

CITY CLERK
ORIGINAL

C-10943
06/02/2016

HOLD HARMLESS AGREEMENT

This Hold Harmless Agreement ("Agreement") is entered into and effective between the CITY OF GLENDALE, an Arizona municipal corporation ("City") and Kowalski Construction, Inc, an Arizona Corporation, dba 1-800-Boardup ("Boardup") as of the 2 day of JUNE, 2016 ("Effective Date").

RECITALS

- A. City intends to use real property improvements in and around the City offered by Boardup for the benefit of Fire Department training (the "Project");
- B. Boardup desires to provide City with opportunities for training exercises at buildings scheduled to be demolished ("Services") consistent with industry-best practices, in order to complete the Project; and
- C. City and Boardup desire to memorialize their agreement with this document.

AGREEMENT

The parties hereby agree as follows:

- 1. **Term.** This Agreement terminates one (1) year from the effective date.
 - 1.1 Option to Extend the Term of the Agreement. City may extend the term of this contract for one (1) year by providing written Notice to Boardup at least 30 days before the contract expires. If City exercises this option, the extended agreement shall be considered to include this option provision. The total duration of this contract, including the exercisc of any options under this clause, shall not exceed five (5) years.
- 2. **Boardup's Work.**
 - 2.1 Standard. Boardup must perform Services in accordance with the standards of due diligence, care, and quality prevailing among emergency construction services having substantial experience with the successful furnishing of Services for projects that are equivalent in size, scope, quality.
 - 2.2 Stipulation. Boardup certifies it will follow all local, state and federal requirements related to the inspection for and handling of asbestos containing materials at the Project. Boardup agrees to follow all local, state and federal requirements in making the property lead-safe.
 - 2.3 Licensing. Boardup warrants that:
 - a. Boardup currently holds all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of Services ("Approvals"); and
 - b. Boardup has not been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment").
 - (1) City is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments, or to examine Boardup's contracting ability.
 - (2) Boardup must notify City immediately if any Approvals or Debarment changes during the Agreement's duration. The failure of the Boardup to notify City as required will constitute a material default under the Agreement.
- 3. **Indemnification.**
 - 3.1 To the fullest extent permitted by law, Boardup must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties"), for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys'

fees and litigation expenses (each, a "Demand or Expense," collectively, "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or Boardup) and that arises out of or results from the breach of this Agreement by Boardup or Boardup's negligent actions, errors or omissions (including any Sub-contractor or other person or firm employed by Boardup), whether sustained before or after completion of the Project.

- 3.2 This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in that event, Boardup shall be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Boardup or of any person or entity for whom Boardup is responsible.
- 3.3 Boardup is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.
- 3.4 This agreement is for the designated work area for activities involving the City and its elected officials, officers, employees and agents while operating alongside Boardup personnel at the designated property.

4. Termination.

- 4.1 For Convenience. City or Boardup may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 15 days following the date of delivery.
- 4.2 For Cause. City may terminate this Agreement for cause if Boardup fails to cure any breach of this Agreement within seven days after receipt of written notice specifying the breach.

5. Insurance.

For the duration of the term of this Agreement, Boardup shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of all tasks or work necessary to complete the Project as herein defined. Such insurance shall cover Boardup, its agent(s), representative(s), employee(s) and any subcontractors.

- 5.1 Minimum Scope and Limit of Insurance. Coverage must be at least as broad as:
 - a. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01, including products and completed operations, with limits of no less than **\$1,000,000** per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
 - b. Automobile Liability: Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
 - c. Worker's Compensation: Insurance as required by the State of Arizona, with Statutory Limits, and Employers' Liability insurance with a limit of no less than **\$1,000,000** per accident for bodily injury or disease.

6. Notices.

- 6.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:
 - a. The Notice is in writing; and
 - b. Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested).

- c. Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:
 - (1) Received on a business day before 5:00 p.m. at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier service; or
 - (2) As of the next business day after receipt, if received after 5:00 p.m.
- d. The burden of proof of the place and time of delivery is upon the Party giving the Notice.
- e. Digitalized signatures and copies of signatures will have the same effect as original signatures.

6.2 Representatives.

- a. Boardup. Boardup's representative authorized to act on Boardup's behalf with respect to the Project, and his or her address for Notice delivery is:

Kowalski Construction, Inc., dba 1-800-Boardup
 c/o Roy Noriega
 2219 W Melinda Lane
 Phoenix, AZ 85027

- b. City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:

City of Glendale
 c/o Terry Garrison, Fire Chief
 6829 N 58th Drive
 Glendale, Arizona 85301

With required copy to:

City Manager
 City of Glendale
 5850 West Glendale Avenue
 Glendale, Arizona 85301

City Attorney
 City of Glendale
 5850 West Glendale Avenue
 Glendale, Arizona 85301

- c. Concurrent Notices.
 - (1) All notices to City's representative must be given concurrently to City Manager and City Attorney.
 - (2) A notice will not be deemed to have been received by City's representative until the time that it has also been received by the City Manager and the City Attorney.
 - (3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Boardup identifying the designee(s) and their respective addresses for notices.

7. **Entire Agreement; Survival; Counterparts; Signatures.**

7.1 Integration. This Agreement contains, except as stated below, the entire agreement between City and Boardup and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.

- a. Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
- b. Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.

- c. Inconsistencies between the solicitation, any addenda attached to the solicitation, the response or any excerpts, if any,, and this Agreement, will be resolved by the terms and conditions stated in this Agreement.

7.2 Interpretation.

- a. The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.
- b. The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.
- c. The Agreement will be interpreted in accordance with the laws of the State of Arizona.

7.3 Survival. Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.

7.4 Amendment. No amendment to this Agreement will be binding unless in writing and executed by the parties. Electronic signature blocks do not constitute execution for purposes of this Agreement. Any amendment may be subject to City Council approval.

7.5 Remedies. All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.

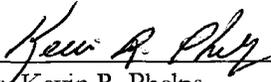
7.6 Severability. If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be reformed to conform with applicable law.

7.7 Counterparts. This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.

[SIGNATURES ON FOLLOWING PAGE.]

The parties enter into this Agreement effective as of the date shown above.

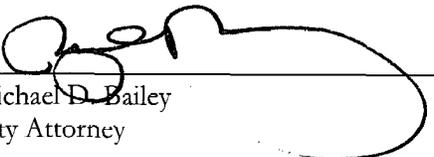
City of Glendale,
an Arizona municipal corporation


By: Kevin R. Phelps
Its: City Manager

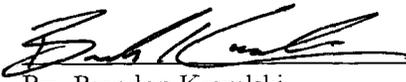
ATTEST:


City Clerk (SEAL)

APPROVED AS TO FORM:


Michael D. Bailey
City Attorney

Kowalski Construction, Inc., dba 1-800-
Boardup, an Arizona Corporation


By: Brandon Kowalski
Its: Authorized Agent



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
6/7/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Onpoint Underwriting, Inc. 8390 E Crescent Pkwy, Ste 200 Greenwood Village CO 80111	CONTACT NAME: Sudona Padgett	
	PHONE (A/C, No, Ext): (866) 631-6555 x4531	FAX (A/C, No): (866) 631-6554
E-MAIL ADDRESS: Affinitycerts@onpointunderwriting.com		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: Ecole Insurance Company		13602
INSURER B:		
INSURER C:		
INSURER D:		
INSURER E:		
INSURER F:		
INSURED KOWALSKI CONSTRUCTION, INC. 2219 W. Melinda Ln. Bldg A Phoenix AZ 85027		

COVERAGES **CERTIFICATE NUMBER:** Kowalski 16.17 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	903627-02	6/1/2016	6/1/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 2,000,000 E.L. DISEASE - EA EMPLOYEE \$ 2,000,000 E.L. DISEASE - POLICY LIMIT \$ 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Re: Limited to Arizona operations only. This form is subject to policy terms, conditions, and exclusions.

CERTIFICATE HOLDER City of Glendale 5850 West Glendale Avenue Glendale, AZ 85301	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Richard Poling/PADGET <i>Richard Poling</i>
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
<p>BLANKET ADDITIONAL INSURED As required by contract</p>	<p>Various Locations Required by Contract</p>
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.