



# THREE RIVERS LEVEE IMPROVEMENT AUTHORITY AGENDA

**MAY 2, 2006**

**Yuba County Government Center  
Board of Supervisors' Chambers  
915 Eighth Street, Suite 109A  
Marysville, California**

**Unless otherwise indicated**

3:30 P.M. I

**CALL TO ORDER**

II **ROLL CALL** – Directors Rick Brown, Mary Jane Griego, Dan Logue, Richard Webb

III **ACTION ITEMS**

A. Authorize escrow agreements with Nordic Industries Inc. and US Bank on contracts as a substitute for retention of earnings and authorize Executive Director to execute same.

IV **BOARD AND STAFF MEMBERS' REPORTS**

V **PUBLIC COMMUNICATIONS**: Any person may speak about any subject of concern provided it is within the jurisdiction of the Levee Improvement Authority and is not already on today's agenda. The total amount of time allotted for receiving such public communication shall be limited to a total of 15 minutes and each individual or group will be limited to no more than 5 minutes.

VI **CLOSED SESSION**

A. Threatened litigation pursuant to Government Code §54956.9(b) – One Case

B. Personnel pursuant to Government Code §54957 – Public Appointment/Executive Director

VII **ADJOURN**

# The County of Yuba

OFFICE OF TREASURER AND TAX COLLECTOR

**JAMES S. KENNEDY**  
TREASURER & TAX COLLECTOR



915 8th STREET, STE. 103  
MARYSVILLE, CA 95901-5273

TELEPHONE (530) 749-7840  
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E-mail: yubatax@co.yuba.ca.us

April 21, 2006

TO: Three Rivers Levee Improvement Authority Board

FROM: James S. Kennedy, Treasurer

SUBJECT: Request for Escrow Agreement

RECOMMENDATION:

Consider Escrow Agreements with Nordic Industries, Inc and U S Bank on Contract No. Ph2-2005/06-01 and Contract No. PH3-2005/06-02 as a substitute for retention of earnings.

DISCUSSION:

The Authority currently has two (2) contracts with Nordic Industries, Inc. for levee repair. They are Contract No. Ph2-2005/06-01 in the amount of \$19,895,075.00 and Contract No. PH3-2005/06-02 in the amount of \$10,476,080.00. The Contractor (Nordic Industries) would like and the law (Section 22300 of the Public Contract Code) and our contracts allow the contractor to deposit it securities with an Escrow Agent (U S Bank) a substitute for retention of earnings.

FISCAL IMPACT

None as all cost of the Escrow Agreement are borne by the Contractor.

**ESCROW AGREEMENT FOR  
SECURITY DEPOSITS IN LIEU OF RETENTION**

This Escrow Agreement is made and entered into by and between **Three Rivers Levee Improvement Authority** whose address is **915 8<sup>th</sup> Street, Suite 115, Marysville, California 95901** hereinafter called "Owner," **Nordic Industries, Inc.** whose address is **1437 Furneaux Road, Marysville, California 95901** hereinafter called "Contractor," and **U S Bank** whose address is **980 9<sup>th</sup> Street, Sacramento, California 95814** 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, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Construction Contract entered into between the Owner and Contractor for **Three Rivers Levee Improvement Authority Phase 2 - Bear River, Western Pacific Interceptor Canal and Yuba River Levees Repair and Olivehurst Detention Basin Construction Project, Contract No. PH2-2005/06-01** in the amount of **\$19,895,075.00** dated **July 11, 2005** (hereinafter 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 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 **Nordic Industries, Inc.**, 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 directly.

(4) Contractor shall be responsible for paying all fees for the expenses incurred by 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 Escrow Agent accompanied by written authorization from the Owner to the Escrow Agent that 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, Escrow Agent shall release to 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 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 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 Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of Owner:

Executive Officer  
Title

Charles K. McClain  
Name

\_\_\_\_\_  
Signature

915 8<sup>th</sup> Street  
Marysville, CA 95901  
Address

On behalf of Contractor:

Vice President  
Title

Clifford A. Yarnell  
Name

  
Signature

1437 Furneaux Road  
Marysville, CA 95901  
Address

On behalf of Escrow Agent:

Vice President  
Title

Michael F. O'Reilly  
Name

  
Signature

980 9<sup>th</sup> Street  
Sacramento, CA 95814  
Address

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 date first set forth above.

Owner

Contractor


Executive Director  
Title

Vice President  
Title

Charles K. McClain  
Name

Clifford A. Yarnell  
Name

\_\_\_\_\_  
Signature

  
Signature

APPROVED AS TO FORM  
DANIEL G. MONTGOMERY,  
COUNTY COUNSEL

BY: 

**ESCROW AGREEMENT FOR  
SECURITY DEPOSITS IN LIEU OF RETENTION**

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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, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Construction Contract entered into between the Owner and Contractor for **Bear River Setback Levee Project, Contract No. PH3-2005/06-02** in the amount of **\$10,476,080.00** dated **March 22, 2006** (hereinafter 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 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 **Nordic Industries, Inc.**, 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 directly.

(4) Contractor shall be responsible for paying all fees for the expenses incurred by 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 Escrow Agent accompanied by written authorization from the Owner to the Escrow Agent that 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, Escrow Agent shall release to 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 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 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 Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of Owner:

Executive Officer  
Title

Charles K. McClain  
Name

\_\_\_\_\_  
Signature

915 8<sup>th</sup> Street  
Marysville, CA 95901  
Address

On behalf of Contractor:

Vice President  
Title

Clifford A. Yarnell  
Name

\_\_\_\_\_  
Signature

1437 Furneaux Road  
Marysville, CA 95901  
Address

On behalf of Escrow Agent:

Vice President  
Title

Michael F. O'Keilly  
Name

\_\_\_\_\_  
Signature

980 9<sup>th</sup> Street  
Sacramento, CA 95814  
Address

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 date first set forth above.

Owner

Contractor

Executive Director  
Title

Vice President  
Title

Charles K. McClain  
Name

Clifford A. Yarnell  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

APPROVED AS TO FORM  
DANIEL G. MONTGOMERY,  
COUNTY COUNSEL

BY: 