

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

22-812

SAP Number

4400020012

Public Works

Department Contract Representative
Telephone Number

Darren Meeka, Deputy Director
909 386-8703

Contractor
Contractor Representative

Banner Bank
Francisca Pardo
Escrow Administrator

Telephone Number

(760) 448-8300

Contract Term

Original Contract Amount

Amendment Amount

Total Contract Amount

Cost Center

Briefly describe the general nature of the contract:

Escrow Agreement for Security Deposits in Lieu of Retention for the Final Closure Project at Colton Sanitary Landfill.

FOR COUNTY USE ONLY

Approved as to Legal Form



Aaron D. Gest, Deputy County Counsel

Date 9/1/22

Reviewed for Contract Compliance



Andy Silao, Compliance Officer

Date

Reviewed/Approved by Department



Brendon Biggs, Director

Date



ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

ESCROW # _____

This Escrow Agreement is made and entered into on the 13th of September, 2022, by and between San Bernardino County, whose address is 222 W. Hospitality Lane, 2nd Floor, San Bernardino, CA, hereinafter called "Owner"; Sukut Construction, LLC, whose address is 4010 W. Chandler Ave., Santa Ana, CA 92704 hereinafter called "Contractor", and Banner Bank, a State chartered bank, whose address is 5901 Priestly Dr., Suite 160, Carlsbad CA 92008, 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 the Colton Landfill Final Closure project in the amount of \$35,667,093.00 (Thirty Five Million Six Hundred Sixty Seven Thousand Ninety Three Dollars and Zero Cents) dated September 13, 2022 (hereinafter referred to as "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 San Bernardino County, 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 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 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 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.



5901 Priestly Dr., Ste. 160 • Carlsbad, CA 92008-8827
Phone: (760)448-8300 • Fax: (760)929-9864 • bannerbank.com
Member FDIC, Equal Housing Lender



- (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 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 upon the written notification 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) 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:
San Bernardino County

Authorized Signer Name _____

Authorized Signer Title _____

On behalf of the Contractor:
Sukut Construction, LLC

Oren Post, CFO
4010 W Chandler Ave.
Santa Ana, CA 92704

On behalf of the Escrow Agent:
Banner Bank

Francisca Pardo
Escrow Administrator
5901 Priestly Dr., Suite 160
Carlsbad, CA 92008



5901 Priestly Dr., Ste. 160 • Carlsbad, CA 92008-8827
Phone: (760)448-8300 • Fax: (760)929-9864 • bannerbank.com
Member FDIC, Equal Housing Lender



(11) *By signing this Agreement, Contractor is: (a) requesting Owner to make payment of retention earnings directly to Escrow Agent, (b) choosing not to deposit securities as a substitute for retention earnings, and (c) agreeing not to direct the investment of payments of retention earnings into securities. The parties understand if Contractor desires to change any of the foregoing, the escrow will need to be transferred to a different escrow agent.*

(12) This Agreement may be executed in any number of counterparts, and by the different parties in separate counterparts, each of which when so executed and delivered, shall be an original. The executed signature page(s) from each counterpart may be joined together with and attached as one such original and shall constitute one and the same instrument. This Agreement, to the extent signed and delivered by electronic means, shall be treated in all manner and respects as an original agreement and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. Both Parties agree that an electronic copy of this Agreement shall be deemed to be an original of this Agreement for all purposes. The Parties also agree that notice for all purposes under this Agreement may be made by electronic communications to the email addresses contained in this Agreement, or as updated by an applicable Party.

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 officer on the date first set forth above.

San Bernardino County

Sukut Construction, LLC

Authorized Signer Name _____

Oren Post, CFO

Authorized Signer Title _____



5901 Priestly Dr., Ste. 160 • Carlsbad, CA 92008-8827
Phone: (760)448-8300 • Fax: (760)929-9864 • bannerbank.com
Member FDIC, Equal Housing Lender