

**SECTION 00505 - ESCROW AGREEMENT**

**#NOTE: USE PROHIBITED ON PROJECTS WITH FmHA FINANCING.#**

**THIS AGREEMENT**, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_  
by, between and among \_\_\_\_\_(Owner),  
\_\_\_\_\_(Contractor)  
and \_\_\_\_\_  
(NAME OF BANK)

(ADDRESS OF BANK)

a trust company, bank, or savings and loan institution with its principal office located in the Commonwealth of Virginia (hereinafter referred to collectively as "Bank") and

("Surety") provides:

I.

**The Owner and the Contractor have entered into a contract with respect to** Project No. \_\_\_\_\_. ("The contract"). This Agreement is pursuant to, but in no way amends or modifies, the contract. Payments made hereunder or the release of funds from escrow shall not be deemed approval or acceptance of performance by the Contractor.

II.

In order to assure full and satisfactory performance by the Contractor of its obligations under the contract, the Owner is required thereby to retain certain amounts otherwise due the Contractor. The Contractor has, with the approval of the Owner, elected to have these retained amounts held in escrow by the Bank. This agreement sets forth the terms of the escrow. The Bank shall not be deemed a party to, bound by, or required or have any right to inquire into the terms of, the contract or any other instrument or agreement between Owner and the Contractor.

III.

The Owner shall from time to time pursuant to its contract pay to the Bank amounts retained by it under the contract. Except as to amounts actually withdrawn from escrow by the Owner, the Contractor shall look solely to the Bank for the payment of funds retained under the contract and paid by the Owner to the Bank.

The risk of loss by diminution of the principal of any funds invested under the terms of this contract shall be solely upon the Contractor.

Funds and securities held by the Bank pursuant to this Escrow Agreement shall not be

subject to levy, garnishment, attachment, lien, or other process whatsoever. Contractor agrees not to assign, pledge, discount, sell or otherwise transfer or dispose of his interest in the escrow account or any part thereof, except to the Surety.

#### IV.

Upon receipt of checks or warrants drawn by the Owner and made payable to it as escrow agent, the Bank shall promptly notify the Contractor, negotiate the same and deposit or invest and reinvest the proceeds in approved securities in accordance with the written instructions of the Contractor. In no event shall the Bank invest the escrowed funds in any security not approved.

#### V.

The following securities, and none other, are approved securities for all purposes of this Agreement:

- (1) United States Treasury Bonds, United States Treasury Notes, United States Treasury Certificates of Indebtedness or United States Treasury Bills,
- (2) Bonds, notes and other evidences of indebtedness unconditionally guaranteed as to the payment of principal and interest by the United States,
- (3) Bonds or notes of the Commonwealth of Virginia,
- (4) Bonds of any political subdivision of the Commonwealth of Virginia, if such bonds carried, at the time of purchase by the Bank or deposit by the Contractor, a Standard and Poor's Or Moody's Investors Service rating of at least "A", and
- (5) Certificates of deposits issued by commercial Banks located within the Commonwealth of Virginia, including, but not limited to, those insured by the Bank and its affiliates.
- (6) Any bonds, notes, or other evidences of indebtedness listed in Sections (1) through (3) may be purchased pursuant to a repurchase agreement with a bank, within or without the Commonwealth of Virginia having a combined capital, surplus and undivided profit of not less than \$25,000,000, provided the obligation of the Bank to repurchase is within the time limitations established for investments as set forth herein. The repurchase agreement shall be considered a purchase of such securities even if title, and/or possession of such securities is not transferred to the Escrow Agent, so long as the repurchase obligation of the Bank is collateralized by the securities themselves, and the securities have on the date of the repurchase agreement a fair market value equal to at least 100% of the amount of the repurchase obligation of the Bank, and the securities are held by a third party, and segregated from other securities owned by the Bank.

No security is approved hereunder which matures more than five years after the date of its purchase by the bank or deposit by the Contractor.

VI.

Upon receipt of a direction signed by the Owner and requiring no other signature or consent whatsoever, the Bank shall pay the principal of the fund, or any specified amount thereof, to the Owner for the account of the Owner. Such payment shall be made in cash as soon as is practicable after receipt of the direction.

Upon receipt of a direction signed by the Owner, the Bank shall pay and deliver the principal of the fund, or any specified amount thereof, to the Contractor, in cash or in kind, as may be specified by the Contractor. Such payment and delivery shall be made as soon as is practicable after receipt of the direction, notwithstanding any objection or instruction to the contrary made by the Contractor, the Surety or any other person or entity.

VII.

For its services hereunder the Bank shall be entitled to a reasonable fee in accordance with its published schedule of fees or as may be agreed upon by the Bank and the Contractor. Such fee and any other costs of administration of this Agreement shall be paid from the income earned upon the escrowed fund and, if such income is not sufficient to pay the same, by the Contractor. The Contractor shall indemnify, defend and hold the Bank harmless from and against any and all claims, demands, actions, causes of action, losses and expenses of any and every kind, including without limitation, attorney's fees, incurred or suffered by the Bank as a result of entering into this agreement or performing its obligations hereunder.

VIII.

The net income earned and received upon the principal of the escrowed fund shall be paid over to the Contractor in quarterly or more frequent installments. Until so paid or applied to pay the Bank's fee or any other costs of administration such income shall be deemed a part of the principal of the fund.

IX.

The Surety undertakes no obligation hereby but joins in this Agreement for the sole purpose of acknowledging that its obligations as surety for the Contractor's performance of the contract are not affected hereby.

**WITNESS** the following signatures, all as of the day and year first above written.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Owner

By: \_\_\_\_\_  
Officer, Partner or Owner (SEAL)

By: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Contractor  
By: \_\_\_\_\_  
Officer, Partner or Owner (SEAL)

Attest:

\_\_\_\_\_  
Bank Officer

\_\_\_\_\_  
Bank

By:

\_\_\_\_\_  
Vice President

Attest:

\_\_\_\_\_  
Surety Company

By: \_\_\_\_\_  
Resident Virginia Agent

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Address

By: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Surety Company

\_\_\_\_\_  
Surety

By: \_\_\_\_\_  
Resident Virginia Agent

By: \_\_\_\_\_  
Attorney-in-Fact (Seal)

\_\_\_\_\_  
Address

END OF SECTION