

33796

ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

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," City of Long Beach whose address is 333 West Ocean Blvd. hereinafter called "Contractor," and Excel Paving Company, whose address is 2230 Lemon Avenue 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 into between the Owner and Contractor for Project R-6972 Furnish Improvements in the amount of \$1,942,303.25 dated February 25, 2015 (hereinafter referred to as the "Contract"). Alternatively, 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 the 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) The Contractor shall be responsible for paying all fees for the expenses incurred by the 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 the Contractor and shall be subject to withdrawal by the Contractor at any time and from time to time without notice of the Owner.

(6) The Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to the Escrow Agent accompanied by written

authorization from the Owner to the Escrow Agent that the Owner consents to the withdrawal of the amount sought to be withdrawn by the 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, the Escrow Agent shall release to the 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) The Escrow Agent shall rely on the written notifications from the Owner and the Contractor pursuant to Sections (5) to (8), inclusive, of this Contract and the Owner and Contractor shall hold the Escrow Agent harmless from the 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 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:

DIRECTOR OF PUBLIC WORKS
Title

ARA MALOYAN
Name


Signature

333 West Ocean Boulevard
Long Beach, CA 90802
Address

Telephone No.

Date: _____

On behalf of the Contractor:

President
Title

C.P Brown
Name


Signature

2230 Lemon Avenue
Long Beach, CA 90806
Address

562-599-5841
Telephone No.

Date: March 6, 2015

APPROVED AS TO FORM

4/30 20 15
CHARLES PARKIN, City Attorney

By 
LINDA T. VU
DEPUTY CITY ATTORNEY

On behalf of Escrow Agent:

U.S. BANK AUP

Title

ROBIN E WOODS

Name

Robin E Woods

Signature

4100 Newport Pl #900 - Newport Beach
Address CA 92660

949-863-2462

Telephone No.

Date: 3/16/15

Escrow Account No.:

157506703865

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:

DIRECTOR OF PUBLIC WORKS

Title

ARA MALOYAN

Name

[Signature]
Signature

Contractor:

President

Title

C. P Brown

Name

[Signature]
Signature

Escrow Agent:

AUP

Title

Robin E Woods

Name

Robin E Woods

Signature

APPROVED AS TO FORM

4/30

20 15

CHARLES PARKIN, CITY ATTORNEY

By

[Signature]
DEPUTY CITY ATTORNEY

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Los Angeles)

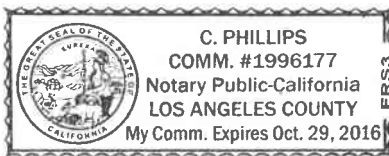
On March 16, 2015 before me, C. Phillips, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared C. P. Brown
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Corporate Officer — Title(s): _____
- Partner — Limited General
- Individual Attorney in Fact
- Trustee Guardian or Conservator
- Other: _____

Signer Is Representing: _____

Signer's Name: _____

- Corporate Officer — Title(s): _____
- Partner — Limited General
- Individual Attorney in Fact
- Trustee Guardian or Conservator
- Other: _____

Signer Is Representing: _____