

SETTLEMENT AGREEMENT AND RELEASE

This **SETTLEMENT AGREEMENT AND RELEASE** (the "Agreement") is entered into as of this 14 day of May 2021, by and among the State of Colorado (acting through the Colorado Department of Transportation), Ames / Granite Joint Venture, HDR Engineering, Inc., and Kleinfelder, Inc. f/k/a Kleinfelder West, Inc., as follows:

I. DEFINITIONS

A. The term "CDOT" shall mean and refer to the State of Colorado acting by and through the Colorado Department of Transportation as a department of the State of Colorado and shall include all State of Colorado agencies, as well as, all of CDOT's related and affiliated entities, past and present Divisions, officers, directors, members, managers, employees, legal representatives, predecessors in interest, successors in interest, assigns, agents, partners and affiliates.

B. The term "AGJV" shall mean and refer to Ames-Granite A Joint Venture d/b/a Ames / Granite Joint Venture, a Colorado limited liability partnership, and shall include all of AGJV's related and affiliated entities, including Ames Construction, Inc. and Granite Construction Company, and all of their parents and subsidiaries, past and present officers, directors, members, managers, principals, employees, partners, legal representatives, heirs, predecessors in interest, successors in interest, assigns, agents, subcontractors, subconsultants, and insurers.

C. The term "HDR" shall mean and refer to HDR Engineering, Inc., a Nebraska corporation, and shall include all of HDR's related and affiliated entities, parents and subsidiaries, past and present officers, directors, members, managers, principals, employees, partners, legal representatives, heirs, predecessors in interest, successors in interest, assigns, agents, subcontractors, subconsultants, and insurers.

D. The term "Kleinfelder" shall mean and refer to Kleinfelder, Inc. f/k/a Kleinfelder West, Inc., a California corporation, and shall include all of Kleinfelder's related and affiliated entities, parents and subsidiaries, past and present officers, directors, members, managers, principals, employees, partners, brokers, legal representatives, heirs, predecessors in interest, successors in interest, assigns, agents, subcontractors, subconsultants, and insurers.

E. The term "Project" shall mean and refer to the pursuit of, and the design and construction completed under, the US 36 Express Lanes Project #NH 0361-093 Contract, including all subcontracts thereto.

F. The term "Incident" shall mean and refer to the July 2019 collapse of retaining wall B1-10R designed and constructed as part of the Project.

G. The term "Parties" shall mean and refer collectively to CDOT, AGJV, HDR, and Kleinfelder.

H. The term “Party” shall mean and refer singularly to CDOT, AGJV, HDR, or Kleinfelder, individually.

I. The term “Released Claims” shall mean and refer collectively to the claims described in § III of this Agreement.

II. RECITALS

WHEREAS, CDOT asserted claims against AGJV related to the Project and the Incident, including through the State of Colorado Attorney General’s July 18, 2019 Notice of Potential Claim (“Notice of Claim”). In turn, AGJV asserted claims against HDR, and HDR asserted claims against Kleinfelder;

WHEREAS, without determining any liability whatsoever, and in order to avoid uncertainties, expense and delay inherent in any further proceedings, as set forth in Paragraphs 1 and 2 below, the Parties desire to enter into this Agreement in order to fully, finally, and completely settle, compromise and discharge all claims of every kind and nature, at law or in equity that any of the Parties had or have against any of the other Parties hereto, arising out or in any way relating to the Incident, including without limitation all claims and damages asserted in the Notice of Claim, upon the terms and conditions set forth below; and

IT IS THEREFORE AGREED as follows:

III. TERMS OF SETTLEMENT

1. **Released Claims by CDOT Against AGJV, HDR, and Kleinfelder.** For the consideration set forth in this Agreement, the sufficiency of which is hereby acknowledged, CDOT hereby completely releases, acquits and forever discharges AGJV, HDR, and Kleinfelder for and from any and all past, present and future claims, demands, obligations, actions, causes of action (at law, in equity or otherwise), rights, bills, sums of money, fees, charges, damages related to or arising from the Incident, including, but not limited to, all claims made by CDOT regarding the Incident, any and all monetary damages (including interest), resulting or consequential property damages, any claimed toll losses incurred by concessionaires including those presented by CDOT as part of the Notice of Claim in this matter, loss of use damages and all continuing and progressive damage to and loss of use of property, costs, attorneys’ fees, expert fees, liabilities, expenses, losses and damages, and compensation of any kind or nature whatsoever, whether known or unknown, past, present or future, related to or arising directly or indirectly out of the Incident and/or the Notice of Claim (“CDOT’s Released Claims”). Notwithstanding the foregoing or anything else in this Agreement to the contrary, CDOT’s Released Claims provided for in this Agreement shall not include or extend to any claims for the breach of this Agreement. This release does not apply to claims that are not CDOT Released Claims as set forth in this Paragraph 1.

2. **Released Claims by and between AGJV, HDR, and Kleinfelder.** For the consideration set forth in this Agreement, the sufficiency of which is hereby acknowledged, AGJV, HDR, and Kleinfelder, for themselves and on behalf of their respective insurers, subcontractors, subconsultants, and subrogees, hereby completely release, acquit and forever discharge each other

for and from any and all past, present and future claims, demands, obligations, actions, causes of action (at law, in equity or otherwise), rights, bills, sums of money, fees, charges, damages related to CDOT's Released Claims, including, but not limited to, any and all monetary damages (including interest), resulting or consequential property damages, loss of use damages and all continuing and progressive damage to and loss of use of property, costs, attorneys' fees, expert fees, liabilities, expenses, losses and damages, and compensation of any kind or nature whatsoever, ("AGJV, HDR, and Kleinfelder's Released Claims"). Notwithstanding the foregoing or anything else in this Agreement to the contrary, AGJV's release set forth in this paragraph does not serve or extend to release any of AGJV's subcontractors or subconsultants other than HDR, Kleinfelder, and their respective subcontractors or subconsultants. Notwithstanding the foregoing or anything else in this Agreement to the contrary, AGJV, HDR, and Kleinfelder's Released Claims provided for in this Agreement shall not include or extend to any claims for the breach of this Agreement.

3. CDOT's Released Claims and AGJV, HDR, and Kleinfelder's Released Claims shall be collectively referred to as the "Released Claims."

4. The Parties agree that they have accepted the consideration specified in this Agreement as a complete compromise of the Released Claims. The Parties understand and agree that if the law or facts with respect to which this Agreement is executed be found hereafter to be other than, or different from the law and facts now believed by any Party to be true, each Party expressly accepts and assumes the risk of such possible difference in law or facts and agrees that this Agreement shall be and remain effective notwithstanding any such difference.

5. This Agreement is intended as a full settlement and compromise of each, every and all of the Released Claims and any causes of action, of every kind and nature which the Parties ever had or now have with respect to the Released Claims, including without limitation any claims for breach of contract, negligence, indemnity, contribution, subrogation, or otherwise. The Parties expressly waive any and all defenses, rights and benefits which they may have, respectively, or which may be derived from the provisions of applicable law which may otherwise limit the extent of this Agreement.

6. The Parties agree that the tender of the consideration stated herein and the execution of this Agreement are done entirely for the purpose of compromise and settlement of a disputed claim. Neither the payment of such sums nor the compromise and settlement of such claims shall be construed as an admission of any liability on the part of any Party nor shall it be interpreted or construed as an admission of any wrongdoing or fault of any kind for any other purpose or proceeding.

7. CDOT shall not bring, assert, commence, institute, maintain or prosecute in any action at law, proceeding in equity, arbitration or any other legal or administrative proceeding, any claim based in whole or in part upon CDOT's Released Claims.

8. AGJV, HDR, and Kleinfelder shall not bring, assert, commence, institute, maintain or prosecute in any action at law, proceeding in equity, arbitration or any other legal or administrative proceeding, any claim based in whole or in part upon AGJV, HDR, and Kleinfelder's Released Claims

9. In executing and delivering this Agreement, each Party relies wholly upon its own judgment, knowledge, and belief as to the nature and extent of damages and loss which has or may have been sustained as to the matters addressed in § III, ¶¶ 1 and 2, and, as to the questions of liability involved, each Party having had the benefit of legal counsel of its own choosing, and each Party further representing and warranting that it has not been influenced by any representations, statements, or warranties made by any other Party, or by any agent, or other person representing any of them, concerning the nature, extent or duration of said damage, or losses, or the legal liability therefor.

10. **Payment to CDOT.** AGJV, HDR, and Kleinfelder, themselves or through their respective insurance carriers, shall pay to CDOT, the total sum of Fourteen Million and 00/100 Dollars (\$14,000,000.00) (the “Settlement Sum”), in good funds, to be paid as follows by no later than sixty (60) days after the Parties’ execution of this Agreement by all Parties:

- (i) Six million and 00/100 Dollars (\$6,000,000.00) to be paid by, or on behalf of, AGJV.
- (ii) Four million and 00/100 Dollars (\$4,000,000.00) to be paid by, or on behalf of, HDR.
- (iii) Four million and 00/100 Dollars (\$4,000,000.00) to be paid by, or on behalf of, Kleinfelder.

Upon execution of this Agreement, CDOT shall provide a W-9 to respective counsel for AGJV, HDR, and Kleinfelder. Notwithstanding anything to the contrary contained in this Agreement, the failure of one or more of AGJV, HDR, or Kleinfelder to remit payment as required pursuant to this paragraph shall not invalidate, void, modify, or otherwise impair this Agreement with respect to those parties that do appropriately remit payment. As CDOT’s exclusive remedy for failures to comply with requirements of this paragraph, the failure of any party to comply with this paragraph shall create a separate direct right of action that CDOT may maintain against that party, pursuant to this Agreement.

11. **Attorney Fees and Costs.** The Parties agree that each shall pay its own attorney fees and costs.

12. **Non-Disparagement.** After the execution of this Agreement, the Parties will not engage in any action or make any public or private comments that disparage or criticize one another, including, but not limited to, regarding disputes arising directly or indirectly from, or relating to, the Incident. The Parties’ obligations under this paragraph shall survive the execution of this Agreement, and shall continue in perpetuity. Therefore, when discussing the Parties’ experiences with one another regarding the Incident, no Party shall make any negative, derogatory, or disparaging statement concerning the other Party, or any of their respective agents, representatives, employees, affiliates, or other entities in writing or orally to anyone publicly or confidentially. If asked by a third party, a Party shall state: “CDOT, AGJV, HDR, and Kleinfelder are pleased that the matter has been resolved without the need for litigation and look forward to

future opportunities to work together.” Consistent with the timing set forth in Paragraph 13, discussing in general terms the underlying causation behind the Incident by referring to any final expert report(s) CDOT commissioned regarding the Incident or discussing CDOT’s response to the Incident shall not be considered disparagement.

13. **Public Statement.** Following the execution of this Agreement, the Parties agree to issue a statement for release to the public regarding the resolution of this matter that generally states that CDOT, AGJV, HDR, and Kleinfelder are pleased that the matter has been resolved without the need for litigation and look forward to future opportunities to work together. Each Party shall approve the statement before it is released to the public and neither party shall unreasonably delay its approval nor unreasonably deny approval.

14. **Disclosures of Information.** The Parties acknowledge and agree that information was exchanged and/or disclosed during a mediation involving the Parties, including without limitation certain expert reports, communications, and other documents, and that such is protected from disclosure by other Parties as “mediation communications” pursuant to §13-22-302, C.R.S. In the event the State of Colorado, CDOT, the Colorado Office of the Attorney General and/or any other custodian of records receives any request for disclosure of documents related to the Incident or Notice of Claim, including without limitation the documents described in the preceding sentence, pursuant to §24-72-204, C.R.S. or otherwise, they shall notify AGJV, HDR, and Kleinfelder by email to their respective counsel, prior to making any such disclosure. This notification shall list the documents requested for disclosure and to whom the documents would be disclosed. To the extent any information requested is material exchanged, shared or disclosed by another Party within the definition of “mediation communications” as defined in accordance with §13-22-302, C.R.S., the custodian of such records shall deny the request for inspection pursuant to §24-72-204(1)(a), C.R.S. To the extent permitted by law, CDOT will release only final, stamped and/or signed versions of any expert report(s) prepared in connection with the Incident.

For purposes of this § I, ¶14, respective counsel for AGJV, HDR and Kleinfelder are:

AGJV:

Ivan Sarkissian, Esquire
McConaughy & Sarkissian, P.C.
Email: isarkissian@msslawpc.com

HDR:

Buck Beltzer, Esquire
Beltzer Bangert & Gunnell LLP
Email: buck@bbglaw.com

Kleinfelder:

L. Tyrone Holt, Esquire
The Holt Group LLC

Email: ty.holt@holtllc.com

IV. REPRESENTATIONS AND WARRANTIES

1. **Independent Legal Advice.** The Parties have received independent legal advice from their respective attorneys with regard to the terms and conditions of this Agreement, as well as the advisability of entering into and executing this Agreement, and are fully informed as to its contents.

2. **Understanding of the Agreement.** The Parties have read this Agreement and understand its contents. Each Party has read the Agreement and, if necessary, has had it explained by counsel. By voluntarily executing this Agreement, the Parties understand its contents and accept its terms as resolving fully all differences, disputes, and claims that may exist within the scope of this Agreement.

3. **Authority to Execute.** Each person executing this Agreement has full legal competence and authority to execute, deliver, and perform this Agreement and to bind the person individually and/or the entity that he or she purports to represent. CDOT represents and warrants that it has the authority to fully and finally release all claims that have been or may be brought by any third-parties that are subsumed within CDOT's Released Claims.

4. **No Previous Assignment.** Each Party warrants and represents that he/she/it is the real party in interest with respect to the claims, and that he/she/it has not previously assigned, transferred, subrogated, granted, or purported to assign, transfer, subrogate, or grant any of the claims, demands, suits, controversies, liabilities or obligations released by this Agreement or any of the benefits or payments to be made pursuant to this Agreement to any person or entity.

V. MISCELLANEOUS PROVISIONS

1. **Entire Agreement.** This Agreement, including all Definitions, Recitals, Terms of Settlement, Representation and Warranties, and Miscellaneous Provisions (which are incorporated into the Agreement and deemed to be substantive parts hereof), constitutes the full and complete understanding of the Parties with respect to the subject matter contained in the Agreement and supersedes any and all prior agreements and understandings, whether written or oral. No addition, deletion or amendment shall have any force or effect, except as mutually agreed to in a writing signed by all Parties to this Agreement. The Parties acknowledge that no promise, inducement, or agreement not expressed herein has been made and that the terms of this Agreement are contractual and not a mere recital.

2. **No Construction Against Drafter.** All Parties have cooperated in the drafting and preparation of this Agreement. Hence, no construction of this Agreement shall be construed against any Party.

3. **Counterparts.** This Agreement may be executed in multiple copies and/or counterparts, each of which shall be deemed the original and which, when taken together, shall be considered to be one binding original document. Facsimile, PDF, or electronic signatures to this

Agreement shall be treated as original signatures. CDOT represents and warrants that it has the authority to fully and finally release all claims that have been or may be brought by any third-parties that are subsumed within CDOT's Released Claims.

4. **Binding Effect.** For purposes of this Agreement, the terms "CDOT," "AGJV," "HDR," and "Kleinfelder" shall be understood to include and inure to the benefit of their respective parents, subsidiaries affiliates, partners, principals, officers, directors, members, managers, shareholders, employees (past and present), agents, consultants, brokers, predecessors, successors, successors in interest, heirs, administrators, assigns, insurers, and legal representatives of the Parties and each of them.

5. **Necessary and Further Documents.** The Parties agree to execute all such further and additional documents as shall be reasonable, convenient, necessary, or desirable to carry out the provisions of this Agreement.

6. **Severability.** If any portion or part of this Agreement is determined by a court or tribunal of competent jurisdiction to be invalid or unenforceable for any reason, it is the intention of Parties that the remainder of this Agreement shall remain in full force and effect.

7. **Choice of Law.** This Agreement shall be construed, interpreted, and enforced in accordance with the laws of the State of Colorado.

8. **Effective Date/Controller Approval.** This Agreement shall not be deemed valid until it shall have been approved by the State Controller or his designee as provided in C.R.S. § 24-30-202(1). The effective date of this Agreement shall be the date it is signed by the State Controller or his designee.

[SIGNATURE PAGES FOLLOWS]

Kleinfelder, Inc.,
a California Corporation

By: *Deborah Butera*
Deborah Butera, Esquire
Sr. Vice President, ~~General Counsel~~ & Secretary

STATE OF California)
) ss:
COUNTY OF _____)

Subscribed and sworn to before me on this _____ day of April, 2021, by _____
_____, as Authorized Representative of Kleinfelder, Inc., a California corporation.

Witness my hand and official seal.

My commission expires: _____

See attached certificate

[SEAL]

Notary Public, State of California



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

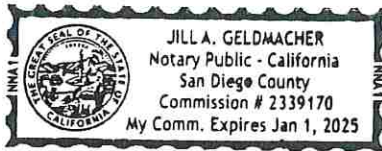
County of San Diego

Subscribed and sworn to (or affirmed) before me on this 12th day of May, 2021, by
Date Month Year

(1) Deborah Butera

(and (2) _____),
Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



Place Notary Seal and/or Stamp Above

Signature Jill A. Geldmacher
Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Settlement Agreement and Release

Document Date: _____ Number of Pages: 11

Signer(s) Other Than Named Above: _____

