

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.

PURPOSE OF DOCUMENT:	Provides a means for the 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-REFERENCES TO FACILITIES MANUAL (FM):	None					
CONTENTS:	Escrow Agreement form					
FOR USE WITH: <i>(check if applicable)</i>	<input checked="" type="checkbox"/>	Long Form (LF)	<input checked="" type="checkbox"/>	Brief Form (BF)	<input checked="" type="checkbox"/>	Multiple Prime (MP)
	<input checked="" type="checkbox"/>	Design Build (DB)	<input checked="" type="checkbox"/>	CM at Risk (CM)		Job Order Contract (JOC)
		Mini Form (MF)				
COMPLETED BY:	<input checked="" type="checkbox"/>	Filling In		Adding Text		No Data Required
ITS USE IS:	<input checked="" type="checkbox"/>	Required		Optional		

*As determined by the University.

Completion Instructions:

1. On page 1, fill in the blank space for “ Facility Name and Address” and “ Project No.” The Escrow Agent fills in all other blank spaces on page 1.
2. The Facility, contractor, and escrow agent fill in and sign their respective blank spaces on pages 4 and 5. The person signing for the University at the top of 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:

OP address deleted to avoid confusion as to proper address for correspondence.

Comments:

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.

RETURN THIS AGREEMENT SIGNED BY DESIGN BUILDER AND ESCROW AGENT TO:
UNIVERSITY OF CALIFORNIA, {FACILITY NAME AND ADDRESS} – USE THIS ADDRESS FOR ALL
CORRESPONDENCE

Project Name: { }

Project No.: { }

Escrow Account No.: _____

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

This Escrow Agreement is made as of _____, 20____, and entered into by and between THE
REGENTS OF THE UNIVERSITY OF CALIFORNIA, hereinafter called "University," and

whose address is

hereinafter called "Design Builder," 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, Design Builder, and Escrow Agent agree as follows:

(1) Design Builder 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 Design Builder for the Project titled

Project Number _____, in the amount of \$_____, dated _____. Alternatively, on written request of Design Builder, University shall deposit retention directly with Escrow Agent. Design Builder and its surety shall be at risk of failure of the Escrow Agent selected. When Design Builder deposits the securities as a substitute for retention, Escrow Agent shall notify University within 5 days after the deposit. At all times, Design Builder 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 Design Builder 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 Design Builder 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. Design Builder 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 Design Builder.

(3) Design Builder 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. Design Builder 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 Design Builder 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 Design Builder'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 Design Builder with a copy to University under separate cover. Design Builder 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 Design Builder.

(6) If, at the request of Design Builder, University deposits retention directly with Escrow Agent, Escrow Agent shall hold such retention for the benefit of Design Builder 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 Design Builder 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) Design Builder 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 Design Builder 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 Design Builder. 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 Design Builder, 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 Design Builder and shall be held in escrow. Interest may be withdrawn by Design Builder 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, Design Builder 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 Design Builder. 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 Design Builder.

(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 Design Builder. Upon 7 days written notice to Escrow Agent from University, with a copy to Design Builder, 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 Design Builder 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 Design Builder pursuant to this Escrow Agreement; and University and Design Builder 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 Design Builder 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 Design Builder 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 Design Builder tenders securities to be deposited in lieu of retention, an authorized representative of the Design Builder 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 Design Builder 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:

1. _____
(Name)

(Signature)

(Telephone Number)

2. _____
(Name)

(Signature)

(Telephone Number)

On behalf of Design Builder:

1. _____
(Name)

(Signature)

(Telephone Number)

2. _____
(Name)

(Signature)

(Telephone Number)

Design Builder, Escrow Agent, and University hereby agree to the covenants contained herein.

IN WITNESS WHEREOF, Design Builder, Escrow Agent, and University have executed this Escrow Agreement, the day and year first written above.

University:

By: _____
(Signature)

(Printed Name)

(Title)

(Telephone Number)

By: _____
(Signature)

(Printed Name)

(Title)

_____(Telephone Number)

Design Builder:

By:

(Signature)

(Printed Name)

(Title)

(Telephone Number)

By:

(Signature)

(Printed Name)

(Title)

(Telephone Number)

Escrow Agent:

By: _____

(Signature)

(Printed Name)

(Title)

(Telephone Number)