

**MUTUAL RELEASE BETWEEN THE BOARD OF EDUCATION OF LIBERTYVILLE
SCHOOL DISTRICT NO. 70 AND TOWER CONTRACTING, LLC**

THIS AGREEMENT is entered into this ____ day of June 2019, by and among the Board of Education of Libertyville School District No. 70, Lake County, Illinois (the “Board”) and Tower Contracting, LLC (“Tower”) (collectively referred hereto as “the Parties”) (the “Agreement”).

WHEREAS, on or about March 24, 2016, the Board and Tower entered into a contract (the “Contract”) whereby Tower agreed to serve as the contractor for a construction project involving an addition and related capital improvements for the benefit of the Board, including, but not limited to, improvements to the Copeland Manor School (the “Project”); and

WHEREAS, Tower is an Illinois corporation that provides construction services; and

WHEREAS, on or about April 26, 2018, the Board issued a 7-day notice of default to Tower and to Great American Insurance Company, as Tower’s surety for the project per Performance Bond Number CA4263752;

WHEREAS, the Board contends that multiple portions of the Project were not completed by Tower in accordance with the terms and specifications of the Contract including but not limited to work on the parking lot, concrete sidewalk, paved sidewalk, landscaping, and catch basin;

WHEREAS, Tower claims that it is entitled to further payment from the Board for the Project, and the Board disputes Tower’s entitlement to further payment due to the Board’s claims that Tower is in default under the Contract;

WHEREAS, on or about October 30, 2018, the Board’s architect, as initial decision maker under the Contract, approved the Owner’s claims for a credit to the Contract totaling \$170,138.80; and

WHEREAS, the Parties now wish to resolve, fully and finally, all disputes.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals.** The recitals set forth above are incorporated in this Agreement as if set forth therein.
2. **Final Change Order and No Further Payment.** Tower agrees to execute the change order for the Project and Contract, attached to this Agreement as **Exhibit A.** Tower further agrees to accept change order amount of \$95,154.00, and to a corresponding reduction to the Contract Sum, resulting in a new Contract Sum of \$5,289,576.82, as set forth on **Exhibit A.** Tower further agrees that it is not entitled to any further payment from the Board related to the Project or Contract.

3. **Performance Bond Default Notice.** The Board agrees to withdraw the notice of default it issued to Great American Insurance Company.
4. **General Release of Claims by Tower.** In consideration for the promises described in this Agreement, Tower and its affiliates, subsidiaries, parents, agents, heirs, successors, and assigns (collectively, “Releasers”) do forever release, discharge, and covenant to hold harmless the Board and any of its past, present or future, Boards, Board members, officers, employees, agents, architects, attorneys, representatives, consultants, and insurers, and their agents, heirs, administrators, executors, successors, and assigns (collectively, “Releasees”), from any and all claims, known or unknown, including but not limited to claims for payment, demands, costs, expenses, loss of services, actions and causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, agreements, promises, damages, judgments, executions, and fees (including attorney’s fees), whatsoever, in law or in equity, arising out of any act or occurrence up to the present time.
5. **Limited Release of Claims by Board.** In consideration for the promises described in this Agreement, the Board does forever release, discharge, and covenant to hold harmless Tower from any further claims to Contract credits or performance of work related to the items set forth in the Board’s architect’s decision letter dated October 30, 2018, attached hereto as **Exhibit B**. The Board does not release or waive, and hereby expressly reserves its right to assert against Tower, any future claims it may discover related to the Project or the Contract.
6. **Amendments/Modification.** No subsequent alteration, amendment, change, addition, deletion, or modification to this Agreement shall be binding upon the Parties unless reduced to writing and duly authorized and signed by each of them.
7. **Entire Agreement.** This Agreement sets forth all of the promises, agreements, conditions, and understandings between the Parties relative to the subject matter hereof and no other promises, agreements, or understandings, whether oral or written, expressed or implied, exist between the Parties. This Agreement constitutes the entire agreement and understanding of the Parties and supersedes all prior negotiations and/or agreements, proposed or otherwise, written or oral, concerning the subject matter hereof.
8. **Execution.** This Agreement may be executed in multiple counterparts, and a set of counterparts bearing the signatures of each Party shall constitute the Agreement as fully as if the Parties had signed a single document. The Parties shall accept facsimile or electronic copies of this Agreement as if original copies.
9. **Severability.** Should any provision of this Agreement be declared illegal by a court of competent jurisdiction, then said provision shall be deleted from this Agreement to the extent that it violates the law, and the remaining provisions in this Agreement shall remain in full force and effect so long as the Parties’ intent in entering into this Agreement can still be met.

10. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois, notwithstanding its choice of law provisions. Any claim to enforce the terms and conditions of this Agreement shall be brought in the Circuit Court of Lake County, Illinois, or the U.S. District Court, Northern District of Illinois, Eastern Division.

11. **Effective Date.** This Agreement is effective upon execution by all Parties.

IN WITNESS WHEREOF, the Parties have signed this Agreement on the ____ day of June 2019.

**BOARD OF EDUCATION OF
LIBERTYVILLE SCHOOL
DISTRICT NO. 70,
LAKE COUNTY, ILLINOIS**

TOWER CONTRACTING, LLC

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

ATTEST:

ATTEST:

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____