

APPROVED
OCT 23 2019

**BOARD OF RECREATION
AND PARK COMMISSIONERS**

BOARD REPORT

NO. 19-215

DATE October 23, 2019

C.D. 11

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: POTRERO CANYON PARK - GRADING (G775) (W.O. E1907428) PROJECT —
APPROVAL OF ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU
OF RETENTION

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


General Manager

Approved X Disapproved _____ Withdrawn _____

RECOMMENDATIONS

1. Approve the request from OHL USA, Inc. DBA Group OHL USA, Inc., (Contractor) to enter into an Escrow Agreement, herein included as Attachment, with the City of Los Angeles, Department of Recreation and Parks (RAP) for Security Deposits in Lieu of Retention for the Potrero Canyon Park – Grading (G775) (W.O. E1907428) Project (Project), Contract No. 3644 (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 to this Report, which applies only to the contract payments currently appropriated by RAP for the Contract, which is Thirteen Million, Five Hundred Twenty-Six Thousand, Five Hundred Seventy-Nine Dollars (\$13,526,579.00);
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 of Recreation and Park Commissioners' (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. 3644, to enter into an Escrow Agreement for Security Deposits in Lieu of Retention (Escrow Agreement).

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 Thirteen Million, Five Hundred Twenty-Six Thousand, Five Hundred

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Seventy-Nine Dollars (\$13,526,579.00). 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

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 .

STRATEGIC PLAN INITIATIVES AND GOALS

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

Goal No. 1: Provide Safe and Accessible Parks.

Outcome No. 2: Every Angeleno has walkable access to a park in their neighborhood regardless of race, ethnicity, or socioeconomic status.

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

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
OHL USA, INC. DBA GROUP OHL USA, 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; OHL USA, INC., DBA GROUP OHL USA, INC., whose address is 1920 Main St., Suite 310, Irvine, CA 92614, hereinafter called CONTRACTOR; and U.S. Bank National Association, whose address is 633 West Fifth Street, 24th Floor, Los Angeles, CA 90071, 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. 3644, hereinafter referred to as CONTRACT, entered into between the OWNER and CONTRACTOR for the Potrero Canyon Park – Grading (G775) (W.O. E1907428) Project (Project) in the amount currently appropriated by RAP for the Contract, which is THIRTEEN MILLION, FIVE HUNDRED TWENTY-SIX THOUSAND, FIVE HUNDRED SEVENTY-NINE DOLLARS (\$13,526,579.00) 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

OHL USA, Inc. DBA Group OHL USA, Inc.

Signature
Sylvia Patsaouras, Board President

Signature
Ahmad Bagheri, President

Signature
Harold Arrivillaga, Board Secretary

Signature

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

Name: _____

Title: _____

Address:
1920 Main St, Suite # 310
Irvine, CA 92614

On Behalf of Escrow Agent:

Signature

Name: _____

Title: _____

Address:
633 West Fifth Street, 24th Floor
Los Angeles, CA 90071

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__

OHL USA, Inc. DBA Group OHL USA, Inc.

By _____
PRESIDENT

By _____
SECRETARY

Executed this _____ day
of _____, 20__

U.S. Bank National Association

By _____

Approved as to Form:

Date: _____

MICHAEL N. FEUER,
City Attorney

By _____
DEPUTY CITY ATTORNEY

The undersigned, Liberty Mutual 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.

LIBERTY MUTUAL INSURANCE COMPANY

BY _____
Attorney-In-Fact