

## Tender and Release Agreement

THIS AGREEMENT, by and between CAPITOL INDEMNITY CORPORATION (hereinafter referred to as "Surety") and THE CITY OF ORLANDO, FL (hereinafter referred to as "Obligee").

WITNESSETH:

WHEREAS, Crusader Contracting, Inc. ("Principal") entered into a Contract Agreement ("Contract") with Obligee to furnish Demolition Services and Site Reconstruction at the "Round Building" - Orlando, FL, pursuant to RFP 14-0239 (the "Project"), and in connection with which Contract Principal and Surety executed and delivered to Obligee Payment and Performance Bonds #60102046, which bonds were in the full amount of said Contract; and

WHEREAS, Obligee formally terminated such Contract via letter dated March 17, 2015 and called upon the Surety to perform its obligations under the Performance Bond; and

WHEREAS, Surety sent out a Project Completion Package, with subsequent Addenda, to solicit bids from local contractors for the completion of the Project. Surety also provided Project Completion Package and all Addenda to Obligee at the same time they were sent to bidders; and

WHEREAS Surety and obligee determined the most responsive bid was submitted by Pece of Mind Environmental ("Completing Contractor"), and tendered its Bid Cover Letter and Form of Proposal to Obligee for its use; and

WHEREAS, The Project Completion Package arranged for Obligee to enter into a new contractual agreement with Completing Contractor ("Completion Contract"), under which Completing Contractor will complete all of the work to be performed under the Completion Contract, will warrant all work for the Demolition Services and Site Reconstruction, and will furnish to Obligee payment and performance bonds guaranteeing Completing Contractor's performance under the Completion Contract; and

WHEREAS, Surety has agreed to make payment to Obligee in the amount of \$663,894.66 as a cash settlement of Obligee's previous, current, and future (known or unknown) claims against the Performance Bond furnished by Surety, which amount shall be paid to Obligee upon the execution of this Tender and Release Agreement and the return of the original Performance Bond; and

WHEREAS, the tender proposal and cash settlement offer is acceptable to Obligee, and the parties desire to document the terms of such agreement as set forth herein:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, THAT: The foregoing recitations are correct and are made a part hereof, and for and in consideration of the sum of \$663,894.66, to it in hand paid by Surety, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Obligee does hereby expressly acknowledge Surety's FULL AND COMPLETE discharge of all obligations under its Performance Bond #60102046, and does hereby RELEASE, ACQUIT and **FOREVER DISCHARGE** Surety and its successors and assigns of and from any and all claims, rights, demands and/or causes of action of whatever kind or nature which Obligee **has or may ever claim to have, now or in the future**, against Surety, under and/or by reason of Surety's Performance Bond furnished to Obligee for the Project; and

For the aforementioned consideration, Obligee by these presents does hereby assign unto Surety, its successors and assigns, any and all rights, demands, claims and/or causes of action which Obligee has against Principal arising out of, as a result of, and/or on the basis of the default and breach by Principal of the Contract for the Project, and Obligee gives Surety, its successors and assigns, full power and authority for its own use and benefit, but at its own cost, to ask, demand, collect, receive, compound and/or release,

and in its name or otherwise, to prosecute and withdraw any claims, suits or proceedings at law or in equity as against Principal, in its efforts to obtain recovery upon its rights under said assignment; and For and in consideration of the foregoing Release, Surety does hereby agree to make and hereby delivers payment to Obligee in the amount of \$663,894.66, simultaneously with the execution and delivery of this Tender and Release Agreement, along with the return of its original Performance Bond; and Surety acknowledges and agrees that its payment bond previously furnished for said Project shall remain in full force and effect in accordance with its original terms, except that it is expressly agreed by and between Surety and Obligee that the scope and coverage of said payment bond shall be limited to and shall only apply to claims for payment of subcontractors and suppliers of Principal, for work performed and/or materials delivered prior to the date of termination, and that said payment bond shall not apply to or cover the Completing Contractor or any of its subcontractors and suppliers, for any work performed and/or materials delivered after the date hereof; and

This Tender and Release Agreement shall extend to and be binding upon the Parties hereto, and their respective successors, assigns and privies.

In any action related to or arising from the terms of this Tender and Release Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred to enforce or defend its rights under this Tender and Release Agreement.

No amendment, modification, termination or waiver of any provision of this Tender and Release Agreement or consent to any departure from the terms hereof, shall in any event be effective unless the same shall be in writing and signed by the Party against whom enforcement of the amendment, modification, termination or waiver is sought.

This Tender and Release Agreement shall be construed and interpreted in all respects in accordance with, and governed by the laws of the State of Florida. Any litigation arising from this Tender and Release Agreement shall be had in a court of proper jurisdiction in the State of Florida, which shall have exclusive jurisdiction over any matters or issues arising therefrom.

**THE CITY OF ORLANDO, FLORIDA**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_ §

§

COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, on this date personally appeared \_\_\_\_\_, known to me to be the person and agent subscribing hereinabove on behalf of The City of Orlando, who upon oath acknowledged to me that he is duly authorized to execute the above and foregoing Release Agreement on behalf of The City of Orlando, that he has read the foregoing Release Agreement, and that he has executed the same on behalf of The City of Orlando for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
NOTARY PUBLIC,  
In and For the State of \_\_\_\_\_

My Commission Expires:

