



Lake Stevens School District | 12309 22nd St. NE | Lake Stevens, WA 98258-9500
425-335-1500 (office) | 425-335-1549 (fax)

CONTRACTOR'S OPTION FOR RETAINED PERCENTAGE ON PUBLIC WORKS CONTRACTS

Project _____

Contractor _____

RCW 60.28 as amended by (Chapter 223, laws of 1994) Regular Session allows each prime contractor on a public works contract the following options concerning the amount reserved as retainage from moneys earned by the contractor.

Contractor's Option

_____ Bond in lieu of retainage. Use Lake Stevens School District Retainage Bond form.

_____ Retained in a non-interest bearing fund by the public body until forty-five days following the final acceptance of said improvement or work as completed.

_____ Deposited by the public body in an interest bearing account or escrow account in a bank, mutual savings bank, or savings and loan association designated by the contractor (Form D-162), not subject to withdrawal until after the final acceptance of said improvement or work as completed, or until agreed to by both parties; PROVIDED, that interest on such account shall be paid to the contractor.

SIGNATURE

TITLE

NAME OF FIRM

DATE

ADDRESS

RETAINAGE BOND

Bond No. _____

KNOW ALL BY THESE PRESENTS:

that _____, a corporation organized and existing under the laws of the State of _____ and authorized to do business in the State of Washington as Principal ("Principal") and

_____, a corporation organized and existing under the laws of the State of _____ and authorized and admitted to transact business in the State of Washington as Surety ("Surety"), are jointly and severally held and bound unto

LAKE STEVENS SCHOOL DISTRICT NO. 4

as Obligee ("Owner") for the use and benefit of Claimants defined below as beneficiaries of the trust fund created by RCW 60.28, in the amount of described below for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, on the _____ day of _____, 200__, the Principal entered into a contract with the Owner in accordance with Drawings, Specifications, and other Contract Documents, which contract is by reference made a part of this Retainage Bond ("Contract");

AND WHEREAS, the Contract and RCW 60.28 require the Owner to reserve from the monies earned by the Principal on estimates during the progress of the improvement or work a sum not to exceed 5% ("Retained Funds");

AND WHEREAS, Principal has requested under RCW 60.28.011(6) to submit a bond for all or a portion of the Retained Funds, and the Owner is required by the statute to accept a satisfactory bond in lieu of the Retained Funds unless it can demonstrate good cause for refusing it;

AND WHEREAS, it is the intent of the Principal, the Surety, and the Owner that this Retainage Bond and any proceeds from it are subject to all claims and liens in the same manner and priority as set forth for retained percentages in RCW 60.28;

NOW THEREFORE, the condition of this obligation is that, if there are no valid claims by any person or entity arising under the Contract pursuant to RCW 60.28, and no payment due from the Principal to the State of Washington with respect to taxes imposed pursuant to Title 82 RCW or payments pursuant to RCW 50.42, then this obligation shall be void; otherwise, it shall remain in full force and effect, subject, however, to the following conditions:

1.e The Principal and Surety hereby jointly and severally agree amonge themselves and with the Owner that every person or entity making a valid claim on the Retained Fund pursuant to RCW 60.28 ("Claimant") who has not been paid in full before the expiration of a period of forty-five (45) days after the completion of all Contract work may sue on this Retainage Bond for the use and benefit of the Claimant, prosecute the suit to final judgment for the sum justly due the Claimant, if any, and have execution on this Retainage Bond, all in accordance with and to the extent permissible under RCW 60.28. The Owner shall not be liable for the payment of any costs or expenses, including attorneys' fees, of any such suit.

2. No suit or action shall be commenced under this Retainage Bond by anye Claimant:

(a)e Unless the Claimant has complied with the requirements of RCW 60.28, and

(b) Other than in a state court of competent jurisdiction in and for thee county in which the Project is situated, and not elsewhere.

3. The amount of this Retainage Bond consists of:e

(Check one of the following; if neither is checked, the first option shall apply)

☐ 5% of the final Contract Sum, including any increases due to change orders, quantities of work, new items of work, or other additions as the Owner may pay under the Contract, any and all future progress payments and 5% of any and all increases in the Contract Sum,

or

☐ _____ Dollars (\$ _____), which is a fixed portion of the Retained Funds. Any balance of the Retained Funds will continue to be withheld, and retainage will be withheld from any future progress payments or increases in the Contract Sum unless this Retainage Bond is amended or replaced.

4. The amount of this Retainage Bond shall be reduced by and to the extent of any payment or payments properly made under it.

SIGNED AND SEALED this _____ day of _____, 20__.

PRINCIPAL

SURETY

Title

By: Its Attorney in Fact

Form Approved by Owner:

Name of Local Office or Agent

LAKE STEVENS SCHOOL DISTRICT NO.
4

Address of Local Office or Agent

Authorized Signature

Dated _____, 20__.

OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION
Old Capital Building, P.O. Box 47200
OLYMPIA WA 98504-7200

ESCROW AGREEMENT

TO _____ e _____
(Bank or Trust Company)

BANK ACCOUNT No. _____ e _____

(Branch)

School District/OSPI

Contract No. _____

(Street) (City) (ZipCode)

Project name _____

The undersigned, _____ e _____
hereinafter referred to as the Contractor, has directed _____ School District and the Office of Superintendent of Public Instruction, hereinafter referred to as the Agency, to deliver to you its warrants or checks which shall be payable to you and the Contractor jointly. Such warrants or checks are to be held and disposed of by you in accordance with the following instructions and upon the terms and conditions hereinafter set forth.

INSTRUCTIONS

1.eThe Agency shall deliver to you from time to time checks or warrants payable jointly to you and the Contractor. You are hereby authorized by the Contractor to endorse in the Contractor's name any such check or warrant so that you may receive the proceeds thereof and invest the same. The power of endorsement hereby granted to you by the Contractor shall be deemed a power coupled with an interest and shall be irrevocable during the term of this Escrow. Although you may be a payee named in such warrants or checks as shall be delivered to you, your duties and responsibilities with respect to the same shall be only those duties and responsibilities which a depository bank would have pursuant to Article 4 of the Uniform Commercial Code of the State of Washington for an item deposited with it for collection as of the date such check or warrant shall be used by you to purchase, as directed by the Contractor, bonds or other securities chosen by the Contractor and approved by you, and the School District. For the purpose of each such purchase, you may follow the last written direction received by you from the Contractor, provided such direction otherwise conforms with the restrictions on investments recited herein. Attached is a list of such bonds, or other securities approved by the Agency. No further approval is necessary if any of these bonds or securities except stocks, may be selected by the Contractor, subject to express written approval of you and the School District. Purchase of such bonds or other securities shall be in a form which shall allow you alone to reconvert such bonds or other securities into money if you are required to do so by the Fiscal Officer for the Superintendent of Public Instruction as provided in paragraph 4 of this Escrow Agreement.e

The investments selected by the Contractor, approved by the School District and purchased by you must mature on or prior to the date set for the completion of the contract, including extensions thereof or 45 days following the final acceptance of said improvement or work.

2.eWhen and as interest on the securities held by you pursuant to this agreement accrues and is paid, you shall collect such interest and forward it to the Contractor at the address designated below unless with your written consent you are otherwise directed in writing by the Contractor.e

3.eYou are not authorized to deliver to the Contractor all or any part of the securities held by you pursuant to this agreement (or any monies derived from the sale of such securities, or the negotiation of the Agency's warrants or checks) except in accordance with the written instructions from the Fiscal Officer for the Superintendent of Public Instruction. The Fiscal Officer for the Superintendent of Public Instruction shall inform you and keep you informed in writing of the name of the person or persons with authority to give you such written instructions. Compliance with such instructions shall relieve you of any further liability related thereto. The estimated completion date on the contract underlying this Escrow Agreement is _____ e e _____. Upon request by you, the School District shall advise you in writing of any change in estimated completion date. If the estimated completion date is changed, you are authorized to reinvest the monies held hereunder in accordance with the new estimated completion date.

4.eIn the event the Fiscal Officer for the Superintendent of Public Instruction orders you to do so in writing, and notwithstanding any other provisions of this agreement, you shall, within thirty-five (35) days of receipt of such order, reconvert into money the securities held by you pursuant to this agreement and return such money together with any other monies, including accrued interest on such securities, held by you hereunder, to the Office of the Superintendent of Public Instruction, P O Box 47200, Olympia, WA 98504-7200.e

5.o The Contractor agrees to pay you as compensation for your services here under as follows:o

Payment of all fees shall be the sole responsibility of the Contractor and shall not be deducted from any property placed with you pursuant to this agreement until and unless the Fiscal Officer for the Superintendent of Public Instruction directs the release to the Contractor of the securities and monies held hereunder whereupon you shall be granted a first lien upon such property released and shall be entitled to reimburse yourself from such property for the entire amount of your fees and any unanticipated amounts which might be owing as provided for herein. In the event that you are made a part to any litigation with respect to the property held by you hereunder, or in the event that the conditions of this escrow are not promptly fulfilled or that you are required to render any services not provided for in these instructions, or that there is any assignment of the interests of this escrow or any modification hereof, you shall be entitled to reasonable compensation for such extraordinary services from the Contractor and reimbursement from the Contractor for all costs and expenses, including attorney fees occasioned by such default, delay, controversy or litigation.

6.oShould you at any time and for any reason desire to be relieved of your obligations as escrow holder hereunder, you shall giveo written notice to the School District, the Office of Superintendent of Public Instruction and Contractor. The School District ando Contractor shall, within 20 days of the receipt of such notice, jointly appoint a successor escrow holder and instruct you to deliver allo securities and funds hereunder to said successor. If you are not notified of the appointment of the successor escrow holder within 20o days, you may return the subject matter hereof to the Office of Superintendent of Public Instruction, P O Box 47200, Olympiao Washington 98504-7200, and upon so doing, it absolves you from all further charges and obligations in connection with this Escrow.o

7. This agreement shall not be binding until executed by the Contractor and the Agency and accepted by you.o

8.oThis instrument contains the entire agreement between you, the Contractor and the Agency with respect to this Escrow and you areo not a party to nor bound by any instrument or agreement other than this; you shall not be required to take notice or demand, nor required to take any action whatever except as herein expressly provided; you shall not be liable for any loss or damage not caused by your own negligence or willful misconduct.o

9. The foregoing provisions shall be binding upon the assigns, successors, personal representatives and heirs of the parties hereto.o

The undersigned have read and hereby approve the instructions as given governing the administration of this escrow and do hereby execute this agreement on this _____ day of _____, 20_____.

(Contractor Signature)

(Agency Signature)

By _____

(Title)

(Title)

By _____

(Address)

The above escrow instructions received and accepted this ____ day of

_____, 20_____.

(Bank or Trust Company)

(Authorized Signature)

BONDS AND SECURITIES ACCEPTABLE BY THE STATE AGENCY

1. Bills, Certificates, note or bonds of the United States
2. Other obligations of the United States or its agencies
3. Obligations of any corporation wholly owned by the Government of the United States
4. Indebtedness of the Federal National Mortgage Association
5. Time deposits in commercial banks

DESIGNATE BELOW THE TYPE OF INVESTMENTS SELECTED
