

COUNTY OF SAN MATEO

41

Inter-Departmental Correspondence

Date: June 22, 2001

Board Meeting Date: July 24, 2001

TO: Honorable Board of Supervisors
FROM: Neil R. Cullen, Director of Public Works
SUBJECT: Execution of Escrow Agreement – Seismic Retrofit – Phase III at the San Mateo County Courthouse, 750 Middlefield Road/777 Hamilton Street, Redwood City, CA 94063 (Project No. P8201)

RECOMMENDATION

Adopt a Resolution authorizing the President of the Board to execute an Escrow Agreement between the County and Gonsalves and Stronck Construction Company, Inc., the County's contractor for the Seismic Retrofit – Phase III at the San Mateo County Courthouse in Redwood City, which allows for the deposit of retention earnings normally withheld by the County, into an escrow account.

Previous Board Action

Awarded a construction contract to Gonsalves and Stronck Construction Company, Inc.

Key Facts

1. Section 22300 of the State Public Contract Code gives the Contractor an option of having funds that are normally withheld until construction is complete, deposited into an Escrow Account (retention funds).
2. The Contractor has requested that his retention funds be deposited directly in an Escrow Account.

Discussion

We make progress payments to the contractor as work progresses, and retain a percentage of these progress payments (usually 10%) as security to guarantee fulfillment of the contract terms by the contractor. The amount retained is then released once the Notice of Completion for the work has been filed.

The Escrow Account provision of the Public Contract Code provides the County with the same protection against contractor defaults as the retention system, as the County retains access to the money deposited in the escrow account. In addition, the Contractor is not permitted to withdraw these funds from the account without the permission of the County.

Honorable Board of Supervisors

Subject: Execution of Escrow Agreement – Seismic Retrofit – Phase III at the San Mateo County Courthouse, 750 Middlefield Road/777 Hamilton Street, Redwood City, CA 94063 (Project No. P8201)

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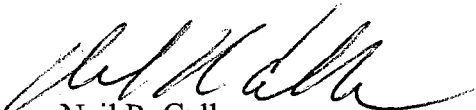
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Fiscal Impact

The contract amount of the Seismic Retrofit- Phase III at the San Mateo County Courthouse project is \$248,044. The total amount deposited into the escrow account will be approximately \$24,804 and the Contractor will earn interest on his retention earnings. The fiscal impact to the County is the loss of the earned interest to the Capital Projects Fund on the above-mentioned amount. However, we believe this is fair as the contractor will have earned the funds that are being retained.

There is no impact on the County General Fund.

A form of resolution and agreement have been approved by County Counsel and the Contractor and Escrow Agent have executed the Agreement.


Neil R. Cullen
Director of Public Works

NRC:JKO:sdd

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cc: Milt Mares, County Counsel

Resolution No. _____

Board of Supervisors, County of San Mateo, State of California

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**Resolution Authorizing the Execution of an Escrow Agreement
between the County of San Mateo and Gonsalves & Stronck Construction Company, Inc.
Which Allows the Deposit of Retention Earnings, Normally Withheld by the County,
into an Escrow Account for the
Seismic Retrofit – Phase III at the San Mateo County Courthouse
in Redwood City, California
(Project No. P8201)**

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that

WHEREAS, this Board awarded the construction contract for above-referenced project to Gonsalves and Stronck Construction Company, Inc. ("Contractor"); and

WHEREAS, the County is required under the construction contract to make progress payments to the Contractor as work progresses; and

WHEREAS, the County is authorized under the contract to retain a percentage of progress payments as security for the fulfillment of the contract by the Contractor; and

WHEREAS, such retainment under the contract is estimated to be \$24,804; and

WHEREAS, Section 22300 of the State Public Contract Code gives the option of having funds normally retained by the County deposited into an Escrow Account; and

WHEREAS, the Contractor has requested that the retention funds be deposited directly in an Escrow Account; and

WHEREAS, the Board has reviewed and considered said escrow agreement:

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED, that the President of this Board is authorized to execute said agreement for and on behalf of the County and the Clerk shall attest thereto.

* * * * *

**ESCROW AGREEMENT FOR
SECURITY DEPOSITS IN LIEU OF RETENTION**

This Escrow Agreement (hereinafter "Agreement") is made and entered into by and between:

County of San Mateo, State of California whose address is 555 County Center, Redwood City, California 94063-1665, hereinafter called "Owner", and **Gonsalves & Stronck Construction Company, Inc.** whose address is 1000 Washington St., CA 94070 hereinafter called "Contractor," and **Bay Area Bank (a Federally Chartered Bank)** whose address is 900 veterans Blvd., Redwood City, CA 94063 hereinafter called "Escrow Agent."

Re: Construction Contract between Owner and Contractor dated April 24, 2001 For SEISMIC RETROFIT – PHASE III at THE SAN MATEO COUNTY COURTHOUSE, 750 MIDDLEFIELD ROAD/777 HAMILTON ST., REDWOOD CITY, CALIFORNIA in the amount of \$248,044.00, hereinafter referred to as "Contract".

For the consideration hereinafter set forth, 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 the aforesaid Contract. Securities eligible for substitution hereunder shall be limited to those listed in California Government Code Section 16430, or to bank or savings and loan certificates of deposit. When Contractor deposits such securities as a substitute for Contract earnings, Escrow Agent shall notify Owner within 10 days of the deposit. The market value of the securities as 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 Owner and Contractor. Securities shall be held in the name of County of San Mateo, State of California and shall designate Contractor as the beneficial owner.
2. Owner shall make progress payments to Contractor for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that Escrow Agent holds securities in the form and amount specified above.
3. Alternatively, on written request of Contractor, Owner shall make payments of retention earnings directly to Escrow Agent. When Owner makes payment of retentions earned directly to Escrow Agent, Escrow Agent shall hold them for the benefit of Contractor until such time as the escrow created under this Agreement is terminated. 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 Owner pays Escrow Agent directly.
4. Contractor shall pay all fees for all expenses included by Escrow Agent in administering said Escrow Account and all expenses of Owner. These expenses and payment terms shall be determined by Owner, Contractor, and Escrow Agent.

5. The interest earned on the securities or 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 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 Escrow Agent that the Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor.
7. Owner shall have a right to draw upon the securities in the event of default by Contractor. Upon seven days' written notice to Escrow Agent from Owner of the default, Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by Owner.
8. Upon receipt of written notification from Owner certifying that the Contract is final and complete, and that 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 all fees and charges.
9. Escrow Agent shall rely on the written notifications from Owner and Contractor pursuant to Sections 5 through 8 of this Agreement, and Owner and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of securities and interest as set forth above.
10. The names of the persons who are authorized to give written notice or to receive written notice on behalf of Owner, Contractor, and Escrow Agent in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of Owner: County of San Mateo

On behalf of Contractor:
Gonsalves & Stronck Construction
Company, Inc.

Signature

Signature

Michael D. Nevin

William Stronck

Name

Name

President

President

Board of Supervisors

Title

Title

400 County Center

1000 Washington Street


~~Redwood City, CA 94063~~

San Carlos, CA 94070

Address

Address

On behalf of Escrow Agent: Bay Area Bank



Signature

MARK SCHDELSTEIN
Name

S.J.A.
Title

900 VETERANS BLD.
REDWOOD CITY, CA. 94063
Address

At the time the Escrow Account is opened, Owner and Contractor shall deliver to Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement by their proper officers on _____.

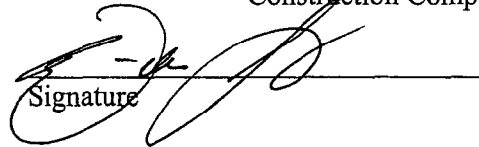
OWNER: County of San Mateo

CONTRACTOR: Gonsalves & Stronck
Construction Company, Inc.

Signature

Michael D. Nevin
Name
President
Board of Supervisors
Title

400 County Center
Redwood City, CA 94063
Address



Signature

William Stronck
Name
President
Title

1000 Washington Street
San Carlos, CA 94070
Address