

TO: ALL COUNTY PERSONNEL

**FROM: VERDENIA C. BAKER
COUNTY ADMINISTRATOR**

**PREPARED BY: OFFICE OF FINANCIAL MANAGEMENT AND BUDGET
(OFMB)**

**SUBJECT: PROCEDURE AND POLICY REGARDING
ACCEPTANCE OF ESCROW AGREEMENTS**

PPM #: CW-F-040

ISSUE DATE
October 25, 2021

EFFECTIVE DATE
October 25, 2021

PURPOSE:

To establish specific criteria and pre-requisites for accepting Escrow Agreements by the County in conjunction with developer agreements, contracts and any other contractual obligations.

UPDATES:

Future updates to this PPM are the responsibility of the Director of Financial Management & Budget Department.

AUTHORITY:

Palm Beach County Administrative Code, Section 307.00, as may be amended.

POLICY:

In conjunction with developer agreements, contracts and any other contractual obligations entered into by the County, when Surety requirements are contained in such instruments the County may elect to permit the developer/contractor the option of providing the County with an Escrow Agreement in lieu of a Letter of Credit, cash bond or other acceptable guaranty.

PROCEDURES:

1. The face of the Escrow Agreement must be in a format similar to Attachment A attached and indicate the following:
 - A. The escrow account which is the subject of the agreement:
 - shall be maintained in a segregated account;
 - shall not be merged with bank assets;
 - shall be an unrestricted cash deposit; and
 - shall not be a loan reserve or similar hold back of bank funds, nor shall it be entailed or restricted in any way.
 - Palm Beach County shall be the stated beneficiary of the Escrow.
 - B. The Escrow Agreement will remain in effect until all obligations are met and until released in writing by the County.
 - C. Statement of the purpose or specific identification of the project for which the Escrow Agreement is issued.
 - D. A specific amount of the Escrow Agreement in U.S. dollars.
 - E. The method of disbursement of the escrow account.
 - F. The name and street address of the escrow agent.
 - G. Venue in Palm Beach County.
 - H. The County may draw and escrow agent shall pay upon demand the amount held in escrow upon any event of default of developer/contractor under the terms of the contractual obligation.
2. At the time of issuance of the Escrow Agreement, the financial institution must have a minimum "peer group" rating that meets or exceeds the threshold levels in at least two of the five approved rating services as listed below:
 - A. Thomson Reuters Bank Insight Quarterly Ratings - 50.
 - B. IDC Bank Financial Quarterly Listing - 125.
 - C. Veribanc, Inc. Listing - 3 Star Green Rating.
 - D. Standard & Poor's Listing - Single A.
 - E. Moody's Listing - Single A.

The proposer of said service must document to the County that the institution has met the established threshold rating for the most current rating period at the time of submission to the County. The proposer will have the responsibility of furnishing the County with revised quarterly ratings during the term of the Escrow Agreement within 30 days of said revision.

For any of the services utilized the most current rating will be used for the basis of acceptance.

The user department shall be responsible for verifying this information. Additionally, the user department shall provide all pertinent information pertaining to the Escrow Agreement to the Contract Development & Control Division (CDC) of the Office of Financial Management & Budget (OFMB). This should include the exact name of the institution, and the exact complete address of the institution.

3. Escrow Agreements from domestic financial institutions and/or international financial institutions from foreign nations that have received most favored nation status from the United States government which do not meet two of the minimum ratings indicated in Section 2 above must be unconditionally guaranteed by a financial institution with two of the minimum ratings indicated in Item 2 above.
4. Verification of the Status or certification of any financial institution may be made with:

Florida Office of Financial Regulation
Division of Financial Institutions
200 E. Gaines Street
Tallahassee, Florida 32399
Phone (850) 487-9687

5. At any time during the life of the Escrow Agreement, should the rating of the financial institution fall below any two of five of the minimum ratings as indicated in Section 2 above, or should the financial institution become insolvent, the contractor/developer must, within sixty (60) calendar days after notification by the County, replace the existing Escrow Agreement with a replacement Escrow Agreement from a financial institution with two of the minimum ratings as specified in Item 2 above. At the County's sole option, the Escrow Agreements may be replaced by a performance/payment bond or other surety acceptable to the County (ex., cash bond or letter of credit) in accordance with the County's existing bond policies. If satisfactory Surety is not posted within sixty (60) days, the County may, at its sole option, draw any remaining funds in the escrow account. In addition to the foregoing, failure to comply with this provision may also result in any or all of the following actions by the County: suspension of the contractor/developer's right to pull building permits and schedule inspections, a stop work order, and/or revocation of the Land Development Permit. These actions shall remain in effect until a satisfactory replacement bond or Escrow Agreement is accepted by the County. The contractor/developer agreement shall so provide for replacement of the escrow in accordance with this policy.
6. The user department shall review the Escrow Agreement for content, the Division of CDC shall review the Escrow Agreement for format, the County Attorney's Office shall review all Escrow Agreements for legal sufficiency. Original Escrow Agreements shall be maintained in the user department's safe or locked file cabinet at all times and shall be clearly identified as to the project or contract for which it is issued. One copy of the Escrow Agreement shall be placed in the department's contract file and one copy shall be sent to the Division of CDC to be held in a separate file. When Escrow Agreements have been provided to CDC, a computerized listing of financial institutions will be maintained by CDC. The list will be reviewed at least annually by CDC and the user department(s) will be notified if any Escrow Agreements require replacement in

accordance with Item 5 above.

7. All financial institutions which issue an Escrow Agreement must be authorized by the Secretary of State to do business in the State of Florida, shall provide proof of same which shall be subject to the prior review and approval by County Staff, and agree to venue in Palm Beach County.



VERDENIA C. BAKER
COUNTY ADMINISTRATOR

Supersession History:

1. PPM CW-F-040, issued April 1, 1993
2. PPM CW-F-040, issued 5/13/11
3. PPM CW-F-040, issued 4/18/16

ESCROW AGREEMENT

THIS ESCROW AGREEMENT, entered into this ____ day of _____, 20____, by and between (name of developer as appears on contract), hereinafter referred to as the DEVELOPER, and (bank's name), of (city and state), hereinafter referred to as "ASSOCIATION" with Palm Beach County, hereinafter referred to as COUNTY, being the beneficiary of this Agreement.

WITNESSETH

WHEREAS, DEVELOPER is owner of that certain real property located in Palm Beach County, Florida, described as:

(legal description)

WHEREAS, The Palm Beach County Unified Land Development Code requires that surety be posted for development work before Palm Beach County will approve the recording of the plat of

WHEREAS, the DEVELOPER had deposited with the ASSOCIATION the sum of _____ DOLLARS (\$), representing one hundred and ten percent (110%) of the estimated cost of said development improvements.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, the parties hereto agree as follows:

1. The deposited funds are to be segregated in a special account, which are not to be merged with bank assets, to carry out the terms of the Agreement.
2. This Escrow Agreement shall remain in full force and effect until all obligations are met, and a written release is authorized by COUNTY, or until the funds are paid to COUNTY in accordance with Paragraph 4.
3. The deposited funds may be reduced and released to the DEVELOPER only upon written approval by the COUNTY. Such reduction shall be issued in accordance with the requirements of the Unified Land Development Code. Upon completion of the work in accordance with the requirements of the Code, the affected department shall forward to the Board of County Commissioners for approval, the release to the DEVELOPER of any remaining funds.
4. It is agreed that written notice to the ASSOCIATION by the COUNTY, specifying what amounts are to be paid to the DEVELOPER shall constitute authorization by the COUNTY to the ASSOCIATION for release of the specified funds to the DEVELOPER. Payment by the ASSOCIATION to the DEVELOPER of the amounts specified in a letter of authorization by the COUNTY to the ASSOCIATION shall constitute a release of the ASSOCIATION for the funds disbursed in accordance with the letter of authorization from the COUNTY.

5. Nothing in this Agreement shall make the ASSOCIATION liable for any funds other than those placed on deposit by the DEVELOPER in accordance with the foregoing provisions; provided that the ASSOCIATION does not release any monies to the DEVELOPER except as stated in this Escrow Agreement.
6. In the event, however, the DEVELOPER shall fail to comply with the requirements of the Contract for Construction of Required Improvements between DEVELOPER and COUNTY, No. _____, then the ASSOCIATION agrees to pay to the COUNTY, immediately upon demand, the balance of the funds held in escrow by the ASSOCIATION, as of the date of the demand.
7. It is further agreed that should the funds held in escrow be insufficient to complete the required improvements that the COUNTY, after duly considering the public's interest, health, safety and welfare, may at its option complete the required improvements and resort to any and all legal remedies against the DEVELOPER.
8. By execution of this Agreement the ASSOCIATION acknowledges receipt from the DEVELOPER of an unrestricted cash deposit for escrow in accordance with the terms and conditions of this Agreement for the sum of _____ DOLLARS (\$_____).
9. ASSOCIATION and DEVELOPER agree that venue for any litigation arising under or as a result of this Agreement, shall occur in Palm Beach County.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this _____ day of _____, 20__.

(CORPORATE SIGNATURE BLOCK)

a corporation of the State of _____

ATTEST:

By: _____
(typed name and title)

(typed name and title)
(Impressionable Corporate Seal)

(INDIVIDUAL SIGNATURE BLOCK)
WITNESSES:

(typed name)

(ASSOCIATION SIGNATURE BLOCK)

ATTEST:

_____, of _____
By: _____
(typed name and title)

(typed name and title)

(Impressionable Corporate Seal)

STATE OF FLORIDA
COUNTY OF PALM BEACH