

**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

417B



FISCAL PROCEDURES APPROVED  
JEANINE J. REY, FINANCE DIRECTOR  
BY: *[Signature]*  
REGINALD L. NEAL

**FROM:** General Manager-Chief Engineer

**SUBMITTAL DATE:**  
August 20, 2013

**SUBJECT:** L.I.D. Testing & Demonstration Facility, Parking Lot Renovation 2010, and Water Efficient Conversion - Release of Project Funds to Contractor's Surety District 2/District 2

**RECOMMENDED MOTION: That the Board:**

1. Receive, file and approve the voluntary Notice of Default and Assignment letter from Federal Insurance Company (Federal), surety for ASR Constructors, Inc. (ASR);
2. Authorize the release to Federal of project funds in the amount of \$2,845.92 still held by the District, in accordance with the Notice of Default and Assignment and the project contract terms, as well as any other minimal project funds that may unexpectedly come into the District's possession as approved by the Chief Engineer and County Counsel;

Continued on Page 2.

**BACKGROUND:**

See Page 2.

**FINANCIAL:**

N/A

*Steve Thomas*

for **WARREN D. WILLIAMS**  
General Manager-Chief Engineer

<b>FINANCIAL DATA</b>	Current F.Y. District Cost:	\$2,845.92	In Current Year Budget:	Yes
	Current F.Y. County Cost:	N/A	Budget Adjustment:	No
	Annual Net District Cost:	N/A	For Fiscal Year:	2013-2014

**SOURCE OF FUNDS:**

201100-15000-947180 Special Accounting Accounts Payable

Positions To Be Deleted Per A-30	<input type="checkbox"/>
Requires 4/5 Vote	<input type="checkbox"/>

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

APPROVE

BY: *[Signature]*  
Steven C. Horn, MPA

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL  
DATE: 8/16/13  
BY: NEAL R. KIPNIS  
RJC

Dep't Recomm.:	<input type="checkbox"/>	Consent	<input type="checkbox"/>	Policy	<input type="checkbox"/>
Per Exec. Ofc.:	<input type="checkbox"/>	Consent	<input type="checkbox"/>	Policy	<input type="checkbox"/>

2013 AUG 13 PM 3:30

Prev. Agn. Ref.: 11.3 of 04/10/12 | District: 2<sup>nd</sup>/2<sup>nd</sup> | Agenda Number:

11-5

ATTACHMENTS FILED  
WITH THE CLERK OF THE BOARD

**FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD SUBMITTAL  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

**SUBJECT:** L.I.D. Testing & Demonstration Facility, Parking Lot Renovation 2010, and Water Efficient Conversion - Release of Project Funds to Contractor's Surety  
District 2/District 2

**SUBMITTAL DATE:** August 20, 2013

**Page 2**

**RECOMMENDED MOTION: That the Board:**

3. Authorize County Counsel to inform Citibank, holder of the project retention funds escrow account, of the following: the District releases any right the District still has against the project funds in the amount of \$15,265.62 held by Citibank in the escrow account; or, alternatively, that those funds shall be returned to the District pursuant to the terms of the escrow agreement and then be paid to Federal by the District.

**BACKGROUND:**

This project has been completed and the notice of completion was recorded on April 11, 2012. The District continues to hold project funds in the amount of \$2,845.92. In addition, \$15,265.62 is still held in the Citibank project retention funds escrow account. ASR has gone into default for a large number of public works projects. As a result, Federal Insurance Company, ASR's project surety, has demanded that those public entities still holding funds due to ASR instead pay the funds to Federal.

Pursuant to documents provided to the District, County Counsel has determined: 1) the \$2,845.92 still held by the District should be paid directly to Federal; and 2) the \$15,265.62 held in the Citibank escrow account should be paid to Federal by Citibank or, alternatively, those funds should be returned to the District pursuant to the escrow agreement and then be paid to Federal by the District.

# Sedgwick<sub>LLP</sub>



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

Board of Supervisors  
Attn: General Manager  
Riverside County Flood Control and Water  
Conservation District  
1995 Market Street  
Riverside, California 92501

Re: Principal: ASR Constructors, Inc.  
Project: L.I.D. Testing & Demonstration Facility, Parking Lot Renovations 2010, and Water Efficient  
Landscape Conservation  
Obligee: Riverside County Flood Control and Water Conservation District  
Bond No.: 8219-26-57  
**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 L.I.D. Testing & Demonstration Facility, Parking Lot Renovations 2010, and Water Efficient Landscape Conservation project ("Project") for the Riverside County Flood Control and Water Conservation District ("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

Clerk of the Board of Supervisors

Board of Supervisors

Re: Principal: ASR Constructors, Inc.

Project: L.I.D. Testing & Demonstration Facility, Parking Lot Renovations 2010, and Water Efficient Landscape Conservation

Obligee: Riverside County Flood Control and Water Conservation District

Bond No.: 8219-26-57

NOTICE OF DEFAULT AND ASSIGNMENT

March 14, 2013

Page 2

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.

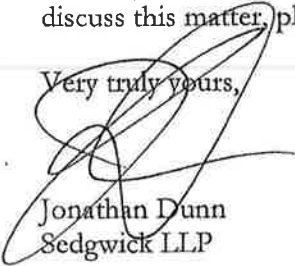
Wayne R. Walton, Esq., is the Assistant Vice President of Chubb and Son, the authorized representative of Federal, and the claims representative handling this matter on its behalf. Federal has hired Richard E. Tasker of Sage Associates, Inc. ("Sage") to assist it in handling Federal's obligations under 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

Clerk of the Board of Supervisors

Board of Supervisors

Re: Principal: ASR Constructors, Inc.

Project: L.I.D. Testing & Demonstration Facility, Parking Lot Renovations 2010, and Water Efficient  
Landscape Conservation

Obligee: Riverside County Flood Control and Water Conservation District

Bond No.: 8219-26-57

NOTICE OF DEFAULT AND ASSIGNMENT

March 14, 2013

Page 3

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)