conflict with "a little bit of lashing here with some of this felty work of Mr. Berry."

#### Conclusions of Law

A. There is no statute or other law which requires that a pending bid proposal must exist before the District can hold a responsibility hearing.

B. Applicable statutes (including, but not limited to Education Code Section 35160 et. seq.) and applicable caselaw provide sufficient authority for the District to have held the Responsibility Hearing for ASR on January 10, 2007.

C. There is no statute or other law which prohibits the District from deeming a contractor to be non-responsible for a period of multiple years.

D. Applicable statutes (including, but not limited to Education Code Section 35160 et. seq.) and applicable caselaw provide sufficient authority for the District to deem a contractor to be non-responsible for a period of multiple years.

E. The Responsibility Hearing that was held for ASR on January 10, 2007 resulted from ASR's previous performance on multiple District Projects and was not the result of any "personal animus".

F. Although the District has considered ASR's contention that, by being the low bidder on multiple Projects, ASR has saved the District 7-8 million dollars, the District finds that such cost savings fails to demonstrate trustworthiness, quality, fitness, capacity and experience for the purpose of determining whether ASR is a responsible contractor.

G. Although the District has considered ASR's contention that the estimated value of the issues that are the subject of the responsibility hearing is \$100,000, the District finds that ASR's estimated value is not accurate, that ASR's estimated value fails to take into account any non-monetary consequences resulting from ASR's Project performance, and that the aggregate consequences of ASR's Project performance have been significant.

H. Although the District has considered ASR's contention that items identified as defective work should not be considered if they were subsequently the subject of a credit or back charge, the District finds that, regardless of whether the District has received a credit or a back charge, defective work remains relevant and should be considered for the purpose of determining whether ASR is a responsible contractor.

I. The District finds that, despite ASR's contention that it was not provided adequate time to prepare for the Responsibility hearing, ASR was provided more than a reasonable amount of time to prepare.

J. With regard to the Issues that were the subject of the Responsibility Hearing Notice contained in the December 13, 2006 letter, based upon the documents entered into the Responsibility Hearing record and the testimony presented at the Responsibility Hearing, the District finds as follows:

**1. Mead Valley Elementary School Project - Unworkmanlike Asphalt Installation -**

The primary problems with the quality of the Asphalt Installation at Mead Valley Elementary School were related to the unworkmanlike manner of the installation which contained ripples, divots and an otherwise unacceptable surface. The problem was not, as represented by Mr. Regotti, solely related to inadequate slopeage. The District's decision to withhold \$5,000 for the defective work was only reached after ASR had tried unsuccessfully, on at least two separate occasions, to repair the defective asphalt during the Summer of 2003 and the 2003 Christmas Break.

**2. Val Verde High School - Failure to Timely Complete Landscape Contract Scope -**

Despite Mr. Regotti's statement that ASR "might have been a little late", it is well documented that ASR's Punch List scope was not completed and the maintenance period could not commence until four months after the scheduled date and almost a month after classes had begun at the school.

**3. Columbia Elementary School - Failure to Install Asphalt in Conformity with Plans and Specifications; Poor Quality Concrete Patch Work -**

Despite Mr. Regotti's statement that the asphalt was found to be below the requirement in some locations, the Project records substantiate that the asphalt was required to be a thickness of not less than three inches, but was found to be less than three inches at all of the locations where core samples were taken. In addition, although Mr. Regotti indicated that the problem may have resulted from improper subgrade preparation, it was part of ASR's scope to prepare the subgrade in the disputed area.

Furthermore, although Mr. Regotti stated that ASR agreed to give the District a \$20,000 credit and an extended warranty, the Project records do not support that such a credit or extended warranty was ever agreed upon or received by the District.

Despite Mr. Regotti's statement that the concrete patch work failures resulted from inadequate compaction and vehicular traffic, the Project records fail to support Mr. Regotti's statement.

4. **Lasselle Elementary School - Failure to Timely Complete Grading; Failure to Perform Grading Scope in Conformity with Plans and Specifications** -

Despite Mr. Tran's statement that the rough grading was timely completed before the rain washed it away, the Project records do not support Mr. Tran's statement and instead reflect that ASR's rough grading scope fell several months behind schedule before it was completed. Despite Mr. Tran's statement that ASR was hindered by its inability to move soil from one part of the Project to the other, the Project records indicate that ASR was to import dirt from offsite. Despite the fact that Mr. Tran noted the Landscaper had accepted the site absolving ASR from any responsibility for defective grading, ASR remained responsible for defective grading conditions.

5. **Rainbow Ridge Elementary School - Failure to Timely Provide Acceptable Elevator Submittals; Failure to Timely Perform Elevator Installation Scope** -

Adequate elevator submittals that could be approved by the Project architect were not provided until more than six months after the required date for the elevator submittals. Mr. Tran's statement that the elevator submittals were delayed because of ASR's subcontractor, does not absolve ASR of responsibility for such delay. The scheduled date for the Elevator "sign off" was April 28, 2006, but actual inspection approval of the elevator did not occur until August 18, 2006. Despite Mr. Tran's statement that the initial failed approval of the completed elevator resulted from the absence of a required hand set and the lack of a dedicated phone line, the Project records indicate that there was a working phone line in place when the inspection occurred. Any failure of ASR's subcontractor to provide a required handset or dialer would have been ASR's own responsibility.

6. **Rainbow Ridge Elementary School - Failure to Timely Perform Roof Framing Scope; Failure to Perform Roof Framing Scope in Conformity with Plans and Specifications** -

ASR failed to offer any explanation for the delayed progress of the Roof Framing Scope. Despite Mr. Regotti's characterization of the issue as just the inspection service interpreting the plans differently than ASR's framing contractor, the Project records indicate that ASR's framing

contractor failed to comply with the Project Plans and Specifications and, when the Project architect approved a corrective solution for the non-conforming installation, it took ASR approximately one and a half months to correct the problem thereby delaying for several weeks the District's ability to install fixtures, furnishings, etc. and otherwise occupy the building.

7. Rainbow Ridge Elementary School - Failure to Provide Irrigation Controller in Conformity with Plans and Specifications -

ASR initially failed to install an irrigation controller that was in conformity with the requirements of the Project Plans and Specifications. Subsequently, after ASR was notified of the non-conforming installation, ASR caused the irrigation controller to be replaced with a new controller that complied with the Project Plans and Specifications.

8. Triple Crown Elementary School - Failure to Perform Asphalt Installation in Conformity with Plans and Specifications; Failure to Perform Asphalt Installation in a Workmanlike Manner -

The Project records indicate that the quality of the onsite and offsite asphalt paving provided by ASR was deficient and failed to comply with the Contract plans and specifications at over ninety locations. The asphalt paving installed by ASR was not smooth and contained undulations, ruts and depressions that impeded the flow of water. In addition, ASR failed to maintain the specified grade at numerous locations. In many areas, the asphalt installed by ASR overlapped with existing concrete and/or caused damage to other work in place. In addition, in some areas, ASR failed to install base materials and/or asphalt which was the required thickness. Asphalt paving work installed by ASR, both onsite and offsite, was of substandard quality and installed in an unworkmanlike manner. Mr. Regotti admitted that it was a sloppy job and apologized saying that "you get a lousy job every once in a while". Mr. Regotti stated that it was "probably one of the worst asphalt jobs that we have ever performed".

9. Triple Crown Elementary School - Failure to Install Plumbing in Conformity with Plans and Specifications -

ASR's plumbing installation was not performed in conformity with the Project plans and specifications. ASR installed sewer lines and a Storm Drain System that allowed raw sewage to backup into the Administration Building and caused various damage. A week after the first backup occurred, and ASR was notified of the problem, there was a second sewer backup along the north side of the Administration building where raw sewage began backing up into the Storm Drain System catch basin. Mr. Regotti admitted that apparently ASR "did get something crossed". He gave his opinion that "it's bound to happen every once in a while."

10. Triple Crown Elementary School - Failure to Provide a Recovery Schedule as Repeatedly Requested and as Required Pursuant to the Plans and Specifications -

The Project CM requested in writing that ASR provide a Recovery Schedule on at least seven different occasions between June 30, 2005 and July 12, 2006. The Project Specifications required, in Paragraph 1.04A.1.c. of Section 01041-2, that "upon written notice by CONSTRUCTION MANAGER, PRIME CONTRACTOR shall, within three (3) calendar days, provide a complete recovery schedule, including manpower loading, resource loading, detailing how the PRIME CONTRACTOR and his subcontractors will recover PRIME CONTRACTOR'S original scheduled milestone dates." ASR never complied with that contractual requirement. Mr. Regotti's only explanation for ASR's failure to provide a recovery schedule as requested and required was to say that ASR did not have an approved or complete offsite plan until half way through the Project. Nevertheless, offsite issues fail to excuse or explain why ASR repeatedly failed to provide a recovery schedule for the onsite work.

11. All Projects – Unprofessional and Antagonistic Conduct/Communications - Although ASR circulated numerous written faxes and correspondence that appear to be intentionally antagonistic and/or insulting, the explanation that Mr. Regotti provided was that his partner, Mr. Berry, is very experienced and gets frustrated. Mr. Regotti referred to it as a personality conflict. Nevertheless, the Project records do not appear to provide justification for ASR's unprofessional and antagonistic communications.

K. Based upon the documents and testimony entered into the record at the January 10, 2007 Responsibility Hearing for ASR Constructors, Inc., and further based upon the above Findings and Conclusions, Val Verde Unified School District hereby finds ASR Constructors, Inc. to be non-responsible. Therefore, ASR Constructors, Inc. is deemed not qualified to submit a bid proposal for any District project requiring that the contract shall be let to the lowest responsible bidder pursuant to Public Contract Code §20111. Val Verde Unified School District's above finding of non-responsibility shall remain in full force and effect for a period of thirty-six months from the date of these Findings of Fact and Conclusions of Law.

Dated: March 2, 2007



C. Fred Workman, Ed.D.

Public Works Hearing Officer

**BEFORE THE BOARD OF THE SAN JACINTO UNIFIED SCHOOL DISTRICT  
RE NONRESPONSIBILITY HEARING OF ASR CONSTRUCTORS, INC. AND  
ASR/DUKE CONSTRUCTORS TO PERFORM ON THE NORTH MOUNTAIN  
MIDDLE SCHOOL EXPANSION AND FUTURE PROJECTS FOR THE BOARD**

IN THE MATTER OF: ) SCHOOL BOARD'S REPORT AND  
 ) FINDINGS  
ASR CONSTRUCTORS, INC. AND )  
ASR/DUKE CONSTRUCTORS )  
RE NON-RESPONSIBILITY HEARING )

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This matter was heard before the Board of the San Jacinto Unified School District, ("Board") on May 9, 2006. The hearing was held to examine the evidence surrounding ASR Constructors, Inc. and ASR/Duke Constructors' (collectively "ASR") responsibility to perform on the North Mountain Middle School Expansion ("North Mountain") and future projects for the Board, and to permit ASR an opportunity to be heard and present evidence before the Board.

The following people were in attendance at the May 9, 2006 Nonresponsibility Hearing:

San Jacinto Unified School District:

The Board of the San Jacinto Unified School District  
The Cabinet of the Superintendent of the San Jacinto Unified School District  
Julie Arthur, Facilities Director

Atkinson, Andelson, Loya, Ruud and Romo

Terry Tao, District's Counsel  
Anthony P. Niccoli, District's Counsel

C.W. Driver:

Mark Kenney  
Chris Butler

ASR

Alan Regotti, President  
Mark Berry, Owner  
Brian Saenz, employee

Robinson & Liebart

Timothy B. Liebart, Counsel for ASR

The basis for the hearing was the following:

ASR's past unworkmanlike and deficient performance on a District Project known and described as Elementary School II—San Antonio Estudillo Elementary ("Estudillo Project"), which includes, but is not limited to, the following: The District's need to descope ASR in lieu of termination, ASR'S refusal to correct unacceptable work, including refusing to regrade the field even under protest, failure to meet concrete design strength, failure to uniform, warp and slope grade the field in a sufficient manner, failure to install portions of the irrigation system in a good and workmanlike manner, failure to weed and adequately amend the soil, failure to provide palms and trees in accordance with the specifications and contract documents, failure to interact with the District, at all times, in a professional manner and ASR'S initiation of the current litigation between the District and ASR.

The following evidence was presented by the San Jacinto Unified School District:

1. A large volume of correspondence between ASR and C.W. Driver and ASR and the District, Contract documents, photographs, reports, test results, logs, and project file documents, including but not limited to, field notes, logs, changes orders, et cetera.
2. A Power Point presentation of the above-mentioned documentary evidence described in Paragraph 1 above.
3. Testimony of Mark Kenney, Chris Butler and Julie Arthur.

The following rebuttal evidence was presented by ASR:

1. A binder containing correspondence, a past and current Project list by ASR, and general construction file project documents.
2. Testimony of Alan Regotti, Mark Berry and Brian Saenz.

Findings

At the hearing on May 9, 2006, both the District and ASR were provided with an unabated opportunity to present evidence and give testimony before the Board and both parties were given unlimited rebuttal opportunities. The hearing commenced at 6:20 p.m. and did not conclude until roughly 8:30 p.m. As a result of the documentary evidence, and testimony given at the hearing, as reflected in the record that is hereby incorporated herein by this reference, the following findings are made by the Board of the San Jacinto Unified School District. This enumeration of findings is not

meant to be exhaustive, and only represents a part of the Board's basis for reaching the conclusion stated below:

1. ASR Failed to Interact With the District and its Construction Manager on the Estudillo Project, At All Times, in a Professional Manner.

The following is not meant to be an exhaustive basis for this finding, but rather exemplifies the type of documentary and testimonial evidence that contributed in part to the Board's basis:

The Board recognizes that the District's construction manager (in the case of the Estudillo Project, C.W. Driver), is the District's agent in managing and coordinating complex and multifaceted construction projects. Contractors who fail to cooperate with the District's construction manager jeopardize the smooth and orderly progress of District projects, thereby damaging the District's interest in having projects proceed and conclude efficiently, professionally and on schedule.

- a. Mark Berry's handwritten comments (on C.W. Driver's January 13, 2005 letter to ASR) which stated: "Who's the Bozo that wrote this!" "You Are poor contractors and Awful mangers!" ASR did not explain, retract or make a commitment to the Board that these types of unprofessional expressions would not continue on future projects.
- b. Mark Berry's handwritten comments (on C.W. Driver's January 14, 2005 letter) which stated: "Very weak Just like CM skills!" ASR did not explain, retract or make a commitment to the Board that these types of unprofessional expressions would not continue on future projects.
- c. Mark Berry's handwritten comments (on C.W. Driver's August 21, 2003 letter Project Construction Water) which stated: "Its very Apparent you Have very little CM experience. Your man on site has no Public School experience at all! Mark Berry" ASR did not explain, retract or make a commitment to the Board that these types of unprofessional expressions would not continue on future projects.
- d. Mark Berry's handwritten comments (on C.W. Driver's August 21, 2003 letter rejecting Change Order Request #6), which stated: "Mark Kenny, It Appears Driver Has Very Little if ANY Knowledge of Estimations Public Schools or how to Build public schools. Be prepared for Claims! Mark Berry" ASR did not explain, retract or make a commitment to the Board that these types of unprofessional expressions would not continue on future

District Either Terminating or Descoping ASR.

The following is not meant to be an exhaustive basis for this finding, but rather exemplifies the type of documentary and testimonial evidence that contributed in part to the Board's basis:

- a. The testimony of Mark Kenney and ASR's May 10, 2004 letter shows that ASR accepted the rough grading of the playfield on May 7, 2004. ASR's May 10, 2004 letter states the following:  
  
"Please be informed that ASR field foreman (TINO) met and walked with Chris Butler (CW Drive) (sic) on Friday May 7 at ball Filed (sic) area. Note that per field conversation had between two parties mentioned above, the field was agreed to have been acceptable to commence landscaping work by our forces. I believe that your grading contractor had also being (sic) informed of this acceptance"
- b. The testimony of Mark Kenney revealed that in July 2004, C.W. Driver tested the irrigation system and discovered concentrations of water and poor drainage demonstrating that ASR had failed to create an even grade engendering a rolling effect. Mr. Kenney used a topographic map at the hearing (incorporated into these findings by this reference) to show that the field had high and low spots that trapped water on the field creating puddling. This occurred throughout the entire field, not just in and around the invert.
- c. The Landscape Architect's September 8, 2004 field report, states: "The situation with the drainage on the playfield has never been resolved. There is still standing water in several areas on the playfield." "The drainage in the Playfield has never been corrected."
- d. C.W. Driver's September 16, 2004 letter to ASR, states, "The field is improperly graded; as a result, storm and irrigation water does not drain properly."
- e. September 29, 2004, C.W. Driver's 48 Hour Notice to ASR to proceed with fixing the grading and irrigation problems.
- f. The evidence showed that ASR failed to accept responsibility for the playfield and fix the grading problems. In response to ASR'S refusal, C.W. Driver's October 6, 2004 correspondence stated:  
  
"Rough grading in the playfield areas was accepted by ASR Constructors on May 10, 2004. From which time, ASR

Constructors assumes responsibility for these areas per all contract considerations - which includes, but is not limited to, the following:

Finish grading shall consist of bringing all ground areas to uniform slopes, meeting grades of installed curbs, paving, etc. And drainage at a 2% slope unless otherwise indicated on the Drawings (02931-12, 3.01.F).

Warp grades as necessary to prevent accumulation of water at locations where designed drainage meets an obstruction (02931-12, 3.01.J).

All planting areas need to be finish graded to a smooth and even condition. Make sure no water pockets or irregularities remain. (02931-12, 3.01.K).

I am astounded by the fact that you claim ASR Constructors is not responsible for the standing water issues in the playfield, however, offer no reasons or explanations. After reviewing your contract agreement and all responsibilities outlined in the Contract Document, it is C.W. Driver's understanding that the problem with the standing water in the playfield is ASR Constructor's responsibility."

- g. The evidence showed that ASR'S failure and refusal to fine grade the field properly created a safety hazard:
- 1) C.W. Driver's September 16, 2004 letter to ASR states: "Numerous Safety hazards exist on both fields: sprinklers 2" above surface represent trip hazards; stagnate mud holes throughout the field with standing water."
  - 2) The County of Riverside issued a notice to the District to remedy the problem of the lack of drainage on the playfield as it increased the incidence of mosquitoes enhancing the risk of spreading the West Nile Virus.
- h. The Board found Mark Kenney's response to ASR'S counter-argument compelling:

ASR provided the District with a survey (that is part of the documentary evidence submitted by the District) which purports to assign blame to the invert for the field's condition. The evidence showed that the District and Mark Kenney had reviewed the survey that ASR provided and it confirmed that ASR did not properly fine grade the field.

Mark Kenney testified to and explained in District correspondence that ASR'S survey was inadequate to show the full extent of the problem since only approximately 16,000 square feet of the more than 120,000 square foot field was surveyed. But, even with this limitation, the Board recognizes that the grades which are to have a constant slope to the east of 0.50%, in actuality rise and fall. For example the elevation provided at the second row, second point from the right of the grid (91.78) is dammed by elevations surrounding it that are one to three inches higher.

ASR insists that the invert elevation on the drain pipe at the southeast corner of the field is the cause of ponds over the 120,000 square foot field. The Board finds this assertion untenable since the invert of the pipe is approximately 2" above the turf and the water flows from this pipe and runs about forty feet and stops due to a high ridge in the grade.

- i. In contrast to ASR'S survey, Mark Kenney testified about the condition of the field by use of a District commissioned survey that produced a topographic of the entire field. The Survey completed at the end of November 2004 corroborates the above-referenced facts, which show that ASR failed to grade the field properly. The high and low spots are clearly marked on the survey with use of a high lighter, as well as excessive water collection forming puddles. Finally, the survey demonstrates that a swell runs vertically and adjacent to the street creating an entrenched barrier preventing the water from draining properly. This survey represents direct evidence of ASR's unworkmanlike performance and its need to correct the field's grade and inadequate drainage.
- j. The District presented multiple photographs showing the poor condition of the field, including severe ponds, large holes filled with sand, a saturated backstop, and the general unusable condition of the field. ASR neither presented rebutting photographs nor video footage of the field, even though, evidence revealed ASR repeatedly videotaped the playfield before it was regraded.

3. ASR Refused to Regrade the Field, Even Under Protest, After Given Multiple Opportunities To Do So.

The following is not meant to be an exhaustive basis for this finding, but rather exemplifies the type of documentary and testimonial evidence that contributed in part to the Board's basis:

- a. Evidence demonstrated that the landscape architect's action report, and expert topographic showed that the only appropriate fix of the playfield was to regrade it.

"If someone were occasionally stopping by the project observe the progress, they would notice the parking lot planters are dry and many plants are being lost."

"Although the Irrigation Controller has now been certified it was only after C.W.'s constant demand and eventual issuance of a 48 Hour Notice. The Irrigation Pump, however, remains uncertified. ASR's failure to flush the lines and valves has caused the valves to continue to release water between spray cycles, otherwise described as bubbling. This bubbling creates over watering and leads to the creation of holes and an uneven grade. Lastly, as shown above, ASR installed sprinkler heads that were not in accordance with the plans and specifications."

5. ASR Failed to Provide Palms in Accordance with the Specifications and Contract Documents and Deliberately Supplied Nonconforming Replacement Palms on the Estudillo Project

The following is not meant to be an exhaustive basis for this finding, but rather exemplifies the type of documentary and testimonial evidence that contributed in part to the Board's basis:

a. Testimony of Mark Kenney, Chris Butler, Julie Arthur and documentary evidence showed that ASR provided Palms that were non-conforming on the Estudillo Project.

b. C.W. Driver's September 16, 2004 letter states:

"Installed palm trees are not per specification and improperly planted; several palms are leaning due to soil saturation from over-watering,"

"All palm trees show signs of uneven trunk growth; these trees do not resemble palms shown in submittal package from ASR constructors."

"We need to have some justification as to why the palms were accepted on the courtyard. These Palms are very uneven and the trunks are extremely fat at the base. They do not look anything like the Palms that we accepted during the submittal process...They should not have been accepted and should be replaced!!!"

c. Testimony of Mark Kinney and Julie Arthur revealed that ASR twice provided replacement palms that were also nonconforming.

d. District presented photographs showing the nonconforming palms. ASR failed to rebut these photographs.

6. ASR Failed to Meet Contractually Required Design Strength of 3000psi at 28 days and Failed to Correct the Inadequate Design Strength Requiring

the District to Accept Concrete Foundations at Estudillo Elementary With Design Strength Less Than That for Which the District Paid and Contracted.

The following is not meant to be an exhaustive basis for this finding, but rather exemplifies the type of documentary and testimonial evidence that contributed in part to the Board's basis:

a. Mark Kenney, Chris Butler and Julie Arthurs' testimony that ASR repeatedly failed to meet contract concrete design strength.

b. Structural Engineer's August 15, 2003 letter to ASR, which states:

"We have been notified by both DSA (Mike Green) and the L.O.R. (Scott Bedgood) that all of the 28-day concrete cylinder breaks to date have failed to meet the specified design strength of 3000 psi. The information we have been given to date via phone reports is that the breaks are anywhere from 90% to 71% of the specified strength."

c. PJHM's August 19, 2003, which states:

"...the concrete used for foundations has failed to meet design strength at twenty-eight days."

d. Evidence was presented demonstrating ASR'S repeated test failures.

e. PJHM June 1, 2004 letter to DSA, which states:

"We are submitting PCO#7 to revise the PSI for the structural concrete. The Concrete did not meet the structural breaks within the twenty-eight days."

f. Structural Engineer's Notes accepting 2500psi, as opposed to 3000psi.

g. Testimony that there could be foundational problems at the Estudillo site. Further, Mark Kenney testified that ASR did not give the District a credit for the District's reluctant acceptance of ASR'S inability to reach appropriate design strength.

7. ASR Initiated Litigation Against the District.

a. ASR initiated litigation against the District demanding compensation for the fine grading scope of work on the Estudillo Project, even though the District had to pay for another contractor to

regrade the field properly after ASR repeatedly refused to do so (even under protest).

- b. Testimony of Julie Arthur that it would cause problems, including scheduling and quality of work problems, having ASR perform on a District project while currently in litigation with the District.

Conclusion

The above findings are not meant to be an exhaustive basis for the Board's conclusion, but are rather meant to represent a small sample of factual findings that lead to the Board's decision.

The Board finds that there was sufficient evidence presented to demonstrate that ASR failed to perform in a workmanlike manner on the Estudillo Project, including but not limited to, refusal to correct unacceptable work, ASR's failure to meet concrete design strength, failure to uniform, warp and slope grade the field in a sufficient manner, failure to install portions of the irrigation system in a good and workmanlike manner, failure to weed and adequately amend the soil, failure to provide palms in accordance with the specifications and contract documents and failure to interact with the District, at all times, in a professional manner.

The Board finds that ASR'S past poor performance reviewed above on the Estudillo Project, especially its repeated refusal to correct its poor performance, even under protest, and its general unprofessional and confrontational attitude toward the District, demonstrates that it is not responsible to perform the North Mountain Project or any other District Project for a period of five years. At the expiration of 5 years from the date of these findings, ASR may bid District jobs.

Further, the documentary evidence and public records show that there is such a unity of interest between ASR and ASR/Duke, including but not limited to, the same business address, business location, business telephone number and same principals or owners, such that a recognition of separateness would be improper, and would not protect the District from the exhibited unprofessional conduct of the companies' mutual principals and inability to sufficiently perform.


Based on the testimony and documentary evidence presented during the Non-responsibility hearing on May 9, 2006, the Board asserts that it has ample evidentiary support to make this decision and hereby concludes this statement of findings.

DATED: May 23, 2006

Submitted by:

San Jacinto Unified School District

By:

  
Joseph R. Busek, Assistant Superintendent  
Of Business and Facilities



STEPHEN J. DENSMORE  
ROGER P. HEYMAN

OF COUNSEL  
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TELEPHONE 818.703.9494  
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www.hdlawllp.com

Writer's Email Address:  
heyman@hdlawllp.com

October 20, 2008

*Via Facsimile & U.S. Mail*

ASR Constructors, Inc.  
5230 Wilson Street  
Riverside, California 92509  
Attention: Alan Regatti, President

RE: Palm Desert Sheriff Station Bid  
Thermal Sheriff Station and Aviation Complex Bid  
Debarment

Dear ASR Constructors, Inc.:

The County has received two additional documents which reflect upon the non-responsibility of ASR and which will be presented to the Board of Supervisors prior to the hearing. Those documents are the transcription of a voicemail received by AA Fire Protection on October 1, 2008 and the Declaration of Ygal Shoukrun. Copies of both are attached hereto.

The County has received your letter of October 17, 2008.<sup>1</sup> In order to insure that there is no misunderstanding on your part and that ASR has a full opportunity to respond to the issues raised by the bid protest and the arguments and evidence presented therein, I did want to point out two things to ASR.

First, your letter repeatedly refers to ASR as the "successful bidder." As a matter of law, the contract is to be awarded to the lowest responsive and responsible bidder. The October 28, 2008 hearing is for the purpose of determining whether or not ASR is a responsible bidder. Unless and until a determination has been made that ASR is a responsible bidder, ASR is not the "successful bidder."

Second, your October 17, 2008 letter appears to focus on the ability of ASR to do the work (Pages 2, 8 and 9 and Exhibits C and D). As a matter of law, "responsibility" includes and requires not only that the bidder has the ability to do the work but also that the bidder has demonstrated the "attribute of trustworthiness." See e.g., *Public Contract Code* § 1103; *City of Ingelwood v. Superior Court* (1972) 7 Cal.3d 861, 867. It is the "attribute of trustworthiness"

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<sup>1</sup> Page 7 of the letter was missing, however. If you will email or fax me a copy, I will circulate it.

ASR Constructors, Inc.  
Alan Regatti, President  
October 20, 2008  
Page 2

that is raised by the bid protest and the facts and evidence presented therein. This is the attribute on which the hearing will be focused. Argument and evidence as to ASR's ability to perform the work and argument and evidence as to whether the asserted attempts to manipulate the bidding (if they occurred) were in fact the cause of ASR being the lowest bidder do not address the issue of the attribute of trustworthiness raised by the protest.

Finally, it would avoid delay if in the future any letters, documents or declarations transmitted by ASR to the Clerk of the Board and/or to the Department of Facilities Management were simultaneously transmitted to my office.

Very truly yours,

HEYMAN DENSMORE LLP



Roger P. Heyman

RPH:ims  
Attachments

cc: James E. Klinkert, Esq. (*via facsimile-w/attachments*)

Transcription Of Voice Mail Received By AA Fire Protection on October 1, 2008 Before 2:00 p.m.

"Hey uh it's Alan at ASR Constructors... we're bidding that Palm Desert Sheriff Station today and I'm lookin' at your quote here, uh, along with all the other quotes I have here for fire protection, and uhm, ... just calling to make sure you're aware, I hate these things to come back and bite me later on. Uh, you know you're about fifty, sixty thousand dollars below, my, my other low bid. So... like I am saying I'm calling to make sure everything looks good to you. But, uh, take a look at it, let me know...951-779-6580, thanks, bye."

[Original recording on machine of AA Fire Protection, audio tape of same in the possession of Jaynes Corporation of California Lawyers.]

OCT 17 2008

Oct 16 2008 14:40

P.02

DECLARATION OF YGAL SHOUKRUN

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I, Ygal Shoukrun, declare as follow:

1. I am the President of AA Fire Protection, Inc. ("AAFP") and all matters stated below are known to me unless stated otherwise. I could and would competently testify to the matters stated below if I was called as a witness in court. I am over the age of 18 years, and of sound mind.

2. AAFP is a fire sprinkler contractor which performs fire sprinkler installations on construction projects in California.

3. As President of AAFP, my job duties include preparing and submitting bids to perform fire sprinkler work on construction projects. Many of AAFP's bids are to perform fire sprinkler work as a subcontractor to a general contractor who has the direct contract with the project owner. I performed these estimating and bid submission activities with respect to the Riverside County Palm Desert Sheriff Station (the "Project").

4. On October 1, 2008, which was bid day for the Project, ("Bid Day") around 8:30 a.m., AAFP started faxing its bid proposal for the Project to the 22 general contractors I expected might be bidding the Project. Jaynes Corporation of California ("Jaynes") and ASR Constructors, Inc. ("ASR") were among these 22. AAFP's bid offered to perform the fire sprinkler system scope of work on the Project for \$289,000.00. A true and correct copy of the AAFP bid, known personally to me as what I prepared, and faxed to the 22 general contractors on Bid Day, is attached as Exhibit 1 and incorporated by reference as though set forth in full at this point.

5. I sent the same bid, copy attached as Exhibit 1, to both Jaynes and ASR on Bid Day before 2:00 p.m.

6. AAFP did not withdraw or revise the bid attached at Exhibit 1 on Bid Day or at any other time.

7. I have been informed Jaynes received a copy of the AAFP bid with handwritten amendments on Bid Day purporting to increase AAFP's price from the real price of \$289,000.00 to \$323,000.00. AAFP neither prepared the amendment nor conveyed the

1 amended document on Bid Day or any other time to Jaynes or any other bidder. AAFP's bid  
2 price for the Project was instead at all times \$289,000.00.

3 8. On Bid Day, I was contacted by Jaynes and asked if I changed my bid price. I  
4 responded that I had not, and AAFP did not fax revision to its bid on Bid Day or at any time to  
5 any of the 22 general contractors I submitted the AAFP bid to.

6 9. On the Bid Day before 2:00 p.m., I did receive a voice mail message from a  
7 man who identified himself as "Alan with ASR Constructors" and he stated on the message  
8 that he had AAFP's bid and it was "\$50,000.00 lower than his other low bids," he wanted to  
9 make sure that the price looks good to AAFP and he didn't want the AAFP price of  
10 \$289,800.00 to "come back and bite" AAFP. He left the call back number of 951-779-6580.

11 10. AAFP never changed its price from \$289,000.00. Someone else tried to trick  
12 Jaynes into believing I increased the AAFP bid price for the Project on Bid Day to my  
13 detriment which I believe is fraudulent and unfair.

14 I declare under penalty of perjury under the laws of the state of California that the  
15 foregoing is true and correct to the best of my knowledge and belief. Executed this 17 day of  
16 October 2008, in Chatsworth, California.

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18 \_\_\_\_\_  
19 YGAE SHOUKRUN

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24 988.622/DR.J148.doc  
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**EXHIBIT "1"**

## AA FIRE PROTECTION, INC

2000 Lemmer Street  
Chatsworth, CA 91311-4502  
Phone (818) 885-8962 Fax (818) 885-1506  
Lic. #766198

Proposal Submitted to  
General Contractor

Job Address  
PALM DESERT SHERIFF STATION  
7370 GERALD FORD DR  
PALM DESERT CA 92260

We hereby propose to furnish the materials and perform the labor necessary for the installation of the Fire Sprinkler System for the above project. Fire Sprinkler System will be completed as per plans and specifications and in accordance with NFPA 13 and city Fire Department codes.

Exclusions: Fire Service, Fire Hydrant, Fire Alarm System, painting, patching, electrical wiring, fire hose equipment, fire extinguisher, saw cutting of pavement, patching of pavement, water motor gear, backflow preventor, fire pumps, jockey pumps, valves, insulation, fire cycle, rack system, fire watch, underground work.

Starting Point: from the riser up 6 inches above ground inside the Building.

All materials are guaranteed to be as specified, and the above work to be performed in accordance with the drawing and specifications submitted for the above work and completed in substantial workmanlike manner for the sum of ~~—~~ **TWO HUNDRED EIGHTY NINE THOUSAND DOLLARS AND 00/CENTS (\$289,000.00)** with payments to be made as work progress.

Date: 10/1/09

Note: This proposal will automatically expire if not accepted within 90 days.  
If accepted, this proposal should be incorporated as part of the contract.

Any Alteration or deviation from the above specifications involving extra costs, will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance upon above work. Workman's compensation and public Liability Insurance on above work to be taken out by AA Fire Protection, Inc. **NO BID BOND, NO PERFORMANCE BOND, NO PAYMENT BOND, NO PERSONAL GUARANTEE** will be provided by AA Fire Protection Inc.

### ACCEPTANCE OF PROPOSAL

AA Fire Protection, Inc. shall only recognize acceptance of proposal before timely receipt of a written acceptance.

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above. Acceptance of proposal shall only mean AA Fire Protection, Inc. will negotiate in good faith for the execution of a construction agreement at the proposed price for the work to be performed. AA Fire Protection, Inc shall not be bound to perform the work unless and until written construction agreement is signed by all parties.

Accepted: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

LAW OFFICES OF  
RITCHIE, KLINKERT & McCALLION

THOMAS B. RITCHIE  
JAMES E. KLINKERT  
JAMES McCALLION  
PAUL J. GUTIERREZ

ONE LAKESHORE CENTRE  
3281 GUASTI ROAD, SUITE 425  
ONTARIO, CALIFORNIA 91761

area code 909  
telephone 390-9999  
facsimile 390-9990

October 17, 2008

**HAND DELIVERED**

Nancy Romero  
Clerk of the Board  
County of Riverside  
County Administrative Center  
1080 Lemon Street, 1<sup>st</sup> Floor  
Riverside, California 92501

Frank J. Gonzales  
Project Manager III  
County of Riverside  
Department of Facilities Management  
3133 Mission Inn Avenue  
Riverside, California 92507-4199

Re: County of Riverside - Palm Desert Sheriff Station (Bid Date - October 1, 2008)

Dear Ms. Romero and Mr. Gonzales:

This firm is counsel to ASR Constructors, Inc. ("ASR"), the successful bidder in connection with the construction of the Palm Desert Sheriff Station ("Project"). Please allow this letter to serve as ASR's preliminary response to the nonmeritorious bid protest ("Bid Protest") of unsuccessful bidder Jaynes Corporation of California ("Jaynes").

**1. Introduction and Summary of Response.**

The concept of competitive bidding is core to the public contract process, and only in exceptional circumstances should a winning bid be rejected and the taxpayer be required to pay more for construction of a project. In direct contravention to the principles of competitive bidding, Jaynes has been on a mission to eliminate ASR as competitor for some time. By its own admission, it has been harassing ASR for several years with unwarranted bid protests. (Bid Protest, p. 2, ¶1.)

In this latest instance, without showing how its bid was affected in even the slightest way, Jaynes and its lawyers construct a false edifice out of groundless accusations in the blind hope that its inferior bid will somehow be elevated to contract award status at the expense of County

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Nancy Romero  
Frank J. Gonzales  
October 17, 2008  
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taxpayers. None of the conduct complained of by Jaynes constitutes collusion. More importantly, nothing in the Bid Protest even begins to explain the \$1,513,000 difference between the losing Jaynes bid and the successful ARS bid somehow resulted from the conduct of which Jaynes complains. Thus, even if Jaynes' assertions were true, there would be no merit to its bid protest.

But Jaynes assertions are not true. In fact, they are patently and outrageously false. The entire Bid Protest is based on innuendo supported by huge leaps of faulty logic. Rather than spend its time carefully bidding projects so as to save the taxpayers money, Jaynes prefers to engage in libelous, unfounded accusations in the hope it can occasionally steal a contract award it has not earned.

**2. Public Policy Strongly Favors the Award of Contracts to the Lowest Bidder.**

The primary purpose of the competitive bidding provisions of the Public Contract Code is to secure the best work or supplies at the lowest price practicable. (Kajima/Ray Wilson v. Los Angeles County Metropolitan Transp. Authority (2000) 23 Cal. 4<sup>th</sup> 305.) The process of selecting the "lowest responsible bidder" includes a determination of: (1) which bidder is the "lowest monetary bidder," (2) whether or not the lowest bidder submitted a "responsive bid," and (3) whether or not the lowest monetary bidder is "responsible." (City of Inglewood-L.A. County Civic Center Authority v. Superior Court (1972) 7 Cal. 3d 861); Taylor Bus Service, Inc. V. San Diego Board of Education (1987) 195 Cal. App. 3d 1331.) If the lowest monetary bidder is responsible and submits a responsive bid, the contract must be awarded to the lowest monetary bidder. According to the California Supreme Court: "Thus, a contract must be awarded to the lowest bidder unless it is found that he is not responsible, i.e., not qualified to do the particular work under consideration. (City of Inglewood, supra.)

**3. Even if the Speculative Assertions of Jaynes and its Lawyers Were True, Jaynes' Bid Protest Would be Meaningless Because Jaynes Cannot Show that its Losing Bid Would Have Been Any Different Had the Incidents of Which it Complains Not Occurred.**

Before any of Jaynes' ridiculous contentions can even be considered as having merit, Jaynes should first be required to demonstrate how the incidents it speculates were accomplished by ASR caused Jaynes' bid to be \$1,513,000 higher than it otherwise would have been.

Attached as Exhibit A is the summary of bids for the Project. ASR's successful bid was

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\$20,197,000. Jaynes' losing bid was \$21,710,000. Jaynes' unsuccessful bid was thus \$1,513,000 higher than the successful bid of ASR.

The process of sifting through all of the extraneous verbiage of the Bid Protest yields an inescapable conclusion that mandates denial of the bid protest: The conduct complained of by Jaynes did not alter Jaynes' unsuccessful bid. Jaynes has not set forth a single fact suggesting that *its bid would have been even one nickel lower - let alone the \$1,513,000 difference between its bid and that of ASR - had the conduct of which it complains not occurred.* (If Jaynes had changed its bid by even a modes amount, that fact would have certainly been set forth in bold type in the Bid Protest.) If Jaynes could present competent evidence of facts that caused its bid to be increased by \$1,513,000 prior to bid time, then Jaynes might have a legitimate basis for protest. Without such facts, however, Jaynes Bid Protest has no substance and amounts to nothing more than the whining of a losing bidder.

Jaynes doesn't set forth the exact time its bid was filed, doesn't reveal the subcontractor list either as it was filed or as it existed 50 minutes prior to bid time, and doesn't reveal the status of Jaynes' bid at the point in time 50 minutes prior to bid time. The reason for this is simple: Despite all of Jaynes' complaints, the complaints had absolutely no effect on its bid. There is simply no explanation as to how Jaynes was induced to submit a bid even one dollar higher than the ASR bid, let alone the \$1,513,000 actual differential between the two bids.

Although Jaynes' bid protest colorfully illustrates the busy activity of a public project bid day, it leaves out all facts specifically relevant to its bid on this particular Project. At precisely what time was Jaynes' bid actually submitted? What changes if any were made to the Jaynes bid during the final 50 minutes prior to the bid deadline? Which of its subcontractors and suppliers submitted bid changes during those final 50 minutes, and what was the nature and substance of those changes? Jaynes' remarkable silence on these potentially relevant issues suggests that either (1) Jaynes' bid was submitted before any of the conduct on the part of ASR is alleged to have occurred, or (2) although Jaynes' bid was submitted after some of the conduct falsely attributed to ASR occurred, such conduct still did not cause any change in the Jaynes bid.

The following questions remain unanswered by Jaynes:

1. How if at all did Jaynes' bid change as a result of the "offensive bid solicitations" (Tabs 5, 6, and 7) that were unrelated to the Project yet complained of by Jaynes in its Bid Protest?
2. How if at all did Jaynes' bid change as a result of the AA Fire Protection bid modification (Tab 11) complained of by Jaynes?

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3. How if at all did Jaynes' bid change as a result of the Olympic Air Conditioning bid withdrawal (Tab 12) complained of by Jaynes ?

Given the lack of connection between the conduct complained of by Jaynes and the amount of its bid, there is no need for the County to waste precious time further evaluating the Bid Protest.

**4. Jaynes' Bid Protest is Built Entirely on Speculation, Conjecture and Surmise, and the "Facts" Asserted by Jaynes are Simply Not True.**

Even the most cursory review of the Bid Protest reveals the many logical flaws and evidentiary shortcomings of the fantasy scenario concocted by Jaynes. The "facts" complained of by Jaynes simply did not occur. Set forth as Exhibit B is the Declaration of Alan S. Regotti, President of ASR ("Regotti Declaration"). The Regotti Declaration confirms that:

a. Mr. Regotti did not create any of the documents complained of in the Bid Protest. (Regotti Declaration, p. 1, ¶2(a).)

b. Mr. Regotti did not direct the creation of any of the documents complained of in the Bid Protest. (Regotti Declaration, p.1, ¶2(b).)

c. Mr. Regotti did not transmit any of the documents complained of in the Bid Protest. (Regotti Declaration, p. 1, ¶2(c).)

d. In fact, Mr. Regotti did not have anything to do with any of the documents complained of in the Bid Protest. (Regotti Declaration, p. 1, ¶2(d).)

Some of the more significant building blocks of Jaynes' elaborate false edifice are the result of inaccurate facts cemented with faulty logic:

The Notion that ASR and T.S. Steel are Somehow One and the Same

Much of the fantasy developed by Jaynes depends on its assertion that ASR and T.S. Steel are somehow the same entity. For example, Jaynes attributes to and blames ASR for various documents allegedly traceable to a T. S. Steel username. (Bid Protest Tabs 5, 6, 7.)

But the only connection between the two firms is that they share a common address. This is one of the few accurate facts that can be found in the Bid Protest - it is undisputed that T. S.

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Steel has the same address as ASR Constructors. In fact, T.S. Steel rents space from ASR. (Regotti Declaration, p. 1, ¶3.) But there is no other connection between the two companies. There is no common ownership. (Regotti Declaration, p. 1, ¶3.) There is no common management. (Regotti Declaration, p. 1, ¶3.) There are no employees shared by the two companies. (Regotti Declaration, p. 1, ¶3.) The companies have different responsible managing officers. (Regotti Declaration, p. 1, ¶3.) The companies have different licenses. (Regotti Declaration, p. 1, ¶3.) The companies have different types of licenses. (Regotti Declaration, p. 1, ¶3.) ASR and T.S. Steel have different bonding companies. (Regotti Declaration, p. 1, ¶3.) Many of these facts are evident from review of the contractor license printouts included at Tab 3 in the Bid Protest.

It is possible under California law to obtain a judicial determination that two companies should have their separate entity veils "pierced" and be treated as a single entity. A corporate identity may be disregarded - the "corporate veil" pierced - where an abuse of the corporate privilege justifies holding the equitable ownership of a corporation liable for the actions of the corporation. Under the alter ego doctrine, then, when the corporate form is used to perpetrate a fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose, the courts will ignore the corporate entity and deem the corporation's acts to be those of the persons or organizations actually controlling the corporation, in most instances the equitable owners. (Sonora Diamond Corp. V. Superior Court (2000) 83 Cal. App. 4<sup>th</sup> 523, 538.)

Alter ego is a limited doctrine, invoked only where recognition of the corporate form would work an injustice to a third person. (Seen generally, 9 Witkin, Summary of Cal. Law (9<sup>th</sup> ed. 1989) Corporations, §§ 12-23, pp. 524-537.) To prevail on a claim of "alter ego," the third party must show (1) there is such a unity of interest that the separate personalities of the corporations no longer exist; and (2) inequitable results will follow if the corporate separateness is respected.

To prevail on a claim of "alter ego," the third party must show (1) there is such a unity of interest that the separate personalities of the corporations no longer exist; and (2) inequitable results will follow if the corporate separateness is respected. Certainly the facts of each case vary." (Tomaselli v. Transamerica Ins. Co. (1994) 25 Cal.App.4th 1269, 1289; Associated Vendors, Inc. v. Oakland Meat Co. (1962) 210 Cal.App.2d 825, 836-837.)

The Tomaselli court further noticed that such factors tending towards disregard of the corporate fiction include "inadequate capitalization, commingling of assets, disregard of corporate and formalities." (Id.)

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Expanding on the concept of "unity of interest," the Tomaselli court said, "the issue(s) vary according to each case and are fact specific. Among the facts which can be considered are financial issues (e.g., was the corporation adequately capitalized?); corporate formality questions (e.g., was stock issued, are minutes kept and officers and directors elected, are corporate records segregated?); ownerships issues (e.g., what is the stock ownership picture?); commingling issues (e.g., are corporate assets commingled, does the parent company merely use the corporate shell of the subsidiary to obtain goods and services for the parent company?). If these factors show a unity of interest, and it is also shown that honoring the corporate shell would promote a fraud or injustice, the third party may be permitted to "pierce the corporate veil" and hold the parent entity liable for the corporate activities. (*Id.* at 842.)

None of these bases for deeming one corporation to be the alter ego of the other is present with respect to ASR and T. S. Steel. No reported case in California has ever applied the piercing doctrine to two companies merely on the basis of a shared address. Yet that is precisely what Jaynes urges the County to do in this instance - view all actions of T. S. Steel as the actions of ASR ! Without this leap of logic, nearly all of Jaynes' assertions fail to make it out of the starting block.

The Opinions of James Black

The connection Jaynes strains to make between ASR and the documents attached to the bid protest derive primarily from the highly questionable opinions of a purported document examiner, James Black.

The first observation worthy of note is that Mr. Black somehow received his assignment, received the documents in question, evaluated the documents in question, formed his opinions and framed them in his declaration on Monday, October 6 - just two business days after the Project bids were made public on the County website. The answer is simple: Mr. Black was told what to say by Jaynes' lawyers, who also prepared his declaration.

Among the many problems with Mr. Black's conclusions:

1. His conclusions were based on only a *preliminary* review of the documents in question. (Black Declaration, p. 1, ¶2.)
2. His conclusions were based on questioned documents and exemplar documents provided by Jaynes' attorneys. (Black Declaration, p. 1, ¶2.)

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3. His conclusions were influenced by the Bid Protest itself which had been provided to him. (Black Declaration, p. 1, ¶2.)
4. His conclusions were based on *purported* exemplar documents. (Black Declaration, p. 1, ¶3.)
5. His conclusions were based on *purported* questioned documents. (Black Declaration, p. 1, ¶4, 5.)
6. His conclusions were based on his opinion that certain documents were faxed from the same brand and model fax machine, but the detailed basis for this opinion and the relevance of the opinion (i.e., the number of such machines in service, etc.) are omitted. (Black Declaration, p. 1, ¶6.)
7. His conclusions were based on his belief - again unsupported by any detailed analysis - that certain documents were *likely* faxed from the same machine. (Black Declaration, p. 1, ¶6.)
8. His conclusions were based on his belief that *some* of the documents reviewed contain the handwriting of *the same person*. (Black Declaration, p. 2, ¶7.)
9. He concludes that this *same person* is Alan Regotti because he was told that is the case. (Black Declaration, p. 2, ¶7, 8.)
10. His conclusions were based on the fact that the header of one document *probably* reads 951-779-6588. (Black Declaration, p. 2, ¶10.)
11. He concludes the number that *probably* reads 951-779-6588 is the fax number of ASR because "that is what I have been told." (Black Declaration, p. 2, ¶10.)
12. All of his opinions and conclusions are stated to be true only "to the best of my knowledge and belief" (Black Declaration, p. 2, lines 23-25) which knowledge and belief, as noted above, results largely from what he was told by Jaynes' attorneys.

"I have been told," "probably," "some," "preliminary" - the holes in Mr. Black's opinion are large enough to drive a rather large truck through. They would not stand up in a court of law and should not be considered by the County of Riverside as evidence of anything. Certainly the taxpayers of this County cannot be subjected to an additional \$1,513,000 in cost based on such "opinions" !

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The Allegedly Changed Bids of AA Fire Protection and Olympia Air Conditioning

Jaynes cites changes to the bids of subcontractors AA Fire Protection and Olympia Air Conditioning during the final minutes prior to bid deadline as somehow disrupting its bid. It is notable that both of these subcontractors are listed on the Jaynes subcontractor list submitted with its bid, so obviously no change resulted from the communications Jaynes wrongful attributes to ASR. And, as noted above, there is no explanation as to how if at all the alleged communications concerning these bids affected the final Jaynes bid figures.

**5. The Ridiculous Assertions of Jaynes Even if True Would Not Amount to a Violation of any Noncollusion Affidavit.**

The suggestion that the communications wrongfully attributed to ASR were for the purpose or had the effect of fixing bidding on the Project is absurd. The whole purpose of anticollusion covenants is to ensure that multiple possible bidders will not conspire to eliminate or weaken competitive bidding.

Indeed, the very definition of the term "collusion" implies conspiracy among prospective bidders. According to the Merriam-Webster Online Dictionary, the "collusion" means a "secret agreement or cooperation especially for an illegal or deceitful purpose." Thus, by definition, one cannot collude with oneself. Even if Jaynes' groundless assertions were true, they involve unilateral conduct as opposed to a multi-party conspiracy. As a result, there was no "collusion" in this instance. Nor was there any *fixing* of anything. Thus, this argument of Jaynes fails because the concept of anticollusion simply does not apply to the facts it has dreamed up.

**6. ASR is a Highly Responsible Bidder.**

In the past nine years, ASR has successfully completed more than 600 public construction projects with an aggregate contract price of \$498,785,495. ASR estimates that its construction of these projects has saved taxpayers approximately \$30,000,000 in the aggregate, based on its estimate of the differential between its successful bids and the next lowest bid on each project. Nine of those projects have been for the County of Riverside with an aggregate contract amount of \$57,893,969. Attached as Exhibit C is a schedule of projects ASR has completed for the County of Riverside that sets for the contract amount and the differential between the contract amount and the bid of the next highest bidder. The savings to taxpayers (i.e., the bid differential) on those nine Riverside County projects alone was \$2,621,000. ASR maintains its principal offices in the County of Riverside. ASR's proven track record of completed public construction

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projects for the County of Riverside is perhaps the best evidence that ASR is a responsible bidder.

Attached collectively as Exhibit D are letters of recommendation from just a few of the many public entities that have enjoyed the benefits of ASR's construction expertise in recent years.

With respect to the "findings and determinations" of other public entities referenced in the Bid Protest at Tab 20, Jaynes and its attorneys would be well advised to get their facts straight. The Val Verde School District matter was the subject of litigation that has been resolved without any finding that ASR was nonresponsible. The San Jacinto debarment of ASR was recently overturned by the Riverside County Superior Court. The ill-considered actions of the City of Hesperia have also been preliminarily addressed by the Court. On October 16, 2008, Judge Thomas Garza, of the San Bernardino Superior Court, issued a restraining order against the City of Hesperia. Some competitors of ASR - perhaps including Jaynes itself - are conducting a coordinated smear campaign against ASR for the purpose of eliminating a competitor. Such efforts will be dealt with harshly.

**7. The Efforts of Jaynes to Eliminate a Highly Effective Competitor that has Saved Taxpayers Many Millions of Dollars Over the Past Seven Years Must be Ignored.**

Set forth the aggregate amount of winning bid differential (i.e., the amount saved by taxpayers). Several of the bids won by ASR were on jobs also bid by Jaynes. Jaynes would obtain more work and make more money, at taxpayer expense, if ASR were somehow eliminated from the competitive bid field.

This bid protest is nothing more than the latest manifestation of Jaynes' ongoing mission to eliminate ASR as its competitor. As pointed out in the bid protest, Jaynes routinely protests bids won by ASR. (Bid Protest, p. 2, ¶1.) Since Jaynes apparently believes it cannot compete effectively with ASR by streamlining its operation so as to allow competitive bids, it instead tries to steal bids from ASR without regard to the ultimate expense borne by the taxpayers. This is the conduct that is truly contrary to public policy.

This less-than-noble intent on the part of Jaynes is underscored by the very manner in which its Bid Protest was handled. Jaynes filed its Bid Protest without serving a copy on ASR. ASR learned of the Bid Protest when it was mentioned during a job walk several days after the Bid Protest was filed. Obviously, Jaynes did not want ASR to learn of its underhanded efforts.

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The conduct of Jaynes in the past as well as in relation to this Bid Protest suggests another plausible explanation for the assertions and questionable documentation contained in the Bid Protest: Jaynes itself engineered the scenario of which it complains to buttress its efforts to eliminate ASR as its competitor. The timing of the Bid Protest lends support to this possibility - it was assembled and filed within 3 business days of the announcement of the successful bidder

**8. Conclusion.**

For each of the reasons discussed above, the nonmeritorious bid protest of Jaynes should be given the consideration it deserves and promptly rejected. The contract for construction of the Project should be awarded to ASR.

Very truly yours,



James E. Klinkert

JEK:

encl. (stated)

cc: ASR Constructors, Inc.

Attn: Alan S. Regotti

Jayne Corporation of California

Attn: James M. Rosel, Esq., Vice President & Corporate Counsel

County of Riverside-The Office of County Counsel

Attn: Marsha L. Victor, Esq.

Heyman Densmore LLP

Attn: Roger Heyman, Esq.

**EXHIBIT A**

## Summary of Bid Projects

TO:	Joe S. Rank County Counsel	PROJECT:	Palm Desert Sheriff Station
FROM:	Cecilia Gil      955-8464 Board Assistant	BID DATE:	10/01/08
OWNER:	Frank Gonzales-955-8467 Facilities Management	BID TIME:	2:00 p.m.
		ITEM/DATE:	#3.62 of 07-29-08

### CONTRACTORS

### BID AMOUNT

ASR Constructors, Inc. 5230 Wilson St. Riverside, CA 92509 (951) 779-6580	Base Bid: \$20,197,000.00 Alt. 1: \$621,000.00 Alt. 2: \$390,000.00
Jaynes Corporation of California 111 Elm Street 4 <sup>th</sup> floor San Diego, CA 92101 (619) 233-4080	Base Bid: \$21,710,000.00 Alt. 1: \$470,000.00 Alt. 2: \$395,000.00
Swinerton Builders 17731 Mitchell North, Suite 200 Irvine, CA 92614 (949) 622-7000	Base Bid: \$22,290,000.00 Alt. 1: \$523,000.00 Alt. 2: \$780,000.00
Bernard Bros. Inc. 618 San Fernando Rd. San Fernando, CA 91340 (818) 898-1521	Base Bid: \$22,249,000.00 Alt. 1: \$520,000.00 Alt. 2: \$478,000.00
Erickson-Hall Construction Co. 500 Corporate Dr. Escondido, CA 92029 (760) 796-7700	Base Bid: \$22,228,000.00 Alt. 1: \$515,000.00 Alt. 2: \$260,000.00
P.H. Hagopian Contractor, Inc. 778 W. Town and County Rd Orange, CA 92868 (714) 633-1222	Base Bid: \$22,495,000.00 Alt. 1: \$623,300.00 Alt. 2: \$281,819.00
S.J. Amoroso Construction Co., Inc. 275 E. Baker St., Suite B Costa Mesa, CA 92626 (714) 433-2326	Base Bid: \$23,567,000.00 Alt. 1: \$200,000.00 Alt. 2: \$575,000.00

Page 2: Palm Desert Sheriff Station  
Bid Date: 10/01/08 @ 2:00 pm  
Project Manager: Frank Gonzales (951) 955-8467

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FTR International Inc. 400 Exchange #150 Irvine, CA 92602 (714) 389-5656	Base Bid: \$23,900,000.00 Alt. 1: \$600,000.00 Alt. 2: \$1,000,000.00
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DJM Construction Co., Inc. 1540 S. Lewis St. Anaheim, CA 92805 (714) 399-3640	Base Bid: \$23,862,000.00 Alt. 1: \$480,000.00 Alt. 2: \$400,000.00
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Mallcraft, Inc. 2225 N. Windsor Altadena, CA 91001 (626) 398-3598	Base Bid: \$24,442,000.00 Alt. 1: \$600,000.00 Alt. 2: \$400,000.00
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RDP/SCI, Inc. 83777 Avenue 45 Indio, California 92201 (760) 347-5257	Base Bid: \$25,100,000.00 Alt. 1: \$552,000.00 Alt. 2: \$708,000.00
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USS Cal Builders, Inc. 8051 Main St. Stanton, CA 90680 (714) 828-4882	Base Bid: \$25,720,000.00 Alt. 1: \$548,000.00 Alt. 2: \$438,000.00
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**EXHIBIT B**

**EXHIBIT B****DECLARATION OF ALAN L. REGOTTI**

I, Alan L. Regotti, declare:

I am the President of ASR Constructors, Inc. ("ASR"), a California corporation doing business in the County of Riverside, State of California. If called upon to do so, I could competently testify of my own personal knowledge to the following:

1. Attached as Exhibit A is the summary of bids for the Palm Desert Sheriff Station ("Project"). ASR's successful bid was \$20,197,000. The losing bid submitted by Jaynes Corporation of California ("Jaynes") was \$21,710,000. Jaynes' unsuccessful bid was thus \$1,513,000 higher than the successful bid of ASR.

2. I have reviewed the bid protest filed on behalf of Jaynes. Many of the statements made therein are false. Specifically, and without limitation:

a. I did not create any of the documents complained of in the Bid Protest.

b. I did not direct the creation of any of the documents complained of in the Bid Protest.

c. I did not transmit any of the documents complained of in the Bid Protest.

d. I did not have anything to do with any of the documents complained of in the Bid Protest.

3. ASR owns and operates out of the building located at 5230 Wilson Street, Riverside, California ("ASR Property"). ASR rents a portion of the ASR Property to other businesses, one of which is T. S. Steel. The relationship of ASR and T. S. Steel is that of landlord and tenant. There is no other connection between the two companies. There is no common ownership. There is no common management. There are no employees shared by the two companies. The companies have different responsible managing officers. The companies have different licenses. The companies have different types of licenses. ASR and T.S. Steel have different bonding companies.

4. At no time has ASR colluded with any individual or entity to fix prices or otherwise affect the bidding on a public project. ASR earns the contracts it is awarded by carefully calculating construction costs and accepting modest profits for the work it does, thus saving taxpayers money.

5. As president of ASR, I am familiar with ASR's track record and history of completing public construction projects. In the past nine years, ASR has successfully completed more than 600

1 public construction projects with an aggregate contract price of \$498,785,495. I estimate that ASR's  
 2 construction of these projects has saved taxpayers approximately \$30,000,000 in the aggregate, based  
 3 on my estimate of the differential between ASR's successful bids and the next lowest bid on each  
 4 project.

5 6. Nine of the public construction projects completed by ASR have been for the County of  
 6 Riverside with an aggregate contract amount of \$57,893,969. Attached as Exhibit C is a schedule  
 7 of the projects ASR has completed for the County of Riverside that shows both the contract amount  
 8 and the differential between the contract amount and the next highest bid. The savings to taxpayers  
 9 (i.e., the bid differential) on those nine Riverside County projects alone was \$2,621,000. All nine  
 10 projects for the County of Riverside were timely and competently completed. There was no  
 11 litigation involving any of those projects, and to this day I am not aware of any complaints with  
 12 regard to the quality of ASR's work on those projects.

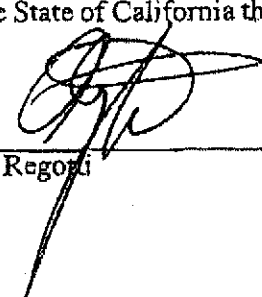
13 7. Attached collectively as Exhibit D are letters of recommendation from just a few of the  
 14 many public entities that have enjoyed the benefits of ASR's construction expertise in recent years.

15 8. Jaynes did not bother to provide ASR with a copy of its bid protest. I learned of the bid  
 16 protest during the course of a job walk earlier this month and had to obtain a copy of the bid protest  
 17 from the County after payment of a \$5.00 fee.

18 I declare under penalty of perjury under the laws of the State of California that the foregoing  
 19 is true and correct.

20 Dated: October 15, 2008

21  
 22  
 23  
 24  
 25  
 26  
 27  
 28  
 Alan L. Regoni



**EXHIBIT C**

**EXHIBIT C**

**SCHEDULE OF RIVERSIDE COUNTY PROJECTS  
COMPLETED BY ASR CONSTRUCTORS, INC.**

<b>PROJECT</b>	<b>CONTRACT AMOUNT</b>	<b>NEXT HIGHEST BID (DIFFERENTIAL)</b>
Larry Smith Correctional Facility - Phase I	\$ 6,557,998	+ \$156,000
Larry Smith Correctional Facility - Phase II	4,556,971	+ 480,000
Perris Sheriff Station	20,783,000	+ 163,000
Rancho Jurupa Park Expansion (Main Entrance)	533,000	+ 200,000
Perris Sheriff Station Fueling Depot	1,073,000	+ 293,000
Rancho Jurupa Park - Campground Facility Expansion	8,542,000	+ 700,000
Pedley Transportation Yard	2,873,000	+ 223,000
Rubidoux Library	11,782,000	+ 225,000
Home Garden Library	1,193,000	+ 181,000
<b>TOTALS</b>	<b>\$57,893,969</b>	<b>\$2,621,000</b>

**EXHIBIT D**



# HESPERIA UNIFIED SCHOOL DISTRICT

15576 Main Street, Hesperia, CA 92345-3482

Phone (760) 244-4411 Fax 244-2806

Mark A. McKinney  
Superintendent

Jovy Yerkakas  
Assistant Superintendent  
Educational Services

Kevin Kelly  
Assistant Superintendent  
Personnel Services

David McLaughlin  
Interim Asst. Superintendent  
Business Services

Board of Trustees  
Hardy Black  
Dr. Robert F. Mack  
Bruce Nielson  
Ila "Lee" Rogers  
William Rogers

#### Elementary Schools

Cornel 947-3115

Cottonwood 919-2252

Cypress Academy 919-2296

Ecstasy 918-0513

Hollyhock 917-2451

Jessie Circle 211-4131

Jupiter 211-4141

Kington 211-4329

Lime Street 211-0912

Maple 211-3076

Miss Academy 211-4305

Miss Grand 211-3701

Merqule Trails 919-3141

Mission Crest 919-4248

Oxford Academy 919-4761

Texas 211-4622

#### Secondary Schools

Canyon Ridge 211-6530

Cedar Middle 211-6203

Hesperia Jr. High 211-4306

Rancho Middle 918-0173

AEC, HOY 211-1771

Desert Trails 918-2119

Canyon Ridge High 211-6530

Hesperia High 211-4303

Mojave High 918-3999

Sulona High 947-4777

September 25, 2008


To Whom It May Concern:

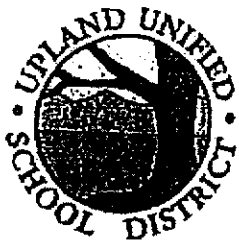
I would like to take this opportunity to express my support for ASR Constructors.

ASR has proven its ability to handle a large volume of construction projects. Currently, they are working on five projects for Hesperia Unified, with a total value of over \$117 million. ASR Constructors is a large, stable company with appropriate staffing to handle the jobs awarded to them. We have also been pleased with their diligence in responding to inquiries and providing additional details as needed.

If you have any specific questions regarding the scope of work ASR has done for our district, please feel free to contact our Interim Assistant Superintendent of Business Services, Mr. David McLaughlin. He may be reached at (760) 244-4411, x7238 or by e-mail at [david.mclaughlin@hesperia.org](mailto:david.mclaughlin@hesperia.org).

Sincerely,

  
Mark A. McKinney  
Superintendent



Upland Unified School District  
390 N. Euclid Avenue  
Upland, CA 91786-4763  
[www.upland.k12.ca.us](http://www.upland.k12.ca.us)  
(909) 985-1864

**Gary Rutherford, Ed.D., Superintendent**

**Assistant Superintendents:**  
Steve Cary, Business Services  
Sherril Black, Human Resources  
Linda Kominski, Ed.D., Educational Services

---

January 28, 2008

To Whom It May Concern:

We have worked with ASR constructors, Inc. on many of our projects and can't say enough good things about the professional and knowledgeable people we have had assigned to us from ASR. Their experience has been invaluable in the execution of each of our projects. I can truly offer my highest recommendation for the firm and the individuals we have had the opportunity to work with.

If you have any specific questions please don't hesitate to contact me at (909) 985-1864 X223.

Sincerely,

A handwritten signature in black ink that reads "Steve Cary".

Steve Cary  
Assistant Superintendent  
Business Services

SC/jd

Shawn Judson, Ed.D.  
Superintendent  
Douglas M. Claffin  
Assistant Superintendent of Business Services  
Rebecca M. Lawrence  
Assistant Superintendent of Instruction/Pupil Services  
Heidi M. Soshnel  
Assistant Superintendent of Personnel  
ylvia Kordich  
Administrator of Special Programs



Board of Trustees  
Bryna Cadman  
Cathline Fort  
David W. Long  
Mark H. Murphy  
Cecilia L. Solorio

6061 East Avenue, Etiwanda, California 91739  
[www.etiwanda.k12.ca.us](http://www.etiwanda.k12.ca.us)  
(909) 899-2461 FAX (909) 899-9463

January 28, 2008

To Whom It May Concern:

Please accept this letter of reference and endorsement for ASR Constructors, Inc. During the past 15 years, the Etiwanda School District has experienced an enormous amount of residential and commercial development. With such demand in growth, the District has required strong working relationships with its contractors. In many of our facilities projects, ASR Constructors has been an important and integral part of our team.

ASR Constructors has demonstrated the ability to meet the demands of an aggressive construction schedule and work cooperatively with our construction teams. Additionally, they have displayed their competency and expertise in many areas of construction and have often provided recommendations that have saved the District time and money.

The District has a long-standing, professional relationship with ASR Constructors and appreciates the dedication that they have demonstrated in ensuring that the students of Etiwanda have extraordinary school facilities. Should you have any questions, it would be our pleasure to assist you.

Sincerely,

  
Melinda K. Colgrove  
Manager, Facilities & Risk Services

  
Douglas M. Claffin  
Assistant Superintendent, Business

CITY OF  
**VICTORVILLE**



760-955-5000  
FAX 760-245-7243  
email: [vville@ci.victorville.ca.us](mailto:vville@ci.victorville.ca.us)  
14343 Civic Drive  
P.O. Box 5001  
Victorville, California 92393-5001

September 22, 2008

To Whom it May Concern:

ASR Contractors is currently working for the City of Victorville on three (3) projects: Green Tree Golf Course Clubhouse, Sunset Ridge Park and Sunset Ridge Fire Station.

The Green Tree project is 95% completed and the Sunset Ridge projects are approximately 25% completed.

To date the City of Victorville has had no inspection issues with ASR Contractors. They have followed the directions given to them.

Sincerely,



Jon Gargan  
Director, Community Services Department

JG/m