

TENDER AND RELEASE AGREEMENT

This Tender and Release Agreement (the "Agreement") is made and entered as of the Effective Date by and between the City of Hollywood ("Obligee") and Great American Insurance Company ("Surety"). (Obligee and Surety are sometimes individually referred to herein as a "Party" and sometimes collectively referred to herein as the "Parties").

RECITALS

A. Structural Integrity Contractors, Inc. ("Principal") entered into a contract dated March 1, 2017, as amended by subsequent modifications and/or change orders (the "Contract"), with Obligee to furnish certain labor and material and perform work on a construction project referred to as Project No. PK-14-053, Van Buren Parking Garage – Structural Defects Surevy & Repairs (the "Project").

B. Surety issued a Performance Bond (the "Performance Bond") and a Payment Bond (the "Payment Bond"), both numbered 4039891 and each in the penal sum of \$219,833.00, in connection with the Project naming Principal as principal and Obligee as obligee (collectively, the "Bonds").

C. The Original Sum of the Contract totaled \$219,833.00. There have been 4 agreed upon Change Orders that changed the Contract amount to \$306,388.00.

D. Pursuant to the Contract, Obligee paid Principal \$254,266.73, leaving a contract balance of \$52,121.27 currently held by Obligee (the "Contract Balance").

E. On or about March 5, 2018, Obligee notified Principal by written letter that Principal was in breach of and had defaulted under the Contract, and thereafter began to pursue Surety under the terms of the Performance Bond.

F. Surety has tendered to Obligee a completion contractor, PRM Engineering & Contracting Inc. ("Completion Contractor"), and arranged for Obligee to enter into a contract with Completion Contractor ("Completion Agreement"), under which Completion Contractor will:

- (1) complete all of the work to be performed under the Contract associated with the Project for the lump sum price of \$137,976.50.
- (2) satisfy all of the obligations of Principal under the Contract, and
- (3) furnish to Obligee payment and performance bonds to guarantee Completion Contractor's performance of the Completion Agreement.

G. Surety has agreed to pay Obligee \$85,855.23, which represents the difference between the Contract Balance and Completion Contractor's lump sum price, as a cash settlement of Obligee's claims asserted against the Performance Bond ("Surety Payment").

H. The tender proposal and Surety Payment are acceptable to Obligee and the Parties desire to document the terms of such agreement as set forth herein.

In consideration of the agreements and undertakings set forth below and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

TERMS OF AGREEMENT

1. Recitals. The Recitals set forth above are true and correct and incorporated into this Agreement.

2. Contract Balance. Obligee represents and acknowledges that the sum of \$52,121.27 is the unpaid Contract Balance as of the Effective Date.

3. Project administration. Administration and inspection of the Project will remain with Obligee and its agents/engineers and inspectors in accordance with the terms of the Contract.

4. Work performed by Principal. Obligee agrees that, as of the Effective Date, all work performed on and materials incorporated into the Project by Principal are in accordance with the Contract and acceptable to Obligee, except for latent defects in the Work, if any, of which Obligee is not currently aware.

5. Entry Into Completion Contract. Obligee will finalize and enter into a contract with the Completion Contractor for the completion of the Project in compliance with the "Contract Documents", as defined herein, within fourteen (14) working days from the date of this Agreement for a Completion Price of \$137,967.50, subject to adjustments as provided herein. As used in this Agreement, the term "Contract Documents" means: (i) the Completion Contract, (ii) to the extent applicable, the completion bid package and all of the bid documents described in the completion bid package; (iii) the Completion Contractor's Bid Proposal dated April 12, 2018; (iv) Obligee's Original Contract with Principal, including all drawings, specifications, forms, addenda and documents forming a part of the Original Contract, and any modifications to the Original Contract, and (v) this Agreement.

6. Obligee's release of Surety. In consideration of the Surety Payment of \$85,855.23, paid to Obligee by Surety, and the other good and valuable consideration described herein, Obligee hereby expressly RELEASES, ACQUITS, and FOREVER DISCHARGES Surety and its successors, agents, attorneys, representatives, officers, directors, shareholders and assigns of and from any and all claims, rights, demands, and/or causes of action of whatsoever kind or nature which Obligee has or may ever claim to have, now or in the future, against Surety: (a) under the Performance Bond, (b) for statutory or common law "bad faith" against Surety that relate to the manner or timeliness in which Surety reviewed, handled, investigated, or settled City's claim(s) against Surety, and (c) claims arising under chapter 624 or 626, *Florida Statutes*, that relate to City's claim against the Bond, regardless of when any of such claim(s) arose or accrued, or (d) in any way relating to the Project ("Release of Surety"); provided, however, that it is expressly understood and agreed by the Parties that the Release of Surety does not release:

(a) Surety's obligations for any latent defects in Principal's labor, services, or materials (but not Completion Contractor's labor, services, or materials) discovered after the date of this Agreement, and

(b) Surety's obligations for any timely and proper claims against the Payment Bond.

7. Surety's payment to Obligee. For and in consideration of the Release of Surety, Surety does hereby agree to make payment to Obligee in the amount of \$85,855.23, within 14 days of this Agreement.

8. Obligee's assignment of claims against Principal. For the aforementioned consideration, Obligee hereby assigns and sets over to Surety, its successors, and assigns any and all rights, demands, claims, and/or causes of action that Obligee any and all rights, demands, claims and/or causes of action that Obligee has or may have against Principal arising out of, as a result of, and/or on the basis of the default and breach by Principal of the Original 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, in Surety's sole and absolute discretion, 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.

9. No Enlargement of Surety's Obligations Under the Bond. Nothing contained in this Agreement shall be deemed to enlarge Surety's obligations under the Performance Bond and, Obligee acknowledges an express reduction in the penal sum of the Performance Bond in the amount of the payments Surety has expended in under this agreement.

10. Continued Effect of Surety's Payment Bond. Surety acknowledges and agrees that its Payment Bond shall continue to remain in full force and effect in strict accordance with its terms. Unless required by law, Obligee acknowledges that it is not authorized to and agrees not to make any representations or promises regarding payment to suppliers and/or subcontractors, and Obligee shall refer all inquiries from suppliers and/or subcontractors with respect to payment to Surety. Surety shall have the right to settle, compromise, defend, appeal, pay, or dispute such claims as it, in its sole and complete discretion, may deem appropriate in accordance with the terms of the Payment Bond and applicable law.

11. Notices. All notices sent in accordance with the Contract or this Agreement shall be sent to the Party to receive such notice at the addresses set forth below or to such other address as either Party may specify in writing, and shall be presumed to have been given three (3) calendar days after mailing, provided mailing was by certified mail, with a copy transmitted by electronic mail, addressed to the intended recipient at its address set forth below:

Surety:

Great American Insurance Company
Brandon Tabor
301 East Fourth St., 24th Floor
Cincinnati OH 45202

With a copy to:

Brett D. Divers, Esq.
Mills Paskert Divers
100 North Tampa Street, Suite 3700
Tampa, Florida 33602

Obligee:

Department of Development Services
City of Hollywood Florida
2600 Hollywood Boulevard
Hollywood, FL 33021
Attn: Terrence Comiskey A.I.A.

With a copy to:

Office of the City Attorney
City of Hollywood Florida
2600 Hollywood Boulevard
Hollywood, FL 33021
Attn: Debra Reese, Esq.

12. Reservation of rights. By this Agreement, Surety does not waive Principal's rights, if any, to contest the validity of the default or as to any other matter, rights, claims or defenses (whether related to the Project or not) that Principal may have against any person, firm or entity including, without limitation, Obligee. Moreover, nothing in this Agreement shall be deemed to waive, alter, limit, modify or abridge any of Surety's rights, claims or defenses (whether related to the Project or not) against any person, firm or entity (including, without limitation, Obligee) under the Bond, the law, agreements of indemnity, or otherwise. Surety's reservation of rights expressly includes the right of Surety to pursue as its own any matter, right, claim or defense of Principal. All of the rights, claims and defenses referenced in this paragraph are expressly reserved.

13. Continued effect of Indemnity Agreement. The February 12, 2016 Agreement of Indemnity ("Indemnity Agreement") between Surety and Principal (and certain individuals identified therein), and any amendments or modifications thereto, remain in full force and effect, and nothing in this Agreement shall be deemed to waive, alter, limit, modify, or release any of Surety's rights, claims, defenses or anything whatsoever under such Indemnity Agreement.

14. No Third Party Beneficiaries. This Agreement is solely for the benefit of the Parties. The Parties do not intend by any provision of this Agreement to create any rights in favor of any person or entity other than the Parties. Further, the Parties acknowledge and agree that nothing in this Agreement is intended to or shall be construed to grant or expand any rights of any third-party claimants or the liabilities or obligations of Surety under the Bonds or waive or alter any available defense or limitation against any third-party claims.

15. General Provisions.

(a) This Agreement constitutes the entire Agreement and understanding of the Parties hereto relating to the subject matter hereof, and shall supersede all prior or contemporaneous agreements, understandings, representations, and warranties, whether written or oral, relating to the subject matter hereof. Each of the Parties acknowledges that the other Party, or anyone acting on behalf of the other Party has made no representations, inducements, promises, or agreements, orally or otherwise, unless such representations, inducements, promises, or agreements are embodied in this Agreement.

(b) The Parties, together with their respective attorneys if any, participated in the drafting and preparation of this Agreement. Therefore, this Agreement shall not be construed in favor of or against any Party on the basis that any such Party did or did not participate in the drafting of this Agreement.

(c) Each Party hereto expressly warrants that it has the necessary authority to execute this Agreement and that each signatory hereto has authority to execute this Agreement on behalf of the respective named Party.

(d) This Agreement and the respective rights and obligations of the Parties shall inure to the benefit of and be binding upon the successors and assigns of the Parties.

(e) This Agreement shall be governed by the laws of the state of Florida. The prevailing party in any arbitration, mediation, or litigation arising out of this Agreement shall be entitled to recover from the non-prevailing party its attorneys' fees incurred therein and on appeal therefrom.

(f) The Effective Date of this Agreement is the date of the last signature below.

(g) Facsimile and electronic signatures may be treated as originals for all purposes. The Parties agree to bear their own attorneys' fees and costs incurred in all matters that led to the entry of this Agreement.

(h) This Agreement shall not in any way be amended or modified without the written consent of both Parties.

(i) The Parties agree to bear their own attorneys' fees and costs incurred in all matters that led to the entry of this Agreement.

(j) If any provision or term of this Agreement is deemed to be illegal or unenforceable in any respect, such provision or term shall not affect any other provision or

