

363



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

FROM: Economic Development Agency

SUBMITTAL DATE:
July 18, 2013

SUBJECT: Glen Oaks Fire Station - Project Closeout

RECOMMENDED MOTION: That the Board of Supervisors:

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

(Continued)

FISCAL PROCEDURES APPROVED
 PAUL ANGULO, CPA, AUDITOR-CONTROLLER
 BY: Lisette Rose 7/18/13
 Lisette Rose

Robert Field
Assistant County Executive Officer/EDA

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 8,750	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: Developer Impact Fees

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

C.E.O. RECOMMENDATION: APPROVE

County Executive Office Signature

BY: Jennifer L. Sargeny
 Jennifer L. Sargeny

MINUTES OF THE BOARD OF SUPERVISORS

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

Ayes: Jeffries, Tavaglione, Stone, Benoit and Ashley
 Nays: None
 Absent: None
 Date: July 30, 2013

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

EDA, Fire, CIP, Auditor

Prev. Agn. Ref.: 3.31 of 2/28/12; 3.30 of 11/30/10

District: 3/3

Agenda Number: **3-23**

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

FORM APPROVED COUNTY COUNSEL
 DATE 7/17/13
 REVIEWED BY CIP BY: [Signature]
 MARSHAL VICTOR
 Departmental Concurrence
 Christopher Hans
 John R. Hawkins, Fire Chief
 Riverside County Fire Department

RECOMMENDED MOTION: (Continued)

3. Ratify Amendment No. 3 to the architectural services agreement between the County of Riverside and Nicoloff & Associates of San Diego, California in the amount of \$8,750 and authorize the Chairman of the Board to execute the agreement on behalf of the county;
4. Authorize the Assistant County Executive Officer/EDA to administer Amendment No. 3 for Nicoloff and Associates, Inc. in accordance with applicable Board policies; and
5. Authorize EDA to issue payment to Federal pursuant to the Notice of Default and Assignment and the contract terms, and work with ASR and Federal to finalize and close out the project, including submittal of all project as-builts and warranty documentation, and clearing up any and all remaining stop notices and outstanding punch list items.

BACKGROUND:

On April 20, 2010, the Board of Supervisors approved the plans and specifications for the Glen Oaks Fire Station project and authorized the Clerk of the Board to advertise for bids. On November 20, 2010, the project was awarded to ASR Constructors Inc. for \$3,546,000. The project consisted of constructing a new 13,000 square foot fire station to replace a temporary station in the wine country region.

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. The EDA 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 county may make claim against the funds upon a default of the contractor. EDA 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 EDA 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.

On December 18, 2007, the Board of Supervisors approved an architectural services agreement between the County of Riverside and Nicoloff and Associates, Inc., in the amount of \$261,280, for design services of the Glen Oaks Fire Station. On February 28, 2012, the Board of Supervisors approved Amendment No. 2 to the architectural services agreement in the amount of \$33,580 for tasks related to the project which were not included in the original scope.

(Continued)

BACKGROUND: (Continued)

The architect was needed on site longer due to the length of time the contractor took to complete the project. Additionally, due to an error in a survey used as a basis for design, modifications were needed in grading and paving plans by the civil engineer. As a result of these additional services, Amendment No. 3 will compensate Nicoloff and Associates, Inc., in the amount not-to-exceed \$8,750.

All costs associated with this agreement will be funded using previously approved project contingency (Developer Impact Fees), thus no net county costs will be incurred.

Attachments:

Amendment No. 3
Notice of Default and Assignment

CLERK'S COPY

to Riverside County Clerk of the Board, Stop 1000

Post Office Box 1147, Riverside, Ca 92502-1147

Thank you.

**THIRD AMENDMENT TO AGREEMENT FOR ARCHITECTURAL SERVICES BY
AND BETWEEN THE COUNTY OF RIVERSIDE AND NICOLOFF AND
ASSOCIATES INC. FOR THE GLEN OAKS FIRE STATION**

THIS THIRD AMENDMENT TO THE AGREEMENT FOR ARCHITECTURAL
SERVICES for the Glen Oaks Fire Station ("Third Amendment") is made and entered
into by and between the COUNTY OF RIVERSIDE, ("COUNTY"), and Nicoloff and
Associates, herein referred to as "ARCHITECT".

RECITALS

WHEREAS, the COUNTY entered into the Original Agreement with
CONSULTANT on December 18, 2007, Agenda Item 3.25 ("Original Agreement");

WHEREAS, the COUNTY entered into a First Amendment to the Agreement on
August 16, 2011;

WHEREAS, the COUNTY entered into a Second Amendment to the Agreement
on February 28, 2012;

WHEREAS, the COUNTY has determined that additional services are needed
and ARCHITECT has agreed to provide such additional services to COUNTY;

WHEREAS, the ARCHITECT has agreed to provide such additional services to
COUNTY for the sum of \$8,750;

NOW, THEREFORE, in consideration of the mutual covenants contained herein
and providing that all other sections not amended remain in full force and effect, the
parties hereto agree as follows, effective as of July 30, 2013:

I. Section II of the Original Agreement is hereby amended to add the following
sentence:

SCOPE OF WORK. ARCHITECT shall provide the additional professional
services, as outlined and specified in Exhibit "A-3"; consisting of one (1) page,
attached hereto and incorporated herein by this reference.

JUL 30 2013 3-23

1 II. Section III of the Original Agreement is hereby amended by modifying the
2 introductory sentence:

3 ARCHITECT shall render the following services and related services as listed in
4 Exhibit "A", Exhibit "A-1", Exhibit "A-2", and Exhibit "A-3" attached hereto and
5 incorporated by this reference.

6 III. Section IV subparagraph A.1 of the Original Agreement is modified to read as
7 follows:

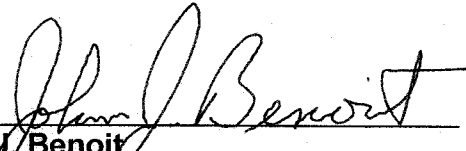
8 A. DETERMINATION OF AMOUNT. For the services hereinabove required the
9 COUNTY shall pay to ARCHITECT in the manner hereafter provided, a fee of
10 Three Hundred Twenty Seven Thousand, Three Hundred Sixty (\$327,360),
11 and shall be paid as provide in paragraph IV,C, Payment.

12 IN WITNESS HEREOF, the parties hereto have caused their duly authorized
13 representatives to execute this Third Amendment on _____.

14 (To be filed in by Clerk of the Board)

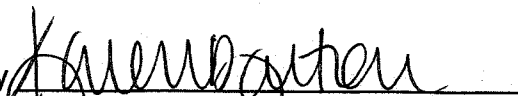
16 COUNTY OF RIVERSIDE

Nicoloff and Associates Inc.

17
18 
19 _____
20 John J. Benoit
21 Chairman, Board of Supervisors

22 _____
23 James M. Nicoloff
24 3405 Kenyon Street,
25 Suite 511
San Diego, CA 92110

22 ATTEST:
23 Kecia Harper-Ihem
24 Clerk of Board

24 By 
25 _____
Deputy

(Seal)

James M. Nicoloff, Architect

November 14, 2012

County of Riverside EDA
Project Management Office
3403 10th St., Suite 500
Riverside, CA 92501

Attn: Natalia Brown, Senior Development Specialist

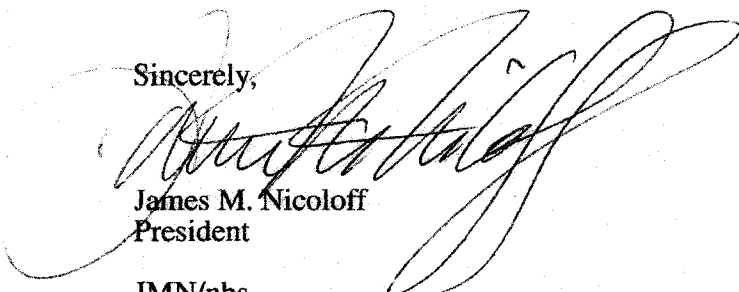
Re: Additional Services for Professional Services & Reimbursable Expenses during
Construction of Glen Oaks Fire Station

Dear Ms. Brown:

This project has gone approximately six months beyond the originally anticipated construction completion date. This has resulted in unanticipated additional time spent on our part as well as additional travel costs. Additionally, because of an error in the survey provided by the County, we have had to modify the grading and paving plan in order to meet actual conditions found in the site by the Contractor. We are therefore requesting the following additional professional service and reimbursable fees be provided by the County of Riverside.

We estimate that an additional Eight thousand seven hundred fifty dollar (\$8,7500.00) amount will cover the cost of our additional time and reimbursable expenses necessary to support the remaining architectural and engineering services, as well as the additional time spent by my Civil Engineering consultant in modifying the grading and paving plan. Should the above amount not appear acceptable as an equitable fee, we are prepared to present and discuss the factors considered in development of our proposal.

Sincerely,



James M. Nicoloff
President

JMN/nbs
encl.

FM08270003809

ATTORNEYS AT LAW

3 PARK PLAZA, 17TH FLOOR IRVINE, CALIFORNIA 92614-8540

www.sedgwick.com 949.852.8200 phone 949.852.8282 fax

Sedgwick LLP

(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: Glen Oaks Fire Station
Obligee: County of Riverside
Bond No.: 8219-26-54
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, it 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: Glen Oaks Fire Station

Obligee: County of Riverside

Bond No.: 8219-26-54

NOTICE OF ASSIGNMENT

March 14, 2013

Page 2

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

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 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)

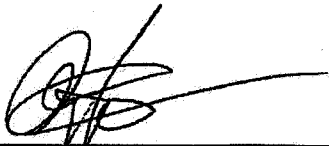
Other _____

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

ASR CONSTRUCTORS, INC.

By: 

Alan Regotti
President

CERTIFICATE OF ACKNOWLEDGEMENT

(Pursuant to California Civil Code, Section 1189)

State of California)
County of _____)

On _____, 20____ before
me _____ 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)

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

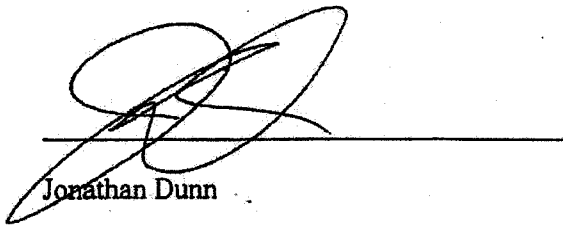
By: Wayne R. Walter
WAYNE R. WALTER

SENIOR Surety Claims Counsel

(SIGNATURES CONTINUE ON FOLLOWING PAGE)

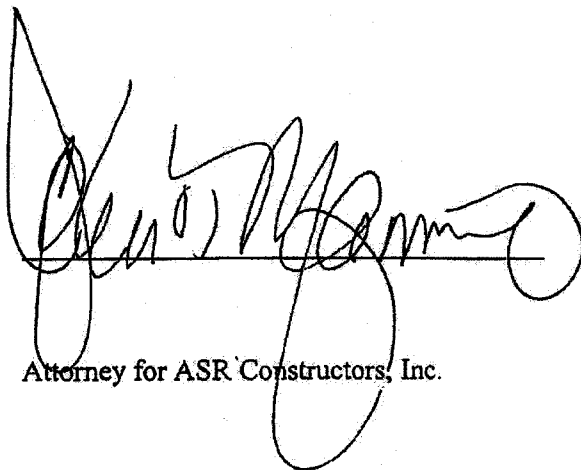
APPROVED AS TO FORM:

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 / Obligee	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 College 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)

3 PARK PLAZA, 17TH FLOOR IRVINE CA 92614-8540

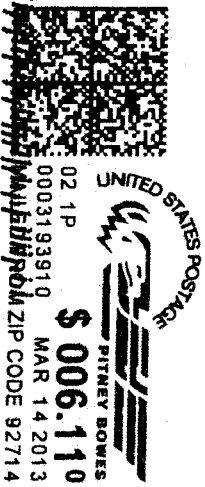
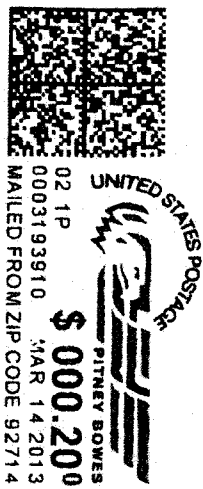
VERIFIED MAIL

Sedgwick
L.L.P.

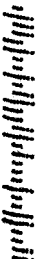


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Clerk of the Board of Supervisors
County of Riverside
4080 Lemon Street, 1st Floor
Riverside, California 92501



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