

Cont. No.

Escrow No. \_\_\_\_\_

ESCROW AGREEMENT FOR DEPOSIT OF  
SECURITIES IN LIEU OF CASH RETENTION  
ON PUBLIC WORKS PROJECT

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_  
19\_\_\_\_, by and between the

a political subdivision of the State of California (hereinafter referred to as Owner),

(hereinafter referred to as Contractor), and

\_\_\_\_\_,  
a state or federally chartered bank (hereinafter referred to as Escrow Agent).

WHEREAS, California Public Contract Code, Section 22300 provides that a Contractor on a Public Works contract may deposit with an escrow agent securities having a value equivalent to or greater than the amount to be held by the public agency owner for retention payments, and, under appropriate circumstances, receive the withheld retention payments;

NOW, THEREFORE, in consideration of the mutual provisions herein contained, the parties hereto agree as follows:

1. Owner has let to Contractor Contract No. , for the construction of , said construction contract being dated . That said construction contract provides that the Owner shall retain from each progress payment a specified portion of the progress payment until the lapse of a specified period of time following acceptance by the Owner of the completed construction project. That said construction contract further provides that the Contractor may substitute a deposit of securities in lieu of the Owner withholding such monies from the total amount of the performance by the Contractor provided such deposit of securities complies with the terms of the construction contract and law. That said construction contract and law alternately provides that the owner may make payment of retentions earned directly to the Escrow Agent after Contractor request.

2. Contractor may deposit with Escrow Agent securities eligible for investment under California Public Contract Code, Section 22300 as security in lieu of any monies withheld by the Owner to ensure performance under the aforesaid construction contract. Alternately, the Owner may make payment of retentions earned directly to the Escrow Agent after Contractor request. Such direct payment of retentions earned shall hereinafter be included in the term "securities."
3. Escrow Agent shall, upon deposit by the Contractor of eligible securities, determine the value of the securities so deposited and certify in the form attached as Exhibit "A" to the Public Works Agency, County of Sacramento, Contract Services Section, 827-7<sup>th</sup> Street, Room 304, Sacramento, California, 95814, that eligible securities have been deposited with the Escrow Agent by the Contractor on account for release of retention by the County of monies withheld to ensure performance of the aforesaid construction contract. Such certification shall state minimum value of the securities. The securities shall not be released by the Escrow Agent until the County Engineer (hereinafter referred to as Engineer) has instructed the Escrow Agent in writing that the said securities may be released to the Contractor. The form of such instruction in writing is annexed hereto as Exhibit "B."
4. Escrow Agent shall hold the aforesaid securities until such time Escrow Agent is instructed in writing by the Owner's Engineer that Escrow Agent may release the securities to the Contractor. In the event the Owner's Engineer submits a written demand and certification, in the form attached hereto as Exhibit "C," stating that the Contractor has failed to perform all or part of the construction agreement after notice and demanding the payment of a specified amount of cash to be delivered by the Escrow Agent to the Owner, the Escrow Agent shall, seven (7) days following receipt of such demand and certification, cause sufficient of the securities deposited by Contractor to be sold and shall immediately deliver to the Owner's Engineer the amount of cash specified in the said demand and certification. No proof or documents, other than the demand and certification, shall be required of

the Engineer by the Escrow Agent in order to accomplish the sale and delivery as specified herein. Any excess cash or securities remaining after satisfaction of the Engineer's demand shall be retained by the Escrow Agent until further instructed by the Engineer.

5. Upon receipt by Owner of an appropriate certification as set forth in Paragraph 3 above, Owner shall release to Contractor all monies withheld by Owner to ensure performance of the aforesaid construction contract, but only to the extent that such monies have been earned by the Contractor and do not exceed the value of the securities deposited as set forth in the certification. Further, Owner shall not release to the Contractor any monies required to be withheld pursuant to a valid stop notice filed by any person so authorized and with respect to the said construction contract. Owner shall be the sole judge of the validity of all such stop notices and shall retain one hundred twenty-five percent (125%) of the amount claimed in the stop notice. At such time as in the opinion of the Owner's Engineer, the Contractor has failed to perform all or part of the construction agreement, the Engineer may give ten (10) day's written notice to the Contractor to adequately commence or complete such performance, or the Engineer shall make demand upon the Escrow Agent for sale of securities deposited by the Contractor and for the delivery of cash proceeds to the Engineer. Upon failure of the Contractor to adequately commence or complete performance within the time specified by the Engineer, the Engineer may submit to the Escrow Agent a written demand and certification in the form attached hereto as Exhibit "C," specifying the amount to be paid to the Owner, and the Escrow Agent shall comply with the terms thereof. The Owner's Engineer shall be the sole judge of the failure of performance by the Contractor, the adequacy of commencement or completion of performance by the Contractor and the value of the failure of performance by the Contractor.
6. This escrow agreement is a third party beneficiary contract to the extent that it provides security to the Owner. The Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any

interest thereon. The Owner shall have the right to have any such securities sold by the Escrow Agent and the cash value thereof delivered to the Owner as set forth above. In the event the sale of the securities does not realize sufficient cash to pay the Owner the amount demanded by the Engineer, Contractor shall be obligated to immediately pay to the Owner any deficiency, and the Owner shall be further entitled to withhold any such deficiency from any payments then due from the Owner to the Contractor or to become due.

7. Contractor shall pay all fees and costs required to establish and maintain the escrow and to carry out the terms of this agreement.
8. The Escrow Agent shall indemnify and hold harmless the Owner from any loss suffered by the Owner as a result of any act or omission of Escrow Agent or any of its officers, employees, representatives, or agents. Further, the Contractor shall indemnify and hold harmless the Escrow Agent from any loss the Escrow Agent may suffer as a result of the acts or omissions of the Contractor or any of its officers, employees, representatives, or agents. further, Owner shall indemnify and hold harmless the Escrow Agent from any loss the Escrow Agent may suffer as a result of the acts or omissions of the Owner or any of its officers, employees, representatives, or agents.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above stated.

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a political subdivision of the State of California

By \_\_\_\_\_  
OWNER'S ENGINEER

\_\_\_\_\_  
CONTRACTOR

\_\_\_\_\_  
ESCROW AGENT

Name of Bank: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SAMPLE