

APPROVED

JUNE 18 2020

BOARD OF RECREATION AND PARK COMMISSIONERS

BOARD REPORT

NO. 20-127

DATE June 18, 2020

C.D. 1

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: LINCOLN PARK RECREATION CENTER – POOL AND POOL BATHHOUSE REPLACEMENT (PRJ1504P) (W.O. #E1907715) PROJECT – CONTRACT NO. 3555 – FINAL REPORT FROM THE BUREAU OF CONTRACT COMPLIANCE

AP Diaz	_____	S. Piña-Cortez	_____
H. Fujita	_____	<i>for</i> C. Santo Domingo	<u>DF</u>
V. Israel	_____	N. Williams	_____



General Manager

Approved X

Disapproved _____

Withdrawn _____

RECOMMENDATIONS

1. In accordance with the final report from the Bureau of Contract Administration, Office of Contract Compliance (OCC) in connection with labor compliance violations for Contract No. 3555 for the Lincoln Park Recreation Center- Pool and Pool Bathhouse Replacement (PRJ1504P) W.O.#E1907715) Project (Project), authorize the Department of Recreation and Parks' (RAP) Chief Accounting Employee or Designee to take the following actions:
 - a. Release from escrow \$212,456.12 in retention monies held under Contract No. 3555 to RAP and direct RAP's Chief Accounting Employee or Designee to prepare a check in such amount payable to the State of California and forward such check to the Bureau of Contract Administration, Office of Contract Compliance (OCC), Attn: Tatiana Santa Cruz for payment and processing to the State of California, Department of Industrial Relations;
 - b. Release from escrow \$83,115.00 in retention monies held under Contract No. 3555 to RAP and direct RAP's Chief Accounting Employee or Designee to deposit such funds into RAP Fund 205 Account No. TBD;
 - c. Release from escrow \$4,157.52 in retention monies held under Contract No. 3555 to RAP and direct RAP's Chief Accounting Employee or Designee to prepare a check in such amount payable to the California Apprenticeship Council and forward such check to OCC, Attn: Tatiana Santa Cruz for payment and processing to the California Apprenticeship Council;
 - d. Release from escrow \$22,760.41 in retention monies held under Contract No. 3555 to G2K Construction, Inc. plus interest accrued, if any, in the escrow account.

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2. Authorize RAP's Chief Accounting Employee to make technical corrections as necessary to carry out the intent of this Report;

SUMMARY

On May 7, 2020, the Board of Recreation and Park Commissioners (Board) approved Report No. 20-056 for the Lincoln Park Recreation Center – Pool and Pool Bathhouse Replacement (PRJ1504P) (W.O. #E1907715) Project (Project), located at 3501 Valley Boulevard., Los Angeles, California 90032. This Report included authorization to withhold contract payments to G2K Construction, Inc. (G2K) for the Project in the total amount of \$322,489.05 as requested by OCC. This amount represented restitution and penalties incurred by G2K and their subcontractor North Pacific Electric for underpayment of prevailing wages and other labor violations on the Project. Subsequent to that date, G2K provided additional proof of payment to one worker. OCC has determined that this payment warrants a reduction of \$22,760.41 in monies withheld from G2K for restitution and penalties, which would reduce the total monies withheld from G2K from \$322,489.05 to \$299,728.64.

OCC has now completed its investigations for prevailing wage violations on this Project and has negotiated and signed two Settlement Agreements with G2K dated December 24, 2019, and May 19, 2020. As a condition of these Settlement Agreements, G2K has issued three Assignments of Funds totaling \$299,728.64 for the total amount required to account for the restitution to all underpaid workers, along with the attendant penalties and payment of training fund contributions as set forth in the table below.

As a result of these agreements and the attendant Assignments of Funds, OCC represents that it has no further claim on any other funds withheld on Contract No. 3555 and recommends that the Board authorize the release of the remaining funds withheld on this Project as set forth in Recommendation 1 of this Report.

The Settlement Agreement dated December 24, 2019, pertains to the underpayment of prevailing wages by G2K and their subcontractor, North Pacific Electric, on two separate cases identified as DLSE Case 3122 and DLSE Case 3131. Likewise, the Settlement Agreement dated May 19, 2020, pertains to the underpayment of prevailing wages to a worker and is identified as DLSE Case 3139.

These Settlement Agreements constitute wage restitution, penalties, and California Apprenticeship Council Training Contribution as follows:

SETTLEMENT DATE	CONTRACTOR OR SUBCONTRACTOR	WAGE RESTITUTION	STATE PENALTY	TRAINING FUND	TOTAL
12/24/2019	G2K Construction, Inc.		\$14,100.00		\$14,100.00
12/24/2019	North Pacific Electric	\$196,937.62	\$51,090.00	\$3,122.30	\$251,149.92
05/19/2020	G2K Construction, Inc.	\$15,518.50	\$17,925.00	\$1,035.22	\$34,478.72
TOTALS		\$212,456.12	\$83,115.00	\$4,157.52	\$299,728.64

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ENVIRONMENTAL IMPACT

The Board previously determined that the Project was categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Article III, Section 1, and Classes 1(11), 2(5), and 3(6,17) of the City CEQA Guidelines (Report No. 16-085). A Notice of Exemption was filed with the Los Angeles County Clerk on June 22, 2016.

FISCAL IMPACT

There is no fiscal impact to RAP's General Fund as a result of this Report.

STRATEGIC PLAN INITIATIVES AND GOALS

Approval of this Board Report advances RAP's Strategic Plan by supporting:

Goal No. 2: Offer Affordable and Equitable Recreational Programming.

Outcome No. 1: Improved health and social equity for young Angelenos

Result: The construction of this new pool will lead to more opportunities for recreational programming and improved health for Angelino's of all ages.

This Report was prepared by Harold Arrivillaga, Commission Executive Assistant II, Board Office.

LIST OF ATTACHMENTS/EXHIBITS

Attachment 1 – Settlement Agreement between G2K Construction, Inc., and the City of Los Angeles, Office of Contract Compliance dated December 24, 2019.

Attachment 2 – Settlement Agreement between G2K Construction, Inc and the City of Los Angeles, Office of Contract Compliance dated May 19, 2020.

SETTLEMENT AGREEMENT

This Agreement is entered into by and between the Parties identified herein below as of December 24, 2019.

The Parties to this Agreement are as follows:

1. G2K Construction, Inc.; and
2. The City of Los Angeles, acting by and through its Office of Contract Compliance.

This Settlement Agreement pertains only to matters arising out of the payment of prevailing wages by G2K Construction, Inc. (G2K), the prime contractor on the Lincoln Park Recreation Center Pool and Bathhouse Replacement Project and their subcontractor North Pacific Electric (NPE), on two separate cases identified by the Labor Commissioner as Division of Labor Standards Enforcement Case 3122 (DLSE 3122), and Division of Labor Standards Enforcement Case 3131 (DLSE 3131).

The first case, DLSE 3122, covers assessments for work performed prior to February 22, 2019, by NPE as a subcontractor for G2K; the second case, DLSE 3131, covers assessments for work performed prior to July 14, 2018, by G2K. Any other assessments or matters that may have been made or are pending (i.e., Subcontractor Outreach and Enforcement, Engineering, Inspection, etc.) are not affected by this Settlement Agreement.

G2K and the City of Los Angeles (City) hereby settle the disputes pertaining to the payment of prevailing wages arising out of the Lincoln Park Recreation Center Pool and Bathhouse Replacement Project (Project) as follows:

1. G2K shall agree to an Assignment of Funds in the amount of \$251,149.92. This constitutes wage restitution to the workers of NPE in the amount of \$196,937.62 as designated in the Disposition of the Case by the Labor Commissioner dated October 24, 2019, DLSE 3122, and the Notice of Withholding of Contract Payments dated November 18, 2019, Case No. P16-599. It also includes the sum of \$51,090.00 for penalties as designated in DLSE 3122. This is comprised of California Labor Code §1775 penalties in the amount of \$50,490.00 (50% of \$100,980.00, the original amount assessed) and California Labor Code §1813 penalties in the amount of \$600.00. This amount also includes the sum of \$3,122.30 for unpaid training fund contributions as designated in DLSE 3122. A true and correct copy of said Disposition and accompanying assessment is attached hereto as Exhibit A. These payments will resolve the allegations of underpayment of prevailing wages and the failure to accurately report certified payrolls on this project by NPE on the Project prior to February 22, 2019.
2. G2K shall agree to a separate Assignment of Funds in the amount of \$14,100.00 for California Labor Code §1775 penalties related to the alleged underpayment of prevailing wages by G2K as designated in the Disposition of the Case by the Labor Commissioner

dated November 26, 2019, DLSE 3131 and the Notice of Withholding of Contract Payments dated December 4, 2019, Case No. P16-599. A true and correct copy of said Disposition and accompanying assessment is attached hereto as Exhibit B.

3. Payment shall be made in the following manner:

Within five working days of the signing of this Settlement Agreement, and receipt of the Assignment of Funds, the Office of Contract Compliance (OCC) will request the release of retention from the Board of Recreation and Parks Commissioners and the issuance of three checks made payable to:

- A. the State of California for the total amount due to the workers as listed on the revised assessment dated August 20, 2019 accompanying DLSE 3122 (Exhibit A). The check shall be made payable based on the gross amount listed in the wage restitution column. The aggregate amount of this check shall be \$196,937.62.
 - B. the City of Los Angeles for the total amount of \$65,190 for 1775 penalties in the amount of \$64,590.00 (\$50,490.00 for DLSE 3122 plus \$14,100.00 for DLSE 3131) and the total amount of 1813 penalties of \$600.00 for DLSE 3131.
 - C. the Department of Industrial Relations, California Apprenticeship Council, P.O. Box 511283, Los Angeles, CA 90051-7838 for unpaid training contributions in the amount of \$3,122.30 as designated in DLSE 3122.
4. Upon receiving the Assignment of Funds, the Office of Contract Compliance will notify G2K in writing that all Labor Compliance issues pertaining to the payment of prevailing wages on these assessments have been resolved, and the City will release G2K from any and all claims for unpaid wages, penalties, interest and liquidated damages related to the cases referred to herein as DLSE 3122 and DLSE 3131. City further agrees that upon receiving the Assignment of Funds, it will withdraw with prejudice the Notices of Withholding of Contract Payments for DLSE 3122 and DLSE 3131 in Case No. P16-599.
5. G2K agrees to not bid or work on any future contracts with the City of Los Angeles for a period of two (2) years. The term will begin on January 1, 2020, and will end on December 31, 2021.
6. Both Parties are aware that in the event this matter is not resolved, a hearing to resolve this matter before a state appointed hearing officer may be held as mandated by California Labor Code §1742.
7. Any funds withheld on this project which are not covered by this Agreement, and not subject to withholding by the City on matters unrelated to the payment of prevailing wages (i.e., Subcontractor Outreach and Enforcement, Engineering, Inspection, Stop Notices, etc.) shall

be released to G2K upon resolution of these separate matters and acceptance of this project by the Board of Recreation and Parks Commissioners.

8. City and G2K agree that this document can be introduced into evidence in any administrative or court proceeding related to the enforcement of this Agreement, and any objection to introducing this document under Evidence Code § 1152 and §1154 is waived.
9. Each party has cooperated in the drafting and preparation of this Agreement. In interpreting this Agreement, any uncertain or ambiguous provision shall not be construed against any Party solely on the basis that that Party selected the uncertain or ambiguous language.
10. The Parties represent and warrant they are the sole and lawful owners of all claims they are releasing herein, and that they have the power and authority to execute a release of any such claims and that they have not heretofore assigned, transferred, sold, conveyed, hypothecated or otherwise disposed of any claim or demand relating to any matter covered by this Agreement to any person, corporation, or entity. Additionally, the Parties hereto, and each of them, represent and warrant that they have the sole right and exclusive authority to execute this Agreement and that they are not restricted in doing so. In the event that any Party breaches any of the representations or warranties contained in this paragraph, such Party agrees to indemnify each other Party from any and all claims, demands, loss, damage, liability, and expense, including costs of suit resulting from such breach.
11. The Parties acknowledge that they have been represented by counsel of their choice in the negotiations leading up to the execution of this Agreement and that they have read this Agreement and have had it fully explained to them by their counsel.
12. Each Party expressly covenants to deal with the other Parties in good faith in the performance of this Agreement. The Parties further agree and authorize their respective attorneys to execute any and all documents and to undertake any and all actions reasonably necessary to effectuate the terms of this Agreement.
13. This Agreement may be amended as to any part of this Agreement only by a written instrument executed by all of the Parties hereto. No claimed unilateral understandings, oral agreements, or unwritten mutual agreements of any nature whatsoever shall be effective either as amendments to this written Agreement or as expressions of the Parties' intent in executing this Agreement.
14. This Agreement may be executed in counterparts and shall be effective when such counterparts have been executed by all Parties hereto as if such Parties had all executed one original. A facsimile signature will be deemed to be equally as valid as an original signature.
15. By entering into this Agreement, G2K does not admit that it violated any provision of the Labor Code or is liable for any violations or non-compliance with the Labor Code by its subcontractor, NPE.

16. The Department of Industrial Relations shall maintain jurisdiction over the Parties to enforce the Settlement until performance in full of the terms of the Settlement.



Emilia Graciela Levy, President
G2K Construction, Inc.

12.24.19
Date



Moshe Levy, Program Manager
G2K Construction, Inc.

12-24-19
Date



Lynda McGlinchey, Program Manager II
City of Los Angeles
Office of Contract Compliance

01/09/2020
Date

January 8, 2020

City of Los Angeles
Contract Compliance Analyst
Department of Public Works
1149 S. Broadway, Suite 300
Los Angeles, CA 90015

Attn: Tatiana Santa Cruz
Subject: Assignment of Funds for Lincoln Park Recreation Center – Pool and Bathhouse Replacement
Ref: DLSE 3122 and DLSE 3131

Dear Ms. Santa Cruz:

G2K Construction, Inc. (G2K) hereby agrees to an assignment of funds in the amount of \$14,100.00 to resolve all labor compliance issues connected with the alleged underpayment of prevailing wages by G2K on the above referenced project.

Please call with any questions you might have.

Thank you

Sincerely,



Emilia Graciela Levy, President
G2K

January 8, 2020

City of Los Angeles
Contract Compliance Analyst
Department of Public Works
1149 S. Broadway, Suite 300
Los Angeles, CA 90015

Attn: Tatiana Santa Cruz
Subject: Assignment of Funds for Lincoln Park Recreation Center – Pool and Bathhouse Replacement
Ref: DLSE 3122 and DLSE 3131

Dear Ms. Santa Cruz:

G2K Construction, Inc. (G2K) hereby agrees to an assignment of funds in the amount of \$251,149.92 to resolve all labor compliance issues connected with the underpayment of prevailing wages by our subcontractor, North Pacific Electric on the above referenced project.

Please call with any questions you might have.

Thank you

Sincerely,

A handwritten signature in blue ink, appearing to read "Emilia Graciela Levy", with a long horizontal flourish extending to the right.

Emilia Graciela Levy, President
G2K

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between the Parties identified herein below as of May 19, 2020.

The Parties to this Agreement are as follows:

1. G2K Construction, Inc.; and
2. The City of Los Angeles, acting by and through its Office of Contract Compliance.

This Settlement Agreement pertains only to matters arising out of the payment of prevailing wages to Miguel Leon, a worker on the project, by G2K Construction, Inc. (G2K), the prime contractor on the Lincoln Park Recreation Center Pool and Bathhouse Replacement Project on the Division of Labor Standards Enforcement Case 3139 (DLSE 3139) and subsequent Revised Assessment dated April 09, 2020 (Revised Assessment).

This Agreement only covers the assessments for work performed by Mr. Leon between July 2017 and August 2019 for G2K. Any other assessments or matters that may have been made or are pending (i.e., Subcontractor Outreach and Enforcement, Engineering, Inspection, the previous assessments by the Office of Contract Compliance, etc.) are not affected by this Agreement.

G2K and the City of Los Angeles (City) hereby settle this dispute pertaining to the payment of prevailing wages arising out of the Lincoln Park Recreation Center Pool and Bathhouse Replacement Project (Project) as follows:

1. G2K shall agree to an Assignment of Funds in the amount of \$34,478.72. This constitutes wage restitution to Miguel Leon by G2K in the amount of \$15,518.50 as designated in the Revised Assessment. It also includes the sum of \$17,925.00 for penalties as designated in the Revised Assessment. This is comprised of California Labor Code §1775 penalties in the amount of \$17,900.00 and California Labor Code §1813 penalties in the amount of

\$25.00. This amount also includes the sum of \$1,035.22 for unpaid training fund contributions as designated in the Revised Assessment. A true and correct copy of DLSE 3139 and the Revised Assessment is attached hereto as Exhibit A. These payments will resolve the allegations of underpayment of prevailing wages to Mr. Leon and the failure to accurately report certified payrolls on this project by G2K between July 2017 to August 2019.

2. Upon receiving the signed original of this Agreement and the Assignment of Funds referred to in Item 1 herewith, the Office of Contract Compliance will notify the Board of Recreation & Parks Commissioners and G2K in writing that all Labor Compliance issues pertaining to the payment of prevailing wages on this assessment have been resolved. The total amount of the three Assignments of Funds between G2K and the Office of Contract Compliance is \$299,728.64. The Office of Contract Compliance will also notify the Board of Recreation & Parks Commissioners and G2K that all funds withheld in excess of this amount may be released to G2K, barring any other matters of which the Office of Contract Compliance is not a party. The Office of Contract Compliance will release G2K from any and all claims for unpaid wages, penalties, interest and liquidated damages related to the case referred to herein as Division of Labor Standards Enforcement Case 3139 (DLSE 3139), and further agrees that upon receiving the Assignment of Funds, it will withdraw with prejudice the Notice of Withholding of Contract Payments for DLSE 3139 in Case No. P16-599.
3. Both Parties are aware that in the event this matter is not resolved, a hearing to resolve this matter before a state-appointed hearing officer may be held as mandated by California Labor Code §1742.
4. Any funds withheld on this project which are not covered by this Agreement or previous Agreements, and not subject to withholding by the City on matters unrelated to the payment of prevailing wages (i.e., Subcontractor Outreach and Enforcement, Engineering, Inspection, Stop Notices, etc.) shall be released to G2K upon resolution of these separate matters and acceptance of this project by the Department of Recreation and Parks.

5. City and G2K agree that this document can be introduced into evidence in any court proceeding related to the enforcement of this Agreement, and Evidence Code § 1152 and §1154 are waived.
6. Each Party has cooperated in the drafting and preparation of this Agreement. In interpreting this Agreement, any uncertain or ambiguous provision shall not be construed against any Party solely on the basis that that Party selected the uncertain or ambiguous language.
7. The Parties represent and warrant they are the sole and lawful owners of all claims they are settling herein, and that they have the power and authority to settle any such claims and that and that they have not heretofore assigned, transferred, sold, conveyed, hypothecated or otherwise disposed of any claim or demand relating to any matter covered by this Agreement to any person, corporation, or entity. Additionally, the Parties hereto, and each of them, represent and warrant that they have the sole right and exclusive authority to execute this Agreement and that they are not restricted in doing so. In the event that any Party breaches any of the representations or warranties contained in this paragraph, such Party agrees to indemnify each other Party from any and all claims, demands, loss, damage, liability, and expense, including costs of suit resulting from such breach.
8. The Parties acknowledge that they have been represented by counsel of their choice in the negotiations leading up to the execution of this Agreement and that they have read this Agreement and have had it thoroughly explained to them by their counsel.
9. Each Party expressly covenants to deal with the other Parties in good faith in the performance of this Agreement. The Parties further agree and authorize their respective attorneys to execute any and all documents and to undertake any and all actions reasonably necessary to effectuate the terms of this Agreement.

10. This Agreement may be amended as to any part of this Agreement only by a written instrument executed by all of the Parties hereto. No claimed unilateral understandings, oral agreements, or unwritten mutual agreements of any nature whatsoever shall be effective either as amendments to this written Agreement or as expressions of the Parties' intent in executing this Agreement.
11. This Agreement may be executed in counterparts and shall be effective when such counterparts have been executed by all Parties hereto as if such Parties had all executed one original. A facsimile signature will be deemed to be equally as valid as an original signature.
12. By entering into this Agreement, G2K does not admit that it violated any provisions of the Labor Code.
13. The Department of Industrial Relations shall maintain jurisdiction over the Parties to enforce the Settlement until performance in full of the terms of the Settlement pursuant to Code of Civil Procedure §664. 6.



Emilia Graciela Levy, President
G2K Construction, Inc.

5/20/2020
Date



Moshe Levy, Program Manager
G2K Construction, Inc.

5/20/20
Date



Lynda McGlynchey, Program Manager II
City of Los Angeles
Office of Contract Compliance

05/26/2020
Date

May 19, 2020

City of Los Angeles
Contract Compliance Analyst
Department of Public Works
1149 S. Broadway, Suite 300
Los Angeles, CA 90015

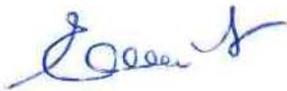
Attn: Tatiana Santa Cruz
Subject: Assignment of Fund for Lincoln Park Recreation Center-Pool and Bathhouse
Replacement Project E190771
Ref: DLSE Case 3139

Dear Ms. Santa Cruz:

G2K Construction, Inc. (G2K) hereby agrees to an assignment of funds in the amount of \$34,478.72 to resolve all labor compliance issues connected with the underpayment of prevailing wages to Miguel Leon by G2K on the above referenced project.

Please call with any questions you may have,

Sincerely,



Emilia Graciela Levy, President
G2K