

ESCROW NO.: _____
ACCOUNT NO. : _____

ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between the **County Service Area 70 Countywide** whose address is **Department of Public Works – Special Districts, 222 West Hospitality Lane, 2nd Floor, San Bernardino, CA 92415-0450** hereinafter called "Owner," **DOWNING CONSTRUCTION INC.**, whose address is 28915 San Timoteo Canyon Road, Redlands, CA 92373 hereinafter called "Contractor" and **COLUMBIA BANK** whose address is **2998 Douglas Blvd., Suite 100, Roseville, CA 95661** hereinafter called "Escrow Agent."

For the 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 **Arrow Route Sewer Main Project – Project No.: 30.30.0191 in the amount of \$7,921,118.00** (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 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 Owner and Contractor. Securities shall be held in the name of Owner, 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 retention 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 agreement 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 to the Owner.
- (6) Contractor 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 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 the Owner and the Contractor pursuant to Sections (5) to (8), inclusive, of this Agreement 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) Escrow Agent shall provide the Escrow Statement of Account to the Owner's accounting department on a monthly basis until the time that the escrow created under this contract is terminated. The Escrow Statement of Account shall be sent to: **County Service Area 70 Countywide, Fiscal, 222 W. Hospitality**

Lane, Second Floor, San Bernardino, CA 92415-04050.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 Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

ON BEHALF OF OWNER:

County Service Area 70 Countywide
Department of Public Works
222 W. Hospitality Lane
San Bernardino, CA 92415-0450

Owner Name & Address

Noel Castillo, P.E.

Name

Director of Public Works

Title

Signature

ON BEHALF OF CONTRACTOR:

Downing Construction, Inc.

28915 San Timoteo Canyon Road
Redlands, CA 92373

Contractor Name & Address

Michelle LaVanWay

Name

Chief Financial Officer

Title

Signature

ON BEHALF OF ESCROW AGENT

Columbia Bank
2998 Douglas Blvd., Suite 100
Roseville, CA 95661

Bank Name & Address

Name

Title

Signature

- (11) At the time the Escrow Account is opened, the Owner and Contractor 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.

OWNER:

County Service Area 70 Countywide

Noel Castillo, P.E.

Name

Director of Public Works

Title

Signature

Date

CONTRACTOR:

Downing Construction, Inc.

Michelle LaVanWay

Name

Chief Financial Officer

Title

Signature

Date