



*For Info
Only*

**OFFICE OF THE
CITY CLERK**

LORRAINE MAGANA
CITY CLERK

ANNE J. MASON
ASSISTANT CITY CLERK

JANICE M. BEAMAN
DEPUTY CITY CLERK

**CITY OF SACRAMENTO
CALIFORNIA**

CITY HALL
ROOM 300
915 I STREET
SACRAMENTO, CA
95814-2671

ADMINISTRATION
916-449-5799

OPERATION SERVICES
916-449-5426

SPECIALIZED SERVICES
916-449-8200

MEMORANDUM

TO: JIM JOHNSTON, FACILITY MANAGEMENT
FROM: JANICE M. BEAMAN, DEPUTY CITY CLERK *JB*
SUBJECT: ESCROW AGREEMENT
DATE: DECEMBER 29, 1987

This is to clarify the escrow agreement for Unger Construction Company. Contract No. 87018.

It is my understanding that the City Clerk's office is to maintain a copy of this escrow agreement with the original contract.

In turn, Facility Management will supply the City Council Contract number and the Council adoption date. Facility Management will also be responsible for carrying out the terms of any Facility Management escrow agreement.

If any of the above information is incorrect, please let me know.

CCO:87243

AGREEMENT

The parties to this agreement are the CITY OF SACRAMENTO,
a municipal corporation ("City" herein), and

Unger Construction Company

a Corporation
(partnership, corporation, joint venture, etc.)

("Contractor" herein), and Bank of America
("Bank" herein). City and Contractor have entered into a
contract for the construction of a project by Contractor, said
Contract No. QA01 being denominated as

Sacramento City-County

Branch Library

for a contract price of \$ 1,391,000.00

resulting in a ten percent retention of \$ 139,100.00

The purpose of this agreement is to provide for the release
to Contractor of sums which would otherwise be withheld from
progress payments to Contractor.

The parties hereto agree as follows:

I

Contractor agrees:

1. To deliver to Bank, in accordance with the provisions
of Government Code Section 53067, one of the following:

(1) Securities eligible for the investment of State
funds under Government Code Section 16430. Any such securities
shall mature not less than six (6) months subsequent to the
date of this agreement and shall, on the date of deposit, have a
market value equal to any sum to be paid by Bank to Contractor; or

(2) Certificates of deposit issued by Bank in the
principal sum equal to any sum to be paid by Bank to Contractor
Any such certificates of deposit shall mature not less than
ninety (90) days from their issuance and shall be accompanied
by evidence satisfactory to Bank and City that the issuing bank
will honor any request for redemption prior to maturity and

that such redemption will be accomplished in such a manner that payment will be made to Bank without any rights of third parties being permitted to intervene.

2. To maintain on deposit at all times prior to termination of the escrow created by this agreement either:

(1) Securities as specified in Section I, paragraph 1(1) above, having a market value at least equivalent to the amount paid to Contractor under the terms of this agreement, or

(2) Certificates of deposit as specified in Section I, paragraph 1(2) above, having a face value at least equivalent to the amount paid to Contractor under the terms of this agreement.

3. Upon demand of Bank, to deposit with Bank additional securities as specified in Section I, paragraph 1(1) above, or negotiable certificates of deposit as specified in Section I, paragraph 1(2), having a market value in such amount as in the opinion of Bank is necessary to maintain such deposit.

4. To pay all charges made by Bank for services rendered by it as such Bank, including but not limited to service fees and out-of-pocket expenses.

5. To pay all charges made by City for services performed by it, including but not limited to start-up charges and monthly transaction charges.

6. To deposit with Bank such documents as in the opinion of Bank are necessary to enable Bank to sell deposited securities or to redeem certificates of deposit.

7. To pay any and all costs incurred by City or Bank, including but not limited to reasonable attorney fees, in any legal proceedings in any way arising out of or related to this escrow, including but not limited to legal proceedings challenging the right of City or Bank to possess or dispose of said securities or certificates of deposit.

8. That Bank may sell securities or redeem certificates of deposit deposited with Bank under the terms of this agreement as may be necessary to satisfy charges made under the provisions of Section I, paragraphs 4 and 5 hereof. In addition, Contractor agrees that City may, at its sole option, deduct the amount of any such charges from progress payments to be made by City to Contractor.

II

City agrees:

1. To pay to Bank, in accordance with established City procedures, funds withheld from progress payments, when Contractor is not in default of the terms and conditions of the contract. Such payment shall not constitute an admission that Contractor is not in default of the contract or an acceptance of any work performed by Contractor.

2. To pay to Bank any additional amounts which would otherwise be withheld from Contractor. When any such sum is paid to Bank, Bank shall arrange with Contractor to pay such sum to Contractor when the deposit of securities and certificates of deposit is equal in value to Section I, paragraphs 2 and 3, subject to additional deposit or withholding according to Section I, paragraphs 4-8.

III

Bank agrees:

1. To hold the securities or certificates of deposit in trust for the benefit of City until such time as the escrow created hereunder is terminated.

2. To obtain from Contractor such documents as in the opinion of Bank are necessary to enable Bank to sell deposited securities or to redeem certificates of deposit.

3. To review the market value of securities held in said escrow account as often as in its business judgment conditions of the securities market warrant.

4. To pay to Contractor moneys paid to Bank by City, except that Bank shall make no payment to Contractor if the total amount of payments so made would exceed the market value of the securities and certificates of deposit in the escrow.

5. To promptly notify City whenever the market value of securities or certificates of deposit deposited under the provisions of Section I, paragraph 1(2), is less than the total payments made by Bank to Contractor, and Contractor fails within ten (10) days to deposit additional securities or certificates of deposit.

6. To promptly, upon receipt of notice from City to do so, sell securities or redeem certificates of deposit and to hold proceeds of such sale or redemption for disbursement at the direction of City.

7. To make no charge to City for any services or out-of-pocket expenses incurred in carrying out its duties and obligations under this agreement.

8. That Bank holds said securities or certificates of deposit as Trustee for City as security for payment of moneys which would otherwise be held by City and that the rights of City to said securities or certificates of deposit are superior to any lien or claim of lien, including, but not limited to, the right to sell securities or redeem certificates of deposit as provided in Section I, paragraph 8 hereof, which Bank claims or may in the future claim against said deposit.

IV

The parties hereto mutually agree that:

1. Contractor shall have the right to withdraw securities or certificates of deposit from the custody of Bank, or to exchange securities or certificates of deposit for those in the custody of Bank. Such withdrawal or exchange may be made only if the market value of securities plus the face value of any certificates of deposit deposited under the provisions of Section I, paragraph 1(2), in the custody of Bank after such withdrawal or exchange equals not less than one hundred percent (100%) of the total amount paid to Contractor by Bank under this agreement. In the event of such withdrawal or exchange, Bank shall notify City within two (2) business days thereof.

2. That this agreement shall terminate and Bank shall return to Contractor all securities or certificates of deposit held in its custody promptly upon receipt of notice from City that said securities or certificates of deposit may be released, subject to any claim of Bank.

3. This agreement shall become operative only upon filing with City and Bank of the written consent of the surety furnishing Contractor with both his performance and payment bonds.

4. Contractor is the beneficial owner of said securities or certificates of deposit held by Bank and that Contractor is entitled to receive any and all interest which may be paid thereon, provided Contractor is not then in default of this agreement or the contract first referred to above.

CITY:

CITY OF SACRAMENTO,
a municipal corporation

BY *Solon Wiseman, Jr.*
CITY MANAGER

ADDRESS:

PHONE # 449-5704

ATTEST:

Louise Magara
CITY CLERK

APPROVED AS TO FORM:

Sam M. Loh
DEPUTY CITY ATTORNEY

CONTRACTOR:

Unger Construction Company

2112 Sutterville Road

Sacramento, Ca. 95822

PH: 916-452-1458

BY *Wyatt Unger*
Wyatt Unger, President

BANK:

Bank of America, Sacramento Escrow Service

BY *B. Hansen*
B. Hansen
Its Escrow Manager

900 8th St.

Sacramento, Ca. 95814

PH: 916-321-4795