

APPROVED

2-15-2017

BOARD REPORT

BOARD OF RECREATION
AND PARK COMMISSIONERS

NO. 17-033

DATE February 15, 2017

C.D. 1

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: LINCOLN PARK RECREATION CENTER – POOL AND BATHHOUSE REPLACEMENT (PRJ1504P) (W.O. #E1907715) PROJECT — ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

AP Diaz _____

V. Israel _____

for *R. Barajas *CRD*

N. Williams _____

H. Fujita _____

M. [Signature]
General Manager

Approved ✓

Disapproved _____

Withdrawn _____

RECOMMENDATIONS

1. Approve the request of G2K Construction, Inc., to enter into an Escrow Agreement, herein included as Attachment 1, with the City of Los Angeles for Security Deposits in Lieu of Retention for the Lincoln Park Recreation Center – Pool and Bathhouse Replacement (PRJ1504P) (W.O. #E1907715) Project (Project), Contract No. 3555, subject to the approval of the City Attorney as to form; and,
2. Authorize the Board President and Secretary to execute the proposed Escrow Agreement upon the City Attorney's approval as to form.

SUMMARY

The Department of Recreation and Parks (RAP) is in receipt of a request from G2K Construction, Inc. (Contractor), general contractor for the Project, Contract No. 3555, to enter into an Escrow Agreement for Security Deposits in Lieu of Retention.

Pursuant to Section 22300 of the Public Contract Code of the State of California, the Contractor has the option to deposit securities with an Escrow Agent as a substitute for retention earnings required to be withheld by the City on Construction Contract No. 3555 (Contract) entered for the Project in the amount of Seven Million, Six Hundred Eighty-Four Thousand Dollars (\$7,684,000.00). Alternatively, on written request of the Contractor, the City may make payments of the retention earnings directly to the Escrow Agent.

When the City makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until such time as the escrow created under the Contract is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of the Escrow Agreement, and the rights and responsibilities of the parties, shall be equally applicable and binding when the City pays the Escrow Agent directly.

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FISCAL IMPACT STATEMENT

There is no fiscal impact on RAP's General Fund as the monies have already been appropriated for this Project.

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

LIST OF ATTACHMENT(S)

- 1) Proposed Escrow Agreement

**ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU
OF RETENTION – AGREEMENT BETWEEN THE CITY OF LOS ANGELES AND
G2K CONSTRUCTION, INC.**

This Escrow Agreement is made and entered into this _____ day of _____, 20__ by and between the City of Los Angeles, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners, whose address is 221 N. Figueroa Street, Suite 300, Los Angeles, California 90012, hereinafter called OWNER; G2K CONSTRUCTION, INC., whose address is 28348 Roadside Drive, # 205, Agoura Hills, CA 91301, hereinafter called CONTRACTOR; and Mechanics Bank, whose address is 18400 Von Karman, Suite 1100, Irvine, CA 92612, hereinafter called ESCROW AGENT.

For the consideration hereinafter set forth, the OWNER, CONTRACTOR, and ESCROW AGENT agree as follows:

1. Pursuant to Section 22300 of the Public Contract Code of the State of California, CONTRACTOR has the option to deposit securities with ESCROW AGENT as a substitute for retention earnings required to be withheld by OWNER pursuant to Construction Contract No. 3555, hereinafter referred to as CONTRACT, entered into between the OWNER and CONTRACTOR for the Lincoln Park Recreation Center – Pool and Bathhouse Replacement Project (PRJ1504P) (W.O. #E1907715) in the amount of SEVEN MILLION, SIX HUNDRED EIGHTY-FOUR THOUSAND DOLLARS (\$7,684,000.00) executed October 4, 2016. Alternatively, on written request of the CONTRACTOR, the OWNER shall make payments of the retention earnings directly to the ESCROW AGENT. When CONTRACTOR deposits the securities as a substitute for CONTRACT earnings, the ESCROW AGENT shall notify the OWNER within ten (10) days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the CONTRACT between the OWNER and CONTRACTOR. Securities shall be held in the name of the City of Los Angeles, Board of Recreation and Park Commissioners, and shall designate the CONTRACTOR as the beneficial owner.

2. The OWNER shall make progress payments to the CONTRACTOR for such funds which otherwise would be withheld from progress payments pursuant to the CONTRACT provisions, provided that the ESCROW AGENT holds securities in the form and amount specified above.

3. When the OWNER makes payment of retentions earned directly to the ESCROW AGENT, the ESCROW AGENT shall hold them for the benefit of the

CONTRACTOR until such time as the escrow created under this Contract is terminated. The CONTRACTOR may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the OWNER pays the ESCROW AGENT directly.

4. The CONTRACTOR shall be responsible for paying all fees for the expenses incurred by ESCROW AGENT in administering the escrow account and all expenses of the OWNER. These expenses and payment terms shall be determined by the OWNER, CONTRACTOR and ESCROW AGENT.

5. The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of CONTRACTOR and shall be subject to withdrawal by CONTRACTOR at any time and from time to time without notice to the OWNER.

6. CONTRACTOR shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to ESCROW AGENT accompanied by written authorization from OWNER to the ESCROW AGENT that OWNER consents to the withdrawal of the amount sought to be withdrawn by CONTRACTOR.

7. The OWNER shall have a right to draw upon the securities in the event of default by the CONTRACTOR. Upon seven (7) days' written notice to the ESCROW AGENT from the OWNER of the default, the ESCROW AGENT shall immediately convert the securities to cash and shall distribute the cash as instructed by the OWNER.

8. Upon receipt of written notification from the OWNER certifying that the CONTRACT is final and complete, and that the CONTRACTOR has complied with all requirements and procedures applicable to the CONTRACT, ESCROW AGENT shall release to CONTRACTOR all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payment of fees and charges.

9. The ESCROW AGENT shall rely on the written notifications from the OWNER and the CONTRACTOR pursuant to Sections 5 to 8, inclusive, of this agreement and the OWNER and CONTRACTOR shall hold ESCROW AGENT harmless from ESCROW AGENT'S release and disbursement of the securities and interest as set forth above.

10. The names of the persons who are authorized to give written notice or to receive written notice on behalf of the OWNER and on behalf of the CONTRACTOR in connection with the foregoing, and exemplars of their respective signatures are as follows:

On Behalf of the Owner:

Title

Name

Signature

221 N. Figueroa Street, Suite 300
Los Angeles, CA 90012

Address

On Behalf of the Contractor:

President
Title

Emilia G. Levy
Name

Signature

28348 Roadside Dr. # 305
Agoura Hills, CA 91301

Address

On Behalf of Escrow Agent:

Senior Vice-President
Title

Jamie Rebatin
Name

Signature

Mechanics Bank
18400 Von Karman, Suite 1100
Irvine, CA 92612

Address

At the time the Escrow Account is opened, the OWNER and CONTRACTOR shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

Executed this _____ day
of _____, 20 ____

THE CITY OF LOS ANGELES, a
municipal corporation, acting by and
through the Board of Recreation and
Park Commissioners

BY _____
President

BY _____
Secretary

Executed this _____ day
of _____, 20 ____

G2K Construction, Inc.

BY _____
President

BY _____
Secretary

Executed this _____ day
of _____, 20 ____

MECHANICS BANK

BY _____
Senior Vice-President

APPROVED AS TO FORM
MICHAEL N. FEUER,
City Attorney

Deputy City Attorney

Dated _____

The undersigned, Name of International Fidelity Insurance Company, Surety for CONTRACTOR on both its faithful performance and payment bonds, hereby gives its consent to terms of this Agreement and to the release of moneys to CONTRACTOR provided for herein.

INTERNATIONAL FIDELITY INSURANCE

BY _____
Attorney-In-Fact