

REPORT OF GENERAL MANAGER

NO. 03-02

DATE January 8, 2003

C.D. 14

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: ROSE HILL RECREATION CENTER - RESTROOM IMPROVEMENTS (#2703N) - PARTIAL RELEASE OF RETENTION

J. Duggan \_\_\_\_\_  
A. Corrales \_\_\_\_\_  
J. Kolb \_\_\_\_\_  
L. Barth \_\_\_\_\_

H. Fujita \_\_\_\_\_  
\*R. Fawcett FOR  
J. Combs \_\_\_\_\_

*John Duggan for*  
*Manuel A. Mollinedo*  
\_\_\_\_\_  
General Manager

Approved \_\_\_\_\_

Disapproved \_\_\_\_\_

Withdrawn \_\_\_\_\_

RECOMMENDATION:

It is recommended that the Board:

1. Authorize the Department's Director of Finance to release a partial payment of \$8,452.74 from Fund No. 43K, Account R361, from the \$12,744.00 in retention funds held under Contract No. 2994; and,
2. Retain the balance of retention funds \$4,291.26 to offset the \$15,400.00 liquidated damages assessed by the Board in its August 14, 2002 action.

SUMMARY:

On August 14, 2002, the Board accepted the work performed by T&J Construction Co., Inc. (T&J), on the Rose Hill Recreation Center - Restroom Improvements and new Half-Basketball court (#2703N) project (Board Report No. 02-287). As directed by the Board, staff's recommendation to assess liquidated damages in the amount of \$15,400.00 was conditionally waived by the Board provided that T&J assign their retention funds to pay the outstanding balances due to T&J's subcontractors.

T&J did not assign retention funds to subcontractors. Instead, on October 7, 2002, T&J submitted documentation demonstrating that a total of nine subcontractors and material suppliers had been paid a total of \$14,918.11. Upon verification of submitted documentation, staff determined that a total of \$8,452.74 had been paid after the Board's action of August 14, 2002. The remaining \$6,465.37 documented by T&J were payments made to subcontractors and suppliers prior to this date, as indicated on Attachment A. As presented by T&J to the Board at the August 14, 2002, meeting, T&J stated that all retention funds would be used to pay outstanding contract balances with subcontractors and suppliers on this construction project. By conditionally waiving the liquidated damages, it was the Board's intent to use retention funds solely for the direct payment of subcontractors which had not been paid at the time of the Board's

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action. It does not appear from the August 14, 2002 meeting minutes that the Board intended to waive liquidated damages in their totality. Rather, it appears that the Board was most concerned with having the subcontractors paid and in that regard the Board was willing to waive the liquidated damages (see attached August 14, 2002 minutes).

The Board should be aware that T&J, failed to include one subcontractor, DMS Landscape Services (DMS), on their October 7, 2002 listing of subcontractors with outstanding contract balances. When contacted by staff, DMS reported that they are owed \$5,090.00 by T&J for worked performed under contract. When contacted by staff, T&J confirmed that there is an outstanding balance, however, T&J claims the amount is \$4,740.00. Furthermore, T&J reported that they are presently a party to litigation filed against DMS and T&J by DMS employees. As such, T&J stated that they are not in a position to pay DMS until the litigation is resolved. For the record, DMS did not file a stop notice with the Department for balance due.

The project was funded by Prop K for a total amount of \$221,000.00. There are sufficient funds in Fund No. 43K, Account No. R361 to release the recommended retention funds.

Prepared by Armando De La O, Contract Administrator.

ROSE HILL R.C. RESTROOM IMPROVEMENTS (#2703N)

ATTACHMENT A

Payments prior to August 14, 2002, Final Acceptance

<u>CONTRACTOR</u>	<u>DATE PAID</u>	<u>AMOUNT</u>
Associated Ready Mixed Concrete	May 16, 2002	\$404.13
MEC / Geotechnical Engineers, Inc.	May 16, 2002	\$440.00
Anawalt Lumber Co.	June 12, 2002	\$108.63
Arm Glen Plumbing	July 2, 2002	\$4,565.32
Ceramic Tile Center	July 16, 2002	\$244.09
Anawalt Lumber Co.	July 30, 2002	\$133.20
3B Electric	August 6, 2002	<u>\$570.00</u>
	TOTAL	\$6,465.37

Payments after August 14, 2002 Final Acceptance

<u>CONTRACTOR</u>	<u>DATE PAID</u>	<u>AMOUNT</u>
Henry Specialties Inc.	August 19,	\$311.00
Zaino Tennis Courts Inc.	September 3,	\$5,174.59
Stonecraft	September 23,	\$600.00
Arm Glen Plumbing	September 30,	<u>\$2,367.15</u>
	TOTAL	\$8,452.74