



ESCROW AGREEMENT

This Escrow Agreement (herein "Agreement") entered into on the _____ day of _____, 20____, by and among the University of Cincinnati (herein "Owner"), a State University created and existing under the laws of the State of Ohio; and _____ (herein "Contractor"), a Corporation organized and existing under the laws of the State of Ohio; and PNC Bank (herein "Escrow Agent"), an Ohio Banking Association organized and existing under the laws of the State of Ohio, all being duly authorized to execute and deliver this Agreement.

WITNESSETH:

WHEREAS, Owner and Contractor have heretofore entered into that certain contract (or contracts) described in Schedule "A" hereto with respect to the project (or projects) therein described (such contract or contracts, as hereafter amended or supplemented, being herein referred to as "Contract"); and

WHEREAS, Section 153.63 of the Ohio Revised Code, (a) requires creation of an escrow account into which shall be deposited Contract payments retained by Owner in accordance with Sections 153.12 and 153.13 of the Ohio Revised Code (herein "Retained Amounts"), and (b) imposes certain other requirements with respect to the time of payment of Retained Amounts, the terms of this Agreement, the settlement of disputes, and other matters; and

WHEREAS, Owner, Contractor and Escrow Agent intend this Agreement to comply in all respects with Section 153.63, and hereby agree that this Agreement shall be so construed as to further the purpose and intent of said law;

NOW, THEREFORE, OWNER, CONTRACTOR AND ESCROW AGENT, INTENDING TO BE LEGALLY BOUND, do hereby agree as follows:

Section 1. Deposit of Retained Amounts. Escrow Agent hereby acknowledges deposit with it of the cash and/or securities described in Schedule "B" hereto (herein "Escrowed Funds"). Owner and Contractor hereby acknowledge and affirm that such deposit represents the full sum of Retained Amounts lawfully retained by Owner to date, pursuant to Section 153.12 of the Ohio Revised Code, with respect to the Contract.

Section 2. Investment or Reinvestment of Escrowed Funds. Until payment of the Escrowed Funds, including interest thereon, the Escrow Agent shall invest and reinvest the Escrowed Funds, and, to the extent commercially feasible in the judgement of the Escrow Agent, the interest earned thereon, in the following described savings accounts or obligations:

- (a) Savings accounts maintained with the Escrow Agent, or with any bank or domestic building and loan association which would be eligible to become a public depository under Section 135.03 of the Ohio Revised Code.
- (b) Bonds or other obligations of the United States of America or agencies thereof.
- (c) "Master Notes" maintained in or by the Trust Department.

Section 3.

- (a) The income from investment of the escrowed funds shall be accumulated in the escrow account.
- (b) The Escrow Agent has the authority to commingle funds held in escrow with funds held under similar agreements.

Section 4. Disbursement of Escrowed Funds. The Escrowed Funds, including interest earned thereon, after expiration of such reasonable time (not exceeding thirty days) as shall be required to permit orderly liquidation of any investments thereof made in accordance with Section 2 hereof, shall be paid by Escrow Agent to Contractor in the event of, and in accordance with, either of the following:

- (a) Receipt by Escrow Agent of notice of similar purport from Owner and Contractor that the Escrowed Funds are to be paid to Contractor.
- (b) Receipt by Escrow Agent of a certified judgement of the Court of Claims created by Section 2743.03 of the Ohio Revised Code, or other court of competent jurisdiction, provided the Escrow Agent shall also
- (c) Upon signed agreement of the parties which is received by the Escrow Agent from the Owner.

Section 5. Compensation of Escrow Agent. Escrow Agent shall be paid for its services out of the income of the Escrow Account. In addition to such fee, Escrow Agent shall be entitled to reimburse itself from the Escrowed funds for reasonable attorneys' fees and costs incurred by it under this Agreement, provided that if such fees or costs are incurred subsequent to payment to Contractor of the Escrowed Funds and interest thereon and otherwise than by reason of negligence or bad faith on the part of Escrow Agent, such fees and costs shall be paid by Contractor to Escrow Agent on demand. Owner shall not become liable to Contractor for any fees retained by Escrow Agent out of the Escrowed Funds.

Section 6. Escrow Agent's Acceptance and Responsibilities: Indemnification by Contractor: Successor Escrow Agent. Escrow Agent accepts the duties imposed upon it by this Agreement, and agrees to perform said duties with ordinary prudence, subject to the following terms and conditions:

- (a) Escrow Agent may rely, and shall be protected in acting or refraining from acting, upon any instrument furnished to it hereunder and believed by it to be genuine and believed by it to have been signed or presented by the appropriate party or parties (including without limitation, with respect to any corporation, any instrument purporting to have been signed on its behalf by its president or any of its vice-presidents or its treasurer) Escrow Agent shall not be liable for any action taken (or any refraining from action) by it in
- (b) Contractor hereby agrees to indemnify and hold Escrow Agent harmless against any loss, liability or expense incurred, without negligence or bad faith on its part, in connection with any claim arising out of or in connection with its entering into this Agreement and carrying out its duties hereunder, including the cost of defending itself against such claim.
- (c) Escrow Agent's accounts relative to the Escrowed Funds and interest thereon shall be subject to audit by the Auditor of the State of Ohio and shall be made available for such purpose during regular business
- (d) By thirty days' notice to Owner and Contractor, Escrow Agent may resign as such hereunder, and in such event shall, upon demand, deliver the Escrowed Funds and interest earned thereon to a successor escrow agent designated by Owner. In default of such designation within thirty days after such notice is received by Owner, shall deliver the Escrowed Funds and interest earned thereon to Owner.

Section 7. Notices. It shall be sufficient service or giving of any notice, request, complaint, demand or other paper if the same shall be duly deposited in the United States mail, registered or certified mail, postage prepaid, addressed as follows:

(a) To Owner:

University of Cincinnati
Capital Finance and Reporting
PO Box 210637
Cincinnati, OH 45221-0637
Attention: Carol Metzger, Controller

(b) To Contractor:

(Tax I.D. # _____)

Name: _____

Address _____

Attention: _____

(c) To Escrow Agent:

PNC Bank
201 East 5th Street, Loc. B1-BM01-03-3
Cincinnati, OH 45202
Attention: Chris Woolums, Vice President

Duplicate copies of each notice, certificate or other communication given hereunder by Owner, Contractor or Escrow Agent to one of the others shall also be given to the other. The Owner, Contractor or Escrow Agent may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent, but no notice directed to any one such entity shall thereby be required to be sent to more than two addresses.

Section 8. Mechanic's liens: Additional Deposits with Escrow Agent. In the event that one or more sworn and itemized statements are filed with Owner pursuant to Section 1311.26 of the Ohio Revised Code, with the result that Section 1311.28 of the Ohio Revised Code applies, Owner reserves the right to deposit funds detained by reason of such filing with Escrow Agent hereunder, which fund shall (a) be invested and reinvested in the same manner as provided for Escrow Funds under Section 2 hereof, and (b) be released at such times, in such amounts, and to such persons as may be ordered by a court of competent jurisdiction or by agreement between Contractor, Owner, and lien Claimant.

Section 9. This agreement is governed by and in accordance with the laws of the State of Ohio.

Project Number: _____

Project Name: _____

Contractor: _____

Select Type of Contract:

General

HVAC

Plumbing

Electrical

Fire Protection

Other: _____

Total Escrowed Funds to equal 8% of labor invoiced through the Application for Payment which shows the total contract completion at 50% or greater which is allowable retainage under the Ohio Revised Code, Section 153.13 to be deposited and receipted for at a later date.

EXECUTED, at Cincinnati, Ohio on this _____ day of _____, 20_____

UNIVERSITY OF CINCINNATI

By: _____
Title: Associate Vice President, University Architect
Planning + Design + Construction

Date: _____

CONTRACTOR

By: _____
Title: _____

Date: _____

PNC BANK

By: _____
Title: _____

Date: _____