

RETAINAGE ESCROW AGREEMENT

This Retainage Escrow Agreement (the "Agreement") is dated as of 1/22/21 between the Board of Education of the Elida Local School District (the "Owner"), and Boenning & Scattergood as escrow agent or (the "Escrow Agent").

- (1) In accordance with certain contracts entered into between the various contractors set forth on the attached Exhibit A, and addendum thereto, (the "Contractors") and the Owner in connection with the captioned Project, Boenning & Scattergood is hereby appointed Escrow Agent to hold the funds for Contractors as set forth on Exhibit A, and any addenda thereto, being delivered to the Escrow Agent by the Owner herewith in compliance with Owner's obligations set forth in Ohio Revised Code Sections 153.13, 153.14 and 153.63 ("Escrow Funds"). The Escrow Agent hereby accepts such appointment.
- (2) The Escrow Agent shall hold the Escrow Funds (including income which shall become part of the Escrow Funds) and shall invest and reinvest the Escrow Funds in a savings account.
- (3) All earnings or other income received from such investment and reinvestment, incurred on such investment and reinvestment, shall be added to the Escrow Funds -- and shall be disbursed as part of the Escrow Funds in accordance with Section (4) hereof. Escrow Agent shall provide Owner with a monthly statement accounting for principal and interest.
- (4) The Escrow Funds shall be held by the Escrow Agent and not disbursed until one of the following events has occurred, in which event the Escrow Agent is authorized and directed to disburse the Escrow Funds, or a portion thereof, in the manner indicated:
 - (a) As soon as practicable after receipt of written notice signed by the Owner and one or more individual Contractors set forth on the attached Exhibit A, and any addenda thereto, indicating that such Contractors contract has been completed ("Completion Certificate") and specifying the amount of the Escrow Funds to be released and the person to whom such funds are to be released.
 - (b) As soon as practicable after receipt of an arbitration order or an order of a court with appropriate jurisdiction, specifying the amount of the Escrow Funds to be released and the person to whom the Escrow Funds are to be released ("Order").
 - (c) As soon as practicable after receipt of a written certificate signed by the Owner ("Owner Certificate") stating that either (i) a Contractor is in default or has breached its contract with the Owner and has not cured such violation to the Owners' satisfaction within thirty (30) days of written notice to such Contractor, or (ii) that a Contractor cannot be located and requesting the Escrow Funds be returned to the Owner. The Escrow Agent may reasonably request such other certifications, representations or legal opinions as it deems necessary to comply with such written request. Once such Escrow Funds are returned to the Owner pursuant to such request, the Escrow Agent shall have no duty or responsibility regarding such Escrow Funds.

Within 30 days of receipt by the Escrow Agent of a Completion Certificate, and Order or an Owner Certificate, the Escrow Agent shall pay the specified amount of Escrow Funds and a proportionate amount of the accrued income, less any applicable Escrow Agent fees and expenses, to the person so indicated in such Completion Certificate, Order or Owner Certificate. In no event shall the Escrow Agent be required to take any action under this Section 4 until it shall have received proper written notification in the form of either a Completion Certificate, an Order or an Owner Certificate.

- (5) The Escrow Agent's ordinary compensation for its services under this Agreement shall be based on a reasonable transaction fee. In the event that it should become necessary for the Escrow Agent to perform extraordinary services, it shall be entitled to reasonable compensation therefore and no reimbursement for all advances, counsel fees and other expenses reasonably and necessarily paid or incurred without negligence or bad faith by it, including costs and expenses of the Escrow Agent in defending itself against any such claim, action or proceeding brought against the Escrow Agent in connection with the exercise or performance of any of its powers or duties under this Agreement. In case any action or proceeding is brought against the Escrow Agent, the Owner shall have the right to assume the defense of the action or Proceeding. At its own expense, the Escrow Agent may employ separate counsel and participate in the defense.
- (6) The Escrow Agent may resign and be discharged from its duties and obligations hereunder by giving thirty (30) days written notice to the Owner and the Contractors. Upon any such resignation of the Escrow Agent, the Owner shall appoint a successor Escrow Agent who shall have all rights of an Escrow Agent hereunder and be bound by the provisions hereof. The Escrow Agent shall deliver the Escrow Funds in its possession at the time to the successor Escrow Agent so appointed.
- (7) The Escrow Agent undertakes to perform only such duties as are expressly set forth herein and shall not be subject to, nor have liability or responsibility under, nor be obligated to recognize any other agreement between, or directions or instructions of any of the parties hereto or any other person in carrying out its duties hereunder, except for written directions or notices delivered to the Escrow Agent in accordance with Section 4 of this Agreement. The Escrow Agent's duties and obligations are purely ministerial in nature, and nothing herein shall be construed to give rise to any fiduciary obligations of the Escrow Agent.
- (8) The Owner and the Contractors shall furnish the Escrow Agent with a list of persons authorized on their behalf, together with specimen signatures of such persons. The Escrow Agent may rely upon, any written Completion Certificate, Order, Owner Certificate, notice, instruction or request furnished to it hereunder and reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties. The Escrow Agent may act in reliance upon the reasonable advice of counsel satisfactory to it in reference to any matter connected with its obligations hereunder and shall not incur any action taken in accordance with such advice.
- (9) The Escrow Agent shall not be responsible for any act or failure to act hereunder except in the case of its negligence.
- (10) In case of any dispute regarding this Agreement, the Escrow Agent shall not be required to institute legal proceedings of any kind and shall be entitled to deposit the Escrow Fund with any court of competent jurisdiction and thenceforth be relieved of any further duty responsibility hereunder.
- (11) If all or part of the Escrow Funds held by the Escrow Agent hereunder shall be attached, garnished or levied upon under any order of court, or if the delivery thereof shall be stayed or enjoined by any order of court, or if any other order, judgment, or decree shall be made or entered by any court affecting the Escrow Funds or any part thereof, the writs, orders, judgments, or decrees so entered or issued, whether with or without jurisdiction, and in case it obeys and complies with any such writ, order judgment, or decree, it shall not be liable to the Owner or the Contractor, their successors, or assigns, notwithstanding that such writ, order, judgment or decree be subsequently reversed, modified, annulled, set aside, or vacated.

- (12) Any corporation or association into which the Escrow Agent may be converted or merged, or with which it or any successor to it may be consolidated, or to which it may sell or transfer its corporate trust assets and business as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, or any subsidiary corporation or association to which it may assign this Agreement shall, ipso facto, be and become successor escrow agent herewith, vested with the immunities, privileges and all other matters as was its predecessor, without the execution of filing or any instrument of any further act on the part of any of the parties hereto, notwithstanding anything herein to the contrary.
- (13) All escrow accounts which are held by the Escrow Agent shall be made available for audit by the Auditor of the State of Ohio.
- (14) This Agreement shall terminate and be of no further force and effect on the date when all monies comprising the Escrow Funds have been disbursed in accordance with the terms hereof.
- (15) This Agreement may be amended, modified or supplemented only by a writing signed by each of the parties, and any such amendment shall be effective only to the extent specifically set forth in such writing.
- (16) This Agreement shall be a contract under the laws of the State of Ohio and for all purposes shall be governed by and construed and enforced in accordance with the laws of said State.

IN WITNESS WHEREOF: the parties hereto executed this agreement on the date and year first above written.

Board of Education of the Elida Local School District

By: _____

Treasurer

Boenning & Scattergood

By: _____

**ELIDA LOCAL SCHOOL DISTRICT
RETAINAGE ESCROW AGREEMENT
EXHIBIT A**

(For each contractor, please attach additional Exhibits, e.g. A-1, A-2, etc.)

Contractor: PETERSON Construction Company
Address: 18817 SR 501 North
Wapakoneta, OH 45895
Tax ID No: 34-1342365

I have read the Retainage Escrow Agreement between the Owner and Escrow Agent, and I agree to the designation of Boenning & Scattergood as the Escrow Agent and the terms of that Agreement.

Signature: William E. Bluth
Title: Controller
Date: 11-22-2021
Contract No.: New Elida Elementary School
Retainage Escrow Deposit Amount: \$ 500,305.65