

**COMPROMISE SETTLEMENT AGREEMENT
AND MUTUAL RELEASE**

This Compromise Settlement Agreement and Mutual Release (this "Settlement Agreement" or "Agreement") is entered into as of the 20th day of September, 2022, by, among, and between Denton County, Texas ("Denton") and O'Haver Contractors ("O'Haver"). 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 Jail Kitchen/Laundry project (the "Project") pursuant to an Agreement for Construction of Jail Kitchen/Laundry RFP #19-2534 (the "Contract") between the Parties, and pursuant to plans and specifications prepared by the Project Architect, HDR, Inc. ("HDR" or "Architect"); and

WHEREAS, during and/or following construction of the Project, disputes arose among and between the Parties regarding delays (allegedly by caused the contractor's performance, owner changes, and design deficiencies/issues), liquidated damages, claims for extended general conditions, disputed change orders, 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 "Dispute"); and

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

WHEREAS, agreement was reached at 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 regarding the Dispute, 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 Dispute and settle their claims 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 remaining contract amount, less prior payments to O'Haver or its subcontractors, to the sum of six hundred ninety-two thousand and nine hundred and two dollars and no/100 (**\$692,902.00**) (the "Final Amount Due"). Denton agrees to pay the Final Amount Due on or before September 20, 2022 upon receipt of the following:



- a) The Final Change Order executed by O'Haver. Payment shall not be withheld by reason of the Architect failure to sign same.
 - b) A Bills Paid Affidavit reflecting payment by O'Haver 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 O'Haver by reason of non-payment to any subcontractor or supplier on the Project; provided, however, that O'Haver 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 O'Haver on the Project claiming non-payment therefor.
- 2) 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) O'Haver acknowledges that the payment of the Final Amount Due fully and finally pays O'Haver all sums, including retainage, to which O'Haver 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 currently-known warranty obligations fully performed.
 - c) Denton and O'Haver mutually agree to consider the Project substantially completed on December 20, 2021, and that any remaining contractual warranties shall commence on that date. Any requirement that the Project Architect certify to such date is waived.
 - d) O'Haver 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 3 hereof.
- 3) Notwithstanding the depth and breadth of the above and foregoing release in Section 2(d), 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) O'Haver's obligations to perform its contractual or special warranties, and any defenses O'Haver may have with respect thereto. By carving out performance of contractual warranty obligations from the releases set forth in this Agreement, O'Haver is not



creating nor extending any warranty obligation it may have, express or implied, beyond those which were undertaken in the Contract.

- c) Non-conforming, faulty, or defective work appearing at or after final payment.
 - d) Latent defects, with "latent defects" being defined as 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.
 - e) The obligations of O'Haver and its surety under the Statutory Payment Bond furnished to Denton in connection with the Project.
 - f) Any claims or offsets which Denton may have against, or in defense of claims raised by, the Project Architect.
 - g) Contractual obligations of O'Haver, 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.
- 4) 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.
- 5) The signatories hereto warrant and represent that they have the full power and authority to bind the Party entity for which they have signed.
- 6) 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 Dispute, (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.



- 7) 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.
- 8) This Settlement Agreement is binding upon the Parties hereto, their successors, legal representatives and assigns, and shall inure to the benefit of the Parties.
- 9) 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.
- 10) 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.
- 11) 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.
- 12) 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.
- 13) 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 _____

O'HAYER CONTRACTORS

By _____

Its _____

The O'Haver Company, Ltd. by
The O'Haver Construction Management Company, LLC,
Its General Partner
By: Donald R. O'Haver II
Its President, Donald R. O'Haver II

9-13-22