

**MONTANA DEPARTMENT OF TRANSPORTATION
ESCROW AGREEMENT**

THIS AGREEMENT is made and entered into this ____ day of Month, _____, 20__ by and among the Montana Department of Transportation, an agency of the State of Montana, hereinafter called the "Department", _____ the "Contractor", and _____, hereinafter called the "Escrow Agent".

WHEREAS, the Department and Contractor are entering into that certain construction contract, hereinafter called the "Contract", construction of Contract Number _____ and Contract Name _____, pursuant to which the Contractor shall cause the work therein to be constructed; and

WHEREAS, the Department and Contractor are desirous of entering into an Escrow Agreement, to provide for specific contingencies governing the escrow and control of contract bid documentation; hereinafter call "Bid Documents"; and

WHEREAS, the Department and Contractor desire the Escrow Agent to hold the Bid Documents of the Contractor;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, it is agreed by and between the parties hereto that:

ARTICLE I – Contract Escrow Bid Documentation

The parties hereto agree to the establishment of Escrow of the Bid Documents. It is the understanding of the parties hereto that the Contractor shall pay the Escrow Agent, as determined by separate agreement, for the escrow of the Bid Documents submitted to the Escrow Agent under the terms of this Agreement.

ARTICLE II – Acknowledgment

By its signature below, the Escrow Agent hereby acknowledges receipt from the Contractor of a sealed container bearing the Contractor's name, address, Contract Number, and Contract Name assigned by the Department which the Contractor represented to the Escrow Agent contained the Contractor's Bid Documents.

ARTICLE III – Deposit of Bid Documents

The Bid Documents shall remain on deposit with the Escrow Agent until those conditions of release, as specified in Article IV "Release from Escrow" are met. As long as the Bid Documents remain in escrow with the Escrow Agent, the Escrow Agent shall not allow any person access, to gain possession, or to in any way interfere with the sealed Bid Document container.

ARTICLE IV – Release from Escrow

Upon notification from the Department that a certificate of completion has been issued for the contract, the Escrow Agent shall release to the Contractor the sealed container bearing the

Contractor's name, address, Contract Number, and Contract Name on it. The Escrow Agent is authorized to release the Bid Document sealed container to the Department without the Contractor's signed consent subject to the following conditions:

- The Contractor has provided the Department a Certified Claim related to the Contract; or
- The Contractor has initiated litigation against the Department relating to the Contract.

Prior to any release from escrow to the Department, the Escrow Agent shall provide written notice to the Contractor that the Bid Documents will be released to the Department for one of the reasons stated above. Such written notice from the Escrow Agent shall be sent by overnight mail no less than five (5) calendar days prior to release to the Department. Further, the written notice shall recite a date and time certain when the escrow documents will be released to the Department. The Contractor may be present at the time of release. Upon any release from escrow of the Bid Document container, the Escrow Agent shall cause the execution of Exhibit A, "ESCROW RELEASE for Contract Bid Documents", as attached hereto and incorporated herein as if fully contained, by the party receiving the Bid Document container.

ARTICLE V – Indemnify

The Contractor agrees to indemnify and hold the Escrow Agent harmless against any loss, claim, damage, liability or expenses incurred in connection with any action, suit, proceeding, claim or alleged liability arising from this Escrow Agreement, provided, however, that the Escrow Agent shall not be so indemnified or held harmless for negligence or acts of bad faith by it or any of its agents or employees.

The Escrow Agent shall have no responsibility as to the genuineness of the signature or the validity of any document deposited in the escrow, nor as to the legal capacity or identity of the parties to this escrow, and the Escrow Agent shall be justified in every act, omission or forbearance in reliance upon the Escrow Agreement so long as and to the extent that it shall act or have acted in good faith.

All of the terms and conditions in connection with the Escrow Agent's duties and responsibilities, and the rights of the undersigned parties are contained in the Escrow Agreement. The Trust Company is not required to be familiar with the provisions of any other instrument or agreement and shall not be charged with any responsibility or liability in connection with the observance or non-observance, by any person, of the provisions of any other such instrument or agreement.

The Escrow Agent shall not be responsible for the determination of any facts or conditions on which the parties may give notice, but the Escrow Agent may rely solely on the notice received from the parties as to the existence of such facts or conditions.

The Escrow Agent may act or refrain from acting in respect of any matter referred to in the Escrow Agreement or additional instructions received in the performance of its duties in full reliance upon the advice of counsel which may be selected by it, and shall be fully protected in so acting or refraining from acting upon the advice of such counsel.

The Escrow Agent may obey and comply with any order or process of a court (whether or not such court shall have jurisdiction) commanding it to do or to refrain from some act in relation to the subject matter of this escrow. It may rely and continue to rely conclusively upon such orders or process, notwithstanding that it may be found subsequently to be void or voidable, until one

of the Trust Officers of the Escrow Agent, shall have actual knowledge that such order or process shall have been modified, annulled, set aside, vacated or quashed.

ARTICLE VI – Notices

All notices and other communication shall be in writing and shall be deemed to have been duly given and delivered if mailed by certified mail, return receipt requested, postage prepaid to the addresses stated herein:

Department:

MDT Construction Engineer

P.O. Box 201001

Helena, MT 59620-1001

Contractor:

Escrow Agent:

ARTICLE VII – Duties of Escrow Agent

The duties and responsibilities of the Escrow Agent shall be limited to those expressly set forth herein and the Escrow Agent shall act only in accordance with this Escrow Agreement. Notwithstanding specific provisions hereunder, the Escrow Agent shall at all times act upon and in accordance with the joint written instructions of the Department and Contractor.

ARTICLE VIII – Laws

This Escrow Agreement shall be deemed to have been executed in Lewis and Clark County, Montana and the laws of the State of Montana shall apply.

ARTICLE IX – Assignment

This Escrow Agreement shall not be assigned without the written consent of all the parties hereto.

ARTICLE X – Survival of Contract

Except as may be expressly modified, all terms and conditions of this Escrow Agreement remain in full force and effect. The establishment of this Escrow Agreement is limited solely by the contingency of release of the Bid Documents by the Contractor to the Department, as established by Article IV, Release from Escrow. Nothing contained herein shall alter the rights of the parties hereto.

The covenants herein contained shall, except as otherwise provided, accrue to the benefit of and be binding upon the successors and assigns of the parties hereto.

In witness whereof, the parties have hereunto set their hands and seals the day above first written.

The Contractor:

By: _____

(Title)

(Witness)

(Date)

The Montana Department of Transportation:

By: _____

(Title)

(Witness)

(Date)

_____ **(Escrow Agent):**

By: _____

(Title)

(Witness)

(Date)

EXHIBIT A –ESCROW RELEASE for Contract Bid Documents

This is to certify that on this _____ day of _____, 20____, the sealed container identified as:

Bid Documentation

Contractor: _____

(Address)

Contract Number: _____

Contract Name: _____

Date of Submittal: _____

(Evidence by Agreement dated _____),
Was released from escrow and personally handed to the below named individual acknowledging receipt, representing the Contractor/Department, by the Escrow Agent upon the presentation of the required documentation pursuant to Article IV, Release from Escrow, of that agreement dated _____, 20____, a copy of such documentation is attached hereto.

Acknowledgment of Receipt:

Acknowledgment of Release:

(Escrow Agent)