

**COMPROMISE SETTLEMENT AGREEMENT  
AND MUTUAL RELEASE**

This Compromise Settlement Agreement and Mutual Release (this "Settlement Agreement" or "Agreement") is entered into as of the \_\_\_\_\_ day of July, 2022, by, among, and between Denton County, Texas ("Denton") and Sundt Construction, Inc. ("Sundt")

The parties to this Settlement Agreement are hereinafter referred to individually as a "Party" or collectively as the "Parties."

**WITNESSETH**

**WHEREAS**, the Parties to this Settlement Agreement are the owner and general contractor involved in the construction of the Denton County's Administrative Complex Phase III Courthouse project (hereinafter, the "Project") pursuant to a Contract (the "Contract") dated September 4, 2018 between the Parties, and pursuant to plans and specifications prepared by the Project Architect, HDR, Inc. (the "Project Architect"); and

**WHEREAS**, during and/or following design and construction of the Project, disputes arose among and between the Parties regarding delays (allegedly by caused the contractor's performance, owner changes, or for design issues), delay or liquidated damages, claims for extended general conditions, disputed change orders, claims for payment for additional services claimed to have been performed by the Project architect, design error, claimed credits, and other issues at the Project and damages allegedly arising therefrom (collectively, whether raised or asserted by claims, demands, litigation, arbitration, negotiations, reports, pleadings, discovery, or otherwise, the "Disputes"); and

**WHEREAS**, by agreement of the Parties a mediation session was held with Steve Nelson as mediator (the "Mediator"), for the purposes of facilitating the compromise and settlement of the Disputes among and between the Parties; and

**WHEREAS**, agreement was reached at or following the Mediation by, among, and between the Parties, and the Parties desire to fully and finally settle and compromise all claims, matters, disputes and causes of action between and among them, except as expressly set forth herein, and to enter into certain promises and agreements between them, and

**WHEREAS**, to avoid the cost, uncertainty and inconvenience of further formal dispute resolution proceedings, and to buy peace, the Parties have agreed to resolve the Disputes and pursuant to the terms of this Agreement.

**NOW, THEREFORE**, for and in consideration of the mutual releases and agreements herein contained, the promises of payment herein provided, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the Parties hereto have agreed, and do hereby agree, to the following:

- 1) The Parties agree to execute an omnibus final change order (the "Final Change Order"), to which this Agreement shall be attached, that adjusts the final contract amount, less prior payments to Sundt or its subcontractors to the sum of **\$2,212,780.00** (the "Final Amount Due"). Denton agrees to pay the Final Amount Due promptly upon receipt of the following:
  - a) The Final Change Order executed by Sundt. Payment shall not be withheld by reason of the Project's architect failure or refusal to sign same.
  - b) A Bills Paid Affidavit reflecting payment by Sundt of all subcontractor and suppliers entitled to payment on the Project, save and except those listed as unpaid, with that list being further divided into a list of those unpaid and to be paid within thirty days of the date of receipt of payment from Denton, and a list of those whose claims have yet to be finally adjusted or paid. Payment shall not be withheld from Sundt by reason of non-payment to any subcontractor or supplier on the Project; provided, however, that Sundt and its surety shall remain liable to indemnify, defend, and hold Denton harmless from and against any and all claims, demands, suits, or liens by any subcontractor or supplier furnishing labor or materials to or through Sundt on the Project claiming non-payment therefor.
  - c) As-built drawings, instruction manuals, and long-term subcontractors and manufacturers' warranties as enumerated in Denton's Counsel's email of March 23, 2022 and its accompanying document entitled "Admin Phase III Closeout Documents and Warranty's Not Submitted." If a manufacturer or subcontractor required to furnish a warranty is listed as unpaid, Sundt shall supply that warranty upon resolution of any remaining issues with the subcontractor and manufacturer; provided, however, that nothing herein shall relieve Sundt from the obligation to furnish such warranties or to perform itself the obligations of the missing warranty.
- 2) Within ten (10) days of Sundt's receipt of the Final Amount Due, Sundt shall pay to Denton County fifty thousand dollars (\$50,000) via check as a sponsorship opportunity for Denton County's use for events at and in promotion of the Project.
- 3) In consideration for the promise of payments set forth above, the mutual releases of claims hereinafter set forth, and other good and valuable consideration, the sufficiency of which is acknowledged by both parties:
  - a) Sundt acknowledges that the payment of the Final Amount Due fully and finally pays Sundt all sums, including retainage, to which Sundt is or might become entitled to receive under the Contract for work performed on the Project and for all claims it has heretofore made or claimed, or which it might hereafter claim.
  - b) Denton accepts the Project as finally complete and all punch list and known warranty obligations fully performed save and except only as set forth in Section 4 hereof.

- c) Denton and Sundt mutually agree to consider the Project as enumerated in Certificate of Substantial Completion 001 (“Certificate 001”) substantially completed on August 9, 2021, and that any remaining contractual warranties tied to Certificate 001 shall commence on that date. Any requirement that the Project Architect certify to such date is waived. Denton and Sundt mutually agree to consider the Project exterior components as enumerated in Certificate of Substantial Completion 002 substantially completed on January 11, 2022, and that any remaining contractual warranties tied to Certificate 002 shall commence on that date.
  - d) Denton and Sundt agree that the contractually required deadlines for completion are hereby extended for their mutual benefit such that the Project is agreed to have been performed within the contractually allotted time.
  - e) Denton and Sundt dispute the Project Architect’s claim and entitlement for additional services on the Project. The Parties agree that any remaining claims by the Project Architect for additional services or payment shall be the responsibility, if any, of Denton. Sundt shall have no responsibility or liability for same.
  - f) Sundt and Denton agree that all claims, demands, or causes of action which either has, may have, or may ever have, against the other, whether known or unknown, latent or patent, heretofore or hereafter arising, and whether arising by contract, tort, operation of law, regulation, statute or ordinance are fully and finally released EXCEPT those obligations specifically undertaken herein or reserved unto the Parties as set forth in Section 4 hereof.
- 4) Notwithstanding the depth and breadth of the above and foregoing release, the following are not released and shall survive the execution of this Agreement:
- a) The obligations specifically undertaken herein by the Parties to this Agreement.
  - b) Sundt’s obligations to perform its contractual warranties with respect to “Latent Defects” as defined herein, and any defenses Sundt may have with respect thereto. That is, by reserving Latent Defects from the releases set forth in this Agreement, Sundt is not creating nor extending any warranty obligation it may have, express or implied, beyond that which was undertaken in the Contract and not otherwise released herein.
  - c) The obligations of Sundt and its surety under the Statutory Payment Bond furnished to Denton in connection with the Project.
  - d) Any claims or offsets which Denton may have against, or in defense of claims raised by, the Project Architect.

- e) Contractual obligations of Sundt, and applicable defenses thereto, with respect to maintaining insurance and providing indemnity from claims by third parties for bodily injury or damage to property other than the Project itself.
- 5) “Latent Defects” as the terms is used herein shall mean unknown, hidden or concealed defects or deficiencies which have not been discovered or known to Denton, its employees, representatives or consultants as of the date of this Agreement and are not discoverable by reasonable and customary inspection.

For purposes of this Agreement a “defect” or “deficiency” shall be deemed as “known” if it was heretofore asserted or claimed by Denton, its attorneys, the Project Architect, or any of their consultants or subconsultants as a punch list item, open work item, deficiency, or any incomplete work, and furthermore for purposes of this Agreement each such defect or deficiency:

- i) is not a Latent Defect even if the extent of that defect or deficiency is not fully known.
  - ii) is not a Latent Defect if it is a deficiency or defect that is related to the aesthetics of the Project; e. g. coloration, texture, noise, or non-structural alignment.
- b) Notwithstanding any of the foregoing releases, Sundt agrees to deliver and install, and warrant per contract, the Z1 Lighting for the Project, and the five in-ground electrical boxes that were wired improperly, but not other in-ground boxes that fill with water due to alleged design error. “Z1 Lighting” is defined herein to include the exterior Z1 lighting around the Project, including programming, and the exterior dome lights, including programming.
- 6) This Settlement Agreement is a compromise and settlement of disputed claims and is being entered into solely to avoid the time, expense, uncertainty, and inconvenience of continued dispute, discussion, and formal dispute resolution proceedings. Neither the execution of this Settlement Agreement nor anything stated herein, nor any amount paid hereunder, is to be construed or deemed as an admission of fault, liability, delay, culpability, error, violation of Federal, State, or Local law or regulation, or wrongdoing on the part of any Party to this Settlement Agreement.
- 7) The Parties agree that, notwithstanding the challenges presented to both Parties by Covid-19 and its impacts, and the relatively minor close-out disagreements compared to the overall scope and complexity of the Project, the Project is an extraordinarily successful project, calculated to assist Denton in delivering government services in an attractive and safe building environment for which both Parties can be proud.
- 8) The signatories hereto warrant and represent that they have the full power and authority to bind the Party entity for which they have signed.

- 9) This Settlement Agreement constitutes a single, integrated, written contract expressing the entire understanding and agreement between the Parties. The terms of the Settlement Agreement are contractual and not merely recitals. There are no other agreements or understandings, written or oral, express or implied, between the Parties with respect to the subject matter of this Settlement Agreement. The Parties declare and represent that no promise, inducement or other agreement not expressly contained in this Settlement Agreement has been made by any other Party, counsel for any other Party, or by the Mediator. THE PARTIES FURTHER WARRANT AND REPRESENT THAT NONE OF THE PARTIES IS RELYING UPON ANY STATEMENT OR REPRESENTATION OF ANY AGENT, REPRESENTATIVE, OR ATTORNEY OF THE PARTIES BEING RELEASED HEREBY. INSTEAD, EACH IS RELYING ON HIS OR HER OWN JUDGMENT with regard to the (1) the facts underlying the Disputes, (2) the subject matter or effect of this Settlement Agreement, and (3) any other facts or issues which might be deemed material to the decision to enter into this Settlement Agreement, *other than* as specifically set forth in this Settlement Agreement.
- 10) Each Party has had the benefit of independent legal counsel in deciding to enter into this Settlement Agreement and with respect to the negotiation of the terms hereof.
- 11) This Settlement Agreement is binding upon the Parties hereto, their successors, legal representatives and assigns, and shall inure to the benefit of the Parties and Released Parties
- 12) Each Party adopts this Settlement Agreement as the product of a group drafting effort of counsel for all Parties, notwithstanding the fact that an initial draft may have been prepared by the Parties or suggested by the Mediator and agrees that the language used in this Settlement Agreement was chosen jointly by the Parties to express their mutual intent, and that no rule of construction will be applied against any Party, including any rule of draftsmanship. The Parties hereby expressly agree that any uncertainty or ambiguity existing herein shall not be interpreted against any of them. Except as expressly limited by this paragraph, all of the applicable rules of interpretation of contract shall govern the interpretation of any uncertainty or ambiguity.
- 13) Texas law, without regard to any law that would apply the law of any other state, shall govern the interpretation of this Settlement Agreement. Any disputes arising under this Settlement Agreement shall be resolved as set forth in the contract between the Parties.
- 14) This Settlement Agreement may be executed in multiple facsimile or scanned counterparts, and with facsimile or scanned signatures, and all such counterparts shall together be deemed to constitute one final agreement, as if each Party had signed one document. Each such counterpart or a facsimile copy thereof shall be deemed to be an original, binding the Parties subscribed thereto, and multiple signature pages or facsimile signature pages affixed by the Mediator to a single copy of this Settlement Agreement shall be deemed to be a fully executed original document.

15) If any term or provision of this Settlement Agreement shall be determined to be unenforceable or invalid or illegal in any respect, the unenforceability, invalidity or illegality shall not affect any other term or provision of this Settlement Agreement, but this Settlement Agreement shall be construed as if such unenforceable, invalid or illegal term or provision had never been contained herein.

16) The failure of any of the parties to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way affect the validity of this Settlement Agreement or any part thereof or any right of any person thereafter to enforce each and every provision. No waiver of any breach of this Settlement Agreement shall be held to constitute a waiver of any other breach.

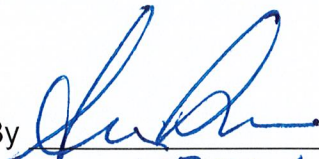
**IN WITNESS WHEREOF**, this Settlement Agreement has been executed the date and year first above written.

**DENTON COUNTY**

By \_\_\_\_\_

Its \_\_\_\_\_

**SUNDT CONSTRUCTION, INC.**

By  \_\_\_\_\_  
TERI L. JONES  
Its BUILDING GROUP, PRES.

Reviewed  
  
Legal