



Moraga-Orinda Fire District

Board of Directors

CALL AND NOTICE OF A SPECIAL MEETING

November 28, 2017

9:00 A.M. CLOSED SESSION

10:30 A.M. OPEN SESSION

PLEASE NOTE NEW MEETING ADDRESS:

Hacienda Mosaic and Garden Rooms

2100 Donald Drive

Moraga, CA 94556

NOTICE OF TELECONFERENCE MEETING

Pursuant to California Government Code section 54953, members of the Board of Directors may attend this meeting via teleconference. Members of the public may attend and participate either at the address given above, or at the teleconference location(s) listed below:

14592 Hansel Ave

Truckee, CA 94161

1. OPENING CEREMONIES

- 1.1. Call the meeting to Order
- 1.2. Roll Call
- 1.3. Pledge of Allegiance
- 1.4. Core Values – *Service, Honor, Integrity*

2. PUBLIC COMMENT

The public is invited to speak on any matter not appearing on the agenda and within the subject matter jurisdiction of the District. Comments should be limited to three minutes. Please state your name and address for the record.

3. CLOSED SESSION

- 3.1. **Conference with Legal Counsel – Potential Litigation**
Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Government Code Section 54956.9: one (1) potential matter
- 3.2. **Public Employee Appointment**
(Government Code Section 54957)
Title: Fire Chief

4. RECONVENE THE MEETING

- 4.1. Call the Meeting to Order

5. REPORT OF CLOSED SESSION ACTION

6. PUBLIC COMMENT

The public is invited to speak on any matter not appearing on the agenda, and within the subject matter jurisdiction of the District. Comments should be limited to three minutes. Please state your name and address for the record.

7. REGULAR AGENDA

7.1. **Termination of Agreement with Federal Solutions Group, Inc. (FSG) for Construction of Station 43 Project**

The District sent FSG a notice of default concerning its failure to comply with the terms of the construction contract. FSG was given an opportunity to cure by November 23, 2017. If FSG has not cured the default by that date, the Board will consider ratifying the Fire Chief's letter terminating the agreement with FSG for the construction of the Station 43 project.

Staff Recommendation: 1) Discuss; 2) Deliberate; 3) Ratify the Fire Chief's letter formally terminating the agreement with FSG

7.2. **Retention of Construction Attorney for Station 43**

The Board will present a Letter of Engagement with Geoff Spellberg of Renne Sloan Holtzman Sakai LLP to provide legal services on the Station 43 project.

Staff Recommendation: 1) Discuss; 2) Deliberate; 3) Approve Letter of Engagement with Renne Sloan Holtzman Sakai LLP to provide legal services on the Station 43 project

7.3. **Consider Establishment of a District Counsel Ad Hoc Committee**

Discuss formation of a District Counsel Ad Hoc Committee.

Staff Recommendation: 1) Discuss; 2) Deliberate; 3) Establish a District Counsel Ad Hoc Committee

8. ADJOURNMENT

This agenda is posted pursuant to the provisions of the Government Code commencing at Section 54956. The date of posting is November 22, 2017.

MORAGA-ORINDA FIRE DISTRICT



Grace Santos
Clerk to the Board

The Moraga-Orinda Fire Protection District ("District"), in complying with the Americans with Disabilities Act ("ADA"), requests individuals who require special accommodations to access, attend and/or participate in District Board meetings due to a disability, to please contact the District Chief's office, (925) 258-4599, at least one business day prior to the scheduled District Board meeting to



Moraga-Orinda Fire District

TO: Board of Directors
FROM: Jerry Lee, Interim Fire Chief
DATE: November 28, 2017
SUBJECT: Item 7.1 - Termination of Agreement with FSG for Construction of Station 43 Project

BACKGROUND

The District sent FSG a notice of default concerning its failure to comply with the terms of the construction contract. FSG was given an opportunity to cure by November 23, 2017. If FSG has not cured the default by that date, the Board will consider ratifying the Fire Chief's letter terminating the agreement with FSG for the construction of the Station 43 project.

RECOMMENDATION

- 1) Discuss; 2) Deliberate; 3) Ratify the Fire Chief's Letter formally terminating the agreement with FSG

ATTACHMENT

- 1) Attachment A – FSG Termination Letter



Moraga-Orinda Fire District

November 24, 2017

Via FedEx

Federal Solutions Group, Inc.
Attn: Kabir Singh
2440 Camino Ramon, Suite 343
San Ramon, CA 94583

Re: Moraga-Orinda Fire District

Notice of Termination of Federal Solutions Group, Inc.'s right to proceed with the contract for construction of Fire Station 43

Dear Mr. Singh,

On November 13, 2017, the Moraga-Orinda Fire District ("District") sent you written notice that Federal Solutions Group, Inc. ("FSG") was in material breach of the contract for construction of Fire Station 43, 20 Via Las Cruces, Orinda, California, dated September 6, 2017 (the "Contract"). A copy of that notice is included with this letter.

FSG has failed to secure performance and payment bonds as required under the Contract and the California Civil Code, which constitutes a material breach under the Contract. On November 13, 2017, FSG was directed to cure its material breach within 10 calendar days of the date of notice from District to Contractor demanding such cure.

As of November 24, 2017, FSG has failed to cure its material breach, has failed to provide performance and payment bonds to the District, and has failed to provide the District with any assurances that it intends to cure its material breach.

The District is therefore terminating FSG's right to proceed for cause under the Contract Documents pursuant to Section 15.G of the Contract's General Conditions, Document 00 72 13. FSG is directed to paragraphs 15.G.4(a) and (b) of the Contract's General Conditions, which provide:

District shall compensate Contractor for the value of the Work delivered to District upon termination as determined in accordance with the Contract Documents, subject to all rights of offset and backcharges, and provided that Contractor provides District with updated as built and project record documents showing the work performed up to the date of termination. However, District shall not compensate Contractor for its costs in terminating the Work or any cancellation charges owed to third parties.

Attachment A

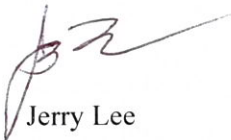
...

Contractor shall deliver to District possession of the Work in its then condition, including but not limited to, all designs, engineering, project records, cost data of all types, Drawings, Special Provisions, and Specifications and contracts with vendors and subcontractors, and all other documentation associated with the Project, and all construction supplies and aids dedicated solely to performing Work which, in the normal course of construction, would be consumed or only have salvage value at the end of the construction period. The Contractor shall remain fully liable for the failure of any Work completed and materials and equipment provided through the date of such termination to comply with the provisions of the Contract Documents. The provisions of this Paragraph shall not be interpreted to diminish any right which District may have to claim and recover damages for any breach of this Agreement, but rather, Contractor shall compensate District for all loss, cost, damage, expense, and/or liability suffered by District as a result of such termination and failure to comply with the Contract Documents.

FSG is directed to deliver possession of the Work to the District “including but not limited to, all designs, engineering, project records, cost data of all types, Drawings, Special Provisions, and Specifications and contracts with vendors and subcontractors, and all other documentation associated with the Project, and all construction supplies and aids dedicated solely to performing Work which, in the normal course of construction, would be consumed or only have salvage value at the end of the construction period.”

FSG is further advised that the District has and will continue to incur damages as a result of FSG’s material breach of the Contract, including but not limited to financing costs, costs paid to consultants to assist with and manage the construction work, permit and design fees, the cost to complete the Contract scope of work, and any other direct, consequential, and special damages the District may incur. The District reserves all of its rights and remedies under the Contract.

Very truly yours,



Jerry Lee

Fire Chief

Moraga-Orinda Fire District



Moraga-Orinda Fire District

TO: Board of Directors
FROM: Jerry Lee, Interim Fire Chief
DATE: November 28, 2017
SUBJECT: Item 7.2 - Retention of Construction Attorney for Station 43

BACKGROUND

The Board will present a Letter of Engagement with Geoff Spellberg of Renne Sloan Holtzman Sakai LLP to provide legal services on the Station 43 project. The letter of engagement will be available at the meeting.

RECOMMENDATION

- 1) Discuss; 2) Deliberate; 3) Approve Letter of Engagement with Geoff Spellberg of Renne Sloan Holtzman Sakai LLP to provide legal services on the Station 43 project



Moraga-Orinda Fire District

TO: Board of Directors
FROM: Jerry Lee, Interim Fire Chief
DATE: November 28, 2017
SUBJECT: Item 7.3 – Consider Establishment of a District Counsel Ad Hoc Committee

BACKGROUND

The Board shall discuss establishment of a District Counsel ad hoc committee.

RECOMMENDED ACTION

- 1) Discuss 2) Deliberate 3) Establish a District Counsel Ad Hoc Committee