

BOARD REPORT

PG. 2 NO. 18-213

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 Project, in the amount of Five Million, Nine Hundred Seventy-Nine Thousand, Nine Hundred Sixty-Six Dollars (\$5,979,966.00). 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 Project.

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

LIST OF ATTACHMENT(S)

Proposed Escrow Agreement

**ESCROW AGREEMENT
FOR SECURITY DEPOSITS IN LIEU OF RETENTION AGREEMENT
BETWEEN
THE CITY OF LOS ANGELES,
DEPARTMENT OF RECREATION AND PARKS
AND
CS LEGACY 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 (Board), whose address is 221 North Figueroa Street, Suite 300, Los Angeles, California 90012, hereinafter called OWNER; CS LEGACY CONSTRUCTION, INC., whose address is 1704 S. Grove Ave. Unit B, Ontario, California 91761, hereinafter called CONTRACTOR; and BANNER BANK, whose address is 5901 Priestly Drive, Suite 160 Carlsbad, California 92008, 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. 3641, hereinafter referred to as CONTRACT, entered into between the OWNER and CONTRACTOR for the Alpine Recreation Center Expansion (AKA Ord & Yale Street Park) – (PRJ20591) (W.O. #E170225F) Project in the amount of FIVE MILLION, NINE HUNDRED SEVENTY-NINE THOUSAND, NINE HUNDRED SIXTY-SIX DOLLARS (\$5,979,966.00) executed August 23, 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

CS Legacy Construction, Inc.

Signature
Sylvia Patsouras, Board President

Signature
Gregg Strumpf, President

Signature
Harold Arrivillaga, Board Secretary

Signature

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

Name: _____

Title: _____

Address:
1704 S. Grove Ave Unit B
Ontario, CA 91761

On Behalf of Escrow Agent:

Signature
Name: _____
Title: Escrow Administrator

Address:
5901 Priestly Dr, Suite # 160
Carlsbad, CA 92008

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__

CS Legacy Construction, Inc.

By _____
PRESIDENT

By _____
SECRETARY

Executed this _____ day
of _____, 20__

Banner Bank

By _____
Escrow Administrator

Approved as to Form:

Date: _____

MICHAEL N. FEUER,
City Attorney

By _____
DEPUTY CITY ATTORNEY

The undersigned, Great American 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.

GREAT AMERICAN INSURANCE COMPANY

BY _____
Attorney-In-Fact