



ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF CONTRACT RETENTION

- I. Upon the contractor's request, the project manager shall complete a standard agreement in conformance with Public Contract Code Section 22300 and send to the contractor.
- II. The contractor shall sign and have the escrow agent sign the agreement and return three copies to the City. All three copies must have original signatures.
- III. The Manager of Fiscal Services or his/her designee shall sign all three copies on behalf of the City.
- IV. After all three copies are signed, the City Clerk shall retain one original, and the City will mail one copy to the contractor and one copy to the escrow agent. (Finance and Project Management will keep a duplicate of the agreement.)
- V. In order for the escrow account to receive the retention that would normally be withheld by the City, the contractor must issue a separate invoice for the retention amount along with the normal invoice for approval by Project Management.
- VI. For termination of the escrow account after the contract is complete, the contractor shall request withdrawal of the escrow account.
 - A. A written request is needed from the contractor.
 - B. Finance staff will verify with Project Management staff to ensure that the contractor has met all requirements and procedures applicable to the contract.
 - C. A written authorization shall be prepared and signed by the Manager of Fiscal Services. It will then be submitted to the escrow agent.

CITY OF IRVINE
ESCROW AGREEMENT FOR SECURITY DEPOSITS
IN LIEU OF CONTRACT RETENTION

This Escrow Agreement is made and entered into by and between the City of Irvine, a municipal corporation of the State of California, whose address is: One Civic Center Plaza, Irvine, California, 92606-5208, hereinafter called "City", _____, whose address is: _____, hereinafter called "Contractor" and _____, a state Federal chartered bank, whose address is: _____, hereinafter called "Escrow Agent."

For consideration hereinafter set forth, the City, Contractor and Escrow Agent agree as follows:

- (1) Pursuant to Section 22300 of the Public Contracts Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention amounts required to be withheld by City pursuant to Construction Contract No. _____ entered into between the City and Contractor for _____ CIP No. _____ in the amount of \$ _____ dated _____ (hereinafter referred to as the "Contract"). Only securities specified in the Public Contracts Code Section 22300 shall be eligible for deposit hereunder. When Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the City within ten days of the deposit. The market value of the securities at the time of 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 City and Contractor. Securities shall be held in the name of the CITY OF IRVINE, and shall designate the Contractor as the beneficial owner.
- (2) The City 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 holds securities in the form and amount specified above.
- (3) Alternatively, the City may make payments directly to Escrow Agent of the retention amount for the benefit of the Contractor until such time as the escrow created hereunder is terminated. City shall make checks payable to _____, Account Name, Account Number # _____, Escrow Reference # _____. The Contractor may direct the investment of the payments into eligible securities as identified in Section 22300 (c). All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the City 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. These expenses and payment terms shall be determined by the 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 City.
- (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 City to the Escrow Agent that the City consents to the withdrawal of the amount sought to be withdrawn by Contractor.
- (7) The City shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven days' written notice to the Escrow Agent from the City of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the City.

- (8) Upon receipt of written notification from the City 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 City and the Contractor pursuant to Sections (5) to (8), inclusive, of this agreement and the City and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.
- (10) The names of persons who are authorized to give written notice or to receive written notice on behalf of the City and on behalf of Contractor in connection with the foregoing, and examples of their respective signatures are as follows:

On behalf of the City:

TITLE

NAME

SIGNATURE

ADDRESS

On behalf of the Contractor:

TITLE

NAME

SIGNATURE

ADDRESS

On behalf of Escrow Agent:

TITLE

NAME

SIGNATURE

ADDRESS

At the time the Escrow Account is opened, the City 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.

City:

TITLE

NAME

SIGNATURE

Contractor:

TITLE

NAME

SIGNATURE

Escrow Agent:

TITLE

NAME

SIGNATURE