**STATE ESCROW AGREEMENT NO.**

THIS ESCROW AGREEMENT is entered into by and between the State of California, acting through the Board of Trustees of The California State University, acting on behalf of the {insert Campus name}, hereinafter designated TRUSTEES, and

Contractor

Address

City, ST Zip

Phone No.; Fax No.,

hereinafter designated CONTRACTOR, and the California State Treasurer, hereinafter designated ESCROW AGENT. TRUSTEES and CONTRACTOR have entered into

Contract Number: <Insert Contract Number>, for

Project Number: <Insert Project Number>, Project Name: <Insert Project Name >, at

<Insert Campus Name>

This escrow agreement is made pursuant to the authority of Public Contract Code section 10852; its purpose is to provide for the release to CONTRACTOR of sums which TRUSTEES would otherwise be required to withhold from progress payments to CONTRACTOR under Public Contract Code section 10851.

The parties hereto agree as follows:

**I.**

CONTRACTOR agrees:

A. To deliver to ESCROW AGENT, in accordance with the provisions of Public Contract Code section 10852 either of the following in the amount of $ <insert 5% of base contract award, rounded to nearest $10,000> :

1. securities eligible for the investment of State funds under Government Code section 16430;

2. certificates of deposit issued by banks authorized to transact business in California which are members of the Federal Deposit Insurance Corporation, or by savings and loan associations authorized to transact business in California which are members of the Federal Savings and Loan Insurance Corporation. Non-negotiable certificates of deposit shall be payable to the order of the ESCROW AGENT as trustee under this Escrow Agreement. Certificates of deposit delivered to ESCROW AGENT, hereunder, shall be accompanied by evidence satisfactory to ESCROW AGENT and TRUSTEES that the issuing bank or savings and loan will honor any request for redemption prior to maturity and that such redemption will be accomplished in a manner that payment will be made to ESCROW AGENT without any rights of third parties being permitted to intervene.

B. To maintain on deposit at all times prior to termination of the escrow created by this agreement securities as specified in section I, paragraph A-1, above; certificates of deposit as specified in section I, paragraph A-2, above; or a combination of such securities and certificates of deposits having a market value of not less than the amount to be paid to CONTRACTOR under the terms of this agreement.

C. Upon demand of ESCROW AGENT, to deposit with ESCROW AGENT additional securities as specified in section I, paragraph A-1 above, having a market value in such amount as in the opinion of ESCROW AGENT is necessary to maintain said deposit or certificates of deposit in said amount.

D. To pay all charges made by ESCROW AGENT for services rendered by it as such ESCROW AGENT, including but not limited to service fees and out-of-pocket expenses.

E. To pay all charges made by TRUSTEES for services performed by them, including but not limited to startup charges and monthly transaction charges.

F. To deposit with ESCROW AGENT such documents as in the opinion of ESCROW AGENT are necessary to enable ESCROW AGENT to sell deposited securities or to redeem certificates of deposit.

G. To pay any and all costs incurred by TRUSTEES or ESCROW AGENT, including but not limited to reasonable attorneys’ fees, in any legal or arbitration proceedings in any way arising out of or related to this escrow, including but not limited to legal or arbitration proceedings challenging the right of TRUSTEES or ESCROW AGENT to possess or dispose of said securities or certificates of deposit.

H. That TRUSTEES may direct ESCROW AGENT to sell securities or redeem certificates of deposit deposited with ESCROW AGENT under the terms of this agreement as may be necessary to satisfy charges made under the provisions of section I, paragraph E, hereof. In addition, CONTRACTOR agrees that TRUSTEES may, at its sole option, deduct the amount of any such charges from progress payments to be made by TRUSTEES to CONTRACTOR.

**II.**

TRUSTEES agree:

To process periodic payment requests in accordance with established State procedures, for release of retention funds which otherwise would be withheld from progress payments pursuant to the requirements of Public Contract Code section 10851, upon receipt of notice from ESCROW AGENT that the following are on deposit with ESCROW AGENT:

A. securities or certificates of deposit in the form and amount specified in section I, paragraph A-1 hereof,

B. documents necessary to enable ESCROW AGENT to sell the deposited securities or to redeem the certificates of deposit.

TRUSTEES shall be obligated to process such payment only if the ESCROW AGENT’s most recent market evaluation shows that the ESCROW AGENT holds securities, or certificates of deposit deposited under the provisions of section I, paragraph A-1, having a market value of not less than the total amount to be paid to CONTRACTOR under this agreement.

**III.**

ESCROW AGENT agrees:

A. To hold the securities or certificates of deposit in trust for the benefit of TRUSTEES until such time as the escrow created hereunder is terminated.

B. To obtain from CONTRACTOR such documents as in the opinion of ESCROW AGENT are necessary to enable ESCROW AGENT to sell the securities or to redeem the certificates of deposit deposited hereunder.

C. To review the market value of securities held in said escrow account monthly.

D To provide the notices required by Section II.

E. To promptly notify TRUSTEES whenever the market value of securities or the face value of certificates of deposit deposited under the provisions of section 1, paragraph A, equals or is less than the total payments made by ESCROW AGENT to CONTRACTOR.

F. To promptly, upon receipt of notice from TRUSTEES to do so, to sell securities or redeem certificates of deposit and to hold proceeds of such sale or redemption for disbursement at the direction of TRUSTEES.

G. To make no charge to TRUSTEES for any services or out-of-pocket expenses incurred in carrying out its duties and obligations under this agreement.

H. That it holds said securities or certificates of deposit as trustee for TRUSTEES as security for payment of monies which would otherwise be withheld from progress payments by TRUSTEES pursuant to the requirements of Public Contract Code Section 10851 that the rights of TRUSTEES to said securities or certificates of deposit are superior to any lien (or claim of lien) including but not limited to the right to sell securities or redeem certificates of deposit as provided in section I, paragraph H, hereof, which ESCROW AGENT claims or may in the future claim against said deposit.

**IV.**

The parties hereto mutually agree that:

A. CONTRACTOR shall have the right to deposit, withdraw or substitute securities or certificates of deposit only by written authorization from TRUSTEES to ESCROW AGENT that TRUSTEES consent to the amount of the deposit, withdrawal or substitution requested by the CONTRACTOR.

B. CONTRACTOR will be permitted to withdraw securities or certificates of deposit from the custody of ESCROW AGENT or to exchange securities or certificates of deposit for those in the custody of ESCROW AGENT if written authorization is provided to the ESCROW AGENT by the TRUSTEES in accordance with Section IV, paragraph A. Such withdrawal or exchange may be made only if the market value of securities and the face value of certificates of deposit deposited under the provisions of Section I, paragraph A, in the custody of ESCROW AGENT after such withdrawal or exchange equals not less than 100% of the total amount paid to CONTRACTOR by ESCROW AGENT under this agreement.

C. The total amount of funds to be released to CONTRACTOR pursuant to this agreement, in lieu of TRUSTEES withholding from progress payments to CONTRACTOR, may be increased if CONTRACTOR so elects. To increase said total amount CONTRACTOR shall submit to TRUSTEES in duplicate original, a properly filled out and executed Notice of Increase form supplied by TRUSTEES. Said form shall be signed by CONTRACTOR and consented to by CONTRACTOR’s surety. Said document shall amend the total amount set forth in section I, paragraph A, of this agreement and all of the terms and conditions of this agreement shall apply to said amended total amount.

D. TRUSTEES may, upon receipt of notice from ESCROW AGENT under section III, paragraph E, hereof, withhold monies from CONTRACTOR under the provisions of Public Contract Code Section 10851 until such time as ESCROW AGENT notifies TRUSTEES that additional securities or certificates of deposit in such amount as may be required and documents necessary to enable ESCROW AGENT to sell the additional securities or certificates of deposit have been deposited with ESCROW AGENT by CONTRACTOR.

E. The TRUSTEES shall have the right to draw upon the securities specified in section I, paragraph A-1 and/or certificates of deposit as specified in section I, paragraph A-2 pursuant to section III, paragraph E, in the event of default by the CONTRACTOR.

F. This escrow shall terminate and ESCROW AGENT shall return to CONTRACTOR all securities or certificates of deposit held in its custody promptly upon receipt of notice from TRUSTEES that a notice of completion has been filed and recorded in the county in which the project is located, and that there are no claims against the securities or certificates of deposit such as stop notice and labor claims and liquidated damages.

G. This agreement shall become operative only upon filing with TRUSTEES and ESCROW AGENT of the written consent of the surety furnishing CONTRACTOR with both his performance and payment bonds.

1. CONTRACTOR is the beneficial owner of said securities or certificates of deposit held by ESCROW AGENT and at the close of the escrow CONTRACTOR is entitled to receive any and all interest which may be paid thereon.

IN WITNESS WHEREOF, We have hereunto set our hands and seals on this day of , 20\_\_\_.

CONTRACTOR:

*(State full legal name of business entity; check appropriate box below.)*  *Contractor’s License No.*

Sole Proprietorship Partnership Corporation Limited Liability Co. Other (specify)

*By:*

*Printed Name, Title Date*

SURETY:

The undersigned, ,

(Name of Surety)

surety for CONTRACTOR on both its faithful performance and payment bonds, hereby gives its consent to the terms of this agreement and to the release of monies to CONTRACTOR provided for herein.

(SEAL)

*By:*

*Printed Name, Title Date*

Attorney-in-Fact

Signatures executed in behalf of the surety must be properly acknowledged.

TRUSTEES:

*By:*

*Printed Name, Title Date*

*Campus*

STATE TREASURER:

*By:*

*Printed Name, Title Date*