

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Agreement"), effective as of December 28th, 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 **TC DENVER DEVELOPMENT, INC.** ("TCDD"), a Delaware corporation registered to do business in Colorado. In this Agreement, the City and TCDD 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 and TCDD entered into an On-Call Program Management Agreement, Contract No. 201839614, on February 15, 2018 (the "2018 Agreement");
- B. **WHEREAS**, the City and TCDD entered into a second agreement, referred to as the Agreement, Contract No. 201735175, on June 29, 2017 (the "2017 Agreement," and together with the 2018 Agreement, the "Agreements");
- C. **WHEREAS**, the City alleges that TCDD breached the 2018 Agreement and the 2017 Agreement (the "Matter");
- D. **WHEREAS**, the City has alleged and alleges that TCDD and M.A. Mortenson Company ("Mortenson") 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.
- E. **WHEREAS**, TCDD denies any and all allegations, averments, claims, damages, wrongdoing, and liability asserted against it arising from or relating to 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. It is agreed by the Parties that the settlement hereinafter set forth represents a compromise of the Claims and that this Agreement is not to be considered as an admission of liability or wrongdoing on the part of any Party, by whom liability is expressly denied.

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,, completely release and forever discharge TCDD, all of TCDD's parent entities (including, but not limited to, Trammell Crow Company, LLC, a Delaware limited liability company, and Trammell Crow Development Investment, Inc., a Delaware corporation), subsidiaries, each of TCDD's, Trammel Crow Company, LLC's, and Trammell Crow Development Investment, Inc.'s affiliates, parents, predecessors, subsidiaries, successors, agents, assigns, attorneys, employees, heirs, managers, members, officers, partners, representatives (including, without limitation, Michael Sullivan), and shareholders ("TCDD 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.

(b) TCDD and each of TCDD'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 ("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, TCDD and M. A. Mortenson 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 TCDD as a full and final settlement of the Claims against TCDD. TCDD shall make the Settlement Payment to the City via wire within three (3) business days after the Effective Date and TCDD's receipt of a W-9 and wire instructions.

Except as expressly described in this Section 2 or elsewhere in this Agreement, no Party has any obligation to pay any other sum to any other Party pursuant to or under this Agreement.

3. **No Precedent.** The City and TCDD enter into this Agreement solely to compromise the disputed Claims. By doing so, neither the City nor TCDD shall be deemed to (a) admit any liability for, wrongdoing, or responsibility to any Party for any alleged Claims, damages, or other relief asserted in the Matter, (b) admit that they or anyone associated with them violated any provision of the Agreements or Colorado law, or (c) establish any precedent (or intend to establish any precedent) regarding any future disputes between or otherwise involving the City and TCDD. Neither this Agreement, nor any negotiations, statements, or documents related hereto, will be offered or received in any legal or administrative proceeding or other legal or equitable action involving any party, including any federal, state, or local government or government agency, or any private party, as an admission, or as evidence or proof of any violation or liability under, or wrongdoing in connection with, any law, rule, or regulation, except in an action by the City or TCDD to enforce the terms of this Agreement.

4. **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' attorneys' fees and costs incurred therein, provided such attorneys' fees and costs were incurred after the Effective Date.

5. **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.

6.. **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.

7. **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.

8. **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.

9. **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.

10. **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.

11. **Entire Agreement; Amendments in Writing.** This Agreement embodies the entire agreement among the Parties related to the subject matter hereof and supersedes upon the Effective Date, 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: Justin M. Bremer

Title: City Attorney

Date: 12/28/2020

TC DENVER DEVELOPMENT, INC.,
a Delaware corporation registered to do business in Colorado

By: William E. Mosher
William E. Mosher

Title: President

Date: 12/28/2020