

DOCUMENT 00680  
EDUC. CODE § 81704(c)(5); P.C.C. § 22300

**ESCROW AGREEMENT FOR  
SECURITY DEPOSITS IN LIEU OF RETENTION**

This Escrow Agreement (“Escrow Agreement”) is made and entered into this [DATE] day of [MONTH], 2004, by and between SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT, a public entity, hereinafter called (“District”), and [Name of Design-Build Entity] whose place of business is \_\_\_\_\_ hereinafter called (“Design-Build Entity”), and [insert either] District, as escrow agent [or] [Name of Bank], a state or federally chartered bank in the state of California, whose place of business is located at \_\_\_\_\_ (“Escrow Agent”). This Escrow Agreement is intended to incorporate the requirements of PCC § 22300.

For the consideration hereinafter set forth, District, Design-Build Entity and Escrow Agent agree as follows:

1. Pursuant to California Education Code, Section 81704(c)(5) and Public Contract Code, Section 22300, Design-Build Entity has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by District pursuant to the Contract No. \_\_\_\_\_ entered into between District and Design-Build Entity for the [\_\_\_\_\_] Project in the amount of [Contract Sum] dated [Date of Contract] (the “Contract”). Alternatively, on written request of Design-Build Entity, District shall make payments of the retention earnings directly to Escrow Agent. When Design-Build Entity deposits the securities as a substitute for Contract earnings, Escrow Agent shall notify District within ten (10) calendar 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 terms of Contract between District and Design-Build Entity. Securities shall be held in name of \_\_\_\_\_, and shall designate Design-Build Entity as beneficial owner.
2. District shall make progress payments to Design-Build Entity for those funds which otherwise would be withheld from progress payments pursuant to Contract provisions, provided that Escrow Agent holds securities in form and amount specified above.
3. When District makes payment of retention earned directly to Escrow Agent, Escrow Agent shall hold them for the benefit of Design-Build Entity until the time that the escrow created under this Escrow Agreement is terminated. Design-Build Entity may direct the investment of the payments into securities. All terms and conditions of this Escrow Agreement and the rights and responsibilities of the Parties shall be equally applicable and binding when District pays Escrow Agent directly.
4. Design-Build Entity shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account, and all expenses of District. Such expenses and payment terms shall be determined by District, Design-Build Entity and Escrow Agent.
5. Interest earned on securities or money market accounts held in escrow and all interest earned on that interest shall be for sole account of Design-Build Entity and shall be subject to withdrawal by Design-Build Entity at any time and from time to time without notice to District.
6. Design-Build Entity 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 District to Escrow Agent that District consents to withdrawal of amount sought to be withdrawn by Design-

Build Entity.

7. District shall have the right to draw upon the securities in event of default by Design-Build Entity. Upon seven (7) days' written notice to Escrow Agent from District of the default, Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by District.
8. Upon receipt of written notification from District certifying that the Contract is final and complete, and that Design-Build Entity has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Design-Build Entity 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 monies and securities on deposit and payments of fees and charges.
9. Escrow Agent shall rely on written notifications from District and Design-Build Entity pursuant to Paragraphs 5 through 8, inclusive, of this Escrow Agreement and District and Design-Build Entity shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of securities and interest as set forth above.
10. Names of persons who are authorized to give written notice or to receive written notice on behalf of District and on behalf of Design-Build Entity in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of District:

\_\_\_\_\_

Title

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Address

On behalf of Design-Build Entity:

\_\_\_\_\_

Title

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Address

On behalf of Escrow Agent:

\_\_\_\_\_

Title

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Address

At the time the Escrow Account is opened, District and Design-Build Entity shall deliver to 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.

SAN MATEO COUNTY COMMUNITY COLLEGE  
DISTRICT

Design-Build Entity

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Title

\_\_\_\_\_

Title

\_\_\_\_\_

Name

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Signature

Escrow Agent

\_\_\_\_\_

\_\_\_\_\_

Title

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

END OF DOCUMENT