

APPROVED
05-18-2016

BOARD OF RECREATION
& PARK COMMISSIONERS

BOARD REPORT

NO. 16-122

DATE May 18, 2016

C.D. 15

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: GAFFEY STREET POOL – POOL AND NEW BATHHOUSE RESTORATION (PRJ20726) (W.O. #E1907453F) PROJECT – ACCEPTANCE OF STOP PAYMENT NOTICE AND ACCEPTANCE OF BOND TO RELEASE MONEY WITHHELD ON STOP PAYMENT NOTICE ON CONSTRUCTION CONTRACT NO. 3514

AP Diaz	_____	V. Israel	_____
<i>for</i> R. Barajas	<u>CSD</u>	K. Regan	_____
H. Fujita	_____	N. Williams	_____

Ramon Barajas FOR
General Manager

Approved Disapproved _____ Withdrawn _____

RECOMMENDATIONS

1. Direct staff to withhold the amounts claimed in the following Stop Payment Notice, plus an additional sum equal to 25% thereof, to defray any costs of litigation in the event of court action, if said amount of said funds are available;
2. Accept the Bond to Release Money Withheld on Stop Payment Notice, filed by AWI Builders, Inc., general contractor for the Gaffey Street Pool – Pool And New Bathhouse Restoration (PRJ20726) (W.O. #E1907453F) Project; and,
3. Direct the Board Secretary to notify the contractor, surety, and other appropriate parties that the Stop Notice was accepted, and that the Bond to Release Money Withheld was also accepted.

SUMMARY

STOP PAYMENT NOTICE

The Department of Recreation and Parks (RAP) is in receipt of a legal notice to withhold construction funds, pursuant to California Civil Code Sections 8520, 8530, and 9350, on the following contract, dated March 1, 2016:

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Contract 3514 CD 15

Gaffey Street Pool – Pool and New Bathhouse Restoration (PRJ20726) (W.O. #E1907453F)	General Contractor:	AWI Builders, Inc.
Construction Status: 43% Complete	Claimant:	Rodriguez Bros Engineering, Inc.
Project Impact: none	Amount:	\$64,843.20

BOND TO RELEASE MONEY WITHHELD ON STOP PAYMENT NOTICE

On April 13, 2016, RAP received the following Bond to Release Money Withheld on Stop Payment Notice filed by AWI Builders, Inc., which releases the Board from any and all liability for withholding funds from the general contractors or the sureties:

Contract 3514 CD 15

Gaffey Street Pool – Pool And New Bathhouse Restoration (PRJ20726) (W.O. #E1907453F)

General Contractor:	AWI Builders, Inc.	Surety:	Hanover Insurance Company
Stop Notice Claimant:	Rodriguez Bros Engineering, Inc.	Amount of Bond:	\$81,054.00

Construction Status: 43% Compete

Project Impact: none

The Bond was filed in accordance with California Civil Code Section 9364, which states, (a) A public entity may, in its discretion, permit the direct contractor to give the public entity a release bond. The bond shall be executed by an admitted surety insurer, in an amount equal to 125 percent of the claim stated in the stop payment notice, conditioned for the payment of any amount the claimant recovers in an action on the claim, together with court costs if the claimant prevails, and b) On receipt of a release bond, the public entity shall not withhold funds from the direct contractor pursuant to the stop payment notice.

FISCAL IMPACT STATEMENT

Acceptance of the Stop Payment Notice and the Bond to Release Money Withheld on Stop Payment Notice has no impact on the RAP's General Fund, as monies were previously appropriated for this project.

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This Report was prepared by Iris Davis, Commission Executive Assistant I, Board Office.

ATTACHMENTS

1. Stop Payment Notice
2. Bond to Release Money Withheld on Stop Payment Notice

PUBLIC WORK STOP PAYMENT NOTICE
LEGAL NOTICE TO WITHHOLD CONSTRUCTION FUNDS
AND
REQUEST FOR NOTICE OF FILING OF NOTICE OF
ACCEPTANCE, COMPLETION OR CESSATION
CIVIL CODE §8044, 8520, 8530, & 9350 et seq.

TO: City of Los Angeles Dept. of Rec. & Parks Commission Off./Attn: Armando Bencomo
221 West Figueroa Street, #300
Los Angeles, CA 90012

PROJECT: Gaffey Street Pool Restoration
3351 South Gaffey Street
San Pedro, CA

TAKE NOTICE THAT Rodriguez Bros Engineering, Inc. whose address is 2023 South Bon View Avenue, #H, Ontario, CA 91761 has performed labor and/or furnished materials for a work of improvement described as follows: Gaffey Street Pool Restoration, 3351 South Gaffey Street, San Pedro, CA.

The labor and/or materials furnished by claimant are of the following general kind: Underground site utilities. Direct contractor is AWI Builders, Inc., 7831 Paramount Boulevard, Pico Rivera, CA 90660.

The labor and/or materials were furnished to or for the following party: AWI Builders, Inc., 7831 Paramount Boulevard, Pico Rivera, CA, 90660. The relationship of the Claimant to the other parties is: Subcontractor.

The value of the whole amount of labor and/or materials agreed to be furnished is \$237,897.00. The value of the labor and/or materials furnished to date is \$203,479.55. Claimant has been paid the sum of \$138,636.35, and there is due, owing and unpaid the sum of \$64,843.20 together with interest at the rate of 2.00 percent per annum from November 1, 2015.

You are required to set aside sufficient funds to satisfy this claim with interest, court costs and reasonable costs of litigation as provided by law. You are also notified that claimant claims an equitable lien against any construction funds for this project which are in your hands.

You are also required to give Notice of Acceptance, Completion or Cessation to the undersigned as required by Civil Code §9362. Attached hereto is the \$10.00 fee as required by Civil Code §9362.

Firm Name: Rodriguez Bros Engineering, Inc.

By: 
Naomi Pele / Authorized Agent

VERIFICATION

I, the undersigned, say: I am the Authorized Agent of the claimant of the foregoing Stop Payment Notice. I have read said Stop Payment Notice and know the contents thereof; the same is true of my own knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 1, 2016, at San Diego, California.


Naomi Pele / Authorized Agent

BOND TO RELEASE MONEY WITHHELD ON STOP NOTICE

KNOW ALL MEN BY THESE PRESENTS:

That I/We, AWI BUILDERS, INC., as PRINCIPAL(S), and THE HANOVER INSURANCE COMPANY, a corporation organized and existing under and by virtue of the laws of the State of NEW HAMPSHIRE and duly authorized to transact business under the laws of the State of California, as SURETY, are held and firmly bound unto the City of Los Angeles Department Of Public Works, and any authority or authorities, board(s), or officer(s) having control over distribution of money due or to become due under the contract, hereafter called the OBLIGEE, in the just and full sum of EIGHT ONE THOUSAND FIFTY FOUR NO/100 Dollars (\$ 81,054.00) lawful money of the United States of America, for the payment of which sum, well and truly to be made, the said PRINCIPAL and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That

WHEREAS, the said PRINCIPAL was awarded and entered into a written contract with the OBLIGEE for GAFFEY STREET POOL RESTORATION - 3351 SOUTH GAFFEY STREET, SAN PEDRO, CA

WHEREAS, a certain Stop Notice under date of MARCH 1ST, 2016 has been filed by RODRIGUEZ BROS ENGINEERING, INC. against payments which are due the said PRINCIPAL in connection with said contract, in the amount of SIXTY FOUR THOUSAND EIGHT HUNDRED FORTY THREE 20/100 Dollars (\$ 64,843.20); and

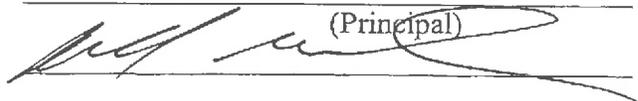
WHEREAS, the said PRINCIPAL(S) disputes the correctness and validity of said claim so filed, and desires that the funds now due him under the provisions of said contract shall be delivered to him notwithstanding said Stop Notice.

NOW, THEREFORE, if the above named PRINCIPAL shall fully protect the OBLIGEE, herein, against any loss by reason of or arising out of the acceptance of this bond, or the release of said moneys, or the payment thereto to said PRINCIPAL, and shall pay any sum which said claimant may recover on said claim, together with the cost of suit in said action, not exceeding the penal sum of this bond, then this obligation shall be void, otherwise it shall be and remain in full force and effect.

This bond is given and accepted under and in accordance with the provision Section 3196 of the Civil Cod of the State of California.

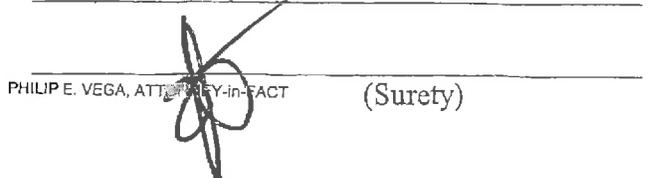
Signed, Sealed and Dated the 13TH day of APRIL, 2016

AWI BUILDERS, INC.

(Principal)


THE HANOVER INSURANCE COMPANY

PHILIP E. VEGA, ATTORNEY-IN-FACT

(Surety)


CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Orange)

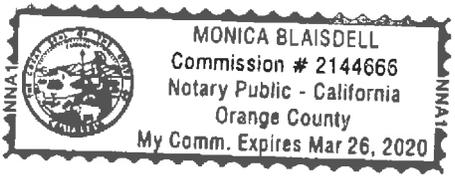
On APR 13 2016 before me, Monica Blaisdell, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Philip E. Vega
Name(s) of Signer(s)

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.



Signature Monica Blaisdell
Signature of Notary Public

THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

POWERS OF ATTORNEY
CERTIFIED COPY

KNOW ALL MEN BY THESE PRESENTS: That THE HANOVER INSURANCE COMPANY and MASSACHUSETTS BAY INSURANCE COMPANY, both being corporations organized and existing under the laws of the State of New Hampshire, and CITIZENS INSURANCE COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Michigan, do hereby constitute and appoint

Philip E. Vega, Myrna Smith, Kevin E. Vega and/or Britton Christiansen

of Covina, CA and each is a true and lawful Attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed any place within the United States, or, if the following line be filled in, only within the area therein designated any and all bonds, recognizances, undertakings, contracts of indemnity or other writings obligatory in the nature thereof, as follows:

Any such obligations in the United States, not to exceed Twenty Five Million and No/100 (\$25,000,000) in any single instance

and said companies hereby ratify and confirm all and whatsoever said Attorney(s)-in-fact may lawfully do in the premises by virtue of these presents. These appointments are made under and by authority of the following Resolution passed by the Board of Directors of said Companies which resolutions are still in effect:

"RESOLVED, That the President or any Vice President, in conjunction with any Vice President, be and they are hereby authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as its acts, to execute and acknowledge for and on its behalf as Surety any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 - Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

IN WITNESS WHEREOF, THE HANOVER INSURANCE COMPANY, MASSACHUSETTS BAY INSURANCE COMPANY and CITIZENS INSURANCE COMPANY OF AMERICA have caused these presents to be sealed with their respective corporate seals, duly attested by two Vice Presidents, this 27th day of February 2013.



THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

Robert Thomas
Robert Thomas, Vice President

Joe Brenstrom
Joe Brenstrom, Vice President

THE COMMONWEALTH OF MASSACHUSETTS)
COUNTY OF WORCESTER) ss.

On this 27th day of February 2013 before me came the above named Vice Presidents of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, to me personally known to be the individuals and officers described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, respectively, and that the said corporate seals and their signatures as officers were duly affixed and subscribed to said instrument by the authority and direction of said Corporations.



BARBARA A. GARLICK
Notary Public
Commonwealth of Massachusetts
My Commission Expires Sept. 21, 2018

Barbara A. Garlick
Barbara A. Garlick, Notary Public
My Commission Expires September 21, 2018

I, the undersigned Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Powers of Attorney are still in force and effect.

This Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America.

"RESOLVED, That any and all Powers of Attorney and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President or any Vice President in conjunction with any Vice President of the Company, shall be binding on the Company to the same extent as if all signatures therein were manually affixed, even though one or more of any such signatures thereon may be facsimile." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 - Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this 13TH day of APRIL 20 16

THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

J. Michael Pete
J. Michael Pete, Vice President