

**KENSINGTON FIRE PROTECTION DISTRICT
AGENDA OF A SPECIAL MEETING OF THE
BOARD OF DIRECTORS**

Date of Meeting: **October 27, 2010**
Time of Meeting: **5:00 p.m.**
Place of Meeting: **Kensington Public Safety Building
217 Arlington Avenue, Kensington, CA 94707**

Please Note: Copies of the agenda bills and other written documentation relating to each item of business referred to on the agenda are on file in the office of the Kensington Fire Protection District Administration Office, 217 Arlington Avenue, Kensington, and are available for public inspection. A copy of the Board of Directors packet can be viewed on the internet at www.kensingtonfire.org/agenda/index.shtml.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Office Administrator, 510/527-8395. Notification 48 hours prior to the meeting will enable the Kensington Fire Protection District to make reasonable arrangements to ensure accessibility to this meeting (28 CFR 35.102-35.104 ADA Title 1).

5:00 p.m. CALL TO ORDER

Directors: Helmut Blaschczyk, Donald Dommer, Janice Kosel, Leslie Michael and
Nina Ramsey

1. **ORAL COMMUNICATIONS.** (This place on the agenda is reserved for comments and inquiries from citizens and Board members concerning matters that do not otherwise appear on the agenda. Speakers shall be requested to provide their names and addresses prior to giving public comments or making inquiries.)

OLD BUSINESS

2. Legal Correspondence and Discussion regarding the Kensington Fire Station Exterior Improvements and Site Accessibility Project (ACTION)

NEW BUSINESS

3. Resolution 10-07 authorizing the Administrator to submit a claim with the Project surety company, Financial Pacific Insurance Company, and negotiate with surety so that project is completed as soon as possible as close to the amount of the original contract as possible.

ADJOURNMENT. The next regular meeting of the Board of Directors of the Kensington Fire Protection District will be held on Wednesday, November 10, 2010, at 7:30 p.m. at the Kensington Community Center, 59 Arlington Avenue, Kensington, CA 94707.

The deadline for agenda items to be included in the Board packet for the next regular meeting of 11/10/10 is Wednesday, 10/27/10 by 1:00 p.m. The deadline for agenda-related materials to be included in the Board packet is Wednesday, 11/3/10 by 1:00 p.m., Fire Protection District Administration Office, 217 Arlington Ave., Kensington.

IF YOU CHALLENGE A DECISION OF THE BOARD OF DIRECTORS IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE BOARD MEETING OR IN WRITTEN CORRESPONDENCE DELIVERED AT, OR PRIOR TO, THE BOARD MEETING

OLD BUSINESS



KEL-TEC

BUILDERS, INC.

LIC #794978

October 11, 2010

Nancy Marshall and Joe Blanco
Mack5
1900 Powell Street
Suite 470
Emeryville, CA 94608

Re: Kensington Fire Station Exterior Improvements and Site Accessibility

Kel-Tec Builders, Inc. has been struggling with this economy and has unfortunately been forced to close its doors and file for bankruptcy. This was an extremely hard decision to make which have future contracts in hand but unfortunately we are unable to continue doing business.

Kel-Tec Builders, Inc., has retained the service of:

Law Offices of R. Kenneth Bauer
500 Ygnacio Valley Road, Suite 300
Walnut Creek, CA 94596
Phone: 925-945-7945
Fax: 925-940-9632

Further communication will be sent via their office.

We apologize for the inconvenience and hope that the contractor of future choice will complete your project satisfactorily.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Kettlewell', written in a cursive style.

Alistair Kettlewell
President

Cc: Brenda J. Navellier, Kensington Fire Protection District



555 12th Street, Suite 1500
Oakland, California 94607
tel 510.808.2000
fax 510.444.1108
www.meyersnave.com

Matthew Lavrinets
Attorney at Law
mlavrinets@meyersnave.com

October 19, 2010

VIA E-MAIL AND U.S. MAIL

Brenda Navelier, Administrator
Kensington Fire Protection District
217 Arlington Avenue
Kensington, CA 94707
Email: kensingtonfirepd@aol.com

Re: Kensington Fire Station, Exterior Improvements & Site Accessibility Project

Dear Ms. Navelier:

This letter is regarding the District's options in proceeding with construction of the above-referenced Project. We understand that the District has received notification that the general contractor on the Project, Kel-Tec Builders, Inc., failed to start work on the Project after the District issued a notice to proceed, and has notified the District that it will be filing for bankruptcy. We have reviewed the performance bond that Kel-Tec obtained for the Project, which appears to be valid. Additionally, I have spoken with Laurie Hants, a claim representative with Financial Pacific Insurance Company, the surety that issued the performance bond, and she has confirmed that the bond is valid and in effect. Finally, we understand that the District would like to start the Project soon, in light of the approaching wet season, and would like to begin negotiations with other contractors to perform the work. Based on these circumstances, we recommend the following actions:

First, the District should make a claim on the bond. This will require sending a written tender of the Project to the surety, via certified mail, and including project-specific information, such as the construction contract, project plans and specifications, and bid documents. It appears that the District has a strong claim to rights under the bond, but it is unclear at this point whether or not the surety will contend that the District's rights under the bond are somehow limited.

Second, the District should begin contacting contractors that may be interested in performing the work, and obtaining estimates from them for the work. The District should then begin negotiations with the surety regarding securing the performance of its desired contractor, and obtaining contribution from the surety. It is important to note that even if the surety does not dispute the District's rights under the bond, the surety may want to determine which contractor will perform the work. If so, the District will need to ensure

Brenda Navellier, Administrator

October 19, 2010

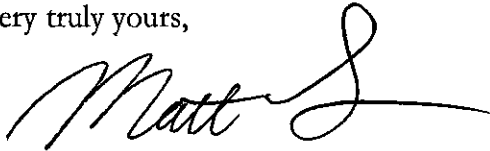
Page 2

that the proposed contractor is suitable for the work, but the surety might choose a contractor that is not the District's first choice. However, by beginning negotiations with contractors, the District can attempt to influence the surety as to which contractor it hires by presenting it with a capable, economical contractor.

We recommend that the District work with its legal counsel in the preparation of necessary resolution language and claim documentation with the surety.

Please contact us if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Matt S", with a long horizontal flourish extending to the right.

Matthew Lavrinets

ML:kkky

c: Boardmembers

1536183.1

Premium based on final contract price.

EXECUTED IN DUPLICATE

Bond No. C913520
Premium: \$5,025.00

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS that:

WHEREAS the Kensington Fire Protection District (Public Agency), has awarded to Kel-Tec Builders, Inc., 251 Arthur Road, Martinez, CA 94553

(Name and address of Contractor)

(Principal), a contract (the Contract) for the work described as follows:

Kensington Fire Station, Exterior Improvements & Site Accessibility

WHEREAS, Principal is required under the terms of the Contract to furnish a bond for the faithful performance of the Contract.

NOW, THEREFORE, we, the undersigned Principal, and Financial Pacific Insurance Company
3880 Atherton Road, Rocklin, CA 95765

(Name and address of Surety)

(A Surety) a duly admitted surety insurer under the laws of the State of California, as Surety, are held and firmly bound unto the Public Agency in the penal sum of Two Hundred Sixty Eight Thousand, Three Hundred Sixty Four & No/100-----

Dollars (\$ 268,364.00), this amount being not less than the total contract price, in lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the hereby bounded Principal, his, her or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform all the undertakings, terms, covenants, conditions and agreements in the Contract and any alteration thereof made as therein provided, on the Principal's part to be kept and performed, all within the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and hold harmless the Public Agency, its officers, agents, and others as therein provided, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

In case suit is brought upon this bond, Surety further agrees to pay all court costs and reasonable attorneys' fees in an amount fixed by the court.

FURTHER, the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, addition or modification to the terms of the Contract, or of the work to be performed thereunder, or the specifications for the same, shall in any way affect its obligations under this bond, and it does hereby waive notice of any such change, extension of time, alteration, addition, or modification to the terms of the Contract or to the work or to the specifications thereunder. Surety hereby waives the provisions of California Civil Code 2845 and 2849. The District is the principal beneficiary of this bond and has all rights of a party hereto.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety, on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

Dated: August 23, 2010

Principal

Kel-Tec Builders, Inc.

By: 

Its

By: PRASURANT

Its

Surety

Financial Pacific Insurance Company

By: 

Its John J. Daley, Attorney-In-Fact

By: _____

Its

(Seal)

APPROVED AS TO SURETY AND
PRINCIPAL AMOUNT

By: 

Insurance Administrator

Note: This bond must be executed in duplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached.

ACKNOWLEDGMENT

State of California
County of Contra Costa)

On September 9, 2010 before me, Nina Johnson, Notary Public
(insert name and title of the officer)

personally appeared Brenda J. Navellier
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.

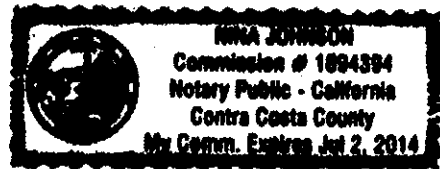
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Nina Johnson

(Seal)



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

County of Contra Costa

On 8/23/2010 before me, L. B. Byas-Barnett, Notary Public
Date Here Insert Name and Title of the Officer

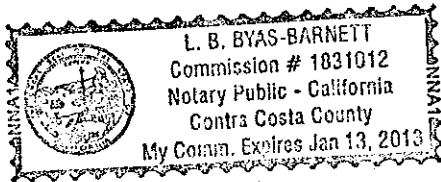
personally appeared John J. Daley
Name(s) of Signer(s)

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 [Handwritten Signature]
Signature of Notary Public L. B. Byas-Barnett



Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: BOND NUMBER: C913520

Document Date: 8/23/2010 Number of Pages: TWO (02)

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: John J. Daley

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney In Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing:
FINANCIAL PACIFIC INSURANCE COMPANY

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney In Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing:

LIMITED POWER OF ATTORNEY

Financial Pacific Insurance Company

BOND NUMBER C913520

POWER NUMBER 913520

PRINCIPAL Kel-Tec Builders, Inc.

PENAL SUM \$268,364.00

KNOW ALL MEN BY THESE PRESENTS, that Financial Pacific Insurance Company, a California corporation (the "Company"), does hereby make, constitute and appoint:

John J. Daley, L.B. Barnett, Kenneth J. Goodwin

its true and lawful Attorneys-in-Fact, with limited power and authority for and on behalf of the Company as surety, to execute, deliver and affix the seal of the Company thereto if a seal is required on bonds, undertakings, recognizances or other written obligations in the nature thereof as follows:

Bid, Performance, Payment, Subdivision and Miscellaneous Bonds up to \$3,000,000.00

and to bind the Company thereby. This Power of Attorney is signed and sealed by facsimile under and by the authority of the following resolutions adopted by the Board of Directors of Financial Pacific Insurance Company at the meeting duly held July 6, 1995, which are now in full force and effect:

RESOLVED, that the President or any Vice President, in conjunction with the Secretary or any Assistant Secretary, may appoint attorneys-in-fact or agents with authority as defined or limited in the instrument evidencing the appointment in each case, for and on behalf of the Company, to execute and deliver and affix the seal of the Company to bonds, undertakings, recognizances, and suretyship obligations of all kinds; and said officers may remove any such attorney-in-fact or agent and revoke any power of attorney previously granted such person.

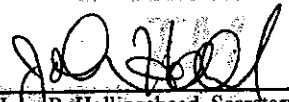
RESOLVED FURTHER, that any bond, undertaking, recognizance, or suretyship obligation shall be valid and binding upon the Company when signed and sealed (if a seal be required) by one or more attorneys-in-fact pursuant to and within the limits of the authority evidenced by the power of attorney issued by the Company to such person or persons.

RESOLVED FURTHER, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company; any such signature and seal when so used shall have the same force and effect as though manually affixed.

IN WITNESS WHEREOF, Financial Pacific Insurance Company has caused these presents to be signed by its proper officers, and its corporate seal to be hereunto affixed this 12th of September, 2007.




Edward J. Paoletti, Vice President


John R. Hollingshead, Secretary

STATE OF CALIFORNIA, COUNTY OF PLACER

On this 1st of January, 2008, before me, Lisa Roper, Notary Public, personally appeared Edward J. Paoletti and John R. Hollingshead, who proved to me on the basis of satisfactory evidence to be the persons whose names 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 persons, or the entity upon behalf of which the persons acted, executed the instrument.

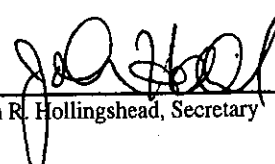



Lisa Roper, Notary Public

CERTIFICATE

I certify under the Penalty of Perjury under the laws of the State of California that the foregoing paragraph is true and correct.

Signed and sealed at Placer, this 23rd day of AUGUST, 20 10


John R. Hollingshead, Secretary

Financial Pacific
Insurance Company
seal must
be affixed

NEW BUSINESS

RESOLUTION 10-07

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE KENSINGTON FIRE PROTECTION DISTRICT CONCERNING THE KENSINGTON FIRE STATION EXTERIOR IMPROVEMENTS AND SITE ACCESSIBILITY PROJECT

WHEREAS the Kensington Fire Protection District ("District") sought bids for the construction of the Kensington Fire Station Exterior Improvements and Site Accessibility Project ("Project");

WHEREAS Kel-Tec Builders, Inc. ("Kel-Tec") submitted a bid on the Project, and the District determined that Kel-Tec was the lowest responsible bidder on the Project;

WHEREAS the District awarded the contract for construction of the Project ("Contract") to Kel-Tec, rejected the only other bid received and issued a Notice to Proceed to Kel-Tec on the Project;

WHEREAS Kel-Tec has failed to start work on the Project pursuant to the Notice to Proceed, and instead Kel-Tec has notified the District in writing by letter dated October 11, 2010, that it will be filing for bankruptcy and will not be able to perform its obligations as set forth in the contract for construction of the Project;

WHEREAS the District required that Kel-Tec obtain a performance bond on the Project, which guaranteed Kel-Tec's performance of the Contract, and Kel-Tec in fact obtained a performance bond, issued by Financial Pacific Insurance Company ("Surety");

NOW THEREFORE, BE IT RESOLVED, the Board of the Directors of the Kensington Fire Protection District hereby directs that the District's Administrator, on behalf of the District, submit a claim with Surety, and otherwise negotiate with Surety so that the Project is completed as soon as reasonably possible, and at as close to the amount of the original contract with Kel-Tec as reasonably possible.

* * * * *

The foregoing resolution was duly adopted at a Special Meeting of the Kensington Fire Protection District Board of Directors on the 27th day of October 2010 by the following vote of the Board:

AYES: BOARD MEMBERS:
NOES: BOARD MEMBERS:
ABSENT: BOARD MEMBERS:

Nina Ramsey, President

ATTEST:

APPROVED AS TO FORM

Leslie Michael, Secretary

Michael S. Riback, General Counsel