

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

364



SUBMITTAL DATE:
July 18, 2013

FROM: Successor Agency to the Redevelopment Agency

SUBJECT: Rancho Jurupa Regional Sports Complex – Project Closeout

RECOMMENDED MOTION: That the Board of Supervisors:

1. Receive and file the voluntary Notice of Default and Assignment from Federal Insurance Company (Federal), surety for ASR Constructors, Inc. (ASR) and declare ASR in default;
 2. Authorize the Successor Agency to the Redevelopment Agency (Successor Agency) to issue notice to the Escrow Agent, Citibank, that a default has occurred and requesting monies be forwarded to the Successor Agency pursuant to the terms of the escrow agreement; and
- (continued)

Approved by:

Lisa Brandl
Managing Director
EDA

REVIEWED BY CIP

Christopher Hans

Christopher Hans
Chief Deputy CEO

**FINANCIAL
DATA**

Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
Annual Net County Cost:	\$ 0	For Fiscal Year:	2013/14

COMPANION ITEM ON BOARD AGENDA: No

SOURCE OF FUNDS: Jurupa Valley Redevelopment Capital Improvement Funds (previously approved budget)

Positions To Be Deleted Per A-30 ☐
Requires 4/5 Vote ☐

C.E.O. RECOMMENDATION:

APPROVE

BY:

County Executive Office Signature

Jennifer L. Sargent

Policy ☒

Consent ☐

Dep't Recomm.: ☐

Policy ☒

Consent ☐

Per Exec. Ofc.: ☐

000 707 52 04 3:23

RECEIVED RIVERSIDE COUNTY

Prev. Agn. Ref.: 4.5 of 7/17/12; 4.7 of 12/14/10

District: 2/2

Agenda Number

4-2

RECOMMENDED MOTION: (Continued)

3. Authorize the Successor Agency to release the funds as appropriate to Federal pursuant to the Notice of Assignment and Default and the contract terms, and subject to staff working with Federal and ASR to complete the project, including clearing all outstanding project performance items and stop notices.

BACKGROUND:

On June 29, 2010, the Board of Directors approved the plans and specifications for the Rancho Jurupa Regional Sports Complex project and the Rancho Jurupa Regional Sports Complex – Well Pumping Equipment - Phase 1 project, and authorized the Clerk of the Board to advertise for bids.

On December 14, 2010, the Board accepted and awarded the construction contract for the Rancho Jurupa Regional Sports Park project to the lowest responsive bidder, ASR Constructors, Inc., in the amount of \$9,659,000. To date, three change orders have been issued in the total amount of \$69,399.

ASR has experienced financial difficulties and assigned their rights to their surety, Federal Insurance Company, on March 14, 2013. Federal, pursuant to their obligations under the bonds, has been arranging for resolution of outstanding stop notices and completion of project performance items. Prior to completion of the project and receipt of all releases, the Notice of Default and Assignment was received by the Economic Development Agency (EDA) in their role as Successor Agency. The EDA/Successor Agency project team has been working with ASR, Federal, and the surety's agent, Sage Associates, to bring the project to completion.

Federal's counsel has endeavored to work with Citibank to modify the escrow agreement to authorize payment directly in the name of Federal pursuant to the Notice of Default and Assignment; however Citibank is apparently refusing contact. Under the escrow agreement, the Successor Agency may make claim against the funds upon a default of the contractor. The Successor Agency therefore proposes to issue such a declaration to Citibank based upon the Notice of Default and Assignment issued to the county from ASR and Federal.

It is recommended that the Board of Supervisors approve the motions authorizing the Successor Agency to work with Federal to clear up all outstanding issues on the project, including any stop notices and performance items, and make payment to Federal for work completed in accordance with the contract.

Attachments:

Notice of Default and Assignment



(949) 567-7817
jonathan.dunn@sedgwicklaw.com

March 14, 2013

Via Certified Mail, Return Receipt Requested

Via Regular Mail

✓ Clerk of the Board of Supervisors
County of Riverside
4080 Lemon Street, 1st Floor
Riverside, California 92501

County of Riverside EDA as Successor Agency
to the Redevelopment Agency for the County
of Riverside
3043 Tenth Street, Suite 500
Riverside, California 92501

Re: Principal: ASR Constructors, Inc.
Project: **Rancho Jurupa Sports Complex**
Obligee: County of Riverside
Bond No.: 8219-26-63
NOTICE OF ASSIGNMENT
File No.: 00355-006596

To Whom It May Concern:

Please be advised that ASR Constructors, Inc., ("ASR") has assigned, transferred and set over to Federal Insurance Company ("Federal") any and all rights to the contract balances, earned and unearned, including but not limited to retention, change orders, and escrow accounts on the above-referenced Project.

ASR has no further interest in these contract funds and any and all additional payments from today's date forward, should be directly issued to Federal. You are hereby requested to mail all checks or vouchers made payable to the order of the undersigned for any further payments due, or to become due, on the above-described contracts to the following address, in care of:

FEDERAL INSURANCE COMPANY
Attn.: Wayne R. Walton
Senior Surety Claims Counsel
15 Mountainview Road
Warren, NJ 07059
Tel.: 908.903.3088 / Fax: 908.903.5537

This direction is irrevocable in accordance with our agreement covering certain arrangements made between the undersigned and Federal. Please, therefore, do not permit any change or deviation from the above direction unless you receive the proper written consent to any suggested change from Federal. This includes any and all payments to ASR, its subsidiaries, affiliates, joint ventures, agents, representatives or employees.

Please be advised that this letter is sent on behalf of Federal in accordance with its subrogation rights as surety, pursuant to the indemnity agreement, payment and performance bonds, and applicable case law.

Clerk of the Board of Supervisors

County of Riverside EDA as Successor Agency to the Redevelopment Agency for the County of Riverside

Re: Principal: ASR Constructors, Inc.

Project: Rancho Jurupa Sports Complex

Obligee: County of Riverside

Bond No.: 8219-26-63

NOTICE OF ASSIGNMENT

March 14, 2013

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Please note that any failure or refusal to observe the foregoing notice may prejudice any rights you may have under the terms and conditions of Federal's bonds and may cause you to be liable (pay twice) for any amounts release. See, California Civil Code §§ 2848 and 2849; *United States Fidelity & Guaranty Co. v. Oak Grove School District* (1962) 205 Cal.App.2d 226; *Universal Surety v. United States* (1986) 10 Cl. Ct. 794, 797; *Harsco Corp. v. Dept. of Public Works* (1971) 21 Cal.App.3d 272, 278; and *Newark Ins. Co. v. United States* (1959) 169 F.Supp. 955.

We further agree to cooperate with Federal so as to mitigate any damages for which Federal will seek recovery/indemnity under the indemnity agreement(s). We recommend you pass this letter on to your counsel as well. If you have any further questions or concerns, please do not hesitate to contact the undersigned.

Very truly yours,



Jonathan J. Dunn, Partner
Sedgwick LLP

Enclosure

cc: Andrew Harris, Sedgwick-OC
Richard E. Tasker, Sage Associates, Inc.
Wayne R. Walton, Esq., Federal Insurance Company
John Mannerino, ASR Constructors, Inc.
Alan Regotti, ASR Constructors, Inc.

ASSIGNMENT AGREEMENT

In consideration of the 60-day forbearance and for other valuable consideration, and pursuant to the Indemnity Agreements between the parties to this agreement, the undersigned, on March ____, 2013, ASR CONSTRUCTORS, INC. ("Assignor") hereby assigns, transfers and sets over to FEDERAL INSURANCE COMPANY ("Surety") all Contract Funds on the public works projects described in Attachment A hereto, of any nature, including but not limited to, progress payments, earned or unearned funds, change orders, extras, claims of any nature, retainages, whether held in escrow accounts, Certificates of Deposit, or similar accounts or instruments, with all the interest accruing thereon, ("Contract Funds") and whether said Contract Funds are due now or in the future under the following described contract:

Assignor hereby constitutes and appoints Surety as its true, lawful and irrevocable attorney-in-fact to demand, receive and enforce payments, to execute estimates, final payments, payment warrants, vouchers, drafts, and/or checks, and to give receipts, releases of any nature, satisfactions for, and to sue for all Contract Funds payable to the Assignor. This may be done either in the name of the Assignor or in the name of the Surety with the same force and effect as the Assignor could do if this assignment had not been made. Any and all moneys or payments which may be received by the Assignor to which Surety is entitled under and by reason of this Assignment will be received by Assignor as trustee for the Surety and will be immediately delivered in kind to Surety without commingling. Assignor hereby represents and warrants to the Surety that the moneys above have not heretofore been alienated or assigned.

This Assignment is irrevocable and shall remain in full force and effect until its release in writing by Surety. Notice of this Assignment may be given at the option of the Surety. This Assignment and all related documents are in furtherance of Surety's right of subrogation and continuing agreement of

indemnity and not in derogation thereof. Pursuant to the Indemnity Agreements, a financing statement was filed on November 28, 2012. This does not affect, rather is intended to supplement Surety's rights to other collateral under the Indemnity Agreements, Joint Control & Trust Agreement, and financing statement.

IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement as of the date and year first set forth above.

FEDERAL INSURANCE COMPANY

By: Wayne R. Walton
WAYNE R. WALTON

SEAL OR Surety Claims Counsel

(SIGNATURES CONTINUE ON FOLLOWING PAGE)

ASR CONSTRUCTORS, INC.

By:


Alan Regotti

President

CERTIFICATE OF ACKNOWLEDGEMENT

(Pursuant to California Civil Code, Section 1189)

State of California)

County of _____)

On _____
me _____

20 _____ before
personally appeared

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

See Notary Attachment

WITNESS my hand and official seal.

Signature _____

Seal

(Notary Public)

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Riverside

On March 14, 2013 before me, Yvette Aceves, Notary Public

(Here insert name and title of the officer)

personally appeared Alan Regotti

who 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.

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.

Yvette Aceves
Signature of Notary Public



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Assignment Agreement

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)
☒ Corporate Officer
President
(Title)
☐ Partner(s)
☐ Attorney-in-Fact
☐ Trustee(s)
☐ Other _____

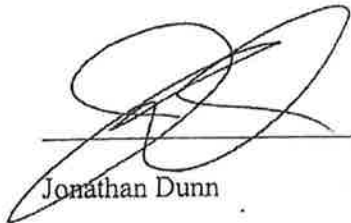
INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

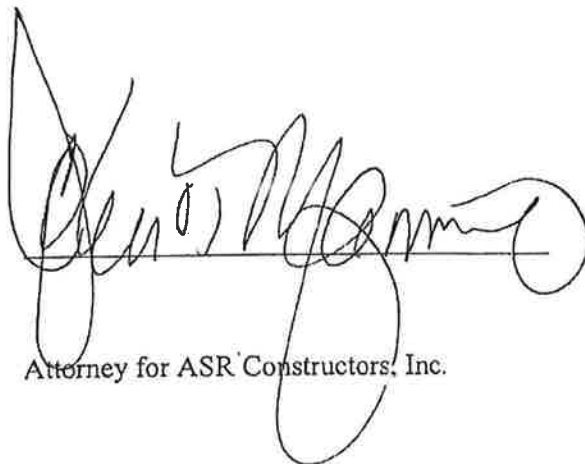
APPROVED AS TO FORM:

SEDGWICK LLP



Jonathan Dunn

Attorney for Federal Insurance Company



Attorney for ASR Constructors, Inc.

ATTACHMENT A TO ASSIGNMENT AGREEMENT

Bond No.	Owner / Obligee	Principal	Surety	Project
8213-56-76	The Redevelopment Agency for the County of Riverside	ASR Constructors, Inc.	Federal Insurance Company	Thermal Sheriff Station and Aviation Complex, Thermal, California (ASR Job No. 728)
8215-30-61	Helendale School District	ASR Constructors, Inc.	Federal Insurance Company	Rivers Edge Middle School (ASR Job No. 790)
8216-89-12	Victor Valley Union High School District	ASR Constructors, Inc.	Federal Insurance Company	Adelanto High School Increment #2 (ASR Job No. 811)
8216-89-15	Victor Valley Union High School District	ASR Constructors, Inc.	Federal Insurance Company	Adelanto High School Fencing (ASR Job No. 819)
8216-89-14	Victor Valley Union High School District	ASR Constructors, Inc.	Federal Insurance Company	Adelanto High School Landscaping (ASR Job No. 820)
8216-89-21	Menifee Union School District	ASR Constructors, Inc.	Federal Insurance Company	Menifee Elementary School #9 (Category 3 work) (ASR Job No. 816)
8216-89-20	Menifee Union School District	ASR Constructors, Inc.	Federal Insurance Company	Menifee Elementary School #9 (Category 18 work) (ASR Job No. 817)
8216-89-27	Mojave Water Agency	ASR Constructors, Inc.	Federal Insurance Company	Mojave Water Agency Headquarters Facility (ASR Job No. 824)
8216-89-28	Alvord Unified School District	ASR Constructors, Inc.	Federal Insurance Company	Hillcrest High School (ASR Job No. 825)
8220-00-47	County of Riverside	ASR Constructors, Inc.	Federal Insurance Company	Site Development for Riverside County Regional Medical Center Trauma / Custody / Urgent Care / Sexual Assault Response Team Expansion, Phase 1, Phase 2, Phase 3 Project #20063953 (ASR Job No. 865)

Bond No.	Owner / Oblige	Principal	Surety	Project
8220-00-49	County of Riverside	ASR Constructors, Inc.	Federal Insurance Company	Larry D. Smith Correctional Facility Support Project Warehouse Building (ASR Job No. 867)
8220-00-54	Adelanto Elementary School District	ASR Constructors, Inc.	Federal Insurance Company	El Mirage Elementary School (ASR Job No. 871)
8219-26-44	Barstow Community Collège District of San Bernardino County, California	ASR Constructors, Inc.	Federal Insurance Company	Performing Arts Center, Barstow College, Barstow, California (ASR Job No. 876)
8219-26-49	The Redevelopment Agency for the County of Riverside	ASR Constructors, Inc.	Federal Insurance Company	Jurupa VFW Post 10267 (ASR Job No. 881)
8219-26-53	City of Palm Desert	ASR Constructors, Inc.	Federal Insurance Company	Palm Desert Aquatic Center, Project No. 722-10, Contract No. C29400A (ASR Job No. 884)
8219-26-54	County of Riverside	ASR Constructors, Inc.	Federal Insurance Company	Glen Oaks Fire Station (ASR Job No. 887)
8219-26-57	Riverside County Flood Control and Water Conservation District	ASR Constructors, Inc.	Federal Insurance Company	L.I.D. Testing & Demonstration Facility, Parking Lot Renovation 2010, and Water Efficient Landscape Conversion (ASR Job No. 888)
8219-26-63	The Redevelopment Agency for the County of Riverside	ASR Constructors, Inc.	Federal Insurance Company	Rancho Jurupa Regional Sports Complex (ASR Job No. 892)

CERTIFIED MAIL[®]

Sedgwick^{LLP}



7006 0100 0001 3508 3345

Clerk of the Board of Supervisors
County of Riverside
4080 Lemon Street, 1st Floor
Riverside, California 92501



00355-006596