

Escrow Agreement for Deposit of Securities

Cover Sheet and Instructions

APPROVED DOCUMENT – This document is approved by the Office of the President and Office of the General Counsel for use by the Facility and is available on electronic media.

PURPOSE OF DOCUMENT:	Provides a means for the CM/Contractor to elect to deposit securities with an escrow agent as a substitute for retention or to have the Facility deposit the retention directly with an escrow agent.			
CROSS-REFERENCE TO FACILITIES MANUAL:	None			
CONTENTS:	Escrow Agreement form			
FOR USE WITH:	CM/Contractor Agreement			
COMPLETED BY:	✓	Filling in	Adding Text	No Data Required
ITS USE IS:	✓	Required	Optional	

NOTE: To use the electronic file of this document, you must go to the “Tools” pull down menu in Microsoft Word, select “Options,” select the “View” tab, and then put a check in the box “Hidden text.” Most instructions and alternate language is displayed in hidden text. Do not print the hidden text for the final document.

Completion Instructions:

1. Notes, suggested text, instructions and other information is formatted using the following methods:
 - Hidden text within brackets. Read the material within the brackets and take the appropriate action (usually inserting text or selecting from a choice of texts.) When printing this document, the default print property will not print the hidden text.
 - Coded instruction within brackets. {This is an example of the format.} The instructions and shading will disappear when the required information is typed.
 - Suggested text is shaded in gray without brackets (see Modification and Additions below.)
2. The person signing for the University on page 5 should be the same person who signed the Agreement; additional Facility personnel may also sign in the University's second set of blank spaces.

Modifications and Additions:

None

Comments:

1. A letter of credit is not appropriate collateral and, therefore cannot be accepted as a substitute for a deposit of securities in lieu of retention.

EXHIBIT {NUMBER}

RETURN THIS AGREEMENT SIGNED BY CM/CONTRACTOR AND ESCROW AGENT TO:
{FACILITY NAME AND ADDRESS}

Escrow Account No.: _____

**ESCROW AGREEMENT FOR
DEPOSIT OF SECURITIES IN LIEU OF RETENTION
AND
DEPOSIT OF RETENTION**

This Escrow Agreement is made as of _____, _____, and entered into by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, whose address is University of California, Office of the President, 1111 Franklin Street, 6th Floor, Oakland, CA 94607-5200, hereinafter called "University," and

whose address is _____

hereinafter called "CM/Contractor," and _____

a state or federally chartered bank in the state of California, whose address is:

hereinafter called "Escrow Agent."

For consideration hereinafter set forth, University, CM/Contractor, and Escrow Agent agree as follows:

(1) CM/Contractor has the option to deposit securities with Escrow Agent as a substitute for retention required to be withheld by University pursuant to the Contract Documents, hereinafter referred to as "Contract," entered into between University and CM/Contractor for the Project titled _____ Project Number _____ in the amount of \$ _____, dated _____. Alternatively, on written request of CM/Contractor, University shall deposit retention directly with Escrow Agent. When CM/Contractor deposits the securities as a substitute for retention, Escrow Agent shall notify University within 5 days after the deposit. At all times, CM/Contractor shall have on deposit securities the market value of which is at least equal to the cash amount then required to be withheld as retention under the terms of the Contract. Securities shall be held in the name of The Regents of the University of California, {FACILITY}; and CM/Contractor shall be designated as the beneficial owner.

(2) Escrow Agent shall review the market value of securities deposited in escrow under this Escrow Agreement as often as conditions of the securities market warrant, but in no case less than once per month. Escrow Agent shall promptly notify University and CM/Contractor of the market value of the deposited securities if such market value is less than the total amount of retention required to be withheld under the terms of the Contract. CM/Contractor shall promptly deposit additional securities so that the current market value of the total of all deposited securities shall be at least equal to the total required amount of retention. Escrow Agent shall, within 5 days after University's request, provide a statement to University of the current market value of all securities deposited under this Escrow Agreement as of a date not earlier than 5 days prior to such request. The provisions of this Paragraph 2 shall not apply to securities consisting of monetary deposits as allowed by Paragraph 7 held by a bank as Escrow Agent, provided the bank provides monthly

statements reflecting the status of the monetary deposits held by the bank to University and CM/Contractor.

(3) CM/Contractor shall not use any or all of the securities deposited in lieu of retention under this Escrow Agreement for any other obligations, including deposits in lieu of retention for other contracts. CM/Contractor represents, covenants and warrants that all deposited securities shall be lien free when tendered to the Escrow Agents and shall remain lien free during their retention by the Escrow Agent.

(4) University shall make progress payments to CM/Contractor for those funds which otherwise would be withheld from progress payments pursuant to the Contract provision, provided that Escrow Agent holds securities in the form and amount specified herein.

(5) Prior to CM/Contractor's submission of each Application For Payment, Escrow Agent shall issue a current statement of (a) the value of the securities currently being deposited in lieu of retention and (b) the current value of all securities being held in escrow pursuant to this Escrow Agreement. Such statement shall be no more than 5 days old at the time of submission, shall be notarized or have a guarantee of signature, and shall be submitted to CM/Contractor with a copy to University under separate cover. CM/Contractor shall attach such original statement to each Application For Payment. The provisions of this Paragraph 5 shall not apply to securities consisting of monetary deposits as allowed by Paragraph 7 held by a bank as Escrow Agent, provided the bank provides monthly statements reflecting the status of the monetary deposits held by the bank to University and CM/Contractor.

(6) If, at the request of CM/Contractor, University deposits retention directly with Escrow Agent, Escrow Agent shall hold such retention for the benefit of CM/Contractor until such time as the escrow created under the Contract is terminated. All terms and conditions of this Escrow Agreement and the rights and responsibilities of the parties shall be equally applicable and binding when University deposits retention directly with Escrow Agent.

(7) University will allow CM/Contractor to deposit the following securities in lieu of retention and direct the investment of the retention deposits into any of the following which at the time of payment are legal investments under the laws of the State of California:

- a. Direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America or any Federal Reserve Bank), or obligations the timely payment of the principal of and interest on which are fully guaranteed by the United States of America, or tax-exempt obligations which are rated in the highest rating category of a nationally recognized bond rating agency.
- b. Obligations, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following: Banks for Cooperatives, Federal Intermediate Credit Banks, Federal Home Loan Bank System, Export-Import Bank of the United States, Federal Financing Bank, Federal Land Banks, Federal Farm Credits, Government National Mortgage Association, Farmer's Home Administration, Federal Home Loan Mortgage Corporation, or Federal Housing Administration.
- c. Bonds of the State of California or those for which the faith and credit of the State of California are pledged for the payment of principal and interest.
- d. Interest-bearing bankers acceptances and demand or time deposits (including certificates of deposit) in banks, provided such deposits are either (1) secured at all times, in the manner and to the extent provided by law, by collateral security described in clauses a or b of this Paragraph 7 continuously having a market value at least equal to the amount so invested so long as such underlying obligations or securities are in the possession of the Securities Investors Protection Corporation, (2) in banks having a combined capital and surplus of at least One Hundred Million Dollars, or (3) fully insured by the Federal Deposit Insurance Corporation.

- e. Taxable government money market portfolios restricted to obligations with maturities of one (1) year or less, issued or guaranteed as to payment of principal and interest by the full faith and credit of the United States of America.
- f. Commercial paper rated in the highest rating category of a nationally recognized rating agency, and issued by corporations organized and operating within the United States of America and having total assets in excess of Five Hundred Million Dollars.

(8) CM/Contractor shall be responsible for paying all fees, costs, and expenses incurred by Escrow Agent in administering the escrow account. These expenses and payment terms shall be determined by CM/Contractor and Escrow Agent. All fees, costs, and expenses of this Escrow Agreement, and any transactions carried out hereunder shall be billed by Escrow Agent to CM/Contractor. In the event that any fees, costs, or expenses shall remain unpaid in excess of 30 days from the date due, Escrow Agent may withhold such unpaid amount from any income distributable to CM/Contractor, but shall not withhold such unpaid amount from any income distributable to University.

(9) Interest earned on the securities or the money market accounts held in escrow and all interest earned on the interest shall be for the sole account of CM/Contractor and shall be held in escrow. Interest may be withdrawn by CM/Contractor from time to time, without notice to University, only to the extent that the total amount held in escrow meets or exceeds the required amount of retention.

(10) Except as provided in Paragraph 9, CM/Contractor shall have the right to withdraw all or any part of the escrow account only by written notice to Escrow Agent accompanied by written authorization from University to Escrow Agent stating that University consents to the withdrawal of the amount sought to be withdrawn by CM/Contractor. University shall not be obligated to consent to any withdrawal to the extent of stop notice claims which cannot be satisfied from other funds then due and payable to CM/Contractor.

(11) University shall have the right to draw upon the securities, any interest earned on the securities, and any interest earned on the interest in the event of default by CM/Contractor. Upon 7 days written notice to Escrow Agent from University, with a copy to CM/Contractor, Escrow Agent shall immediately convert the securities, any interest earned on the securities, and all interest earned on the interest to cash and shall distribute the cash as instructed by University. Escrow Agent shall have no duty to determine whether a default has occurred and may rely solely upon the written notice of such default from University.

(12) Upon receipt of written notification from University certifying that final payment is due under the Contract, Escrow Agent shall release to CM/Contractor the amount, if any, by which the value of all securities and interest on deposit less escrow fees and charges of the escrow account exceeds 125% of all stop notice claims on file. Escrow Agent shall pay the remaining amount to University or as directed by University. The escrow shall be closed immediately upon disbursement of all monies and securities on deposit and payment of fees and charges.

(13) Escrow Agent shall rely upon the written notifications from University and CM/Contractor pursuant to this Escrow Agreement; and University and CM/Contractor shall hold Escrow Agent harmless from Escrow Agent's release, conversion, and disbursement of the securities and interest as set forth herein.

(14) Escrow Agent shall have the right to terminate this Escrow Agreement upon 30 days notice to all parties hereunder. Upon receipt of such notice, University and CM/Contractor shall appoint a successor Escrow Agent in writing and deliver written notice of such appointment to Escrow Agent. Thereupon, Escrow Agent shall deliver all assets in its custody to such successor Escrow Agent and all responsibility of Escrow Agent under this Escrow Agreement shall terminate; provided, however, if CM/Contractor and University fail to appoint a successor Escrow Agent on or before the end of the 30 day notice period, then Escrow Agent is authorized and instructed to return all assets, documents, and other items in its custody to University and this Escrow Agreement shall be terminated without further instruction.

(15) The duties and responsibilities of Escrow Agent shall be limited to those expressly set forth in this Escrow Agreement; provided, however, that, with Escrow Agent's written consent, the duties and responsibilities in this Escrow Agreement may be amended at any time or times by an instrument in writing signed by all parties.

(16) Whenever CM/Contractor tenders securities to be deposited in lieu of retention, an authorized representative of the CM/Contractor shall declare under penalty of perjury that the securities are lien free and shall remain lien free during their retention by the Escrow Agent. The declaration shall be in the following form:

"The undersigned, on behalf of {NAME OF CONTRACTOR} whose address is {STREET ADDRESS}, {CITY}, {STATE} {ZIP CODE} represents, covenants and warrants that the securities tendered herewith are lien free and shall remain lien free during their retention by the Escrow Agent.

I, {NAME}, hereby declare that I am the {TITLE} of {NAME OF CONTRACTOR}, that I am duly authorized to make this representation, and that I declare under perjury under the laws of the State of California that the foregoing is true and correct."

(Signature)

(Date)

(17) The names of the persons authorized to give written notice or to receive written notice on behalf of University and on behalf of CM/Contractor in connection with this Escrow Agreement, and exemplars of their respective signatures, are as set forth below. Such names may be changed by written notice to the other parties.

On behalf of University:

On behalf of CM/Contractor:

- 1. _____
(Name)

(Signature)

(Telephone Number)
- 2. _____
(Name)

(Signature)

(Telephone Number)

- 1. _____
(Name)

(Signature)

(Telephone Number)
- 2. _____
(Name)

(Signature)

(Telephone Number)

CM/Contractor, Escrow Agent, and University hereby agree to the covenants contained herein.

IN WITNESS WHEREOF, CM/Contractor, Escrow Agent, and University have executed this Escrow Agreement, the day and year first written above.

University:

CM/Contractor:

By

By

(Signature)

(Printed Name)

(Title)

(Telephone Number)

(Signature)

(Printed Name)

(Title)

(Telephone Number)

By

By

(Signature)

(Printed Name)

(Title)

(Telephone Number)

(Signature)

(Printed Name)

(Title)

(Telephone Number)

Escrow Agent:

By:

(Signature)

(Printed Name)

(Title)

(Telephone Number)