

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

365



SUBMITTAL DATE:
July 18, 2013

FROM: Successor Agency to the Redevelopment Agency

SUBJECT: Thermal Sheriff Station and Aviation Facility - 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 issue notice to the Escrow Agent (Citibank), that a default has occurred and requesting monies be forwarded to the the Successor Agency pursuant to the terms of the Escrow Agreement; and

(continued)

Approved by:

Lisa Brandt

Lisa Brandt
Managing Director
EDA

REVIEWED BY CIP

Christopher Hans

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: Desert Communities Redevelopment Project Area
Capital Improvement Bond Proceeds (previously approved budget)

Positions To Be Deleted Per A-30 ☐

Requires 4/5 Vote ☐

C.E.O. RECOMMENDATION:

APPROVE

BY

Jennifer L. Sargent

County Executive Office Signature

Jennifer L. Sargent

Policy ☒

Consent ☐

Dept't Recomm.: ☐

Policy ☒

Consent ☐

Per Exec. Ofc.: ☐

2013 JUL 30 PM 3:23

RECEIVED RIVERSIDE COUNTY

Prev. Agn. Ref.: 4.3 of 11/25/08; 4.2 of 5/9/06

District: 4/4

Agenda Number

4-3

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

RECOMMENDED MOTION: (Continued)

3. Authorize the Successor Agency to release the remaining funds to Federal, in accordance with the Notice of Default and Assignment and the contract terms and subject to staff working with Federal and ASR to close out all remaining project issues, including stop notices and warranty issues.

BACKGROUND:

On April 1, 2008, the Board approved the Thermal Sheriff Station and Aviation Facility project and authorized the plans to be bid out. The contract was awarded to ASR Constructors, Inc. (ASR) on October 28, 2008. The project was determined completed and a notice of completion was approved by the Board on August 28, 2012. Prior to receipt of all releases on the project which would have allowed payment to ASR of final contract funds, a Notice of Default and Assignment was received by the Economic Development Agency in their role as Successor Agency staff. ASR has experienced financial difficulties and assigned their rights to their surety, Federal Insurance Company (Federal), 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. An issue exists with the Audio Visual (AV) System projectors and some minor punchlist items. Successor Agency staff has been working with ASR and the surety's consultant, Sage Associates, to resolve all outstanding matters, close out any issues and prepare to disburse remaining funds.

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 from ASR and Federal. The Successor Agency will then issue payment to Federal as appropriate under the contract documents. A contractor's surety which pays any stop notice claim under the payment bond has a right of subrogation against the Successor Agency for any remaining funds retained by the Successor Agency for the contractor.

It is recommended that the Board approve the motions authorizing the Successor Agency staff to work with Federal to clear up all outstanding issues on the project, and make payment to Federal for work completed in accordance with the contract.

Attachments:

Notice of Default and Assignment



(949) 567-7817

jonathan.dunn@sedgwickllp.com

March 14, 2013

Via Certified Mail, Return Receipt Requested

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

3403 Tenth Street, Suite 500

Riverside, California 92501

Re: Principal: ASR Constructors, Inc.

Project: Thermal Sheriff Station and Aviation Complex

Obligee: Co. of Riverside EDA as Successor Agency to the Redevelopment Agency of Riverside Co.

Bond No.: 8213-56-76

NOTICE OF DEFAULT AND ASSIGNMENT

File No.: 00355-006596

To Whom It May Concern:

By way of introduction, Sedgwick LLP ("Sedgwick") represents Federal Insurance Company ("Federal") who is surety for its principal ASR Constructors, Inc. ("ASR"), with respect to the Thermal Sheriff Station and Aviation Complex project ("Project") for the County of Riverside EDA as Successor Agency to the Redevelopment Agency of Riverside County ("Obligee"). Please be advised ASR informed Federal that it is unable to perform its remaining obligations in connection with the Project. Enclosed please find a copy of the voluntary Notice of Default that ASR provided to Federal in connection with the Project, and please be advised that ASR has assigned all of its rights to Federal regarding the Project.

By this letter, and pursuant to the assignment in the attached letter from ASR, Federal and ASR jointly request that all amounts due or to become due of any nature, including without limitation earned or unearned amounts, extras, change orders, progress, final payments or retained percentages, whether or not held in escrow accounts, Certificates of Deposit or similar accounts or instruments owed on account of the Contract (collectively, "Contract Funds"), be paid to Federal, and mailed directly to:

Federal Insurance Company
c/o Wayne R. Walton, Esq.
15 Mountain View Road
P.O. Box 1616
Warren, New Jersey 07059-1616

This assignment is also irrevocable unless altered or rescinded by representatives of both Federal and ASR. 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 and do not send any further monies to ASR or to any creditors that may assert claims against such funds.

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: Thermal Sheriff Station and Aviation Complex

Obligee: Co. of Riverside EDA as Successor Agency to the Redevelopment Agency of Riverside Co.

Bond No.: 8213-56-76

NOTICE OF DEFAULT AND ASSIGNMENT

March 14, 2013

Page 2

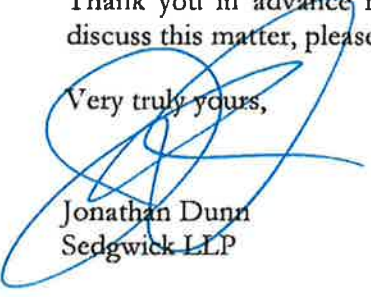
Wayne R. Walton, Esq., is the Assistant Vice President of Chubb and Son, the authorized representative of Federal, and the claims representative handling this matter on its behalf. Federal has hired Richard E. Tasker of Sage Associates, Inc. ("Sage") to assist it in handling Federal's obligations under the bonds. Someone from Sedgwick, Sage and/or Federal will be in touch with you or the Project personnel in connection with the Project very soon regarding the status of the open issues on the Project, and regarding the next steps, if any.

In the interim, please confirm in writing to our office, the following:

1. The original contract amount;
2. All change orders, including their numbers and amounts;
3. The Revised Contract Amount (1+2);
4. Amounts paid to ASR to date;
5. The contract balance including retainage (3-4);
6. All amounts in retainage and whether you hold such amounts or they are deposited with a bank or in an escrow account; and
7. All pending change orders, whether approved, pending or rejected.

Thank you in advance for your anticipated cooperation. If you have any questions or wish to further discuss this matter, please do not hesitate to contact the undersigned.

Very truly yours,


Jonathan Dunn
Sedgwick LLP

JJD

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.

ASR CONSTRUCTORS, INC.

STATE LICENSE NO. 615395
5230 Wilson Street, Riverside, CA 92509
951.779.6580 Fax 951.779.6588

March 13, 2013

Wayne R. Walton, Esq.
Assistant Vice President
Federal Insurance Company
15 Mountain View Road
P.O. Box 1616
Warren, NJ 07059-1616

Re: **Notice of Bonded Projects**
Principal: ASR Constructors, Inc.

Dear Mr. Walton:

As discussed with Federal Insurance Company ("Federal"), ASR Constructors, Inc. ("ASR") is experiencing financing problems and presently unable to meet its current obligations on bonded projects (hereinafter "Bonded Projects"), and its obligations to Federal under the indemnity agreements with Federal. Because we are unable to complete the work and perform our obligations, with respect to both payment and performance on the Bonded Projects, we request that Federal take such steps as it, in its sole discretion, considers necessary or appropriate to perform its obligations as surety, with respect to the Bonded Projects listed below, including, but not limited to, taking over and re-letting the work in an effort to mitigate losses and expenses.

In particular, this voluntary notice of default applies to all Bonded Projects, including but not limited to the projects on the list attached hereto.

We hereby agree to cooperate with Federal, leave all equipment and materials onsite which are necessary for the completion of the Bonded Projects, and to provide any further possible assistance to Federal including execution of further documents, letters, or authorizations, and to cooperate with Federal's review of all payment ledgers, account payables, account receivables, certified payrolls, and other documentation or files relating to the Bonded Projects. Federal is hereby authorized to take whatever action it deems necessary or appropriate to discharge the bonded obligations.

We also direct the obliges / owners on the Bonded Projects to direct all checks, vouchers or any further payments due on the Bonded Projects to Federal, as such address as it may designate to the obliges / owners, including amounts due or to become due of any nature, including without limitation earned or unearned amounts, extras, change orders, progress, final payments or retained percentages, whether or not held in escrow accounts, Certificates of Deposit or similar accounts or instruments owed on account of the Contract (collectively, "Contract Funds"). This direction is irrevocable and in accordance with the General Agreements of Indemnity executed between Federal, ASR and other indemnitors.

Wayne R. Walton, Esq.
Re: Notice of Default
March 13, 2013
Page 2

In executing this letter, we hereby expressly waive the notice provisions in Sections VI, N.P. and AA. Of the August 7, 2012 Joint Control and Trust Agreement regarding the termination of the Federal's participation in the Joint Control and Trust Agreement and Federal's termination of ASR's completion of the Bonded Projects.

We further hereby waive all statutory and/or contractual notice provisions and herewith authorize the obligees/owners and /or Federal to declare default on the Bonded Projects and to proceed accordingly. We will further cooperate with Federal so as to mitigate any damages for which Federal will seek recovery / indemnity under the indemnity agreements.

Very truly yours,

Alan Regotti
President
ASR Constructors, Inc.

Marc W. Berry
Secretary
ASR Constructors, Inc.

cc: Jonathan Dunn, Sedgwick -OC
John Mannerino, ASR Constructors, Inc.

Bond Number	Owner / Obligee	Principal	Project
8219-26-53	City of Palm Desert	ASR Constructors, Inc.	Palm Desert Aquatic Center, Project No. 722-10, Contract No. C29400A (ASR Job No. 884)
8219-26-54	County of Riverside	ASR Constructors, Inc.	Glen Oaks Fire Station (ASR Job No. 887)
8219-26-57	Riverside County Flood Control and Water Conservation District	ASR Constructors, Inc.	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.	Rancho Jurupa Regional Sports Complex (ASR Job No. 892)
8216-89-15	Victor Valley Union High School District	ASR Constructors, Inc.	Adelanto High School Fencing (ASR Job No. 819)
8216-89-14	Victor Valley Union High School District	ASR Constructors, Inc.	Adelanto High School Landscaping (ASR Job No. 820)
8216-89-21	Menifee Union School District	ASR Constructors, Inc.	Menifee Elementary School #9 (Category 3 work) (ASR Job No. 816)
8216-89-20	Menifee Union School District	ASR Constructors, Inc.	Menifee Elementary School #9 (Category 18 work) (ASR Job No. 817)
8216-89-27	Mojave Water Agency	ASR Constructors, Inc.	Mojave Water Agency Headquarters Facility (ASR Job No. 824)
8216-89-28	Alvord Unified School District	ASR Constructors, Inc.	Hillcrest High School (ASR Job No. 825)
8220-00-47	County of Riverside	ASR Constructors, Inc.	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)
8220-00-49	County of Riverside	ASR Constructors, Inc.	Larry D. Smith Correctional Facility Support Project Warehouse Building (ASR Job No. 867)

Bond No.	Owner / Obligee	Principal	Project
8213-56-76	The Redevelopment Agency for the County of Riverside	ASR Constructors, Inc.	Thermal Sheriff Station and Aviation Complex, Thermal, California (ASR Job No. 728)
8215-30-61	Helendale School District	ASR Constructors, Inc.	Rivers Edge Middle School (ASR Job No. 790)
8216-89-12	Victor Valley Union High School District	ASR Constructors, Inc.	Adelanto High School Increment #2 (ASR Job No. 811)
8220-00-54	Adelanto Elementary School District	ASR Constructors, Inc.	El Mirage Elementary School (ASR Job No. 871)
8219-26-44	Barstow Community College District of San Bernardino County, California	ASR Constructors, Inc.	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.	Jurupa VFW Post 10267 (ASR Job No. 881)

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 012 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

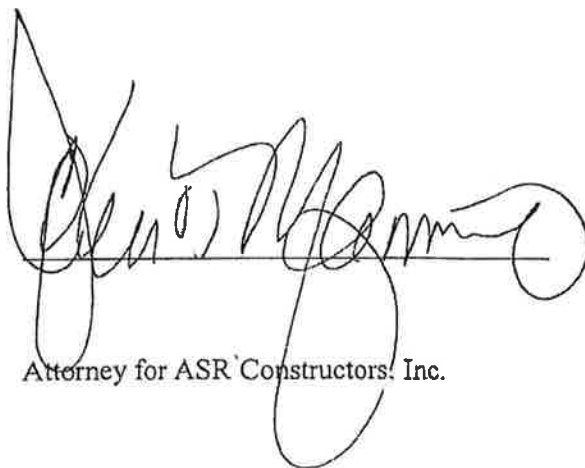
APPROVED AS TO FORM:

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)
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