

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “*Agreement*”) is made and entered into by and between Donelson Construction Company, LLC (“DONELSON”), and The City of Smyrna Georgia (“City”), This Agreement shall become effective on the date it becomes executed by all Parties (the “*Effective Date*”).

RECITALS

WHEREAS various disputes have arisen between the parties that are the subject in claims and counter claims in a lawsuit in the Superior Court of Cobb County, Civil Action No. 22103953 (the “*Civil Action*”); and

WHEREAS the parties desire to compromise their claims and disputes related to all issues between them in an effort to avoid further legal fees, cost, time, distraction, and the inherent uncertainty that results from litigation; and

NOW, THEREFORE, in consideration of the mutual promises and releases contained herein, and for other good and valuable consideration, the sufficiency of which is acknowledged, the Parties hereby agree as follows:

TERMS AND CONDITIONS

1. **Incorporation of Recitals.** The Parties hereby expressly incorporate by reference the above recitals and definitions set forth therein and acknowledge them to be accurate.

2. **Termination and Payment for Services.** The Parties agree that the agreement between the City and Donelson was terminated for convenience and that the City shall pay Donelson the sum of \$68,000 for services rendered. This payment shall be made within 60 days of the effective date of this agreement.

3. **Aggregate and Materials.** All aggregate and other materials left at the city shall remain the property of Donelson and the City will dispose of it in any manner within its discretion.

4. **Dismissal of Civil Action With Prejudice.** Within five calendar days of the receipt by Donelson of the payment described in Paragraph 2 , the parties shall file a pleading dismissing the claims and counter claims with prejudice. Each party to bear their own costs and attorney’s fees.

5. **Release by Donelson of the City.** Upon the receipt by Donelson of the payment described in Paragraph 2, Donelson, for and on behalf of itself and its affiliates, parents, subsidiaries, agents, attorneys, insurers, successors, owners, officers, directors, employees, controlled entities, and heirs and assigns, conditionally releases and covenants not to sue the Defendant and its respective agents, officers, elected officials, employees, insurers, and attorneys from and as to any and all claims, demands, liabilities, damages, or causes of action of any kind whatsoever, whether legal or equitable, and whether contingent or non-contingent, that have arisen or may in the future arise from any act or omission that has occurred at any time prior to the Effective Date of this Agreement, including without limitation those claims asserted by Donelson

in the Civil Action. Donelson further represents and warrants to the Defendants that no other person or entity has any right to assert any of the claims described in the preceding sentence and that Donelson has not assigned, transferred, or conveyed to any other person or entity any right to assert any claim that would otherwise be included in the scope of this section of this Agreement.

6. **Release of Donelson by the City.** Upon the Effective Date of this Agreement, the City, for and on behalf of themselves and their affiliates, parents, subsidiaries, agents, attorneys, insurers, successors, owners, officers, directors, employees, controlled entities, and heirs and assigns, conditionally release and covenant not to sue Donelson, its surety and its agents, affiliated companies, officers, members, shareholders, directors, employees, insurers, and attorneys from and as to any and all claims, demands, liabilities, damages, or causes of action of any kind whatsoever, whether legal or equitable, and whether contingent or non-contingent, that have arisen or may in the future arise from any act or omission that has occurred at any time prior to the Effective Date of this Agreement, including without limitation those claims arising out of or relating to the facts and circumstances set forth in Civil Action. The City further represents and warrant to Donelson that no other person or entity has any right to assert any of the claims described in the preceding sentence and that the Defendants have not assigned, transferred, or conveyed to any other person or entity any right to assert any claim that would otherwise be included in the scope of this section of this Agreement.

7. **No Admission of Liability.** The Parties understand and agree that this Agreement and the terms hereof are intended as a compromise of disputed claims and defenses intended to avoid continued litigation and the expense and uncertainty thereof. Accordingly, this Agreement and the settlement provided for herein shall not be construed or viewed as an admission by any Party of liability for wrongdoing whatsoever or intentional, reckless, or bad faith wrongful conduct, such liability being expressly denied.

8. **Inadmissibility of this Agreement.** This Agreement, and the settlement provided for herein, shall not be admissible in any lawsuit, administrative action, or any judicial or administrative proceeding if offered to show, demonstrate, evidence, or support a contention that any of the Parties or anyone else acted illegally, improperly, or in breach of law, contract or proper conduct, excepting any claims which may arise to enforce this Agreement.

9. **Attorneys' Fees.** Each of the Parties shall bear its own attorneys' fees in connection with the Civil Action and the negotiation and execution of this Agreement.

10. **Acknowledgements and Representations.** This Agreement is executed by the Parties voluntarily. The Parties acknowledge that they have had a full and reasonable opportunity to consider this Agreement, that they have consulted with legal counsel regarding the terms of this Agreement, and that they have not been pressured or in any way coerced into executing this Agreement. This Agreement has been negotiated, drafted, and reviewed through a cooperative effort of the Parties, and no Party shall be considered the drafter of this Agreement so as to give rise to any presumption or convention regarding the construction of this Agreement. Further, the section headings used in this Agreement are for convenience only and do not limit, modify, or interpret this Agreement.

11. **Governing Law and Choice of Forum.** This Agreement and the rights and obligations of the Parties shall be governed and construed in accordance with the laws of the State of Georgia, without giving effect to any state's conflict of laws principles. Any action relating to the enforcement or interpretation of this Agreement shall be brought exclusively in the Superior Court of Cobb County, and all Parties hereby submit themselves to the personal jurisdiction of that court and agree not to assert the defense(s) of lack of personal jurisdiction, improper venue, or forum *non conveniens* in any such action.

12. **Severability.** If any provision of this Agreement is unenforceable or is held to be unenforceable by a court of competent jurisdiction, such provision shall be fully severable, and this Agreement and its terms shall be construed and enforced as if such unenforceable provision had never been part of this Agreement.

13. **All Necessary Steps.** The Parties acknowledge and agree to take all necessary steps, including the execution of documents, to carry through and complete the exchange of consideration and other contractual obligations described in this Agreement.

14. **Counterparts.** This Agreement may be executed in two or more counterparts, and it shall not be necessary that the signatures of the Parties hereto be contained on any one counterpart hereof. Each counterpart shall be deemed an original, but all counterparts together shall constitute one and the same instrument. Copies of original signatures on this Agreement shall be treated as originals and may be transmitted electronically via email or via DocuSign, RightSignature, or another similar electronic signature platform.

15. **Modification.** Unless expressly provided for otherwise in another section of this Agreement, no modification of this Agreement or of any covenant, condition, or limitation contained herein shall be valid unless in writing signed by all Parties.

16. **No Waiver.** A Party's failure at any time or from time to time to require performance of another Party's obligations under this Agreement shall not affect the first Party's right to enforce any provision of this Agreement at a subsequent time, and shall not constitute a waiver of any right arising out of any subsequent breach.

17. **Entire Agreement.** This Agreement contains all the terms of the understanding and agreement by and between the Parties. No representations, inducements, promises, or agreements, oral or otherwise, which are not embodied herein shall be of any force or effect.

IN WITNESS WHEREFORE, the Parties hereto have executed this Agreement with their hands and seals effective as of the date set forth above.

[signatures on following page]

Donelson Construction Company, LLC.

By:_____

Print Name:_____

Title:_____

The City of Smyrna, Georgia

By:_____

Print Name:_____

Title:_____