

APPROVED

REPORT OF GENERAL MANAGER

MAR 18 2009

NO. 09-065

DATE March 18, 2009

BOARD OF RECREATION
and PARK COMMISSIONERS

C.D. 10

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: LAFAYETTE PARK - RECREATION CENTER (W.O. #E170317F) CONTRACT NO. 3237 - ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION #276-B

R. Adams _____	J. Kolb _____
H. Fujita _____	F. Mok _____
S. Huntley _____	K. Regan _____
V. Israel _____	*M. Shull <i>in full</i>

[Signature]

 General Manager

Approved _____ Disapproved _____ Withdrawn _____

RECOMMENDATION:

That the Board:

1. Ratify the action of the Board of Public Works, Bureau of Accounting (BOA) approving and executing the attached Escrow Agreement for Security Deposits in Lieu of Retention #276-B, as amended, between the City of Los Angeles, acting through the Board of Public Works, and Western Alta Construction, Inc., for the Lafayette Park - Recreation Center (W.O. #E170317F) project, Contract No. 3237;
2. Authorize the Department of Public Works to be the Administrator of the Escrow Agreement; and,
3. Authorize the Chief Accounting Employee to make retention payments to, and to direct the release of all amounts from, the Escrow Account, as required by the Escrow Agreement, as amended.

SUMMARY:

On January 9, 2008, the Board awarded Contract No. 3237 to Western Alta Construction, Inc., for the Lafayette Park - Recreation Center (W.O. #E170317F) (Board Report No. 08-08). The contract is funded with \$4,205,823 from Proposition K funds, \$572,070 from Heart of Los Angeles Youth, Inc. (HOLA) Gift Funds, and \$1,165,704 from Quimby funds. Proposition K funds are controlled by

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the City Administrative Officer (CAO), with Project Management by the Bureau of Engineering (BOE) and accounting by the Board of Public Works, Office of Accounting (BOA). HOLA Gift Funds and Quimby funds are fully-controlled and managed by the Department of Recreation and Parks (Department).

In October, 2008, the contractor requested that BOA open an Escrow Agreement for Security Deposits in Lieu of Retention (Agreement) for this contract. The contractor returned the completed Agreement to BOA on February 19, 2009. Such agreements are required to be offered to contractors under the provisions of the California Public Contract Code, Section 22300 and provide for disbursement of contract retention payments which otherwise would remain with the City. Under one Contract Code option, the contractor deposits securities in an escrow account as a substitute for retention amounts which thereby allows retention amounts that otherwise would be withheld by the City to be paid to the contractor. The other option, requested by Western Alta Construction, Inc., provides that retention amounts are to be paid to an escrow account by the City. An agreement between the City, an escrow bank and the contractor provides the terms and conditions of this arrangement.

Both the Department of Recreation and Parks and the Department of Public Works routinely issue such agreements. For the Department, approval of such agreements by the Board is required. For the Department of Public Works, approval of such agreements is delegated by the Board of Public Works to its Office of Accounting.

For contracts awarded by the Board of Public Works, agreements have been executed by the Department having funding control, which is typically, but not always, Public Works. For contracts awarded by the Board, agreements have been executed by the Board, regardless of the Department having funding control.

When Western Alta Construction, Inc., requested an agreement, the Office of Accounting reasoned that since the Proposition K funds provided the majority of the funding for this contract, the agreement should be executed by the Department of Public Works. Accordingly, the Agreement was executed between Western Alta Construction, Inc., Commerce West Bank, and the Department of Public Works.

In retrospect, this is not consistent with the practice of the Board, whereby it would have executed the Agreement since it awarded the contract. Should a similar request from a contractor be made in the future, the Board of Public Works, Office of Accounting will refer the contractor to the Department of Recreation and Parks for an agreement.

As mentioned, this Agreement now has been fully executed. In order to avoid rescinding it and requiring the contractor to apply again to the City for an agreement from the Department of Recreation and Parks, the BOA requests approval from the Board for ratification of the agreement

REPORT OF GENERAL MANAGER

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already executed for this contract. An amendment has been made to the Agreement to indicate that retention funds will be released as provided subsequent to acceptance of the contract by the Board, instead of by the Board of Public Works. The escrow account established under this Agreement will receive retention payments from all contract funding sources. BOA agrees that no direction will be given to the escrow bank to disburse funds from the escrow account established under this Agreement without written direction from the Department.

FISCAL IMPACT STATEMENT:

There is no fiscal impact on the Department's General Fund.

This report was prepared by Craig Bloomquist, Director, Board of Public Works, Office of Accounting. Reviewed by Neil Drucker, Program Manager, Recreational and Cultural Facilities Program, Bureau of Engineering, Faith Mok, Director of Finance, Department of Recreation and Parks; and Michael A. Shull, Superintendent, Planning and Development Division, Department of Recreation and Parks.

**AMENDMENT NO. 1 TO ESCROW AGREEMENT FOR SECURITY DEPOSITS
IN LIEU OF RETENTION # 276-B**

**CommerceWest Bank
Escrow Account No. 1406370**

1. Section I (8) of Escrow Agreement for Security Deposits in Lieu of Retention #276-B, entered into by and between the City of Los Angeles (City), Western Alta Construction, Inc., and CommerceWest Bank, pursuant to City Construction Contract No. 3237, dated February 19, 2008, for the construction of the Lafayette Park Recreation Center, Work Order No. E170317F, is hereby amended as follows:

The words "Board of Public Works" are deleted and replaced with "Board of Recreation and Park Commissioners".

2. The Owner and Contractor shall deliver to CommerceWest Bank, the Escrow Agent, a fully executed counterpart of this amendment to this agreement.

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

Owner City of Los Angeles

Contractor Western Alta Construction, Inc.

Title Director, Office of Accounting

Title President

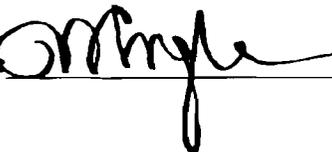
Name Craig V. Bloomquist

Name Richard Engle

Signature



Signature



CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of ORANGE

On FEB. 25, 2009 before me, A. ELIZABETH MUNOZ,
(Here insert name and title of the officer)

personally appeared RICHARD ENGLE,

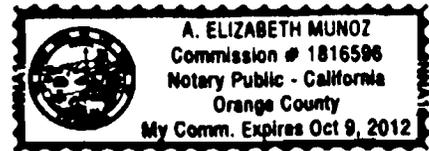
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(~~ies~~), and that by his/~~her~~/~~their~~ signature(s) 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 of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

AMENDMENT NO. 1 TO ESCROW
(Title or description of attached document)

AGREEMENT FOR SECURITY DEPOSITS
(Title or description of attached document continued)

Number of Pages 1 Document Date 02/25/09

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
 Corporate Officer
PRESIDENT
(Title)
 Partner(s)
 Attorney-in-Fact
 Trustee(s)
 Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

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- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public)
- Print the name(s) of document signer(s) who personally appear at the time of notarization
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~ is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording
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- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary)
- Securely attach this document to the signed document

EXHIBIT "C"

City of Los Angeles

Escrow Agreement No. 276-B

City Contract No. 3237

Escrow Agent Account No. 1406370

ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between the City of Los Angeles whose address is 200 N. Spring Street, Room 967, Los Angeles, CA 90012 hereinafter called "City", and

Western Alta Construction, Inc. whose address is 635 E. First Street, #436, Tustin, CA 92780
(Contractor)

hereinafter called "Contractor", and

CommerceWest Bank whose address is 4685 MacArthur Court, Newport Beach, CA
(Escrow Agent)
92660

hereinafter called "Escrow Agent."

SECTION I

For the consideration hereinafter set forth, the City, the Contractor, and the Escrow Agent agree as follows:

- (1) Pursuant to Section 22300 of the Public Contract Code of the State of California, the Contractor has the option to deposit securities with the Escrow Agent as a substitute for retention earnings required to be withheld by the City pursuant to the Construction Contract entered into between the City and the Contractor for:

Construction Contract No.	<u>3237</u>	Dated	<u>FEB. 19, 2008</u>
Name of Project	<u>Lafayette Park Recreation Center</u>		
Work Order Number	<u>E170317F</u>		
Original Contract Amount (OCA)	\$	<u>5,943,597.00</u>	
Mobilization Amount	\$	<u>0.00</u>	
Basis for Retention (OCA less Mobilization Amount)	\$	<u>5,943,597.00</u>	
Retention (10% of Basis for Retention)	\$	<u>10%: 594,359.70</u>	

(Hereinafter referred to as the "Contract"). Alternatively, on written request of the Contractor, the City shall make payments of the retention earnings directly to the Escrow Agent, who must be a member of the Federal Deposit Insurance Corporation and must be Federally insured pursuant to California Government Code Section 53648 and chartered to transact business in California. When Contractor deposits the securities as a substitute for contract earnings, the Escrow Agent shall notify the City within 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 City and the Contractor as the beneficial owner.

Securities eligible for substitution under this Escrow Agreement pursuant to the California Government Code and approved by the City are listed in the attached Exhibit entitled ELIGIBLE SECURITIES (and incorporated in this Escrow Agreement by reference).

(2) **Option A**

The City shall make progress payments to the Contractor for those 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.

{**Please note:** that if the entire retention amount required for the project is not deposited in full at the time the escrow account is opened, there may be delays in the release of retention funds per progress payment. When installment deposits are made by the contractor to the escrow agent and the escrow agent notifies the City, depending on the progress payment cycle, these deposits may not be reflected until the next full cycle.

This is because the necessary paperwork for each progress payment is processed 30 to 45 days prior to the release of the payment. Therefore, if at the time the paperwork is prepared and the necessary amount of retention is not on deposit with the escrow agent, retention monies will be retained. Due to the high volume of checks dispersed per month, a separate check for the retention funds will not be issued. Those funds will be released with the next progress payment (given that sufficient monies are on deposit).}

(3) **Option B**

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 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 City pays the Escrow Agent directly.

***All parties agree that option Option B will be used.
[Insert Option (A) or Option (B)]

[Initial] *OR* *[Signature]* *CRB*
Contractor Escrow Agent City

- (4) Contractor shall be responsible for paying all fees for the expenses incurred by the Escrow Agent in administering the Escrow Account and all expenses of the City. These expenses and payment terms shall be determined by the City, the Contractor and the 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 the Contractor and shall be subject to withdrawal by the Contractor at any time and from time to time without notice to the City.
- (6) The Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to the Escrow Agent accompanied by written authorization from the City to the Escrow Agent that the City consents to the withdrawal of the amount sought to be withdrawn by the Contractor.
- (7) The City shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven days' written notice to the Escrow Agent from the City of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the City.
- (8) Upon receipt of written notification from the City certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, the Escrow Agent shall release to the 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 payments of fees and charges.

Such written notification will be given at the expiration of thirty-five (35) but before sixty (60) calendar days from the date of acceptance of the work by the Board of Public Works, or as prescribed by law, provided, however, that there will be a continued retention of necessary securities to cover such amounts as are required by law to be withheld by properly executed and filed notices to stop payment, or as may be authorized by contract to be further retained, and resolution of all claims resulting therefrom pursuant to contract provisions.

- (9) The Escrow Agent shall rely on the written notifications from the City and the Contractor pursuant to (above) SECTION I, Paragraphs (5) to (8), inclusive, of this agreement and the City and the Contractor shall hold the Escrow Agent harmless from the Escrow Agent's release and disbursement of the securities and interest as set forth above.

SECTION II

Contractor Agrees:

- (1) To pay all charges incurred by the CITY for services performed by it in relation to the escrow, including, but not limited to, startup charges and monthly transaction charges.
- (2) To deposit with the ESCROW AGENT such documents as in the opinion of the ESCROW AGENT, are necessary to enable the ESCROW AGENT to sell deposited securities or to redeem certificates of deposit.
- (3) To pay any and all costs incurred by the CITY or the ESCROW AGENT, including but not limited to reasonable attorneys' fees, in any legal or arbitration proceedings in any way arising out of or related to this escrow including, but not limited to, legal or arbitration proceedings challenging the right of the CITY or the ESCROW AGENT to possess or dispose of said securities or certificates of deposit.
- (4) That the CITY may direct the ESCROW AGENT to sell securities or redeem certificates of deposit deposited with the ESCROW AGENT under the terms of this agreement as may be necessary to satisfy charges to meet any or all of the CONTRACTOR's obligations under the contract which may be included by the CITY in completing the WORK; or for any other legal requirement, including those of the State Labor Code. In addition, CONTRACTOR agrees that the CITY may, at its sole option, deduct the amount of any such charges from progress payments to be made by the CITY into the Escrow Account.
- (5) The Contractor, within ten days of notification by the Escrow Agent that the securities have fallen below market value, shall deposit additional securities into the Escrow Account to meet the market value of the retention withheld under the contract.
- (6) To submit each month to the **Director of the Office of Accounting** on Monthly Report Forms provided by the City (and incorporated in this Escrow Agreement by reference) a signed, certified statement of the total dollar amount of cash, certificates of deposit, time deposit, and other securities (at market value) on deposit with the Escrow Agent in the Escrow Account at the end of the month immediately preceding the Construction Contract's progress payment closure date, and to send the signed, certified Monthly Report Form to the Escrow Agent for its Attestation in accordance with SECTION III, Paragraph (3) below under Escrow Agent Agrees.

SECTION III

Escrow Agent Agrees:

- (1) To review the market value of securities held in said escrow account monthly as of the close of business on the first business day of each month and promptly notify the CONTRACTOR to post additional securities and to notify the City whenever said market value is less than the retention value required under the contract.
- (2) To hold said securities or certificates of deposit for the CITY, as security for payment of monies which would otherwise be held by the CITY pursuant to the contract provisions and that the rights of the CITY to said securities or certificates of deposit are superior to any lien (or claim of lien) including, but not limited to, the right to sell securities or redeem certificates of deposit as provided in SECTION I, Paragraph 4 hereof, which ESCROW AGENT claims or may in the future claim against said deposit.
- (3) To submit each month to the Director of the Office of Accounting
 - (a) a copy of the **Escrow Agent's Monthly Statement** showing all account transactions and ending balance in the Escrow Account **during the month ended** immediately preceding the Construction Contract's progress payment **closure date**;
 - (b) and also, to submit [on the same signed, certified Monthly Report Form prepared by and received from the Contractor in accordance with SECTION II, Paragraph (6) under Contractor Agrees], the Escrow Agent's signed, certified statement of the total dollar amount of cash, certificates of deposit, time deposits, and other securities (at market value) on deposit in the Escrow Account **at the end of the month** as reported on the **Escrow Agent's Monthly Statement** being submitted in accordance with SECTION III, Paragraph (3)(a) above.
- (4) To collateralize any deposits in excess of \$100,000.00 or the amount insured pursuant to federal law in compliance with Government Code Section 53652.
- (5) To maintain a quality rating of "A" or higher as determined by Findley's Rating Service or a comparable rating by the City's selected rating service. If at anytime during the project the Escrow Agent is determined to be unsuitable, as determined by the City, the City reserves the right to terminate the agreement.

SECTION IV

The parties hereto mutually agree that:

- (1) This agreement shall become operative only upon filing with the CITY and the ESCROW AGENT of the written consent of the surety furnishing the CONTRACTOR with both its performance and payment bonds.
- (2) That each part and paragraph of this Escrow Agreement shall be deemed and construed to be separate and divisible, and in any event that any part, paragraph or subpart or subparagraph shall be held to be invalid or unenforceable, the remaining parts or paragraphs shall continue to be in full force and effect.
- (3) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the City, on behalf of the Contractor, and on behalf of the Escrow Agent in connection with the foregoing, and the **exemplars of their respective signatures are as follows:**

<p>On behalf of the City Office of Accounting</p> <p>Assistant Director</p> <p>Title</p> <p>Ninfa Malabuyoc</p> <p>Name – Print or Type</p> <p><i>Ninfa E. Malabuyoc</i></p> <p>Signature</p> <p>200 N. Spring Street Room 967, City Hall Los Angeles, CA 90012</p> <p>Address</p> <p>213-978-0994</p> <p>Phone Number</p> <p>2/19/09</p> <p>Date</p>	<p>On behalf of the Contractor</p> <p>President</p> <p>Title</p> <p>Richard Engle</p> <p>Name – Print or Type</p> <p><i>Richard Engle</i></p> <p>Signature</p> <p>Western Alta Construction, Inc.</p> <p>635 E. First St., Ste 436</p> <p>Tustin, CA 92780</p> <p>Address</p> <p>714-573-7682</p> <p>Phone Number</p> <p>12/23/08</p> <p>Date</p>	<p>On behalf of the Escrow Agent</p> <p>Regional Vice President</p> <p>Title</p> <p>Stephanie Juneau</p> <p>Name – Print or Type</p> <p><i>Stephanie Juneau</i></p> <p>Signature</p> <p>CommerceWest Bank</p> <p>4685 MacArthur Court</p> <p>Newport Beach, CA 92660</p> <p>Address</p> <p>1406370</p> <p>Escrow Account Number</p> <p>949-251-9088</p> <p>Phone Number</p> <p>12/23/08</p> <p>Date</p>
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At the time the Escrow Account is opened, the City and the 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.

Owner City of Los Angeles

Contractor Western Alta Construction, Inc.

Title Director, Office of Accounting

Title President

Name – Print or Type Craig V. Bloomquist

Name – Print or Type Richard Engle

Signature *Craig Bloomquist*

Signature *Richard Engle*

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of ORANGE

On FEB. 18, 2009 before me, A. ELIZABETH MUNOZ,
(Here insert name and title of the officer)

personally appeared STEPHANIE JUNEAU

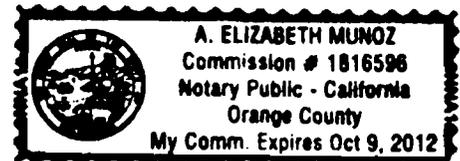
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), 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 of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

ESCROW AGREEMENT FOR SECURITY
(Title or description of attached document)

DEPOSITS IN LIEU OF RETENTION
(Title or description of attached document continued)

Number of Pages 10 Document Date 12/23/08

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
 Corporate Officer

(Title)

- Partner(s)
 Attorney-in-Fact
 Trustee(s)
 Other REGIONAL VICE PRES.

INSTRUCTIONS FOR COMPLETING THIS FORM

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- Print the name(s) of document signer(s) who personally appear at the time of notarization
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording
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CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of ORANGE

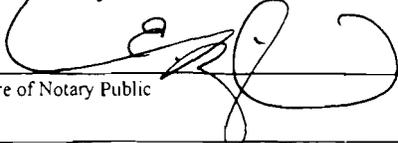
On FEB. 18, 2009 before me, A. ELIZABETH MUNOZ,
(Here insert name and title of the officer)

personally appeared RICHARD ENGLE

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.

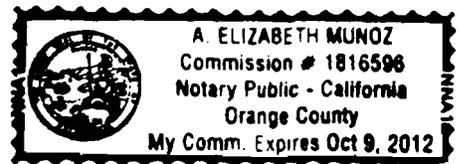
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

ESCROW AGREEMENT FOR SECURITY
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DEPOSITS IN LIEU OF RETENTION
(Title or description of attached document continued)

Number of Pages 10 Document Date 12/23/08

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- Individual (s)
 Corporate Officer

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- Partner(s)
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 Other _____

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- Securely attach this document to the signed document

The undersigned FIDELITY AND DEPOSIT COMPANY OF MARYLAND
(Name of Surety)

Contractor Western Alta Construction, Inc.

Project Lafayette Park Recreation Center Contract No. 3237

Surety for the CONTRACTOR on both its faithful performance and payment bonds, hereby gives its consent to the terms of this agreement and to the release of moneys to the CONTRACTOR provided for herein.

By: ATTORNEY-IN-FACT
Title

By: _____
Title

OWEN M. BROWN

Print or Type Name

Print or Type Name

Signature

(Seal)

Signature

(Seal)

Note: Signatures of those executing for the surety must be properly acknowledged. A power of attorney or other authorization of the person executing this consent on behalf of the surety must either accompany this document or be on file with the City of Los Angeles.

SEE PAGE 7 FOR MONTHLY REPORT FORM - OPTION "A"

SEE PAGE 8 FOR MONTHLY REPORT FORM - OPTION "B"

SEE PAGE 9 FOR PROCEDURES FOR USE OF MONTHLY REPORT FORM

SEE PAGE 10 FOR ELIGIBLE SECURITIES

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of ORANGE

On 2-5-09

Date

before me,

BARBARA J. BENDER, NOTARY PUBLIC

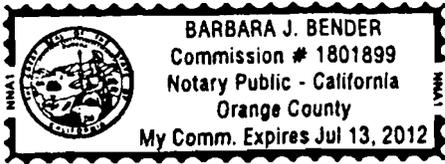
Here Insert Name and Title of the Officer

personally appeared

OWEN M. BROWN

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(e) whose name(e) 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(e) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

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

Signature of Notary Public

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 ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

Title or Type of Document:

Document Date: 2-5-09

Number of Pages: SIX (6) PAGES

Signer(s) Other Than Named Above: WESTERN ALTA CONSTRUCTION, INC.

Capacity(ies) Claimed by Signer(s)

Signer's Name: OWEN M. BROWN

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



Signer Is Representing: FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Signer's Name: _____

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



Signer Is Representing: _____

**Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by WILLIAM J. MILLS, Vice President, and ERIC D. BARNES, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute and appoint **Owen M. BROWN, of Anaheim, California**, its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed, **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md. in their own proper persons. This power of attorney revokes that issued on behalf of Owen M. BROWN, dated February 17, 2003.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 27th day of December, A.D. 2004.

ATTEST:

FIDELITY AND DEPOSIT COMPANY OF MARYLAND



Eric D. Barnes

Eric D. Barnes

Assistant Secretary

By:

William J. Mills

William J. Mills

Vice President

State of Maryland }
City of Baltimore } ss:

On this 27th day of December, A.D. 2004, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came WILLIAM J. MILLS, Vice President, and ERIC D. BARNES, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself depose and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Mariu D. Adamski

Mariu D. Adamski

Notary Public

My Commission Expires: July 8, 2011

City of Los Angeles
Craig V. Bloomquist, Director
Office of Accounting
200 N. Spring St., Room 967, City Hall
Los Angeles, CA 90012

To Attention of:
Ninfa Malabayoc
Substitution of Securities Manager
Phone (213) 978-0994
FAX (213) 978-0998

CONTRACTOR'S SUBSTITUTION OF SECURITIES PROGRAM MONTHLY REPORT FORM

From: Contractor Western Alta Construction, Inc. Address 635 E. First St., Ste. 436
Name - (Print or Type) Tustin, CA 92780

This Monthly Report is submitted in compliance with the Escrow Agreement providing for substitution of securities for monies withheld to ensure performance of the construction contract.

Name of Escrow Agent CommerceWest Bank Escrow Account No. 1406370

City's Escrow Agreement No. _____ Dated: _____

City's Construction Contract No. _____ Dated: _____

Construction Contract's progress payment closure date for this Monthly Report EOM

Actual Required Retentions at closure date for prior month \$ _____

Estimated Required Retentions at closure date for this Monthly Report \$ _____

This is to certify that for purpose of the City's computing the net retentions to be withheld from the progress payment at the closure date for this Monthly Report, the total dollar amount of cash, certificates of deposit, time deposits, other deposits, and securities (at market value) on deposit in the subject Escrow Account at the end of the month immediately preceding the Construction Contract's progress payment closure date for this Monthly Report is \$ _____

The Contractor by the signature of its authorized representative affixed hereto certifies and declares that the information reported above is true and correct.

Western Alta Construction, Inc. By Richard Engle 714-573-7682
Name of Contractor - (Print or Type) Name - (Print or Type) Phone No.

President _____
Title - (Print or Type) Signature Date

ATTESTATION BY ESCROW AGENT CommerceWest Bank
(Name of Escrow Agent)

Attached you will find a copy of the Escrow Agent's Monthly Statement of all account transactions and ending balance in our Escrow Account Number 1406370 during the month ended immediately preceding the Construction Contract's Progress payment closing date for this Monthly Report.

The total dollar amount of cash, certificates of deposit, time deposits, other deposits, and securities (at market value) on deposit in the Escrow Account at the end of the month as reported on the attached Escrow Agent's Monthly Statement is \$ _____

The Escrow Agent by the signature of its authorized representative affixed hereto certifies and declares that the information reported above is true and correct.

CommerceWest Bank By Joseph L. Gonzales 949-251-9088
Name of Escrow Agent - (Print or Type) Name - (Print or Type) Phone No.

Client Center Manager _____
Title - (Print or Type) Signature Date

MONTHLY REPORT FORM - OPTION - "A"

