

18-ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between Owner BAKERSFIELD CITY SCHOOL DISTRICT, whose address is _____, and Contractor _____, whose address is _____, and Escrow Agent _____, whose address is _____.

For the consideration set forth in this Agreement, 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 Agreement entered into between the Owner and Contractor for **FREMONT E.S. (10) TEMPORARY CLASSROOMS - ELECTRICAL, FIRE ALARM & COMMUNICATIONS PROJECT # 22213.TR-26** in the amount of \$_____, dated _____ (referred to as the "Construction Agreement"). Alternatively, on written request of Contractor, Owner shall make payments of the retention earnings directly to the Escrow Agent. When Contractor deposits the securities as a substitute for retention 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 Construction Agreement between the Owner and Contractor. Securities shall be held in the name of _____ and shall designate the Contractor as the beneficial owner.
2. Owner shall make progress payments to Contractor for those funds which otherwise would be withheld from progress payments under the provisions of the Construction Agreement, provided the Escrow Agent holds securities in the form and amount specified above.
3. When Owner makes payments of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of Contractor until the time the escrow created under this Escrow Agreement is terminated. Contractor may direct investment of the payments into securities. All terms and conditions of this Escrow Agreement and the rights and responsibilities of the parties shall be equally applicable and binding when 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 Owner. These

expenses and payment terms shall be determined by 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 Owner to Escrow Agent that Owner consents to withdrawal of the amount sought to be withdrawn by Contractor.

7. Owner shall have a right to draw upon the securities in the event of default by Contractor. Upon seven days' written notice of the default to the Escrow Agent from Owner, Escrow Agent shall immediately convert the securities to cash and distribute the cash as instructed by Owner.

8. Upon receipt of written notification from Owner certifying that the work under the Construction Agreement is final and complete, and that Contractor has complied with all requirements and procedures applicable to the Construction Agreement, 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 monies and securities on deposit and payment of fees and charges.

9. Escrow Agent shall rely on the written notifications from Owner and Contractor pursuant to Sections 6 to 8, inclusive, of this Escrow Agreement and 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 Owner and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures, are as follows:

On behalf of Owner:

On behalf of Contractor:

Title _____

Title _____

Name Above [typed or printed]

Name Above [typed or printed]

Signature _____

Signature _____

Address: _____

Address: _____

On behalf of Escrow Agent:

Title _____

Name Above [typed or printed]

Signature

Address: _____

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

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

Owner _____

Contractor _____

Title Above

Title Above

Name Above [typed or printed]

Name Above [typed or printed]

Signature

Signature

Escrow Agent _____

Title Above

Name Above [typed or printed]

Signature