

RETAINAGE ESCROW AGREEMENT

Wright State University Construction Projects

This Retainage Escrow Agreement (the "Agreement") is dated as of 3/28/07, between Wright State University (the "Owner"), and The Bank of New York Trust Company, National Association, as escrow agent ("BNY" 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, BNY 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 shares of Dreyfus Treasury Prime Cash Management, a money market mutual fund or such similar or successor fund thereto. A copy of the prospectus for this fund has been provided to the Owner. Escrow Funds received by the Escrow Agent after the 15th of the month need not be invested until the first business day of the following month. The Escrow Agent is hereby authorized to sell any investment immediately prior to the release of all or any portion of the Escrow Funds pursuant to the terms of this Agreement. The Escrow Agent, or any of its representatives, shall not be held liable for any investment loss resulting from any investment made, sold or otherwise liquidated in accordance with this Agreement. The Escrow Agent is hereby authorized to execute purchases and sales of permitted investments through the facilities of its own trading or capital markets operations or those of any affiliated entity.
 - (3) All earnings or other income received from such investment and reinvestment, less losses, if any, 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. Although the Owner and the Contractors each recognizes that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, the Owner and the Contractors hereby agree that confirmations of permitted investments are not required to be issued by the Escrow Agent for each month in which a monthly statement is rendered. For tax reporting purposes only, the Contractors shall be deemed to be the recipients of the investment income earned on the Escrow Funds. The Contractors shall provide the Escrow Agent with an executed form W-9, certifying its taxpayer identification number, upon execution of this Agreement.
 - (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 Contractor's 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 a certified copy of an arbitration order or a final, nonappealable 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, an 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. No provision of this Agreement shall require the Escrow Agent to advance, to any payee listed in any disbursement request to be made out of this Agreement or otherwise, funds that exceed the balance held in the Escrow Fund.
- (5) The Escrow Agent's ordinary compensation for its services under this Agreement shall be computed per the fee schedule attached hereto as Exhibit B. 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 to 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. The Escrow Agent shall be paid from the income on amounts held pursuant to 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. If a successor Escrow Agent has not been appointed and has not accepted such appointment by the effective date of resignation, the Escrow Agent may, at the end of a 30 day period beginning upon the date of resignation, apply to a court of competent jurisdiction for the appointment of a successor Escrow Agent and the fees, cost and expense (including counsel fees and expenses) which it incurs in connection with such a proceeding shall be paid by the Owner and the Contractors. Notwithstanding the above, no resignation or termination of the Escrow Agent shall be effective until a successor Escrow Agent shall have accepted its appointment.
- (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. The Escrow Agent shall be entitled to advice of counsel concerning all matters hereof and duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers, and employees as may be reasonably employed in connection with this Agreement. The Escrow Agent may act upon the opinion or advice of any attorney (who may be the attorney or attorneys for the Owner or Contractors). The Escrow Agent shall not be responsible for any loss or damage resulting from any action or non-action taken in good faith in reliance upon such opinion or advice. The Escrow Agent shall have the right to perform any of its duties hereunder through agents, affiliates, attorneys, custodians or nominees.
- (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, set forth on the attached Exhibit "A". In the event of any change in the identity of such representatives, a new list shall be executed and delivered by the Owner or Contractors, as applicable, to the Escrow Agent. Until such time as the Escrow Agent shall receive a new list on behalf of the Owner or any of the Contractors, the Escrow Agent shall be fully protected in relying without inquiry on any then current list on file with the Escrow Agent. 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 liability for any action taken in accordance with such advice. The Escrow Agent shall have no responsibility to inquire into or determine the genuineness, authenticity, or sufficiency of any securities, checks, or other documents or instruments submitted to it in connection with its duties hereunder.
- (9) The Escrow Agent shall not be responsible for any act or failure to act hereunder except in the case of its willful misconduct or gross negligence. **ANYTHING IN THIS ESCROW AGREEMENT TO THE CONTRARY NOTWITHSTANDING, IN NO EVENT SHALL THE ESCROW AGENT BE LIABLE FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND WHATSOEVER (INCLUDING BUT NOT LIMITED TO LOST PROFITS), EVEN IF THE ESCROW AGENT HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH LOSS OR DAMAGE AND REGARDLESS OF THE FORM OF ACTION.** The Escrow Agent shall be entitled and is hereby granted the right to set off and deduct any unpaid fees and/or nonreimbursed expenses from amounts on deposit in the Escrow Agreement. The Escrow Agent shall not have any liability or obligation with respect to any failure or delay in the performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fires; floods; wars; civil or military disputes; sabotage; epidemics; riots; interruptions; loss or malfunctions of utilities, computer (hardware or software) or communications services; accidents; labor disputes; acts of civil or military authority or governmental actions; it being understood that the Escrow Agent shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.
- (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 or responsibility hereunder. The Escrow Agent shall be entitled to refrain from taking any action contemplated by this Agreement in the event that it becomes aware of any disagreement between the parties hereto as to any facts or as to the happening of any contemplated event precedent to such action. The parties hereto, other than the Escrow Agent, further agree to pursue any redress or recourse in connection with such a dispute, without making the Escrow Agent a party to the same.
- (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 Contractors, their successors, or assigns, notwithstanding that such writ, order, judgment or decree be subsequently reversed, modified, annulled, set aside, or vacated.
- (12) Any bank, 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 or 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.
- (17) This Agreement may be executed in any number of counterparts, and by each of the parties on separate counterparts, each of which, when so executed, shall be deemed an original, but all of which shall constitute but one and the same instrument. Delivery of any executed counterpart of this Agreement by facsimile shall be equally as effective as delivery of a manually executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by facsimile also shall deliver a manually executed counterpart of this Agreement, but failure to deliver a manually executed counterpart shall not affect the validity, enforceability or binding effect of this Agreement.
- (18) The Escrow Agent agrees to accept and act upon instructions or directions pursuant to this Agreement sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that the Owner shall provide to the Escrow Agent an incumbency certificate listing the names of the individuals who are designated and authorized to sign for the Owner or in the name of the Owner, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If the Owner elects to give the Escrow Agent e-mail or facsimile instructions (or instructions by a similar electronic method) and the Escrow Agent in its discretion elects to act upon such instructions, the Escrow Agent's understanding of such instructions shall be deemed controlling. The Escrow Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Escrow Agent's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Owner agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Escrow Agent, including without limitation the risk of the Escrow Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.
- (19) Any notice, consent or request to be given in connection with any of the terms or provisions of this Agreement shall be in writing and be given in person, by facsimile transmission, courier delivery service or by mail, and shall become effective (a) on delivery if given in person, (b) on the date of delivery if sent by facsimile or by courier delivery service, or (c) four business days after being deposited in the mails, with proper postage for first-class registered or certified mail, prepaid.

Until notified in writing by the appropriate party of a change to a different address, notices shall be addressed as follows:

(i) if to the Owner:

Wright State University
3640 Colonel Glenn Hwy
Dayton, Ohio 45435
Attention: William A. Batelle
Fax Number: 937-775-3513

(ii) if to the Escrow Agent:

The Bank of New York Trust Company, N.A.
6525 W. Campus Oval, Suite 200
New Albany, Ohio 43054
Attention: Corporate Trust
Fax Number: 614-775-5636

- (20) The Owner and the Contractors hereby acknowledge that the Escrow Agent is subject to federal laws, including the Customer Identification Program (CIP) requirements under the USA PATRIOT Act and its implementing regulations, pursuant to which the Escrow Agent must obtain, verify and record information that allows the Escrow Agent to identify the Owner and the Contractor. Accordingly, prior to opening an Account hereunder the Escrow Agent will ask the Owner and the Contractor to provide certain information including, but not limited to, their names, physical addresses, tax identification numbers and other information that will help the Escrow Agent to identify and verify their identity, such as organizational documents, certificate of good standing, license to do business, or other pertinent identifying information. The Owner and the Contractor agree that the Escrow Agent cannot open an account hereunder unless and until the Escrow Agent verifies their respective identities in accordance with its CIP.
- (21) Each party hereto hereby agrees not to elect a trial by jury of any issue triable of right by jury, and waives any right to trial by jury fully to the extent that any such right shall now or hereafter exist with regard to this Agreement, or any claim, counterclaim or other action arising in connection herewith. This waiver of right to trial by jury is given knowingly and voluntarily by each party, and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue.

(22) This Agreement contains the entire agreement of the parties with respect to the transactions contemplated hereby and supersedes all prior written and oral agreements, and all contemporaneous oral agreements, relating to such transactions.

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

Wright State University

Address: 3640 Colonel Glenn Hwy
Dayton, Ohio 45435

By: *P. Jeffrey Ulliman*
Jeffrey Ulliman
University Controller
937-775-3154

By: *Matthew Filipic*
Matthew Filipic
Vice President for Business and Fiscal Affairs
937-775-2246

The Bank of New York Trust Company, N.A.

Address: 6525 W. Campus Oval, Ste 200
New Albany, Ohio 43054

By: *Sue Tilton*
Sue Tilton
Assistant Vice President
614-775-5291

RETAINANGE ESCROW AGREEMENT

EXHIBIT A _____

[If more than one contractor, please attach additional Exhibits, e.g. A-1, A-2, etc.]

Contractor: _____

Address _____

Tax ID No.: _____

I have read the Retainage Escrow Agreement between the Owner and Escrow Agent, and I agree to the designation of The Bank of New York Trust Company, N.A. as the Escrow Agent and the terms of that Agreement.

Signature

Title

Date: _____

Project Name: _____

Project No.: _____

Contract No.: _____

The Escrow Deposit is equal to 8% of labor invoiced through the Application for Payment which shows the contract completion at 50% or greater.

[Exhibit B]

Schedule of Fees for Retainage Escrow Services

THE BANK OF NEW YORK TRUST COMPANY, N.A.

Upon Appointment of The Bank of New York Trust Company, N.A. ("BNY") as Escrow Agent, the Owner shall be responsible for the payment of the fee and charges as set forth in this Fee Schedule.

ANNUAL ADMINISTRATION FEE: \$ 2,000.00

The Escrow Agent shall be paid from the income on amounts held pursuant to this Agreement. The annual fee will be deducted in even monthly withdrawals divided proportionally among the contractor accounts.

• The annual administration fee includes the below listed items, as applicable.

- Initial Account Set-up
- Routine Escrow Administration
- Statements of Account to Owner and Contractor
- Asset Principal & Income Collection
- Processing of Cash Receipts and Disbursements

INVESTMENT FEES:

With respect to investments in money market mutual funds, the investment maintenance fee will be calculated at an annual rate of 0 basis points on average total monthly account balances. With respect to investments in money market mutual funds for which BNY provides shareholder services, BNY (or its affiliates) may also receive and retain additional fees from the mutual funds (or their affiliates) for shareholder services as set forth in the Authorization and Direction to BNY to Invest Cash Balances in Money Market Mutual Funds

MISCELLANEOUS FEES: By Appraisal

The fees for performing extraordinary or other services not contemplated at the time of the execution of the transaction or not specifically covered elsewhere in this schedule will be commensurate with the service to be provided and will be charged based on an appraisal of the services to be performed. These extraordinary services may include, but are not limited to, supplemental agreements, unusual releases and the preparation of special reports. Counsel, accountants, special agents and others will be charged at the actual amount of fees and expenses billed.

CUSTOMER NOTICE REQUIRED BY THE USA PATRIOT ACT:

- To help the US government fight the funding of terrorism and money laundering activities, US Federal law requires all financial institutions to obtain, verify, and record information that identifies each person (whether an individual or organization) for which a relationship is established.

- What this means to you: When you establish a relationship with BNY, we will ask you to provide certain information (and documents) that will help us to identify you. We will ask for your organization's name, physical address, tax identification or other government registration number and other information that will help us to identify you. We may also ask for a Certificate of Incorporation or similar document or other pertinent identifying documentation for your type of organization.

- We thank you for your assistance.

Accepted By:

Signature: P. Jeffrey Ulliman

Name: Jeffrey Ulliman

Title: University Controller

For BNY:

Sue Tilton

Sue Tilton

Assistant Vice President

Signature: Matthew Filipic

Name: Matthew Filipic

Title: Vice President for Business and Fiscal Affairs

Date: 8/28/07