

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

138



FROM: Waste Management Department

SUBMITTAL DATE:
April 9, 2013

SUBJECT: Escrow Agreement in Lieu of Retention with Sukut Construction, Inc., for the Construction of Liner System within the Phase 2, Stage 4 area at the Lamb Canyon Sanitary Landfill

RECOMMENDED MOTION: That the Board authorize the General Manager-Chief Engineer to execute the Escrow Agreement with Sukut Construction, Inc., and Union Bank, N.A., on behalf of the County.

BACKGROUND: On March 12, 2013, the Board awarded a contract to Sukut Construction, Inc. (Contractor) in the amount of \$10,504,231.50 for the Construction of Liner System within the Phase 2, Stage 4 area at the Lamb Canyon Sanitary Landfill. Pursuant to Section 22300 of the Public Contract Code of the State of California, the Contractor has requested the County to deposit eligible securities with the Escrow Agent (Union Bank) as a substitute for retention earnings. Upon execution of this Escrow Agreement, the Department will be releasing the entire amount of the monthly progress payments instead of withholding the retention. The retention monies will either go to escrow or Contractor (if adequate securities are placed in escrow by Contractor). As recommended by County Counsel, the General Manager-Chief Engineer should sign the Escrow Agreement because there will be future related documents submitted to the bank as the project progresses, and the General Manager-Chief Engineer will then be the authorized signatory for the County.

[Handwritten Signature]

Hans W. Kernkamp, General Manager-Chief Engineer

FORM APPROVED COUNTY COUNSEL
BY: NEAL R. KIPNIS
DATE: 4/9/13

Departmental Concurrence

FINANCIAL DATA	Current F.Y. Total Cost:	N/A	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	N/A	Budget Adjustment:	No
	Annual Net County Cost:	N/A	For Fiscal Year:	12/13

SOURCE OF FUNDS:	Positions To Be Deleted Per A-30	<input type="checkbox"/>
* Department will release 10% retention of the \$10,504,231.50 contract earlier with an escrow account, but still retain control over final release from escrow.	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: *Alex Gann*
Alex Gann

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Stone, seconded by Supervisor Ashley and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: April 23, 2013
xc: Waste

Kecia Harper-Ihem
Clerk of the Board
By: *[Signature]*
Deputy

Prev. Agn. Ref.: 4/10/2012 (12.1) District: 5/5 Agenda Number: **12-1 C**
3/12/13 (12.2)

ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

This escrow Agreement is made and entered into by and between the Riverside County Waste Management Department, whose address is 14310 Frederick Street, Moreno Valley, CA 92553, hereinafter referred to as "Owner" Sukut Construction, Inc., whose address is 4010 W. Chandler Ave, Santa Ana, CA 92704 hereinafter referred to as "Contractor", and Union Bank, N.A., whose address is 1980 SATURN STREET, MONTEREY PARK, CA 91755 hereinafter referred to as "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 the Construction Contract entered into between Owner and Contractor for Project: Lamb Canyon Landfill in the amount of \$10,504,231.50, dated March 12, 2013 (hereinafter, referred to as the ("Contract")). 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 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 Riverside County Waste Management Department, and shall designate the Contractor as the beneficial owner.
2. The Owner shall make progress payments to the Contractor for those funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent hold securities in the form and amount specified above.
3. When the Owner makes payment of retention's earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until the time that 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. 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 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 the 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 Contractor. Upon seven 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 payments of fees and charges.
9. 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 these 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 the Owner and on behalf of the Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of Owner:
Riverside County Waste Management Department

Hans Kernkamp

Name
General Manager-Chief Engineer

Title

Signature

4/23/13
Date

On behalf of Contractor:
Sukut Construction, Inc

Paul Kuliev

Name

CFO

Title

Signature

Address:
14310 Frederick Street
Moreno Valley, CA 92553

Address:
4010 W. Chandler Ave
Santa Ana, CA 92704

Telephone: 951-486-3200

Telephone: 714-460-1024

On behalf of Escrow Agent:
UNION BANK, N.A.

Angel Hernandez
Vice President

Signature

Address:
UNION BANK, N.A.
1980 SATURN STREET, V03-012
MONTEREY PARK, CA 91755

Telephone: (800) 669-8661

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.

OWNER:

By:

General Manager-Chief Engineer

Title

CONTRACTOR:

By:

Chief Financial Officer

Title

FORM APPROVED COUNTY COUNSEL

BY:

NEAL R. KIPNIS

DATE