

**AGREEMENT  
(Design-Build SB 863)**

This Agreement ("Agreement"), dated \_\_\_\_\_, 2018, for reference purposes, is made and entered into by and between the County of Ventura, a political subdivision of the State of California (hereinafter "Agency") and \_\_\_\_\_ (hereinafter "Design-Build Entity") for:

**PROJECT NUMBER: 13401  
COUNTY OF VENTURA  
TODD ROAD JAIL HEALTH AND PROGRAMMING UNIT  
SANTA PAULA, CALIFORNIA**

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, Design-Build Entity and Agency agree as follows:

**ARTICLE 1 – WORK AND PRICE**

**1.1 WORK OF THE CONTRACT**

- A. Design-Build Entity hereby agrees to serve as the Design-Build Entity for the Project identified herein, inclusive of providing complete planning, design and engineering services, construction management services, complete permitted plan sets, construction services, completion and commissioning services, and turnover of a complete, functional and legally operable Project, in accordance with the Specifications, Drawings, and all other terms and conditions of the Contract Documents ("Work").
- B. Without limiting the foregoing, Work specifically includes the following Enhancements:
  - 1. The following Additive Enhancements:
    - a) [Additive Enhancement No. 1].
    - b) [Additive Enhancement No. 2].
    - c) [Additive Enhancement No. 3].
    - d) [etc.].
  - 2. The following Voluntary Enhancements:
    - a) [Voluntary Enhancement No. 1].
    - b) [Voluntary Enhancement No. 2].
    - c) [Voluntary Enhancement No. 3].
    - d) [etc.].

**1.2 PRICE FOR COMPLETION OF THE WORK**

- A. Agency shall pay Design-Build Entity the Contract Sum of \${AMOUNT} for completion of Work in accordance with Contract Documents (including Additive and Voluntary Enhancements identified in paragraph 1.1B above).

**1.3 ALLOWANCES**

- A. Contract Sum includes the following allowances:
  - 1. Allowance for Furniture, Fixtures & Equipment (FFE) \$500,000
- B. Allowance Work will be authorized by Agency in writing, following change order procedures to determine cost, supporting documentation and authorization to proceed. Unused allowance amounts at Contract completion shall reduce the Contract Sum accordingly.

## **ARTICLE 2 – TIME; LIQUIDATED DAMAGES; COMPENSABLE DELAY**

### **2.1 CONTRACT TIME**

- A. The Contract Time shall commence on the date specified in the Notice to Proceed
- B. Design-Build Entity shall fully complete the Work within 800 calendar days of the commencement date.

### **2.2 LIQUIDATED DAMAGES**

- A. For each calendar day after the expiration of the Contract Time that the Work remains incomplete on and before the date of Substantial Completion, the Design-Build Entity shall pay Agency liquidated damages at the daily rate of Four Thousand Dollars (\$4,000.00).
- B. Agency and Design-Build Entity agree that if the Work is not completed within the Contract Time, Agency's damages would be extremely difficult or impracticable to determine and that the amounts indicated above are reasonable estimates of and reasonable sums for such damages. Agency may deduct any liquidated damages due from Design-Build Entity from any amounts otherwise due to Design-Build Entity under the Contract Documents. Liquidated damages as provided for in this Section 2.2 shall be Agency's sole and exclusive remedy for Design Builder's delay in completing the Work within the Contract Time. This provision shall not limit any right or remedy of Agency for damages caused by any other breach of Design-Build Entity other than failure to complete the Work within the Contract Time.

### **2.3 COMPENSABLE DELAY**

- A. If Design Builder is entitled to an increase in the Contract Sum as a result of a Compensable Delay as determined pursuant to Article 15 of Document 007253 (General Conditions), the Contract Sum shall be increased by [XXXX] per day for each consecutive day for which such compensation is payable. This paragraph shall apply only to the extent that Design-Build Entity fulfills requisites proving entitlement to Compensable Delay in accordance with the General Conditions.
- B. Agency and Design-Build Entity agree that damages for Compensable Delay would be extremely difficult or impracticable to determine and that the amounts indicated above are reasonable estimates of and reasonable sums for such damages.

**ARTICLE 3 – PROJECT REPRESENTATIVES**

**3.1 AGENCY’S CONTACT INFORMATION**

County of Ventura  
Public Works Agency  
800 S. Victoria Ave, L# 1670  
Ventura, CA 93009  
(805) 654-2073

Agency’s Responsible Administrator: Jeff Pratt, Director of Public Works Agency

**3.2 DESIGN-BUILD ENTITY’S CONTACT INFORMATION**

{Name}  
{Address}  
{City, State, Zip}  
{Phone}

Design-Build Entity’s Administrator: {Name}

**3.3 DESIGN-BUILD ENTITY’S KEY PERSONNEL**

- A. Design-Build Entity’s Technical Proposal lists the key personnel intended to be staffed on the Project to perform its design, construction and obligations under the Contract Documents. Design-Build Entity represents that such staff have the necessary licenses, experience and qualifications to satisfactorily perform the requirements of the Contract Documents and that at all times Design-Build Entity shall maintain such staff or similar staff having all necessary licenses, certifications, experience and skills necessary to perform all obligations of the Contract Documents
- B. Design-Build Entity may not change the identity of its Project Manager or any other Key Personnel without prior Agency written approval, which approval shall not be unreasonably withheld, provided such replacement has similar or greater experience and qualifications.

**3.4 BRIDGING ARCHITECT**

- A. DLR Group/Kitchell furnished the Bridging Documents (Performance Criteria and Concept Drawings) and shall have the rights assigned to Bridging Architect in the Contract Documents.

**ARTICLE 4 – CONTRACT DOCUMENTS**

**4.1 CONTRACT DOCUMENTS**

- A. The following documents comprise the “Contract Documents”:

- |    |                 |  |
|----|-----------------|--|
| 1. | Document 004200 | Proposal Form                                |
| 2. | Document 004330 | Subcontractors List                          |
| 3. | Document 004516 | Design-Build Entity Certifications           |
| 4. | Document 005200 | Agreement                                    |
| 5. | Document 006113 | Construction Performance Bond                |
| 6. | Document 006116 | Construction Labor And Material Payment Bond |
| 7. | Document 006536 | Guaranty                                     |
| 8. | Document 007253 | General Conditions                           |

9. Document 007300 Supplementary General Conditions
10. Document 007316 Supplementary General Conditions – Insurance and Indemnification
11. General Requirements Division 01 Specification Sections
12. Bridging Documents, as defined in Document 000201
13. Proposal submitted by Design-Build Entity
14. Final Construction Documents (following receipt of all approvals required by other Contract Documents.
15. Contract Change Orders

- B. Together these Contract Documents form the contract between Agency and Design-Build Entity for the Work (the “Contract”). The Contract constitutes the complete and exclusive agreement between Agency and Design-Build Entity regarding the subject matter herein and supersedes any previous agreements or understandings. The Contract Documents may only be amended, modified or supplemented by a written instrument signed by both parties or as provided in the Contract Documents.

## **ARTICLE 5 – REPRESENTATIONS AND COVENANTS OF DESIGN-BUILD ENTITY**

Without superseding, limiting, or restricting any other representation or warranty set forth elsewhere in the Contract Documents, or implied by operation of law, the Design-Build Entity makes the following covenants and representations to Agency:

### **5.1 GENERAL**

- A. In order to induce Agency to enter into this Agreement, Design-Build Entity represents that: it is duly organized, existing and in good standing under applicable state law; is licensed to perform all aspects of the Work; it has and will employ only persons and subcontractors and designers with all required qualifications, licenses and certifications to perform the Work; that Design-Build Entity is duly qualified to conduct business in the State of California; that Design-Build Entity has duly authorized the execution, delivery and performance of the Contract; Design-Build Entity and its Designers have carefully reviewed the Contract Documents; and the Contract Documents do not violate or create a default under any instrument, agreement, order or decree binding on Design-Build Entity.
- B. Prior to executing this Agreement, Design-Build Entity has performed all required pre-construction investigations required and described in the Contract Documents, including Article 3 of Document 007253 (General Conditions). Design-Build Entity and its Designers have carefully examined the Site and the adjacent areas, have suitably investigated the nature and location of the construction Work and have satisfied themselves as to the general and local conditions which will be applicable, including but not limited to: (1) conditions related to site access and to the transportation, disposal, handling and storage of materials; (2) the availability of labor, water, power and roads; (3) normal weather conditions; (4) observable physical conditions at the site and existing site conditions including: size, utility capacities and connection options of external utilities; (5) the surface conditions of the ground; and (6) the character and availability of the equipment and facilities which will be needed prior to and during the performance of construction Work. Design-Build Entity and its Designers have suitably reviewed the site survey, record documents, seismic data, preliminary geotechnical and other test reports, environmental documents and any other documentation furnished by Agency to the Design-Build Entity prior to the date of this Agreement.
- C. Design-Build Entity agrees that the Contract Time and Milestones are reasonable and feasible, and that time is of the essence for the performance of the Work. Design-Build Entity agrees that all Construction Documents will be complete, coordinated, and accurate and the Work will be of good quality, free of defects and will conform to the requirements of the Contract Documents. Design-Build Entity agrees to correct any error(s), omission(s), or deficiencies in the Contract Documents or construction documents which

are prepared by Design-Build Entity at no additional cost to Agency; however, this provision in no way limits the liability of Design-Build Entity.

**5.2 RECORDS MAINTENANCE**

- A. Design-Build Entity shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to Agency for inspection at any reasonable time. Design-Build Entity shall maintain such records for a period of four (4) years following completion of work hereunder.

**5.3 CONFLICTS OF INTEREST**

- A. Design-Build Entity has read and is aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflicts of interest of public officers and employees. Design-Build Entity hereby represents that it is unaware of any financial or economic interest of any public officer or employee of the Agency relating to the Contract. Design-Build Entity shall notify Agency if it becomes aware of such interest.

**5.4 STATUTORY COMPLIANCE**

- A. Design-Build Entity agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement.

Without limiting any other provision hereunder, Design-Build Entity shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the Agency's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

**ARTICLE 6 – MISCELLANEOUS**

**6.1 TERMS AND ABBREVIATIONS**

- A. Terms and abbreviations used in this Agreement are defined in Document 007253 (General Conditions) and Section 014200 (References and Definitions) and will have the meaning indicated therein.

**6.2 AGENCY'S REVIEW OF CONSTRUCTION DOCUMENTS**

Agency shall have the right to review all phases of Design-Build Entity's design including, but not limited to, drawings, specifications, shop drawings, samples and submittals, as specified in the Contract Documents. Such review and other action shall not relieve Design-Build Entity of its responsibility for a complete design complying with the requirements of the Contract Documents; but rather, such review shall be in furtherance of Agency's monitoring and accepting the design as developed and issued by the Design-Build Entity, consistent with these Contract Documents. Design-Build Entity's responsibility to design and construct the Project in conformance with the Contract Documents shall be absolute.

**6.3 ASSIGNMENT AND DELEGATION**

- A. Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.
- B. In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Design-Build Entity or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the

Cartwright Act (Chapter 2 (commencing with §16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time Agency tenders final payment to Design-Build Entity, without further acknowledgment by the parties.

**6.4 NO WAIVER**

A. No action or failure to act by Agency shall constitute a waiver of a right afforded it under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence in a condition or breach thereunder, except as may be specifically agreed in writing. No waiver by Agency of any condition, breach or default shall constitute a waiver of any other condition, breach or default; nor will any such waiver constitute a continuing waiver.

**6.5 SEVERABILITY**

A. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Design-Build Entity and Agency acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Design-Build Entity and Agency acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

**6.6 CONSENT**

A. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

**6.7 NO THIRD PARTY BENEFICIARIES**

A. Except for indemnitees under Document 007253 (General Conditions), section 13.9 paragraph E, and Document 007316 (Supplementary Conditions – Insurance and Indemnification), section 3.2, nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

**6.8 APPLICABLE LAW AND FORUM**

A. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the city of Ventura, California in the County of Ventura.

**6.9 CAPTIONS**

A. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

**6.10 SURVIVAL OF TERMS**

A. The provisions of the Contract Documents which by their nature survive termination of the Contract or Final Completion, including without limitation all warranties, indemnities, payment obligations, claims procedures and requirements, dispute resolution provisions and Agency's right to audit Design-Build Entity's books and records, shall remain in full force and effect after Final Completion or any termination of the Contract for any reason.

**6.11 TIME OF ESSENCE**

A. Time is and shall be of the essence of this Contract and every provision thereof.

**6.12 AUTHORITY TO BIND AGENCY**

- A. It is understood that Design-Build Entity, in Design-Build Entity's performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has no authority to bind Agency to any agreements or undertakings.

**6.13 NON-COLLUSION COVENANT**

- A. Design-Build Entity represents and agrees that it has in no way entered into any contingent fee arrangement with any firm or person concerning the obtaining of this Agreement with Agency. Design-Build Entity has received from Agency no incentive or special payments, nor considerations not related to the provision of services under this Agreement.

IN WITNESS WHEREOF, the parties enter into this Agreement as of the date set forth above.

DESIGN-BUILD ENTITY:

AGENCY:

\_\_\_\_\_  
(Name of Firm)

COUNTY OF VENTURA

\_\_\_\_\_  
(Type of Organization)

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed name)

Director of the Public Works Agency

\_\_\_\_\_  
(Printed name)

\_\_\_\_\_  
(Title)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed name)

\_\_\_\_\_  
(Title)

California Contractor License(s):

Employer Identification No:

*Attach notary acknowledgment for all signatures of Design-Build Entity. If Design-Build Entity is a corporation, attach either (1) a corporate resolution or power of attorney authorizing the signing corporate officer to execute on behalf of corporation; or (2) signatures from two corporate officers, one each from the following categories: (a) Chairman of the Board, President, Chief Executive Officer (CEO) or Vice President; and (b) Secretary, Assistant Secretary, Chief Financial Officer (CFO) or Assistant Treasurer.*

END OF DOCUMENT

**SURETY BONDS**

**PERFORMANCE BOND**

Whereas, the County of Ventura, hereinafter called "Agency", and [name of Design-Build Entity], hereinafter called "principal", have entered into a contract for the design and construction of the Ventura County Todd Road Jail Health and Programming Unit, located in Santa Paula, California (project no. 13401), dated [Month, Day], 2018, whereby principal agrees to complete certain designated work and to perform other duties and obligations as described in said contract, which is incorporated herein by this reference and made a part hereof; and

Whereas, principal is required under the terms of said contract to furnish a bond to guarantee principal's faithful performance of the work and all the terms and conditions of the contract; and

Now, therefore, we the principal and the undersigned, as corporate surety, are held and firmly bound unto Agency in the penal sum of [\$ amount of bond] lawful money of the United States, for the payment of which sum well and truly be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the principal, its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and provisions in the said contract and any alteration thereof made as therein provided, on principal's part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless Agency, its officers, agents, and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

The above obligation shall continue after Agency's acceptance of the work for the duration of the correction period as specified in the contract during which time if the principal fails to make full, complete, and satisfactory repair or replacement to the work and/or fails to protect Agency from loss or damage resulting from or caused by defective materials or faulty workmanship, the obligation of surety hereunder shall continue so long as any obligation of principal remains.

**PAYMENT BOND**

And, whereas, principal is required under the terms of said contract to furnish a good and sufficient payment bond to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code of the State of California.

Now, therefore, principal and the undersigned, as corporate surety, are held firmly bound unto the Agency and all contractors, subcontractors, laborers, material suppliers and other person employed in the performance of the aforesaid contract and referred to in the aforesaid Civil Code in the like sum of [\$ same amount as performance bond] for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, or for any amounts required to be deducted, withheld and paid over to the Franchise Tax Board from wages of employees of the contractor and the contractor's subcontractors, that said surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees including reasonable attorney's fees incurred in successfully enforcing such obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code of the State of California, so as to give a right of action to them or their assigns in any suit brought upon this bond. Should this condition of this bond be fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

**GENERAL TERMS**

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said contract or the plans and specifications accompanying the same shall in any manner affect its obligations on these bonds, and it does hereby waive notice of any such change, extension, alteration or addition. Correspondence or claims related to these bonds shall be sent to the surety at the address set forth below.

Nothing herein shall limit the Agency's rights or surety's obligations under the contract or applicable law, including, without limitation, California Code of Civil Procedure section 337.15.

In witness whereof, this instrument has been duly executed by the principal and surety below named  
on, \_\_\_\_\_, 2018

Principal: \_\_\_\_\_

Surety: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(print name)

Title: \_\_\_\_\_

Title: \_\_\_\_\_

ADDRESS FOR NOTICES: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

E-mail: \_\_\_\_\_

Phone/Fax: \_\_\_\_\_

**WITHHELD CONTRACT FUNDS CERTIFICATION**

**1.1 SUMMARY**

A. Public Contract Code Section §22300 requires the inclusion in invitations for public agency bids and in public agency contracts a provision which will, at the expense of the contractor, permit the substitution of securities of equal value for any construction progress monies withheld to ensure performance under a contract. Therefore, as the Design-Build Entity for the Ventura County Todd Road Jail Health and Programming Unit, Design-Build Entity hereby certifies the following:

I do not intend to substitute securities for monies withheld and thereby avail myself of the process and rights provided in Public Contract Code Section §22300.

I do intend to exercise my option as specified in Public Contract Code Section §22300 and hereby agree to the following:

1. I will establish an escrow agreement satisfactory to the County, with a state or federally chartered bank, which shall contain at a minimum provisions governing inter alia:
  - a) The amount of securities to be deposited;
  - b) The type of securities to be deposited, (eligible securities for deposit are described in Government Code Section 16430);
  - c) The providing of powers of attorney or other documents necessary for the transfer of the securities deposited;
  - d) The terms and conditions of conversion to cash to provide funds to meet defaults by the Contractor including, but not limited to termination of the Contractor's control over the work, stop notices filed pursuant to law, assessment of liquidated damages or other amounts to be kept or retained under the provisions of the contract;
  - e) The decrease in value of securities on deposit; and
  - f) The termination of the escrow agreement upon completion of the contract and acceptance by the County.
2. I will obtain written consent of the surety to any such agreement; and
3. I will attach to each progress payment submitted a notarized copy of escrow instructions executed by agents thereof and on bank letterhead as proof that such an account has been established. Such instructions will set forth that securities deposited shall not be withdrawn for any purpose (with contractor's complete and unreserved agreement) without prior written approval by the County of Ventura with respect to the Project herein above referenced.

\_\_\_\_\_  
Signature of Design-Build Entity

END OF DOCUMENT

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

California Public Contract Code §22300

This Escrow Agreement is made and entered into by and between  
("Agency") whose address is \_\_\_\_\_ and  
("Design-Build Entity") whose address is  
and  
("Escrow Agent") whose address is \_\_\_\_\_.

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

(1) Pursuant to Section 22300 of the Public Contract Code of the State of California, Design-Build Entity has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Agency pursuant to the Construction Contract entered into between the Agency and Design-Build Entity for \_\_\_\_\_ in the amount of \$\_\_\_\_\_ dated \_\_\_\_\_, (hereinafter referred to as the "Contract") which Contract is identified by Project. No. \_\_\_\_\_ and Auditor Controller's Contract No. \_\_\_\_\_. Alternatively, on written request of the Design-Build Entity, the Agency shall make payments of the retention earnings directly to the Escrow Agent. When Design-Build Entity deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the Agency within ten days of the deposit. The market value of the securities at the time of the 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 Agency and Design-Build Entity. Securities shall be held in the name of \_\_\_\_\_, and shall designate the Design-Build Entity as the beneficial owner.

(2) The Agency shall make progress payments to the Design-Build Entity 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) When the Agency makes payments of retentions earned directly to Escrow Agent, the Escrow Agent shall hold them for the benefit of the Design-Build Entity until such time as the escrow created under this contract is terminated. The Design-Build Entity may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the Agency pays the 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. These expenses and payment terms shall be determined by the Agency, Design-Build Entity 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 Design-Build Entity and shall be subject to withdrawal by Design-Build Entity at any time and from time to time without notice to the Agency.

(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 Agency to the Escrow Agent that Agency consents to the withdrawal of the amount sought to be withdrawn by Design-Build Entity.

(7) The Agency shall have a right to draw upon the securities in the event of default by the Design-Build Entity. Upon seven days' written notice to the Escrow Agent from the Agency of the default, the

Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Agency.

(8) Upon receipt of written notification from the Agency certifying that the Contract is final and complete, and that the Design-Build Entity has complied with all requirements and procedures applicable to the Contract, the Escrow Agent shall release to the 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 moneys and securities on deposit and payments of fees and charges.

(9) Escrow Agent shall rely on the written notifications from the Agency and the Design-Build Entity pursuant to Sections (1) to (8), inclusive, of this Agreement and the Agency and Design-Build Entity 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 the persons who are authorized to give written notice or to receive written notice on behalf of the Agency and on behalf of Design-build entity in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of Agency:

\_\_\_\_\_

\_\_\_\_\_, Director,

Public Works Agency

\_\_\_\_\_

\_\_\_\_\_, Director

Central Services Department

\_\_\_\_\_

\_\_\_\_\_, Director

Engineering Services Department

Address for all of the above:

Public Works Agency

800 South Victoria Avenue

Ventura, CA 93009

**SAMPLE FORM**  
Form used for escrow will have names and signatures of persons authorized in accordance with paragraph 10.

On behalf of Design-build entity:

\_\_\_\_\_

Title

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Street Address

\_\_\_\_\_

City & State

Zip Code

On behalf of Escrow Agent:

\_\_\_\_\_

Title

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Street Address

\_\_\_\_\_

City & State

Zip Code

At the time the Escrow Account is opened, the Agency and Design-build entity 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.

**ON BEHALF OF AGENCY:**  
**COUNTY OF VENTURA**

**ON BEHALF OF DESIGN-BUILD ENTITY:**

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State Zip Code

\_\_\_\_\_  
City, State Zip Code

EXHIBIT "A"

ESCROW INSTRUCTIONS

The parties to this escrow are \_\_\_\_\_ ("Agency") and \_\_\_\_\_ ("Design-build entity") and \_\_\_\_\_ ("Escrow Agent"). Agency and Design-build entity have entered into a contract for the construction of which contract is identified by Project No. \_\_\_\_\_ and Auditor-Controller's Contract No. \_\_\_\_\_ and was entered into by and between Agency and Design-build entity ("Construction Contract"). Pursuant to Public Contract Code Section 22300, Design-build entity may substitute certain securities for an equivalent amount of money required to be withheld from progress payments by Agency to Design-build entity pursuant to the Construction Contract.

The Escrow Agent is hereby instructed as follows:

1. Design-build entity may deliver to Escrow Agent:
  - (a) Securities of the types projectified in Sections 22300 of the Public Contract Code and Section 16430 of the Government Code.
  - (b) Such other documents as are necessary to enable Escrow Agent to convert such securities into cash.
2. Upon receipt of such securities and other documents, Escrow Agent shall notify Agency within ten days of the deposit, and shall examine them to determine whether they are in a form sufficient to effect conversion of the securities into cash. Escrow Agent shall thereupon send written notice of its determination to Agency.
3. Escrow Agent shall hold such securities as trustee for Agency. The right of Agency to such securities is superior to any other lien or claim of lien; provided, however, that Design-build entity shall be entitled to any interest earned by such securities prior to their conversion to cash pursuant to section 5 hereof, and further provided that such interest may be withdrawn by Design-build entity at any time and from time to time without notice to Agency.

Securities may be substituted by Design-build entity, but any securities substituted for securities previously deposited shall not reduce the current cash value of securities held below that last reported to Agency by Escrow Agent.
4. Escrow Agent shall determine the current cash value of such securities held by it as of the close of business on the first business day following the \_\_\_\_\_ day of each month and, in addition, on any other days which the Agency may from time to time projectify in a written notice to Escrow Agent. Current cash value shall be determined as follows:
  - (a) For securities traded over-the-counter or on a stock exchange:
    - (1) Determine either the current bid price for the securities as of the close of business or the face value of the securities, whichever is less.
    - (2) Subtract the cost of sale (broker commission).
    - (3) Subtract all unpaid escrow fees and costs associated therewith.
  - (b) For certificates of deposit:
    - (1) Determine the face amount.
    - (2) Subtract the potential interest penalty for immediate conversion.
    - (3) Subtract all unpaid escrow fees and costs associated therewith.
  - (c) Determine the value of other securities by procedures calculated to determine net realizable value. Promptly upon making each such determination, Escrow Agent shall notify Agency of the securities held and current cash value of such securities.
5. At any time or times that Agency believes it has a right to do so under the provisions of the Construction Contract, Agency may, without the consent of Design-build entity, deliver to Escrow Agent a written demand that Escrow Agent convert to cash all or any part of such securities. Upon seven days' written notice from Agency of such demand, Escrow Agent shall convert to cash all or part of such securities as demanded and shall distribute the cash as instructed by the Agency.

6. When the Construction Contract has been satisfactorily completed on the part of Design-build entity and any stop notices filed against the Construction Contract have been released, Agency shall give written notice to Escrow Agent that such securities may be returned to Design-build entity. Upon receipt of such written notice and payment of all escrow fees and costs, the Escrow Agent shall deliver to Design-build entity all money, interest, securities and other documents remaining in escrow and the escrow shall terminate.
7. Design-build entity, and not Agency, shall be liable to Escrow Agent for all of Escrow Agent's fees and costs associated with this escrow.
8. The Director of the Ventura County Public Works Agency, a Department Director of said Agency, or other person authorized in writing by such Director or Department Director is authorized to give written notice and to make written demands on behalf of Agency pursuant to sections 4, 5 and 6 hereof.
9. All written notices and demands pursuant to the escrow agreement and these Instructions shall be addressed as follows:
  - (a) To Agency:  
  
 Director, Ventura County Public Works Agency  
 800 South Victoria Avenue  
 Ventura, California 93009
  - (b) To Design-build entity:
  - (c) To Escrow Agent:

DATED: \_\_\_\_\_

**ON BEHALF OF AGENCY:  
COUNTY OF VENTURA**

**ON BEHALF OF DESIGN-BUILD ENTITY:**

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State Zip Code

\_\_\_\_\_  
City, State Zip Code

**ON BEHALF OF ESCROW AGENT:**

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State Zip Code

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