

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is made and entered into on the last date set forth on the signature pages below ("Effective Date") by and between the Elida Local School District Board of Education (the "School District") and the Village of Elida, Ohio (the "Village"). Collectively, the School District and the Village shall be referred to as the "Parties."

R E C I T A L S:

A. WHEREAS, the School District is constructing a new elementary school (the "New Elementary School") on property it owns at 300 Pioneer Road, Lima, Ohio 45807 (more specifically, Allen County Parcel Nos. 36-1705-01-001.000, 36-1705-01-002.000, and 36-1705-01-003.000) (the "Property") to replace the currently existing Elida Elementary School on the Property (the "Existing Elementary School").

B. WHEREAS, the Property is currently located outside the corporate limits of the Village.

C. WHEREAS, the Village has provided water and sewer utility services to the Property for the entire existence of the Existing Elementary School.

D. WHEREAS, a dispute has arisen as to whether the Village may require the School District to annex the Property to the Village in order to receive Village water and sewer services at the New Elementary School.

E. WHEREAS, on or about December 3, 2019, the School District filed that certain lawsuit styled: *Elida Local School District Board of Education vs. Village of Elida, Ohio, et al.*, Case No. CV2019 0506 in the Allen County Court of Common Pleas (the "Lawsuit").

F. WHEREAS, on or about January 6, 2020, the Village, the Village Mayor, and the Village Administrator filed their Answer and Affirmative Defenses in the Lawsuit.

G. By virtue of this Agreement, the Parties desire to fully and completely resolve this matter in good faith, and settle any and all claims and defenses that were asserted or that could have been asserted in the Lawsuit.

NOW, THEREFORE, in consideration of the promises and the mutual covenants of the Parties stated in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Non-Admission of Liability.** Nothing in this Agreement shall constitute or be construed as an admission of liability on behalf of the School District or the Village or their respective officers, agents, servants, employees, legal representatives, assigns, affiliates, predecessors, administrators, and/or successors, or an admission as to the validity of the allegations in the Lawsuit.

2. **Voluntary Agreement/Attorney Representation.** The Parties represent that in the

execution and negotiation of this Agreement they are represented by counsel of their choice and that said attorneys advised their respective clients with respect to the advisability of making the settlement and release provided herein and of executing this Agreement. The Parties further represent and warrant that they are fully aware of the terms contained in this Agreement, made any desired changes, and have voluntarily and without coercion, duress, or undue influence of any kind, entered into this Agreement and the documents executed in connection with this Agreement.

3. **Terms.** As full and final settlement of the Lawsuit, the Parties hereby agree as follows:

- A. The School District hereby agrees to annex the Property to the Village. The proposed annexation is limited to the Property and the School District expressly does not intend to annex any other property. The School District agrees to sign a pre-annexation agreement with the Village (which the Parties will negotiate and execute) and to begin the annexation process as soon as reasonably practical. Upon annexation, the School District will be entitled to the inside rate on water and sewer utility services from the Village.
- B. The Village hereby agrees to maintain domestic water to the Existing Elementary School and to provide domestic water for the construction of the New Elementary School no later than June 30, 2020. The water line at issue in this provision is a 4-inch line coming from Sunnydale Street, into which the Village will permit the School District's contractor to tap.
- C. The School District hereby agrees to pay the cost of installing an 8-inch line to Wildwood Avenue, with such cost being capped at Sixty Thousand Dollars (\$60,000). The Village hereby agrees to make diligent effort to install said pipeline as inexpensively as reasonably practical. The Village agrees that said pipeline must be completed by October 1, 2020. If the Village does not complete the pipeline by October 1, 2020, then the Village shall pay the entire cost of said pipeline. If the Village is unable to timely complete said pipeline as a result of an Act of God, an unexpected delay caused by governmental approval processes, an unexpected delay caused by any controlling township, and/or some other delay caused by factors that could not reasonably be foreseen, then the Parties agree that the Village shall be afforded additional time to complete said pipeline before bearing all cost for said pipeline.
- D. The Village hereby agrees to abate all income tax for employees of the Existing Elementary School and/or the New Elementary School beginning when annexation becomes official through the first ten (10) years of existence of the New Elementary School. This abatement does not apply to those current employees of the Existing Elementary School, as of the Effective Date, who will continue on as employees at the New Elementary School and have Village income tax liability by virtue of their residence in the Village ("Resident Employees"). This abatement also does not apply to employees who are hired by the School District, and start to work at the Existing Elementary School or the New Elementary School, after the Effective Date ("New Elementary Employees"). The Village represents to the School District that the Village has full authority to agree to this abatement.

- E. The School District hereby agrees to forgive the final three years of payments owed by the Village to the School District related to the high school, which would otherwise be owed pursuant to the Settlement Agreement executed by the Village and the School District on December 20, 2011. Each payment is in the amount of Thirty Thousand Eight Hundred and Fifty-Six Dollars (\$30,856). This shall serve as completion of said agreement, and render that agreement fully completed and satisfied.
- F. In years four (4) through ten (10) of the existence of the New Elementary School, the School District hereby agrees to pay the Village Twenty Thousand Dollars (\$20,000) per year in unrestricted funds ("School District Payment"). Pursuant to ORC 5705.41 and .44, this payment obligation is subject to annual appropriation and certification by the School District. The total nominal amount of the School District Payments will be One Hundred and Forty Thousand Dollars (\$140,000). Each yearly School District Payment shall be made by the School District within thirty (30) days after completion of the pertinent school year. The first yearly School District Payment shall be made after the 2023-24 school year. If any yearly School District Payment is not made (due to lack of appropriation, certification, or any reason other than the ceasing of payments addressed in Paragraph G below), the Village is relieved from its obligations under Paragraph D above for that corresponding year.
- G. Following annexation, the School District is entitled to a credit for any income tax payments made to the Village by any New Elementary Employees. This credit will be applied to and deducted from the School District Payments and will be a dollar for dollar reduction. (Purely as one example, if a New Elementary Employee is hired in Year 1 and immediately starts paying income taxes to the Village, the deduction for all such taxes would be applied to and deducted from the Year 4 School District Payment, unless already fully credited, and, in such case, carried over to subsequent years' School District Payments.) Should the total amount of the tax payments made to the Village by New Elementary Employees eventually exceed One Hundred and Forty Thousand Dollars (\$140,000), it is not the intention of the parties that the School District would receive a corresponding payment of monies from the Village. Rather, in that event, the School District Payments would simply cease.
1. The School District will provide the Village with documentation necessary to demonstrate its entitlement to any credit requested pursuant to Section G above for New Elementary Employees. Further, to that end, the School District will provide the Village with a list of all Resident Employees and other current employees of the Existing Elementary School.
 2. The School District is not entitled to a credit under Section G above for Village income tax paid by any Resident Employees.
- H. The Village hereby agrees to waive any and all tap fees related to the Existing Elementary School or New Elementary School.
- I. The Village hereby agrees that there will be no other costs or fees to the School District from the Village related to the Existing Elementary School or New Elementary School.

- J. The parties agree that all pending public-records requests made by the School District related to the subject matter of the Lawsuit are withdrawn.

4. **Release by School District.** Except as otherwise set forth in this Agreement, in consideration of the promises, covenants and agreements set forth herein and for other good and valuable consideration, the School District hereby waives, remises, releases, acquits, satisfies, and forever discharges the Village, and the Village's past and present officers, agents, servants, employees, legal representatives, assigns, affiliates, predecessors, and administrators, of and from all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims, and demands whatsoever, in law or in equity, arising out of, or in any way stemming from application of Village Code Section 123.02 as to the Existing Elementary School, New Elementary School and/or the Property.

5. **Release by Village.** Except as otherwise set forth in this Agreement, in consideration of the promises, covenants and agreements set forth herein and for other good and valuable consideration, the Village hereby waives, remises, releases, acquits, satisfies, and forever discharges the School District, and the School District's past and present officers, agents, servants, employees, legal representatives, assigns, affiliates, predecessors, and administrators, of and from all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims, and demands whatsoever, in law or in equity, arising out of, or in any way stemming from application of Village Code Section 123.02 as to the Existing Elementary School, New Elementary School and/or the Property.

6. **Dismissal.** The School District shall file a notice of dismissal of the Lawsuit with prejudice within ten (10) business days after full execution of this Agreement by the Parties, with each party bearing its own costs.

7. **Entire Agreement.** This Agreement constitutes the sole and entire agreement between the Parties in regard to the matters herein and supersedes all prior and contemporaneous statements, promises, understandings or agreements, whether written or oral.

8. **Amendments.** This Agreement may be amended, modified or altered at any time upon the approval of the Parties; however, any such amendment must be in writing and signed by all Parties in order for such amendment to be of any force and effect.

9. **Partial Invalidity.** In the event that any provision of this Agreement is declared by any court of competent jurisdiction to be void or otherwise invalid, all of the other terms, conditions and provisions of this Agreement shall remain in full force and effect to the same extent as if that part declared void or invalid had never been incorporated in the Agreement and in such form, the remainder of the Agreement shall continue to be binding upon the Parties.

10. **Assignability.** The Parties may not assign any of their rights under this Agreement without express written consent from the other Party.

11. **Survival.** All representations and warranties contained herein shall survive the execution and delivery of this Agreement, and the execution and delivery of any other document or instrument referred to herein.

12. **Applicable Law.** This Agreement shall be subject to and governed by the laws of the State of Ohio without regard to conflict of law rules.

13. **Costs.** Unless otherwise provided in this Agreement, the Parties have agreed to bear their own attorneys' fees and costs, including all costs related to the Lawsuit and the preparation of any and all documents necessary to enter into this Agreement.

14. **Counterparts.** This Agreement may be signed and executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one Agreement. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or email shall be effective as delivery of an originally executed counterpart of this Agreement.

15. **No Adverse Construction.** In the event any part of this Agreement is found to be ambiguous, such ambiguity shall not be construed against any Party.

16. **Not Evidence.** This Agreement shall not be used as evidence in any proceeding other than one to enforce this Agreement, or one seeking damages arising from a breach of this Agreement.

17. **Authority.** The Parties represent and warrant to each other that each is the sole and lawful owner of all right, title, and interest in and to every claim and other matter which each releases in this Agreement. In the event that such representation is false, and any such claim or matter is asserted against either Party by anyone who is the assignee or transferee of such a claim or matter, then the Party who assigned or transferred such claim or matter shall fully indemnify, defend, and hold harmless the Party against whom such claim or matter is asserted and its successors from and against such claim or matter.

18. **Further Assurances.** The Parties shall perform such further acts and things and execute and deliver such additional agreements, powers and instruments, as may reasonably be required or advisable to carry into effect the purposes of this Agreement or to better assure and confirm unto the Parties the rights, powers and remedies hereunder.

[THE REMAINDER OF THIS PAGE INTENTIONALLY BLANK.
SIGNATURE PAGES TO FOLLOW.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth below.

DATED: _____

Elida Local School District Board of Education

By: _____
Name: _____
Title: _____

DATED: April 16 2020

Village of Elida, Ohio

By: Claude R. Paxton
Name: Claude R. Paxton
Title: Mayor

CERTIFICATE
(ORC Section 5705.41)

The undersigned, Treasurer of the Elida Local School District, located in Allen County, Ohio, hereby certifies in connection with the preceding Agreement that the amount required to meet the obligations of the District under the contract, obligation, or expenditure for the work described in the Agreement has been lawfully appropriated for those purposes, and is in the treasury or in process of collection to the credit of an appropriate fund, free from any outstanding obligation or encumbrance.

DATED: _____

Joel Parker, Treasurer
Elida Local School District