

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

30509

This Escrow Agreement is made and entered by and between the City of Long Beach, whose address is 333 West Ocean Boulevard, Long Beach, California 90802, hereinafter called "Owner," by and between ARB, Inc., whose address is 26000 Commercentre Drive, Lake Forest, CA 92630, hereinafter called "Contractor," and California Bank & Trust, whose address is 300 Lakeside Drive, 8th Floor, Oakland, CA 94612, hereinafter called "Escrow Agent."

For consideration hereinafter set forth, the Owner, Contractor, and Escrow Agent agree as follows:

- (1) Pursuant to Section 22300 of the Public Contract code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Construction Contract entered between the Owner and Contractor for the work described in "Specifications No. G-250 for the Construction of 2008 Gas Main and Service Lines Replacement for LBGO, Long Beach, California," in the amount of 8,295,472.00 dollars dated January 22, 2008 (hereinafter referred to as the "Contract.") Alternately, on written request of the Contractor, the Owner shall make payments of the retention earnings directly to the Escrow Agent. When the Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the Owner within 10 days after 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 the terms of the Contract between the Owner and Contractor. Securities shall be held in the name of the City of Long Beach, and shall designate the Contractor as the beneficial owner.
- (2) The Owner shall make progress payments to the Contractor 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 Owner makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until the time that the escrow created under this Contract is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this Contract and the rights and responsibilities of the parties shall be equally applicable and binding when the Owner pays the Escrow Agent directly.
- (4) Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the Owner. These expenses and payment terms shall be determined by the Owner, Contractor, 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 Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice of the Owner.
- (6) Contractor shall have the right to withdraw all of any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor.

- (7) The Owner shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven days' written notice to the Escrow Agent from the Owner of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.
- (8) Upon receipt of written notification from the Owner certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor 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 Owner and the Contractor pursuant to Sections (5) to (8), inclusive, of this Contract and the Owner and Contractor 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 of behalf of the Owner and on behalf of the Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of the Owner:

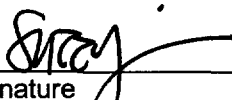
On behalf of the Contractor:

City Manager
Title

CHIEF FINANCIAL OFFICER
Title

PATRICK H. WEST
Name

ALFONS THEEUWES
Name


Signature


Signature

333 West Ocean Boulevard
Long Beach, CA 90802

**EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.**

26000 Commercentre Drive
Lake Forest, CA 92630

(562) 570-6916
Telephone No.

(949) 454-7162
Telephone No.

4.16.08
Date

MARCH 24, 2008
Date

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APPROVED AS TO FORM AND RETURNED

4-3, 2008
ROBERT E. SHANNON, City Attorney

By 
RICHARD ANTHONY
DEPUTY CITY ATTORNEY

At the time the Escrow Account is opened, the Owner and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Contract.

IN WITNESS WHEREOF, the parties have executed this Contract by their proper officers on the date first set forth above.

Owner:

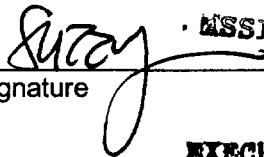
Contractor:

City Manager
Title

CHIEF FINANCIAL OFFICER
Title

PATRICK H. WEST
Name


Name

 ASSISTANT
Signature

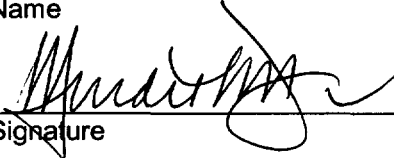
ALFONS THEEUWES
Signature

**EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.**

Escrow Agent:

VICE PRESIDENT
Title

MEREDITH DAVIS
Name


Signature