

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

133



FROM: Parks Department

SUBMITTAL DATE:
July 19, 2010

SUBJECT: Mayflower Park Phase 2 Improvement Project – Award of Construction - District IV

RECOMMENDED MOTION: That the Board :

1. Find the bid by Doug Wall Construction non-responsive;
2. Waive any minor irregularities in bid by A.E.L. Construction, Inc. as recommended in the findings set forth below;
3. Award the construction contract to the lowest responsive bidder A.E.L. Construction, Inc.;
4. Authorize the Chair to execute the agreement with A.E.L. Construction, Inc., Blythe, California, in the amount of \$3,109,000 for the Mayflower Park Phase 2 Improvement Project;
5. Instruct the Clerk of the Board to return four (4) executed copies of the agreement to the Department for transmittal and file; and
6. Authorizes the Auditor-Controller to post the budget adjustment as shown on the attached Schedule A.

BACKGROUND: On April 20, 2010 (per Board Minute Order 13.1), the Board of Supervisors approved the plans and specifications for the construction of the Phase 2 project at the Mayflower Park site. The project will consist of a new maintenance facility, new entry kiosk, new potable water well, additional shade structures, expansion of the existing dry RV storage area, and landscaping. The Clerk of the Board advertised for bids.

(continued on page 2)

[Signature]
Scott Bangle, Director

2011-001:SB:SL

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 3,109,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	Yes
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2010/11
SOURCE OF FUNDS: 2002 Resources Bond Act Per Capita Program (69%), East County Parks Development Impact Fees (28%), Parks Department Fund (3%)				Positions To Be Deleted Per A-30 <input type="checkbox"/>
				Requires 4/5 Vote <input checked="" type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: *[Signature]*
Alex Gann

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Benoit, seconded by Supervisor Buster and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: August 31, 2010
xc: Parks, Auditor, EO

Kecia Harper-Ihem
Clerk of the Board
By: *[Signature]*
Deputy

Prev. Agn. Ref.: 1/26/10, 13.1; 4/20/10, 13.1; 6/15/10, 13.1

District: IV

Agenda Number:

13.1

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

FISCAL PROCEDURES APPROVED
BY: ROBERT E. BYRD, AUDITOR-CONTROLLER
DATE: 7/27/10
BY: SAMUEL WONG

Policy ☒ Policy ☒
Consent ☐ Consent ☐
Dept't Recomm.: Per Exec. Ofc.:

SUBJECT: Mayflower Park Phase 2 Improvement Project – Award of Construction - District IV

Bids were received and publicly opened by the Clerk on May 19, 2010, with the Clerk receiving four (4) bids. A bid protest was filed, and upon review, it was determined that the two lowest bidders were non-responsive. The Department then opted to re-bid the project.

On June 15, 2010 (per Board Minute Order 13.1), the Board of Supervisors approved the rejection of all bids and authorized the Clerk of the Board to advertise for bids. Bids were received and publicly opened by the Clerk on July 15, 2010, with the Clerk receiving five (5) bids. Three bid protests were received by Doug Wall Construction, A.E.L. Construction, Inc., and C.N.B. Excavating, Inc. The protests contended that certain items in the bids by Doug Wall Construction and A.E.L. Construction Inc. made those bids non-responsive. A summary of the protests and the Department's response to those protests can be found in the chart below. Department staff and County Counsel have reviewed the protest information and conclude the protest issues related to the lowest bidder warrant the rejection of said bid. Department staff and County Counsel then reviewed the protest information related to the second lowest bidder and concluded the protest issues do not warrant rejection of the bid and it is appropriate to proceed with the award to A.E.L. Construction, Inc. Therefore it is recommended that the Board award the lowest, responsive/responsible bid submitted by A.E.L. Construction, Inc., Blythe, California in the amount of \$3,109,000.

All costs associated with this project will be funded through the Park Department funds, existing Development Impact Fee commitments (August 23, 2005, M.O. 3.65) and State Resources Bonds; thus there is no fiscal impact to the County General Funds as a result of this project.

Summary of Bid Protests and Recommended Findings

Bid Protest Item Re Doug Wall Construction	Department Response	Recommended Finding
Item 4 of Addendum No. 4 stated "All bidders are directed to use an allowance in their bids and therefore directed to enter \$400,000 (four hundred thousand) on <u>'Item 4 Installation of a Well and Domestic Water System'</u> of the Bid Schedule." Doug Wall Construction did not.	The referenced Addendum item was clear in stating to enter the \$400,000 figure in the appropriate location. This could constitute a clerical error for which Doug Wall Construction would be entitled to request relief from his bid under Public Contract Code Section 5103, and suffer no penalty against his bid bond. That option gives this bidder an advantage over the other bidders which cannot be waived as set forth in case law under the Public Contract Code.	Bid from Doug Wall Construction, Inc., is non-responsive.

Bid Protest Item(s) Re A.E.L. Construction	Department Response	Recommended Finding
As stated by the CSLB, well drilling cannot be self-performed by an "A" or "B" licensed contractor. The fourth low bidder argues that since AEL does not have a C-57 well drilling license and did not list one on his subcontractor list, this makes the bid by AEL nonresponsive and invalid.	AEL's listed sub-contractor, JPI is listed to perform all plumbing, underground utilities, and well work. Per confirmation letter dated July 22 from AEL, they are aware of the licensing restriction and JPI will be sub-contracting with Palm Springs Pump for the well drilling portion of the work. Palm Springs Pump has a C-57 (Well Drilling) license.	Bid from AEL Construction, Inc., is responsive.
The fourth low bidder states that A.E.L. submitted two bid forms, and altered the bid form, and it is therefore non-responsive.	Bid Addendum No. 2 to the project specifications provided a new bid form. The difference between the original and new form was to combine two lines items into one – the description of the work remained the same. A.E.L. submitted both the original form and the newer form. The bid is the same on the two line items and the total bid is the same. This does not give the bidder any advantage and is a minor irregularity that can be waived. It is unclear what part of the bid form is alleged to be modified. A copy of the bid does make it appear that the numbers in front of each line item are blacked out, however the original form reveals that these numbers were merely highlighted with a marker pen.	This is a minor irregularity that can be waived and bid from A.E.L. is responsive.

Schedule A

Increase Appropriations:

25400-931104-551100	Contribution to Other County Funds	\$ 100,000
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Expected Offset:

25400-931104-325100	Unreserved Fund Balance	\$ 100,000
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AGREEMENT

Phase 2 Improvements at Mayflower Park PKARC - 070

This Agreement is entered into at Riverside, California on August 10, 2010, and is between the **Riverside County Parks Department**, hereafter called "**DEPARTMENT**" and A.E.L. Construction, Inc., Blythe, California, hereinafter called "**CONTRACTOR**".

1. **CONTRACTOR** has submitted to the **DEPARTMENT** its bid for the **Phase 2 Improvements at Mayflower Park**, hereafter called "Project," and all appurtenant work in strict accordance with the Contract Documents identified below and the **DEPARTMENT** has accepted said bid.

2. **CONTRACTOR** has re-examined and carefully studied its bid and found it to be correct; ascertained that its subcontractors are properly licensed and possess the requisite skill and forces and will enter into agreements containing contractual terms identical to those of this Agreement; examined the site and fully understands all of the Contract Documents; and can do the work in accordance with the Contract Documents for the price set forth in its bid.

3. Contract Documents: The entire contract consists of the following: (a) this Agreement; (b) the Notice Inviting Bids; (c) the Instructions to Bidders; (d) the Bid Form; (e) the Bid Bond; (f) the Payment Bond; (g) the Performance Bond; (h) all applicable State and Federal requirements; (i) the General Provisions; (j) the Special Provisions (Technical Specifications); (k) Plans and Drawings; (l) any addenda issued for the project; (m) any change orders issued for the project; (n) any additional or supplemental specifications or drawings issued in accordance with the provisions of the Contract Documents; (o) meeting minutes and any field orders. All of these documents are by this reference incorporated herein with like effect as if here set forth in full; and upon the proper issuance of other documents they shall likewise be deemed incorporated.

4. The Work: **CONTRACTOR** shall do all things necessary to accomplish the work described in the Contract Documents; and shall commence work within fifteen (15) calendar days after receipt of a Notice to Proceed and shall complete the work within one hundred twenty (120) calendar days after its receipt of said Notice.

5. Compensation:

CONTRACTOR shall be paid the following total amount, in the manner set forth in the Contract Documents, the lump sum of:

\$3,109,000 (Three Million One Hundred Nine Thousand Dollars and 0/100)

The parties have executed this Agreement as of the date set forth on Page 1 of this Agreement.

CONTRACTOR:

COMPANY NAME: AEL CONSTRUCTION, INC.

BY: 

NAME: DEREK FRAHMANN

TITLE: SECRETARY

OWNER:

RIVERSIDE COUNTY PARKS DEPARTMENT

BY: 

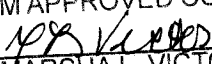
Marion Ashley
Chairperson, Board of Supervisors

ATTEST:

CLERK OF THE BOARD
Kecia Harper-Ihem

BY: 

AUG 31 2010 13.1

FORM APPROVED COUNTY COUNSEL
BY:  8/27/10
MARSHAL VICTOR DATE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

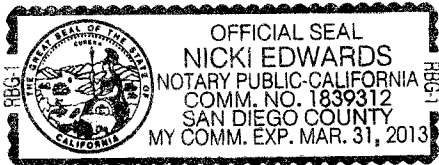
State of California

County of San Diego

On July 26, 2010 before me, Nicki Edwards, Notary Public,

personally appeared Derek Frahmman, 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 the 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.

Nicki Edwards
Signature of Notary

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
☒ CORPORATE OFFICER

Secretary

- ☐ PARTNER(S) ☐ LIMITED
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR

OTHER:

DESCRIPTION OF ATTACHED DOCUMENT

Agreement

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)
AEL Construction, Inc.

PERFORMANCE BOND

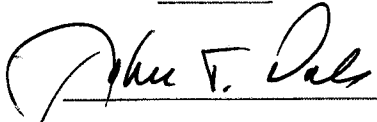
The makers of this bond, AEL CONSTRUCTION, INC., as Principal and CONTRACTOR, and INSURANCE COMPANY OF THE WEST, a corporation authorized to issue surety bonds in California, as Surety, are held and firmly bound unto the **Riverside County Parks Department**, hereafter called "DEPARTMENT", in the sum of \$ 3,109,000.00 (100% estimated total contract price) for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such that whereas the Principal entered into a certain contract with the DEPARTMENT dated AUGUST 10, 2010, for the construction of the **Phase 2 Improvements at Mayflower Park**, in accordance with the Contract Document.

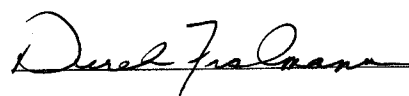
Now therefore, if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms conditions and agreements of said contract during the original term of said contract and any extension thereof that may be granted by the DEPARTMENT, with or without notice to the surety, and during the life of any guarantee required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms of conditions and agreements of any and all duly authorized modifications of said contract that may hereafter be made, then this obligation to be void, otherwise to remain in full force and effect. Without notice, Surety consents to extension of time for performance, change in requirements, change in compensation or prepayment under said contract.

SIGNATURES MUST BE NOTARIZED - Attach Acknowledgments

SURETY

BY: 
NAME: JOHN T. DOLE
TITLE: ATTORNEY-IN-FACT
DATE: JULY 26, 2010

CONTRACTOR

BY: 
NAME: DEREK FRAHMANN
TITLE: SECRETARY
DATE: 7.26.10

ICW GROUP
Power of Attorney
Insurance Company of the West
Explorer Insurance Company **Independence Casualty and Surety Company**

KNOW ALL MEN BY THESE PRESENTS: That Insurance Company of the West, a Corporation duly organized under the laws of the State of California, Explorer Insurance Company, a Corporation duly organized under the laws of the State of California, and Independence Casualty and Surety Company, a Corporation duly organized under the laws of the State of Texas, (collectively referred to as the "Companies"), do hereby appoint

NICKI EDWARDS, JOHN T. DOLE, DANIEL P. DOLE, ROBERT P. DOLE

their true and lawful Attorney(s)-in-Fact with authority to date, execute, sign, seal, and deliver on behalf of the Companies, fidelity and surety bonds, undertakings, and other similar contracts of suretyship, and any related documents.

In witness whereof, the Companies have caused these presents to be executed by its duly authorized officers this 2nd day of January, 2008.



Jeffrey D. Sweeney

Jeffrey D. Sweeney, Assistant Secretary

State of California } ss.

County of San Diego

INSURANCE COMPANY OF THE WEST
EXPLORER INSURANCE COMPANY
INDEPENDENCE CASUALTY AND SURETY COMPANY

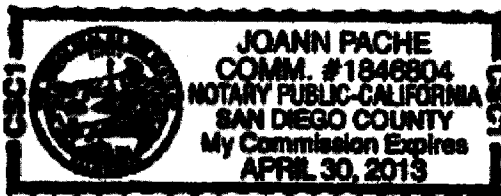
J. Douglas Browne

J. Douglas Browne, Senior Vice President

On May 21, 2009, before me, JoAnn Pache, Notary Public, personally appeared J. Douglas Browne and Jeffrey D. Sweeney, 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 they executed the same in their authorized capacities, and that by their signatures on the instrument, the entity upon behalf of which the persons 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.



JoAnn Pache

JoAnn Pache, Notary Public

RESOLUTIONS

This Power of Attorney is granted and is signed, sealed and notarized with facsimile signatures and seals under authority of the following resolutions adopted by the respective Boards of Directors of each of the Companies:

"RESOLVED: That the President, an Executive or Senior Vice President of the Company, together with the Secretary or any Assistant Secretary, are hereby authorized to execute Powers of Attorney appointing the person(s) named as Attorney(s)-in-Fact to date, execute, sign, seal, and deliver on behalf of the Company, fidelity and surety bonds, undertakings, and other similar contracts of suretyship, and any related documents.

RESOLVED FURTHER: That the signatures of the officers making the appointment, and the signature of any officer certifying the validity and current status of the appointment, may be facsimile representations of those signatures; and the signature and seal of any notary, and the seal of the Company, may be facsimile representations of those signatures and seals, and such facsimile representations shall have the same force and effect as if manually affixed. The facsimile representations referred to herein may be affixed by stamping, printing, typing, or photocopying."

CERTIFICATE

I, the undersigned, Assistant Secretary of Insurance Company of the West, Explorer Insurance Company, and Independence Casualty and Surety Company, do hereby certify that the foregoing Power of Attorney is in full force and effect, and has not been revoked, and that the above resolutions were duly adopted by the respective Boards of Directors of the Companies, and are now in full force.

IN WITNESS WHEREOF, I have set my hand this 26 day of July, 2010.

Jeffrey D. Sweeney

Jeffrey D. Sweeney, Assistant Secretary

To verify the authenticity of this Power of Attorney you may call 1-800-877-1111 and ask for the Surety Division. Please refer to the Power of Attorney Number, the above named individual(s) and details of the bond to which the power is attached. For information or filing claims, please contact Surety Claims, ICW Group, 11455 El Camino Real, San Diego, CA 92130-2045 or call (858) 350-2400.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

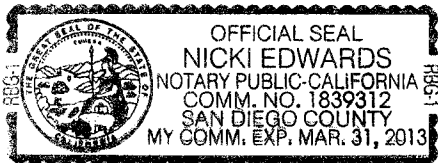
County of San Diego

On July 26, 2010 before me, Nicki Edwards, Notary Public,

personally appeared John T. Dole,

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 the 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.

Nicki Edwards
Signature of Notary

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

- ☐ PARTNER(S) ☐ LIMITED
☒ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
OTHER:

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)
Insurance Company of the West

DESCRIPTION OF ATTACHED DOCUMENT

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

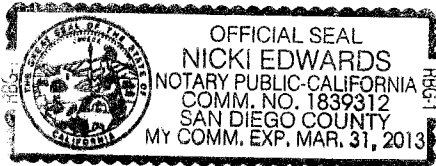
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County of San Diego

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Signature of Notary

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- ☐ INDIVIDUAL
☒ CORPORATE OFFICER

Secretary

- ☐ PARTNER(S) ☐ LIMITED
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR

OTHER:

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)
AEL Construction, Inc.

DESCRIPTION OF ATTACHED DOCUMENT

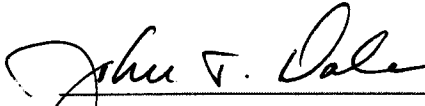
Performance / Payment bond

PAYMENT BOND

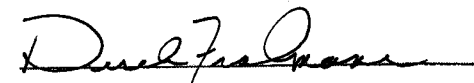
The makers of this bond are AEL CONSTRUCTION, INC., as Principal and CONTRACTOR, and INSURANCE COMPANY OF THE WEST, a corporation authorized to issue surety bonds in California, as Surety. This bond is issued in conjunction with that certain public works contract dated AUGUST 10, 2010, between Principal and the **Riverside County Parks Department** for the total amount payable pursuant to the contract. THE AMOUNT OF THIS BOND IS ONE HUNDRED PERCENT 100% OF THE TOTAL SUM OF THE CONTRACT. The contract is for the public work generally consisting of the **Phase 2 Improvements at Mayflower Park**. The beneficiaries of this bond are as stated in Section 3248 of the Civil Code; and the requirements and conditions of this bond are as set forth in Section 3248, 3249, 3250 and 3252 of said Code. Without notice, Surety consents to extension of time for performance, change in requirements or amount of compensation, or prepayment under said contract.

SIGNATURES MUST BE NOTARIZED - Attach Acknowledgments

SURETY

BY: 
NAME: JOHN T. DOLE
TITLE: ATTORNEY-IN-FACT
DATE: JULY 26, 2010

CONTRACTOR

BY: 
NAME: DEREK FRAHMANN
TITLE: SECRETARY
DATE: 7.26.10

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KNOW ALL MEN BY THESE PRESENTS: That Insurance Company of the West, a Corporation duly organized under the laws of the State of California, Explorer Insurance Company, a Corporation duly organized under the laws of the State of California, and Independence Casualty and Surety Company, a Corporation duly organized under the laws of the State of Texas, (collectively referred to as the "Companies"), do hereby appoint

NICKI EDWARDS, JOHN T. DOLE, DANIEL P. DOLE, ROBERT P. DOLE

their true and lawful Attorney(s)-in-Fact with authority to date, execute, sign, seal, and deliver on behalf of the Companies, fidelity and surety bonds, undertakings, and other similar contracts of suretyship, and any related documents.

In witness whereof, the Companies have caused these presents to be executed by its duly authorized officers this 2nd day of January, 2008.



Jeffrey D. Sweeney

Jeffrey D. Sweeney, Assistant Secretary

State of California } ss.

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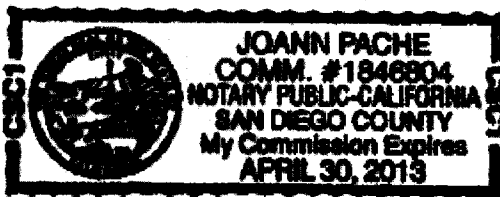
J. Douglas Browne

J. Douglas Browne, Senior Vice President

On May 21, 2009, before me, JoAnn Pache, Notary Public, personally appeared J. Douglas Browne and Jeffrey D. Sweeney, 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 they executed the same in their authorized capacities, and that by their signatures on the instrument, the entity upon behalf of which the persons 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.



JoAnn Pache

JoAnn Pache, Notary Public

RESOLUTIONS

This Power of Attorney is granted and is signed, sealed and notarized with facsimile signatures and seals under authority of the following resolutions adopted by the respective Boards of Directors of each of the Companies:

"RESOLVED: That the President, an Executive or Senior Vice President of the Company, together with the Secretary or any Assistant Secretary, are hereby authorized to execute Powers of Attorney appointing the person(s) named as Attorney(s)-in-Fact to date, execute, sign, seal, and deliver on behalf of the Company, fidelity and surety bonds, undertakings, and other similar contracts of suretyship, and any related documents.

RESOLVED FURTHER: That the signatures of the officers making the appointment, and the signature of any officer certifying the validity and current status of the appointment, may be facsimile representations of those signatures; and the signature and seal of any notary, and the seal of the Company, may be facsimile representations of those signatures and seals, and such facsimile representations shall have the same force and effect as if manually affixed. The facsimile representations referred to herein may be affixed by stamping, printing, typing, or photocopying."

CERTIFICATE

I, the undersigned, Assistant Secretary of Insurance Company of the West, Explorer Insurance Company, and Independence Casualty and Surety Company, do hereby certify that the foregoing Power of Attorney is in full force and effect, and has not been revoked, and that the above resolutions were duly adopted by the respective Boards of Directors of the Companies, and are now in full force.

IN WITNESS WHEREOF, I have set my hand this 26 day of July, 2010

Jeffrey D. Sweeney

Jeffrey D. Sweeney, Assistant Secretary

To verify the authenticity of this Power of Attorney you may call 1-800-877-1111 and ask for the Surety Division. Please refer to the Power of Attorney Number, the above named individual(s) and details of the bond to which the power is attached. For information or filing claims, please contact Surety Claims, ICW Group, 11455 El Camino Real, San Diego, CA 92130-2045 or call (858) 350-2400.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

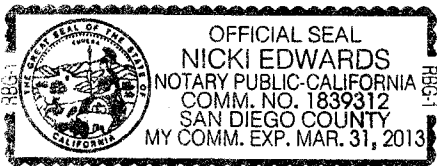
County of San Diego

On July 26, 2010 before me, Nicki Edwards, Notary Public,

personally appeared John T. Dole,

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 the 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.

Nicki Edwards
Signature of Notary

OPTIONAL

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CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

- ☐ PARTNER(S) ☐ LIMITED
☒ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR

OTHER:

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)
Insurance Company of the West

DESCRIPTION OF ATTACHED DOCUMENT

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

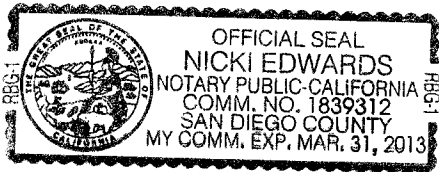
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I certify under the PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



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CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
☒ CORPORATE OFFICER

Secretary

- ☐ PARTNER(S) ☐ LIMITED
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR

OTHER:

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)
AEL Construction, Inc.

DESCRIPTION OF ATTACHED DOCUMENT

Performance / Payment bond



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/23/2010

PRODUCER (619) 475-5200, Fax (619) 475-5258

Paul Dole Insurance Agency

5130 Bonita Road, Suite A

P.O. Box 400

Bonita CA 919080400

INSURED

A.E.L. Construction, Inc.

505 State Place

Escondido

CA 92029

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

NAIC #

INSURER A: Navigators Specialty Ins Co

INSURER B: General Insurance Company of

INSURER C: Everest National Insurance

INSURER D

INSURER E

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSR'D	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY	SF06CGL000403-04	01/01/2010	01/01/2011	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000
	CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person) \$ 5,000
					PERSONAL & ADV INJURY \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:				GENERAL AGGREGATE \$ 2,000,000
	POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/>				PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY	24CC01851160	01/01/2010	01/01/2011	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$
	ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
	SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS				
	<input checked="" type="checkbox"/> NON-OWNED AUTOS				
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
	ANY AUTO				OTHER THAN EA ACC \$
					AUTO ONLY AGG \$
C	EXCESS / UMBRELLA LIABILITY	71C2000169-101	01/01/2010	01/01/2011	EACH OCCURRENCE \$ 5,000,000
	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE \$ 5,000,000
	DEDUCTIBLE				\$
	RETENTION \$				\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N <input type="checkbox"/>			E.L. EACH ACCIDENT \$
	If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE \$
	OTHER				E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Re: Mayflower Park Improvements, 4980 Colorado River Road, Blythe, CA 92225/ Any person or org that the named insd is obligated by virtue of a written contract or agreement is named as an Additional Insd on Auto Liab and Gen Liab per form ANFES160 (05/2006) (Comm'l jobs): Riverside County Regional Park and Open-Space District; County of Riverside /*10 days notice of cancellation for non-payment

CERTIFICATE HOLDER

(951) 955-1383

Riverside County Regional Park and
Open-Space District; County of Riverside
Attn: Steve Lech
4600 Crestmore Road
Riverside, CA 92509

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Daniel Dole

ACORD 25 (2009/01)

INS025 (200901)

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**BLANKET ADDITIONAL INSURED ENDORSEMENT
(EXCLUDING RESIDENTIAL)**

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS (FORM B)

CG 20 10 11 85

SCHEDULE

Name of Person or Organization:

Any person or organization that the named insured is obligated by virtue of a written contract or agreement to provide insurance such as is afforded by this policy.

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

The following additional provisions apply to any entity that is an insured by the terms of this endorsement:

1. Primary Wording

If required by written contract or agreement: Such insurance as is afforded by this policy shall be primary insurance, and any insurance or self-insurance maintained by the above additional insured(s) shall be excess of the insurance afforded to the named insured and shall not contribute to it.

2. Waiver of Subrogation

If required by written contract or agreement: We waive any right of recovery we may have against an entity that is an additional insured per the terms of this endorsement because of payments we make for injury or damage arising out of "your work" done under a contract with that person or organization.

3. Neither the coverages provided by this insurance policy nor the provisions of this endorsement shall apply to any claim arising out of the sole negligence of any additional insured or any of their agents/ employees.

4. This endorsement does not apply to any work involving or related to properties intended for permanent residential or habitational occupancy (other than apartments).

The words "you" and "your" refer to the Named Insured shown in the Declarations.

"Your work" means work or operations performed by you or on your behalf; and materials, parts or equipment furnished in connection with such work or operations.

ANF-ES 160 (5/ 2006)



P.O. BOX 420807, SAN FRANCISCO, CA 94142-0807

CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

ISSUE DATE: 07-23-2010

GROUP: 000713
POLICY NUMBER: 0034098-2009
CERTIFICATE ID: 38
CERTIFICATE EXPIRES: 07-10-2011
07-10-2010/07-10-2011

RIVERSIDE COUNTY REGIONAL PARK AND
OPEN-SPACE DISTRICT; COUNTY OF RIVERSIDE
4800 CRESTMORE RD
RIVERSIDE CA 92509-6858

SD

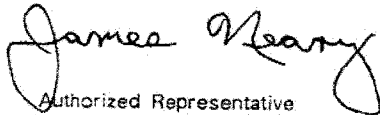
JOB: MAYFLOWER PARK IMPROVEMENTS
4980 COLORADO RIVER RD
BLYTHE
CA 92225

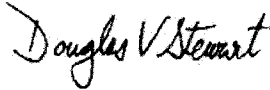
This is to certify that we have issued a valid Workers' Compensation insurance policy in a form approved by the California Insurance Commissioner to the employer named below for the policy period indicated.

This policy is not subject to cancellation by the Fund except upon 10 days advance written notice to the employer.

We will also give you 10 days advance notice should this policy be cancelled prior to its normal expiration.

This certificate of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policy listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate of insurance may be issued or to which it may pertain, the insurance afforded by the policy described herein is subject to all the terms, exclusions, and conditions, of such policy.


Authorized Representative


Interim President and CEO

EMPLOYER'S LIABILITY LIMIT INCLUDING DEFENSE COSTS: \$1,000,000 PER OCCURRENCE.

ENDORSEMENT #1600 - MORGAN, DENNIS EUGENE PRESIDENT - EXCLUDED.

ENDORSEMENT #2570 ENTITLED WAIVER OF SUBROGATION EFFECTIVE 2010-07-23 IS
ATTACHED TO AND FORMS A PART OF THIS POLICY. THIRD PARTY NAME:
RIVERSIDE COUNTY REGIONAL PARK AND

EMPLOYER

A E L CONSTRUCTION, INC AND/OR AMPAC SD
CONSTRUCTION MANAGEMENT, INC AND/OR MORGAN,
DENNIS E (AN INDIVIDUAL)
505 STATE PL
ESCONDIDO CA 92029

[B10,SD]

MINUTES OF THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



13.1

(1)

On motion of Supervisor Stone, seconded by Supervisor Buster and duly carried by unanimous vote, IT WAS ORDERED that the recommendation from the Parks Department regarding the Approval of the Mayflower Park Phase 2 Improvement Project; Approval of Award of Construction Contract to A.E.L. Construction Inc.; and Authorize a Budget Adjustment, 4th District is approved as recommended.

(2)

On Motion of Supervisor Ashley, seconded by Supervisor Tavaglione and duly carried by unanimous vote, IT WAS ORDERED that the above matter be reconsidered.

(3)

On Motion of Supervisor Buster, seconded by Supervisor Benoit and duly carried by unanimous vote, IT WAS ORDERED that the above matter is continued to Tuesday, August 31, 2010 at 1:30 p.m.

I hereby certify that the foregoing is a full true, and correct copy of an order made and entered on August 10, 2010 of Supervisors
Minutes.

(seal)

WITNESS my hand and the seal of the Board of Supervisors
Dated: August 10, 2010
Kecia Harper-Ihem, Clerk of the Board of Supervisors, in
and for the County of Riverside, State of California.

By:  Deputy

AGENDA NO.
13.1

xc: Parks, COB

• SAMUEL S. GILL
(1912-1965)
ERNEST R. BALDWIN
(1925-1996)

LAW OFFICES
GILL AND BALDWIN, P.C.

130 NORTH BRAND BOULEVARD
SUITE 405
GLENDALE, CALIFORNIA 91203

TELEPHONES
(323) 245-3131
(818) 500-7755
(310) 558-1115

FACSIMILE
(818) 242-4305

www.GillandBaldwin.com

August 6, 2010

Via Overnight Mail

Board of Supervisors
County of Riverside
4080 Lemon Street, 1st Floor
Riverside, CA 92501

Attn: Ms. Kecia Harper-Ihem, Clerk of the Board

Re: Mayflower Park Phase 2 Improvement Project
Proposed Award of Construction - District IV
Board Meeting August 10, 2010
Agenda Item 13.1

Dear Members of the Board:

This office represents CNB Excavating, Inc., a licensed general contractor which submitted a fully responsive bid to the County on July 15, 2010 on the above reference project. My client representatives have had discussions and exchanged correspondence with staff regarding evaluation of the bids and selection of the lowest responsive and responsible bidder. Unfortunately, the staff recommendation set forth in the Submittal to the Board dated July 19, 2010, recommends award to A.E.L. Construction, a bidder whose bid is not responsive. For the reasons set forth below, CNB protests award of the contract to any bidder on the project other than CNB.

CNB does not question the findings on page 2 of the Submittal regarding the bid of Doug Wall Construction. It does have serious concerns about the analysis set forth on page 3 regarding the bid of A.E.L.

A.E.L.'S failure to list a qualified subcontractor for the well work

The first item discussed regarding A.E.L. is its patent failure to list a qualified, properly licensed subcontractor to perform the well work required under Bid Item No. 4.

13.1

2010-08-102320

All parties agree that the prime contractor (bidder) is not qualified to do the well work and must engage the services of a specialty contractor licensed by the State of California to perform such work. All parties agree that A.E.L. did not list such a subcontractor.

Under the Department Response presented by the staff, it is permissible for A.E.L. to subcontract that work to the unlicensed subcontractor (JPI) as long as JPI subcontracts the work to a properly licensed specialty contractor. The law is otherwise.

That the work would ultimately be performed by a properly licensed second tier subcontractor does not cure the fatal defect in the subcontract between A.E.L. and JPI. The subcontract between A.E.L. and JPI would be illegal. The second tier subcontract is irrelevant.

A.E.L. cannot legally contract with JPI to perform work for which JPI is not properly licensed. Such a subcontract would be unlawful under Business and Professions Code Section 7118. Beyond that, an attempt by A.E.L. to enforce the bid knowing of this defect would constitute a misdemeanor under Business and Professions Code Section 7028.

In entering into such a subcontract, A.E.L. would also be violating Business and Professions Code Section 7114 (Aiding or abetting an unlicensed person to act as a contractor). JPI would be violating Business and Professions Code Section 7117.6 (Acting in the capacity of a contractor when not licensed in that classification).

An attempt to waive the known defect also is a violation of Business and Professions Code Section 7028.7 which gives rise to the possibility of issuance of citations to the responsible officer or employee of the public entity. Any attempt to award such a contract is also subject to issuance of an injunction prohibiting such an award under Business and Professions Code Section 7028.4.

Since A.E.L. cannot legally use JPI, A.E.L.'s attempt to pursue award of its bid while knowing of the license defect constitutes a violation of B&P 7028.15 which provides that it is a misdemeanor to submit a bid to a public entity when not properly licensed. This section also provides that such a bid **"shall be considered non-responsive and shall be rejected by the public agency."** The County has no discretion to waive the defect. A.E.L.'s bid must be rejected.

A.E.L. and/or JPI's violation of the Subcontractor Listing Law

It should also be noted that allowing JPI to locate a properly licensed specialty sub-subcontractor to perform the work after the bid opening constitutes a violation of the Subcontractor Listing Law itself (Public Contract Code Section 4100 et seq.). If A.E.L. or JPI knew before the bid that JPI was not properly licensed, they violated the Business and Professions Code. If they learned of the requirement after the bid, they must have obtained prices from licensed well contractors sometime between July 15, 2010 and July 22, 2010. That's bid shopping which is a violation of the Public Contract Code. The major purpose behind the Subcontractor Listing Law is to prevent bid shopping and bid peddling. Permitting JPI to do so would not only violate the letter and spirit of the law, but it would deny the County the benefits associated with getting those prices before the bid.

For both reasons, the failure to list a properly license subcontractor is a non-waivable defect which renders A.E.L.'s bid non-responsive and mandates rejection.

A.E.L.'s submission of different bid forms

The second item discussed in the Submittal deals with the submission of two separate bid forms by A.E.L. Your bid documents are straightforward - there is to be no alteration of the bid documents by a bidder (for obvious reasons). The bid documents clearly require the bidder to use a single form - CNB did so but A.E.L. did not. While the Department Response accurately states the apparent similarity of the two forms, CNB suggests that it is bad public policy to permit even a minor variation from your requirements. It suggests to bidders that the bid documents are not fixed, but subject to unilateral modification by bidders. CNB requests that you exercise your discretion in favor of the certainty afforded by a bright line rule against modifications and reject A.E.L.'s bid on that ground as well.

A.E.L.'s failure to submit an Affidavit for Corporate Contractor Non-Collusion

There is another significant defect in the bid which is not discussed in the Staff report. A.E.L. did not submit an Affidavit for Corporate Contractor Non-collusion as required in bid documents and under Public Contract Code Section 7106.

The Affidavit required under the bid documents and law must be signed under penalty of perjury (a sworn oath). The notarial designation of such a statement is a "jurat".

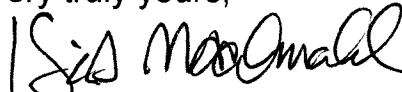
The Affidavit submitted by A.E.L. was not a document executed under oath. A.E.L.

Board of Supervisors
County of Riverside
August 6, 2010
Page 4

did not provide a jurat. Instead, it provided an "acknowledgment". An acknowledgment is simply a notary's confirmation of the identity of the individual signing the document. It has nothing to do with, and does not constitute by any stretch of legal analysis, a statement under oath. Because the document is not a true affidavit, its statements were not made under oath nor can the A.E.L. representative who executed the document be held to the veracity standard of an oath. The failure to execute the document under oath and have that fact affirmed by a notary renders the document a nullity. This is not a waivable defect.

We appreciate the difficulties presented to staff in bidding and then analyzing non-compliant bids under the pressure of time associated with the construction of this project. CNB submitted a bid that is compliant and complete in all respects with the bidding requirements. We ask that the Board reject the bid of A.E.L. and award the project to CNB. Thank you for your consideration of our concerns. We look forward to a discussion of these issues either with staff prior to the Board meeting or during the meeting itself.

Very truly yours,



Kirk S. MacDonald

KSM:jo

cc: Steve Lech, Park Planner (*via overnight mail*)

Pamela J. Walls, County Counsel (*via overnight mail*)

CNB Excavating, Inc.

J:\CNB\Mayflower Park\Board 080610.wpd

8-31-10 13.1

PLEASE PRESS FIRMLY

1		FROM	
DATE	8/31/10		
COMPANY	RECEIVED RIVERSIDE COUNTY CLERK/BOARD OF SUPERVISORS		
ADDRESS	2000 Main Street, Riverside, CA 92503		
ADDRESS	Riverside, CA 92503		
CITY	Riverside, CA 92503		
SENDERS NAME	KIM S. MCKINLEY		
PHONE NUMBER	951-947-1111		
2	2		
COMPANY	Riverside County Board of Supervisors		
NAME	KIM S. MCKINLEY		
ADDRESS	2000 Main Street, Riverside, CA 92503		
ADDRESS	Riverside, CA 92503		
CITY	Riverside, CA 92503		
3	3		
YOUR INTERNAL BILLING REFERENCE WILL APPEAR ON YOUR INVOICE			
SPECIAL INSTRUCTIONS			

4		SHIPPING AIR BILL	
PACKAGE INFORMATION		PACKAGE LABEL	
<input checked="" type="checkbox"/> LETTER (MAX 8 OZ)	<input type="checkbox"/> PACKAGE (WT)	<input type="checkbox"/> DECLARED VALUE \$	
<input type="checkbox"/> COD AMOUNT \$	(CASH NOT ACCEPTED)		
5	5		
DELIVERY SERVICE	PRIORITY OVERNIGHT BY 10:30 AM	EARLY PRIORITY BY 8:00 AM	SATURDAY DELIVERY
RELEASE SIGNATURE			
SIGN TO AUTHORIZE DELIVERY WITHOUT OBTAINING SIGNATURE			
7	7		
PICK UP INFORMATION			
TIME		DRIVER #	ROUTE #
106838589		106838589	
9			
GSO TRACKING NUMBER			