

Escrow # _____

ESCROW AGREEMENT FOR
DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between the County of El Dorado, a political subdivision of the State of California, acting through its Department of Transportation whose address is 2850 Fairlane Court, Placerville, CA 95667 hereinafter called "Owner," DeSilva Gates Construction L.P. whose address is 11555 Dublin Boulevard, PO Box 2909, Dublin, CA 94568 hereinafter called "Contractor," and Union Bank of California whose address is 1980 Saturn Street, V 03-012, Monterey Park, CA 91755 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, the Contractor has the option to deposit securities with the Escrow Agent as a substitute for retention earnings required to be withheld by the Owner pursuant to the Construction Contract entered into between the Owner and Contractor for Latrobe Road Realignment Widening and Bridge Project from Suncastr Lane to Golden Foothill Parkway in the amount of \$6,627,769.50 dated April 1, 2008 (hereafter 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 the 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 County of El Dorado 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 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 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) 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) The County Officer or employee with responsibility for administering this Agreement, on behalf of the Owner, is Richard W. Shepard, P.E., Director of Transportation, or successor.
- (11) 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 examples of their respective signatures are as follows:

On behalf of Owner:

Director of Transportation
Title

Richard W. Shepard, P.E.
Name

Signature

2850 Fairlane Court
Placerville, California 95667
Address

On behalf of Contractor:

General Manager of Accounting
Title

William C. Kuchulis
Name

Signature

P.O. Box 2909
Dublin, California 94568
Address

On behalf of Escrow Agent:

Vice President
Title

Cindy DeKruyf
Name

Signature

1980 Saturn Street V03-012
Monterey Park, California 91755
Address

Requesting Department and Contract Administrator Concurrence:

By: _____
Richard W. Shepard, P.E.
Director of Transportation

Dated: _____

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 on the dates indicated below, the latest of which shall be deemed to be the effective date of this Agreement.

-- COUNTY OF EL DORADO --

By: _____ Dated: _____

Board of Supervisors
"Owner"

Attest:
Cindy Keck
Clerk of the Board of Supervisors

By: _____ Dated: _____

Deputy Clerk

-- DESILVA GATES CONSTRUCTION L.P. --

By: _____ Dated: _____

William C. Kuchulis
General Manager of Accounting
"Contractor"