



ORIGINAL

Contract Number

SAP Number
10100114

**Real Estate Services Department –
Project Management**

Department Contract Representative	<u>Don Day</u>
Telephone Number	<u>(909) 387-5000</u>
Contractor	<u>McCarthy Building Companies, Inc.</u>
Contractor Representative	<u>Jim Madrid</u>
Telephone Number	<u>(949) 851-8383</u>
Contract Term	<u>600 Days</u>
Original Contract Amount	<u>\$25,700,000</u>
Add Alternate Amount	<u>\$257,100</u>
Total Contract Amount	<u>\$25,957,100</u>
Cost Center	<u>7700003100</u>

Briefly describe the general nature of the contract: *Design-Build Services Escrow Agreement for security deposits in lieu of retention for the 323 Acquisitions and Remodel Project located at 323 West Court Street, San Bernardino, CA.*

FOR COUNTY USE ONLY

Approved as to Legal Form

Katherine Hardy
Katherine Hardy, Deputy County Counsel

Date 7/7/20

Reviewed for Contract Compliance

René Glynn
René Glynn, Supervising Project Manager

Date 7-7-2020

Reviewed/Approved by Department

Don Day
Don Day, Interim Deputy Director, RESD-PM

Date 7/6/2020

ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between County of San Bernardino, whose address is 385 N. Arrowhead Avenue, 3rd Floor, San Bernardino, CA 92415 hereinafter called "Owner," McCarthy Building Companies, Inc., whose address is 20401 SW Birch St. Suite 300 Newport Beach, CA 92660 hereinafter called "Contractor," and U.S. Bank, National Association, whose address is 633 West 5th Street, 24th Floor, Los Angeles, CA 90071, 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 project: 323 Building Acquisition and Remodel, in the amount of \$25,957,100 dated February 4, 2020 (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 the 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 the Contractor at any time and from time to time without notice to the Owner.

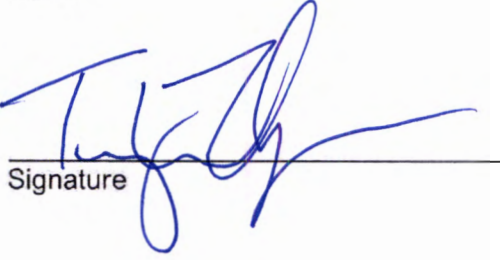
- (6) Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor.
- (7) The Owner shall have a right to draw upon the cash or securities in the event that the Owner declares 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) through (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 Contractor in connection with the foregoing, and exemplars of their respective signatures are shown below.

[Continued On To Next Page]

On behalf of Owner:
County of San Bernardino

Director of Real Estate Services Dept.
Title

Terry W. Thompson
Name


Signature

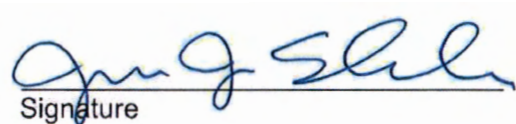
385 N. Arrowhead Ave., 3rd Floor
San Bernardino, CA 92415-0184
Address

Telephone # 909-387-5000

On behalf of Contractor:
McCarthy Building Companies, Inc.

Assistant Secretary/VP of Finance
Title

Jamie J. Schrader
Name


Signature

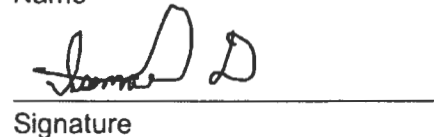
20401 SW Birch Street, Suite #300
Newport Beach, CA 92660
Address

Telephone # 949-851-8383

On behalf of Escrow Agent:
U.S. Bank, National Association

Vice President
Title

Ismael Diaz
Name


Signature

633 West 5th Street, 24th Floor
Los Angeles, CA 90071
Address

Telephone # 213-615-6063

At the time the Escrow Agreement 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 on the dates set forth below.

On behalf of Owner:
County of San Bernardino

On behalf of Contractor:
McCarthy Building Companies, Inc.

Chairman, Board of Supervisors
Title

Assistant Secretary/VP of Finance
Title

Curt Hagman
Name

Jamie J. Schrader
Name

Signature


Signature

SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

5/27/20
Date

Lynna Monell, Clerk of the Board of Supervisors

On behalf of Escrow Agent:
U.S. Bank, National Association

By: _____
Deputy

Vice President
Title

Dated: _____

Ismael Diaz

Name


Signature

May 19, 2020
Date

633 West 5th Street, 24th Floor
Los Angeles, CA 90071
Address

Telephone # 213-615-6063