

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Agreement"), effective as of December ~~23~~ 2020 ("Effective Date"), is entered into by, between, and among the following parties: the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City") and **M.A. MORTENSON COMPANY** ("Mortenson"), a Minnesota corporation registered to do business in Colorado. In this Agreement, the City and Mortenson may be referred to collectively as the "Parties," and sometimes may be referred to individually as a "Party." The Parties enter into this Agreement regarding the following matters:

Recitals

- A. **WHEREAS**, the City has alleged and alleges that Mortenson and Trammel Crow Development Company improperly exchanged non-public information during the procurement process regarding the expansion of the Colorado Convention Center ("Project"), causing the City to restart the procurement process ("Matter").
- B. **WHEREAS**, on July 22, 2019, the City and Mortenson entered a previous agreement to settle a Prequalification Appeal and CORA Litigation (the "Prequalification Settlement") arising from and related to the Matter.
- C. **WHEREAS**, the City has entered into a certain Settlement Agreement and Mutual Release with Trammel Crow Development Company to resolve any and all civil claims it has against the company arising from the Matter.
- D. **WHEREAS**, the City now alleges it also has civil claims against Mortenson arising from the Matter.
- E. **WHEREAS**, Mortenson denies any and all past, present, and future allegations, assertions, averments, claims, damages, wrongdoing, liability set-offs, bills, charges, costs, debts, demands, expenses, losses of whatever nature or kind, direct or indirect, whether known or unknown, or capable of being known, asserted or that could be asserted against it arising from or relating to the Project, the pursuit by Mortenson of the Project, and the Matter (the "Claims"); and
- F. **WHEREAS**, the Parties recognize the uncertainty of litigation and the expense associated therewith, and, thus, the Parties have agreed to mutually settle and compromise all matters in controversy between and among them and all possible or potential claims related to the Matter, as set forth in this Agreement, including the Claims.

Operative Provisions

NOW, THEREFORE, in consideration of the recitals above and the mutual promises, conditions, covenants, and agreements below, and other good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged and confessed, the Parties agree as follows:

1. **Mutual Releases.**

(a) The City, its appointed and elected officials, agents and employees unconditionally and irrevocably remise, waive, satisfy, and completely release and forever discharge Mortenson, all of Mortenson's parent entities, subsidiaries, affiliates, each of Mortenson's agents (alleged, apparent, or actual), successors, assigns, assignees, partners, joint ventures, co-ventures, contractors, vendors, principals, trustees, creditors, shareholders, owners, accountants, attorneys, employees, heirs, managers, members, administrators, officers, directors, partners, representatives and each person or entity acting or purporting to act for them or on their behalf, and each of them, respectively (hereinafter collectively the "Mortenson Releasees") of and from any and all past, present, and future claims, counterclaims, actions, lawsuits, set-offs, controversies, attorneys' fees, bills, causes of action, charges, costs, damages, debts, demands, expenses, liabilities, losses, remedies, rights, debarment, reports to a debarment board, suits, and sums of money, of whatever nature or kind, direct or indirect, whether known or unknown, or capable of being known, whether in contract or in tort, at law or in equity, by right of action or otherwise, or arising under or by virtue of any statute or regulation, of whatever kind or character, that exist, could exist, or may have existed as of the Effective Date and which relate to or arise or could arise from the Claims; provided, however, this release does not apply to any obligations of the Parties set forth in this Agreement. Furthermore, nothing herein precludes the City from using information related to the Claims for purposes of evaluating any future prequalification application by Mortenson. However, Mortenson's compliance with this Agreement and the Prequalification Settlement will be viewed as the full and complete satisfaction of any and all reparations, damages and/or injuries the City believes were caused, or may have been caused by Mortenson due to its conduct associated with the Project, its pursuit of the Project, or the Matter.

(b) Mortenson and each of Mortenson's affiliates, parents, predecessors, subsidiaries, successors, agents, assigns, attorneys, directors, employees, heirs, managers, members, officers, partners, representatives, and shareholders, completely release and forever discharge the City and each of the City's appointed and elected officials agents, assigns, attorneys, employees, and representatives (hereinafter collectively the "City Releasees"), of and from any and all attorneys' fees, bills, causes of action, charges, costs, damages, debts, demands, expenses, liabilities, losses, remedies, rights, suits, and sums of money, of whatever nature or kind, whether known or unknown, whether in contract or in tort, at law or in equity, or arising under or by virtue of any statute or regulation, that exist, could exist, or may have existed as of the Effective Date and which relate to or arise or could arise from the Claims; provided, however, this release does not apply to any obligations of the Parties set forth in this Agreement.

2. **Settlement Payment.** In consideration of the mutual releases above and the other consideration described herein, Mortenson and Trammel Crow Development Company shall pay, or cause to be paid, to the City the total settlement payment amount of NINE MILLION DOLLARS (\$9,000,000), of which FOUR MILLION FIVE HUNDRED THOUSAND DOLLARS (\$4,500,000.00) (the “Settlement Payment”) will be paid by Mortenson as a full and final settlement of the Claims against Mortenson. Mortenson shall make the Settlement Payment to the City via wire within three (3) business days after the Effective Date and Mortenson’s receipt of a W-9 and wire instructions. Such payment by Mortenson, together with a separate payment to the City by Trammel Crow Development Company (“Trammel Crow”) in the amount of FOUR MILLION FIVE HUNDRED THOUSAND DOLLARS (\$4,500,000.00), pursuant to a separate agreement between Trammel Crow and the City, will result in a total payment to the city of NINE MILLION DOLLARS (\$9,000,000). Mortenson has no obligation to pay the amount owed by Trammel Crow and, except as expressly described in this Section 2 or elsewhere in this Agreement and no Party has any obligation to pay any other sum to any other Party pursuant to or under this Agreement. A breach by Trammel Crow of its separate agreement will not be considered a breach by Mortenson of this agreement.

3. **Amendment of the Prequalification Settlement.** Paragraph 1. of the Parties’ prior Prequalification Settlement is amended as outlined below such that Mortenson and its parent entities, subsidiaries, affiliates, successors, joint ventures, and any similar entities (“Mortenson Entities) shall not seek Pre-Qualification with the City or bid on any City contracts for three years from the Effective Date of the Agreement:

- a. Mortenson’s prequalification status with the City and County of Denver is revoked for all regular and specialty categories in which prequalification is available under the Rules, including the following categories of work, until three years after the Effective Date of the Agreement:

1A – General Civil	\$25M
1B – Excavation and Grading	\$18M
1E(1) – Piped Water	\$9M
1E(4) – Piped Sewer	\$9M
1E(5) – Sewer Open Channel/Pond	\$9M
1F(2) – Concrete	\$6M
1F(3) – Sidewalk, Curb and Gutter	\$6M
1G(1) – Bridges	\$6M
1G(2) – Minor Structures	\$1.5M
2A – General Building	\$25M
2B – Building Demolition	\$3M
2G – Structural Rehabilitation	\$9M
Convention Center Special Permission	

- b. After three years from the Effective Date of the Agreement the Mortenson Entities can re-apply for prequalification status with the City per the normal process and procedures. The City may approve or reject the prequalification

pursuant to its normal policy and procedures and reserves all rights to exercise prequalification approvals and disbarment procedures as necessary.

- c. Future Work. The Mortenson Entities will not bid on any City and County of Denver contracts in any amount until three years after the Effective Date of the Agreement.
- d. Acknowledgement by Mortenson: Mortenson acknowledges that it failed to preserve the City's procurement process and will strive to do better in the future. This acknowledgement will not be admissible as evidence in any hearing, proceeding, action, or lawsuit of any kind, except as necessary to enforce the terms of this Agreement.

5. **Attorneys' Fees and Costs.** Each Party shall bear his, her, and its own attorneys' fees and costs arising from or related to the Claims through the Effective Date. Should any action be filed regarding this Agreement after the Effective Date, the prevailing Party or Parties therein shall be entitled to recover from any non-prevailing Party or Parties therein the prevailing Party's or Parties' reasonable attorneys' fees and costs incurred therein, provided such attorneys' fees and costs were incurred after the Effective Date.

6. **Communications.** The Parties acknowledge that the City will issue a press release or other public communication regarding the settlement of the Claims. The City will use the following quote in the press release announcing the settlement and attribute it to Dan Johnson, President and Chief Executive Officer of Mortenson. "Mortenson's actions in the procurement of the Colorado Convention Center project were contrary to who we are as a company and were completely unacceptable. We recognize in addition that our actions caused significant harm to the City. We are truly sorry, and we accept responsibility for our actions." Mortenson acknowledges that this Agreement and any documents in the City's possession regarding the Claim may be available for public inspection in the event of a request under C.R.S. 24-72-201 et seq.

7. **Warranties and Representations.**

(a) The Parties warrant and represent that they and/or their legal representatives are legally competent and authorized to execute this Agreement, and that each individual signing this Agreement is authorized to do so and bind the Party for whom he or she signs.

(b) The Parties warrant and represent that, before executing this Agreement, they have been fully informed of its terms, contents, conditions, and effect, and no promise or representation of any kind has been made to them by any Party to this Agreement or anyone acting on his, her, or its behalf, as the case may be, except as is expressly stated herein. The Parties have relied solely and completely upon their own judgment and advice of their legal counsel in making and entering this Agreement and they do so freely and voluntarily.

(c) The Parties warrant and represent that they have, through their respective counsel, participated in the preparation of this Agreement and it is understood that no provision hereof shall

be construed against any Party by virtue of the activities of such Party or such Party's counsel in the preparation of this Agreement.

8. **Governing Law; Provisions Severable.** This Agreement is intended to be performed in the State of Colorado and the substantive law of Colorado shall govern the validity, construction, enforcement, and interpretation of this Agreement. If any provision is deemed void by applicable law, such void provision shall be deemed severed from the Agreement and the remaining provisions shall remain in full force and effect.

9. **Further Assurances.** Each Party agrees to take all reasonable steps necessary to effectuate the terms of this Agreement. The Parties agree to perform any other acts and to execute and deliver any further documents which may be necessary or appropriate to carry out the purposes of this Agreement.

10. **Waiver.** The failure of any Party to demand from the other performance of any act or obligation under the Agreement shall not be construed as a waiver of said Party's right to demand, at any subsequent time, such performance.


11. **Successors.** This Agreement shall inure to the benefit of the respective heirs, successors, and assigns of the Parties, and each and every one of the Mortenson Releasees and the City Releasees shall be deemed to be intended third-party beneficiaries of this Agreement.

12. **Execution in Counterparts.** This Agreement may be executed in counterparts, and scanned and e-mailed signatures will constitute a fully enforceable Agreement that requires no further documentation.

13. **Entire Agreement; Amendments in Writing.** This Agreement, along with the Prequalification Settlement as amended herein, embody the entire agreement among the Parties related to the subject matter hereof and supersede upon the Effective Date of the Agreement, all prior agreements and understandings, if any, whether oral or written, express or implied, relating to the subject matter hereof. This Agreement may be amended only by an instrument in writing executed jointly by all Parties.

[Signature Page to Settlement Agreement and Mutual Release.]


CITY AND COUNTY OF DENVER,
a municipal corporation of the State of Colorado

By: 
Kristin M. Bronson

Title: City Attorney

Date: December 23, 2020

M.A. MORTENSON COMPANY,
A Minnesota Corporation

By: 
Daniel L. Johnson

Title: President and CEO

Date: 12.23.20