

APPROVED
JUN 06 2018

**BOARD OF RECREATION
AND PARK COMMISSIONERS**

BOARD REPORT

NO. 18-105

DATE June 06, 2018

C.D. 8

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: ALGIN SUTTON RECREATION CENTER – POOL REPLACEMENT AND BATHHOUSE RENOVATION (PRJ21117) (W.O. #E170293F) PROJECT — ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

AP Diaz _____ V. Israel _____
*R. Barajas DF _____ S. Piña-Cortez _____
H. Fujita _____ N. Williams _____

M. Shue

General Manager

Approved X _____ Disapproved _____ Withdrawn _____
With Correction to Escrow Agreement

RECOMMENDATIONS

1. Approve the request from USS Cal Builders, Inc.(Contractor), to enter into an Escrow Agreement, herein included as Attachment 1, with the City of Los Angeles, Department of Recreation and Parks (RAP) for Security Deposits in Lieu of Retention for the Algin Sutton Recreation Center – Pool Replacement and Bathhouse Renovation (PRJ21117) (W.O. #E170293F) Project (Project), Contract No. 3610 (Contract), subject to the approval of the City Attorney as to form;
2. Approve the Escrow Agreement and its execution, substantially in the form attached as Attachment 1 to this Report, which applies only to the contract payments currently appropriated by RAP for this contract, which is Four Million, One Hundred Eighty-Eight Thousand Dollars (\$4,188,000.00);
3. Authorize RAP's Chief Accounting Employee or designee to make technical corrections as necessary to carry out the intent of this Report; and,
4. Authorize the Board President and Secretary to execute the proposed Escrow Agreement upon the City Attorney's approval as to form.

SUMMARY

RAP is in receipt of a request from Contractor, Contract No. 3610, 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 of Los Angeles (City), RAP, on the Contract entered into for the Algin Sutton Recreation Center – Pool Replacement and Bathhouse Renovation (PRJ21117) (W.O. #E170293F) Project, in the amount of Four Million, One Hundred Eighty-

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Eight Thousand Dollars (\$4,188,000.00). Alternatively, on written request of the Contractor, RAP may make payments of the retention earnings directly to the Escrow Agent.

When RAP 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.

FISCAL IMPACT STATEMENT

There is no fiscal impact on RAP's General Fund as the monies subject to this Escrow Agreement have already been appropriated for the Algin Sutton Recreation Center – Pool Replacement and Bathhouse Renovation (PRJ21117) (W.O. #E170293F) Project .

This Report was prepared by Harold Arrivillaga, Commission Executive Assistant I.

LIST OF ATTACHMENT(S)

- 1) Proposed Escrow Agreement
- 2) Contract No. 3610

**ESCROW AGREEMENT
FOR SECURITY DEPOSITS IN LIEU OF RETENTION
AGREEMENT BETWEEN
THE CITY OF LOS ANGELES, DEPARTMENT OF RECREATION AND PARKS
AND
USS CAL BUILDERS, 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 (Board), whose address is 221 North Figueroa Street, Suite 300, Los Angeles, California 90012, hereinafter called OWNER; USS CAL BUILDERS, INC., whose address is 8051 Main Street, Stanton California 90680, hereinafter called CONTRACTOR; and COMMUNITY BANK, whose address is 460 Sierra Madre Villa Avenue, Pasadena, California 91107, 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. 3610, hereinafter referred to as CONTRACT, entered into between the OWNER and CONTRACTOR for the Algin Sutton Recreation Center – Pool Replacement and Bathhouse Renovation (W.O. #E170293F) (PRJ21117) Project in the amount of FOUR MILLION, ONE HUNDRED EIGHTY-EIGHT THOUSAND DOLLARS (\$4,188,000.00) executed February 15, 2018. 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.

[Signature Page to Follow]

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:

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

USS Cal Builders, Inc.

Signature
Sylvia Patsaouras, Board President

Signature
Eric Othman, Secretary

Signature
Iris L. Davis, Board Secretary

Signature

Name: _____

Title: _____

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

Address:
51 Main Street
Stanton, CA 90680

On Behalf of Escrow Agent:

Signature
Name: _____
Title: Senior Vice President

Address:
460 Sierra Madre Villa Avenue
Pasadena, CA 91107

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 its BOARD OF RECREATION AND PARK COMMISSIONERS

By _____
PRESIDENT

By _____
SECRETARY

Executed this _____ day
of _____, 20__

USS Cal Builders, Inc.

By _____
PRESIDENT

By _____
SECRETARY

Executed this _____ day
of _____, 20__

Community Bank

By _____
Senior Vice President

Approved as to Form:

Date: _____

MICHAEL N. FEUER,
City Attorney

By _____
DEPUTY CITY ATTORNEY

The undersigned, Arch 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.

ARCH INSURANCE COMPANY

BY _____
Attorney-In-Fact

**CONTRACT BETWEEN THE CITY OF LOS ANGELES
AND USS CAL BUILDERS INC.,
FOR THE
ALGIN SUTTON RECREATON CENTER – (PRJ 21117) (W.O. #E170293F) PROJECT**

This Agreement ("Agreement") is made and entered into this 15th day of February 2018, by and between the City of Los Angeles, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners (hereinafter "City") and USS Cal Builders, Inc. (hereinafter "Contractor").

WITNESSETH

WHEREAS, Contractor submitted a bid for the construction of the Algin Sutton Recreation Center – Pool and Bathhouse Replacement – (PRJ 21117) (W.O. #E170293F) Project located at 8800 South Hoover Street, Los Angeles, California 90044. Said bid is attached hereto as Exhibit "A" and incorporated by reference as though fully set forth herein; and

WHEREAS, City is desirous of the construction of the aforementioned development as specified in the aforementioned bid (See Exhibit "A").

NOW THEREFORE, in consideration of the covenants and conditions contained herein, to be kept and performed by the respective parties, it is agreed as follows:

1. The aforementioned bid shall constitute City Contract Number 3610 ("Contract"); and
2. Said Contract shall be composed of the following documents, which shall be made a part hereof as though fully set forth herein:
 - (a) This Agreement; and
 - (b) The Instructions to Bidders and the Notice Inviting Bids; and
 - (c) Contractor's Proposal; and
 - (d) The Plans and Specifications; and
 - (e) All Bonds required by the Charter of the City of Los Angeles.

All of which are on file in the office of the Board of Recreation and Park Commissioners, and each of the parties hereto agree to carry out and fully perform each and all of the provisions of said documents which are required of it to be performed; and

3. Contractor shall perform said Contract in accordance with the terms of the aforementioned documents; and

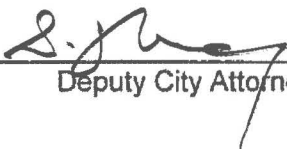
4. City shall pay Contractor to perform said Contract the sum of SIX MILLION, THREE HUNDRED EIGHTY-EIGHT THOUSAND DOLLARS (\$6,388,000.00); and

5. Contractor shall perform said Contract for the sum of SIX MILLION, THREE HUNDRED EIGHTY-EIGHT THOUSAND DOLLARS (\$6,388,000.00).

6. The City's liability under this Contract shall be limited to the amount of funding available by the City in the amount of Four Million, One Hundred Eighty-Eight Thousand Dollars (\$4,188,000.00), the current City appropriation to fund the Contract. If the City appropriates additional funds to this Contract, the City's liability shall be to the extent of such appropriation(s), subject to the terms and conditions of this Contract. The Contractor is not required to perform any work in excess of the amount of the current funding, plus additional funding appropriated by the City, if any, for the this Contract.

IN WITNESS WHEREOF, the parties have caused this instrument to be fully executed by their duly authorized representatives


APPROVED AS TO FORM
MICHAEL N. FEUER,
City Attorney




Deputy City Attorney

2-15-18

THE CITY OF LOS ANGELES, a municipal corporation, acting by and through its BOARD OF RECREATION AND PARK COMMISSIONERS

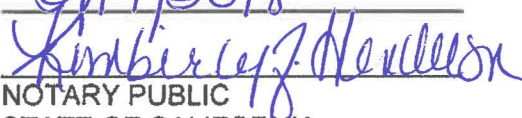
BY 

President

BY 

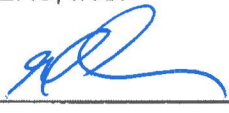
Secretary

SUBSCRIBED AND SWORN TO
BEFORE ME ON

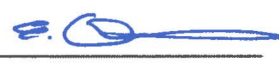
2/14/2018


NOTARY PUBLIC
STATE OF CALIFORNIA
(Notary Seal)

USS CAL BUILDERS, INC.

BY 

President

BY 

Secretary



JURAT

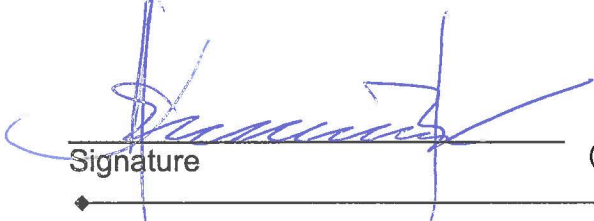
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

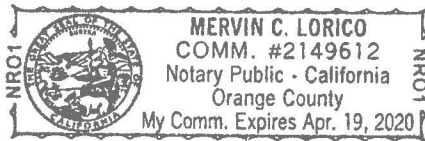
State of California

County of ORANGE

Subscribed and sworn to (or affirmed) before me on this 12TH day of FEBRUARY,
20 18 by ALLEN OTHMAN AND ERIC OTHMAN

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.


Signature _____ (Seal)



OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

CONTRACT - ALGIN SUTTON
(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

Additional information

INSTRUCTIONS

The wording of all Jurats completed in California after January 1, 2015 must be in the form as set forth within this Jurat. There are no exceptions. If a Jurat to be completed does not follow this form, the notary must correct the verbiage by using a jurat stamp containing the correct wording or attaching a separate jurat form such as this one with does contain the proper wording. In addition, the notary must require an oath or affirmation from the document signer regarding the truthfulness of the contents of the document. The document must be signed AFTER the oath or affirmation. If the document was previously signed, it must be re-signed in front of the notary public during the jurat process.

- State and county information must be the state and county where the document signer(s) personally appeared before the notary public.
- Date of notarization must be the date the signer(s) personally appeared which must also be the same date the jurat process is completed.
- Print the name(s) of the document signer(s) who personally appear at the time of notarization.
- Signature of the notary public must match the signature on file with the office of the county clerk.
- 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 jurat form.
 - ❖ Additional information is not required but could help to ensure this jurat is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
- Securely attach this document to the signed document with a staple.