

RELEASE AND SETTLEMENT AGREEMENT

1. This Release and Settlement Agreement is made by TLT Construction Corp. ("TLT") and the Town of Reading, Massachusetts, acting by and through its School Committee (the "Town"), each acting on its own behalf and on behalf of its employees, agents, administrators, predecessors, successors, assigns, legal representatives and attorneys, respectively, and who are referred to herein individually as a "Party" or collectively as the "Parties."
2. For and in consideration of the sum of Six Million Dollars (\$6,000,000.00) in good funds (the "Settlement Payment") and other good and valuable consideration, and upon transfer of the Settlement Payment pursuant to this Agreement, TLT hereby forever releases and discharges the Town, its officials, employees, agents, predecessors, successors, assigns, legal representatives, insurers and attorneys of and from any and all claims, actions, liability, causes of action, grievances, suits, demands, liens, including attorneys' liens, controversies and proceedings, for damage, compensation, benefits, costs, losses, claims under G.L. c.93A, expenses, attorneys' fees, declaratory relief and relief arising out of economic injury, property damage and injury, violation of federal or state civil rights, breach of contract, negligence and liabilities in law and equity, whether known or unknown (collectively, "claims"), including all claims alleged or which could have been alleged in, or arising out of, the action entitled TLT Construction Corp. v. Town of Reading, Middlesex Superior Court Civil Action No. 07-04549, and including any claims alleged or which could have been alleged on account of or in connection with matters relating to the action entitled TLT Construction Corp. v. Harleysville Worcester Insurance Company v. Town of Reading, Middlesex Superior Court Civil Action No. 07-

05072 and the resolution thereof by means of that certain Settlement Agreement and General Mutual Release dated May, 2013, or any appeals arising therefrom (singularly and collectively, the "Civil Action"), and arising out of, resulting from or relating to the construction project known as "Additions and Renovations to Reading Memorial High School" (the "Project") and the contract therefor between TLT and the Town dated as of April 16, 2004 (the "Contract").

3. For and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and upon transfer of the Settlement Payment as provided for below, the Town hereby forever releases and discharges TLT, its officials, employees, agents, predecessors, successors, assigns, sureties, legal representatives and attorneys of and from any and all claims, actions, liability, causes of action, grievances, suits, demands, liens, controversies and proceedings, for damage, compensation, benefits, costs, losses, claims under G.L. c.93A, expenses, attorneys' fees, declaratory relief and relief arising out of economic injury, property damage and injury, breach of contract, negligence and liabilities in law and equity, whether known or unknown (collectively, "claims"), including all claims alleged or which could have been alleged in the Civil Action, or any appeal arising therefrom, and arising out of, resulting from or relating to the Project and the Contract. The Town expressly retains any and all claims it may have against TLT and its sureties on the Project for indemnification or contribution for third-party claims asserted against the Town after the date of this Agreement by any person or entity for payment for any labor, services, goods, supplies, material or equipment furnished by, for or on behalf of TLT for or in connection with the Project or the Contract .

4. The Town and TLT each represent that it is not aware of any present or possible claims of subcontractors or suppliers or other persons for labor and/or materials provided for the Project; and TLT represents that it has paid or otherwise resolved all claims of subcontractors and suppliers for labor and/or materials provided for the Project, and TLT promises, covenants and agrees, on its behalf and on behalf of its legal representatives, assigns, successors and sureties, promptly to defend, indemnify, and hold harmless the Town against any and all causes of action, claims, demands, direct payment demands, liability, actions, damages of any kind or nature, costs, charges, losses, expenses and attorneys' fees, arising directly or indirectly from any claims for damages brought by any such subcontractor or supplier for unpaid contract balances or monies owed on the Project, whether arising under or by way of a direct payment demand or otherwise.
5. TLT represents that Western Surety Company has approved the settlement of the Civil Action in the manner provided for herein and consents to the release of funds by the Town, as evidenced by the Consent and Release of Western Surety Company, an executed copy of which is attached hereto as Exhibit A.
6. A portion of the Settlement Payment will be paid as against and on account of a change order to the Contract, reflecting sums payable by the Town on account of work performed under the Contract. TLT agrees that such change order may be a unilateral change order by the Town and shall be substantially in the form attached hereto as Exhibit B. The Town's Settlement Payment obligation under this Agreement shall be contingent upon receipt of the consent of the Project surety, XL Specialty Insurance Company, to the release of such payment, pursuant to paragraph 9.10 of the General Conditions of the Contract.

7. The undersigned represent and warrant that each has the right, capacity and all necessary authority to execute this Agreement on behalf of its respective party and to execute or cause the execution of the Stipulation of Dismissal, and represent and warrant that neither party has sold, assigned or transferred any of the claims referred to in paragraph No.'s 2 and 3 to any person or entity not identified herein.
8. The undersigned represent and warrant that each has had the opportunity to review this Agreement and has had the advice of counsel prior to executing this Agreement and that it executes this Agreement as its free act and deed.
9. This Agreement is subject to and contingent upon the effectiveness of the vote of the Reading Town Meeting to appropriate funds sufficient for payment of the Settlement Payment. The Town represents that a Special Town Meeting for such purpose has been called for November, 2016. The Settlement Payment is to be made by December 30, 2016, and will be made by the Town in accordance with written instructions delivered to the Town or the Town's counsel by Western Surety Company, or its counsel subject to consent thereto by counsel for TLT. Reimbursement to the Town of any portion or portions of the Settlement Payment amount by another party shall not be a condition of the Town's payment obligation under this Agreement.
10. Upon the making of the Settlement Payment the Parties will promptly file a stipulation of dismissal in the Civil Action, said stipulation providing for a final resolution and disposition of all claims referenced in the Civil Action, without costs or an award of attorneys' fees and with all rights of appeal waived, and to be in the form attached hereto as Exhibit C.
11. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective employees, agents, attorneys, officials, and sureties. No amendment,

modification, waiver or termination of this Agreement shall be binding unless executed in writing and signed by the Parties.

12. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and there are no inducements, representations, warranties, or understandings that do not appear within the terms of this Agreement.
13. This Agreement and the rights and obligations of the Parties hereunder shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to any conflict of laws principles.
14. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, with all counterparts constituting but one and the same instrument. The execution of this Agreement by any Party hereto will not become effective until counterparts hereof have been executed by all Parties.
15. If any provision of this Agreement shall be found invalid for any reason in a court of competent jurisdiction, such invalidity shall be construed as narrowly as possible, and the balance of this Agreement shall be deemed to be amended to the minimum extent necessary, so as to secure to the Parties the benefits thereof.

[signatures follow on next page]

Dated as of the ____ day of _____, 2016.

TLT Construction Corp.

By:

Witness

Printed Name: Thomas V. Kostinden
Title: president, duly authorized

Witness

Town of Reading,
By:

Printed Name:
Title: _____, duly authorized

EXHIBIT A
(Consent of Surety)

CONSENT AND RELEASE OF WESTERN SURETY COMPANY

Western Surety Company, a surety company licensed to do business in the Commonwealth of Massachusetts with a principal office at 333 South Wabash Avenue, Chicago, IL 60604, acting pursuant to the Stipulated Order on Motion to Amend Complaint entered on September 30, 2014 (the "Stipulated Order") in the civil action entitled Western Surety Company v. TLT Construction Corp. et al. and TLT Construction Corp. v. Town of Sutton, in the United States District Court for Massachusetts, Civil Action No. 1:13-CV-12804-DPW, and any other authority, hereby consents to the release and payment of funds by the Town of Reading Massachusetts (the "Town") in the total amount of Six Million Dollars (\$6,000,000) (the "Settlement Payment") in connection with the settlement and resolution of the civil action pending in the Massachusetts Superior Court entitled TLT Construction Corp. v. Town of Reading, Middlesex Superior Court Civil Action No. MICV2007-04549 (the "Civil Action") filed by TLT for claims arising out of the construction project known as "Additions and Renovations to Reading Memorial High School" (the "Project") and the contract therefor between TLT and the Town dated as of April 16, 2004, such release and payment of funds to be in accordance with written instructions delivered to the Town or the Town's counsel by Western Surety Company, or its counsel, and as consented to by counsel for TLT; AND

Western Surety Company, for good and valuable consideration, including the said payment by the Town, the receipt and sufficiency of which are hereby acknowledged, hereby forever releases and discharges the Town, its officials, employees, agents, predecessors, successors, assigns, insurers, legal representatives and attorneys of and from any and all claims, actions, liability, liens, and proceedings on account of or arising out of the Project, the Civil Action, the Stipulated Order and/or the Town's payment of the Settlement Payment as consented to herein; and warrants and covenants to the Town that the person signing this Consent and Relief on its behalf has full authority to do so.

DATED: DEC. 6, 2016

WESTERN SURETY COMPANY

By



Name: Raymond P. Johnson

Title: CLAIMS DIRECTOR

Duly authorized

EXHIBIT B
(Change Order)

DRAFT

CHANGE ORDER

Project Additions and Renovations to Reading Memorial High School
Date of Issuance ___/___/16
To TLT Construction Corp., Contractor
Contract Date 4/16/04

Change Order # 63

The contract is changed as follows:

Site Work and Related Items			
COR860	Redesign of handicap ramp	\$80,619.34	
COR847	Taller retaining wall	\$34,106.18	
COR823R	Additional trench drain	\$30,000.00	
COR830	Changes in drainage already installed	\$12,140.54	
COR858 and CCD10	Work on abutter's driveway	\$45,691.42	
COR851	Overtime for misc. change orders	\$25,380.27	
COR842	Electrical wiring for weather station omitted from contract docs	\$1,041.80	
COR856	Repair of sidewalks damaged after installation	\$136,877.78	
			\$365,857.33
Asbestos Abatement Work			
Design, Monitoring, Testing	IEG (Contractor's consultant) monitoring, management, testing and EFI Global (consultant) indoor testing	\$12,136	
Asbestos Disposal	Hauling and disposal of unforeseen asbestos	\$243,551.78	
Asbestos Abatement Plan for DEP	Additional requirements for abatement subcontractor, ECSI, for removal and abatement operations, per state protocols and DEP	\$125,066.50	
ACM vs. non-ACM	Segregation and stockpiling of building materials by demolition subcontractor, Kidder Building & Wrecking	\$115,889.14	
Loss of recycled material	Inability to reuse demolished building materials on site because of unforeseen asbestos	\$33,698.28	
Overhead and profit	On above, per contract	\$82,202.96	
			\$612,544.66

Track			
COR412	Additional asphalt to increase pitch for drainage	\$14,600.00	
			\$14,600.00
Project Schedule and Phasing			
COR624	Overtime of subcontractors and profit to TLT to deliver auditorium space early to accommodate Nov. 2006 Town Meeting	\$48,859.00	
COR732	Temporary egress from auditorium to accommodate early occupancy for Town Meeting	\$1,125	
COR733	Layout and cleanup for temporary exterior egress for auditorium to accommodate early occupancy for Town Meeting	\$13,475	
COR773	Extra cleaning to deliver auditorium early for Town Meeting	\$13,406.70	
COR552	Electrical subcontractor, Griffin Electric, additional time costs, all as accepted in COs 41-51	\$48,600	
COR712	Extension of builder's risk insurance from 10/1/06 to 12/28/06, actual date of substantial completion of Phase 2	\$4,798.88	
COR746	Paving of temporary egress gravel pathway adjacent to auditorium, as required by Building inspector	\$19,298.49	
COR753	Chain link fence to keep public away from construction work, required by Building inspector required; work under ASI 174	\$4,004.67	
			\$153,567.74

Total \$1,146,569.73

The Original Contract Sum was: \$44,871,700.00
Net change by previously authorized Change Orders*: \$2,818,920.27
Previously authorized Contract Sum prior to this Change Order was: \$47,690,620.30
The Contract Sum will be increased by the amount of: \$1,146,569.73
The new Contract Sum including this Change Order will be: \$48,837,190.03
The Contract Time will be (increased) (decreased) (unchanged) by: 199 days

* See note on following page

Issued by Owner, per agreement
with and as consented to by
Contractor, TLT Construction
Corp.
Town of Reading

Signature

***NOTE:** Such Change Orders include: Change Order 56 (credit amount of 284,439.00 for corrective work costs incurred by Town for track) and Change Order 57 (credit amount of 264,236.00 for deletion from Contract of stadium lights work previously added to Contract under Change Orders 49 and 53). The Change Order 56 credit amount is deemed adjusted to 255,995 and the Change Order 57 credit amount is deemed adjusted to 259,605.50, per ruling of the Special Master in Middlesex Superior Court Civil Action No. 07-04549, TLT Construction Corp. v. Town of Reading.

Change Orders 55 (credit amount of \$80,015.30 for Owner additional costs), 58 (credit amount of \$135,006.30 for Owner additional costs related to time of completion) and 61 (credit amount of \$108,017.58 for Owner additional costs related to time of completion and HVAC work items) are each deemed adjusted to zero, per ruling of the Special Master in Middlesex Superior Court Civil Action No. 07-04549, TLT Construction Corp. v. Town of Reading.

The Change Orders do not include the following Construction Change Directives, issued by Owner as credits for corrective and completion site work items and determined by the Special Master to be valid in the following amounts: CCD 22R – \$186,112, CCD 27 – \$34,431, CCD 26 – \$63,959.

EXHIBIT C
(Stipulation of Dismissal)

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT DEPT.
C.A. NO. 07-04549D

TLT CONSTRUCTION CORP.,
Plaintiff and Defendant-in-Counterclaim,

v.

TOWN OF READING,
Defendant and Plaintiff-in-Counterclaim.

**STIPULATION OF DISMISSAL
WITH PREJUDICE**

Now come the parties to the above entitled action and stipulate and agree,
pursuant to Mass. R. Civ. P. 41 (a)(1)(ii), that this action shall be dismissed with
prejudice and without costs, and with all parties waiving any and all rights of appeal.

DATED:

TLT CONSTRUCTION CORP.
By its attorney

TOWN OF READING
By its attorney

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