



SECTION 00600

RETAINAGE ESCROW AGREEMENT

(REQUIRED ON AGREEMENTS OF \$500,000 OR GREATER)

THIS AGREEMENT, made this the _____ day of _____, by and between **Insert Name of Contractor Here** (hereinafter called the "CONTRACTOR") and **Knoxville Utilities Board**, an independent agency of the City of Knoxville, Tennessee, a municipal corporation, (hereinafter called the "OWNER"), and **First Tennessee Bank**, (hereinafter called the "Escrow Agent"), a national banking institution with offices at Memphis, Tennessee.

PREMISES

- (a) OWNER and CONTRACTOR have heretofore entered into a construction contract dated the _____ day of _____ ("Agreement"), whereby the CONTRACTOR will make improvements in accordance with the Contract Documents for **Insert Name of Project Here**, **Control Number: 0000** with such Contract providing that the OWNER is to retain 5% of all Applications for Payment submitted by the CONTRACTOR, all as more specifically set forth in such Agreement to which specific reference is hereby made:
- (b) The parties hereto are desirous of creating an escrow account with the Escrow Agent the deposit of such retainage;
- (c) The Bank has agreed to act as escrow agent and to receive and hold the retainage paid to it until the receipt of a release by the OWNER.

In consideration of the foregoing premises and the mutual covenants and promises hereinafter set forth, it is hereby agreed as follows:

- (1) The OWNER hereby agrees to pay all retainage held pursuant to the Contract to the Escrow Agent or its duly authorized agent, with such retainage to be deposited by the Escrow Agent in a separate interest-bearing escrow account.
- (2) Said interest-bearing escrow account shall be owned by CONTRACTOR, except to the extent ownership thereof is affected by the assignment to OWNER pursuant to the terms hereof,,
- (3) The CONTRACTOR shall and hereby does conditionally assign all its ownership interest in such escrow account, including its power to make withdrawals therefrom, to OWNER. This conditional agreement shall terminate upon OWNER's execution of a release, to the extent of such release.

(4) When OWNER determines, in accordance with the provisions of the Contract, that CONTRACTOR is entitled to all or a portion of the retainage, OWNER shall forward in written release to the Escrow Agent substantially in the form attached hereto as Exhibit A, whereupon all or a portion of the amounts held in such escrow account thereby released, together with any interest on the portion to be released, shall, upon request of the CONTRACTOR, be paid immediately to the CONTRACTOR by the Escrow Agent.

(5) Should a dispute arise as between the OWNER and CONTRACTOR whereby the OWNER fails to execute and deliver a release to the Escrow Agent, the Escrow Agent shall not be liable to either the OWNER or CONTRACTOR for failure to deliver the amount on deposit in the escrow account with interest thereon to the CONTRACTOR. The Escrow Agent shall transfer the amounts on deposit in the escrow account to the OWNER upon OWNER's written request and shall not be liable to the CONTRACTOR for such action. In the event that litigation ensues between the OWNER and CONTRACTOR, the Escrow Agent shall also be entitled to rely upon an order of a court of competent jurisdiction which is final and not appealable to release all or a portion of the amounts on deposit in the escrow account to the CONTRACTOR or to the OWNER. It is the parties' intent that the Escrow Agent shall not be a necessary party to any litigation between the OWNER and CONTRACTOR.

(6) The Escrow Agent may not assign or transfer its responsibility as escrow agent hereunder to another escrow agent without first obtaining the written consent of the OWNER and CONTRACTOR.

(7) The Escrow Agent shall invest the Escrowed Account funds in a First Tennessee Bank Money Market Account.

(8) The Escrow Agent shall be obligated only for the performance of such duties as are specifically set forth in this Escrow Agreement and may rely and shall be protected in acting or refraining from acting on any instrument believed by it to be genuine and to have been signed or presented by the proper party or parties. The Escrow Agent shall not be liable for any action taken or omitted by it in good faith and believed by it to be authorized hereby, nor for action taken or omitted by it in accordance with the advice of its counsel.

(9) Should any controversy arise between the undersigned with respect to this Escrow Agreement or with respect to the right to receive the Escrowed Assets, Escrow Agent shall have the right to institute a bill of interpleader in any court of competent jurisdiction to determine the rights of the parties. Should a bill of interpleader be instituted, or should Escrow Agent become involved in litigation in any manner whatsoever on account of this Escrow Agreement or the Escrowed Assets made hereunder, the undersigned hereby bind and obligate themselves, their heirs and legal representatives, to pay Escrow Agent, in addition to any charge made hereunder for acting as Escrow Agent, reasonable attorney's fees incurred by Escrow Agent, and any other disbursements, expenses, losses, costs and damages in connection with and resulting from such litigation.



(10) The Escrow Agent shall have no liability under, or duty to inquire into the terms and provisions of the Agreement, and it is agreed that its duties are purely ministerial in nature, and that the Escrow Agent shall incur no liability whatsoever except for willful misconduct or gross negligence so long as it has acted in good faith. The Escrow Agent shall not be bound by any modification, amendment, termination, cancellation, rescission or supersession of this Escrow Agreement unless the same shall be in writing and signed by all of the other parties hereto and, if its duties as Escrow Agent hereunder are affected thereby, unless it shall have given prior written consent thereto.

(11) The Escrow Agent may at any time resign hereunder by giving written notice of its resignation to the other parties hereto, at their address set forth in Section 18 hereof, at least 10 days prior to the date specified for such resignation to take effect, and upon the effective date of such resignation, the Escrowed Assets hereunder shall be delivered by it to such person as may be designated in writing by the other parties executing this Escrow Agreement, whereupon all the Escrow Agent's obligations hereunder shall cease and terminate. If no such person shall have been designated by such date, all obligations of the Escrow Agent hereunder shall, nevertheless, cease and terminate.

(12) The parties agree to indemnify, defend and hold the Escrow Agent harmless from and against any and all loss, damage, tax liability and expense that may be incurred by the Escrow Agent arising out of or in connection with its acceptance or appointment as Escrow Agent hereunder, including the legal costs and expenses of defending itself against any claim or liability in connection with its performance hereunder.

(13) The Escrow Agent will provide a (monthly, quarterly, or annual) statement.

(14) This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee.

(15) This Escrow Agreement shall terminate when all cash has been distributed by the Escrow Agent pursuant to this agreement.

(16) The names and addresses of the parties to the Escrow Agreement are as follows:

OWNER: Knoxville Utilities Board
 Purchasing Manager
 4505 Middlebrook Pike
 Knoxville, TN 37921-5599



KNOXVILLE UTILITIES BOARD
STANDARDS AND SPECIFICATIONS

CONTRACTOR: _____

ESCROW AGENT: First Tennessee Bank
Attn: Mandy Hickman
800 S. Gay Street
Knoxville, TN 37902



KNOXVILLE UTILITIES BOARD
STANDARDS AND SPECIFICATIONS

OWNER: Knoxville Utilities Board

Attest:

By OWNER

By: _____

Title: _____

Date: _____

CONTRACTOR: _____

Attest:

By CONTRACTOR

By: _____

Title: _____

Date: _____

ESCROW AGENT: First Tennessee Bank

Attest:

By ESCROW AGENT

By: _____

Title: _____

Date: _____



EXHIBIT A

By this document "Exhibit A", **Knoxville Utilities Board (Owner)**, in accordance with the conditions of contract, hereby authorizes First Tennessee Bank to release retainage as specified with corresponding accrued interest, if applicable, less any analysis fee(s), if applicable, from Contractor's escrow retainage account in association with Owner's project entitled (INSERT PROJECT NAME), KUB Control Number (INSERT CONTROL NUMBER).

Amount of retainage released shall be in accordance with section 00600 (Retainage Escrow Agreement) and the contract documents.

Knoxville Utilities Board:

(Signature, same as p.5)

Date: _____

(CONTRACTOR's Name)

(Signature, same as p.5)

Date: _____

Copy to: Contractor