

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

This Confidential Settlement Agreement and Release (the "Settlement Agreement") is entered into as of this 15 day of September, 2015, by and among the City of Sioux Falls, South Dakota ("Sioux Falls"), M. A. Mortenson Company ("Mortenson"), Sink Combs Dethlefs P.C. ("SCD"), Koch Hazard Architects ("Koch Hazard"), M.J. Dalsin, Inc. ("Dalsin"), and Innovative Metals Company Inc. ("IMETCO") (collectively referred to as the "Parties").

RECITALS

WHEREAS, Sioux Falls, as Owner of the Sioux Falls Events Center, now known as the Denny Sanford Premier Center (the "Premier Center Project"), and SCD, as Architect, entered into an Owner/Architect Agreement (the "Owner/Architect Agreement"), dated January 18, 2011, as subsequently amended, to provide design services in connection with the Premier Center Project; and

WHEREAS, Koch Hazard provided services as an authorized representative to act on behalf of SCD in connection with the Owner/Architect Agreement; and

WHEREAS, Sioux Falls, as Owner, entered into an agreement, dated September 8, 2011, with Mortenson, to serve as Construction Manager at Risk in connection with the Premier Center Project (the "CMAR Agreement"); and

WHEREAS, Dalsin entered into a Subcontract Agreement with Mortenson, dated September 8, 2011, in connection with the Premier Center Project to, among other things, furnish and install the vapor barrier/metal wall panel system and roofing/expansion joint system (the "Premier Center Subcontract"); and

WHEREAS, IMETCO entered into an agreement with Dalsin to supply the metal wall panel material for the Premier Center Project pursuant to Specification Section 074213 of the Construction Documents (the "IMETCO Agreement"); and

WHEREAS, issues have arisen with respect to the appearance of the metal panel wall system installed on the Premier Center Project, to wit: the Owner alleges that as a result of design, construction or material deficiencies, the metal wall panel system exhibits excessive oil canning, joint misalignment and other aesthetic issues that materially detract from the intended appearance of the building; including installation and/or flashing of windows; and that the project was not timely completed (the "Metal Wall Panel Issues"); and

WHEREAS, each of the Parties hereto denies liability for the Metal Wall Panel Issues, including responsibility for resulting diminution of value and/or the cost associated with any remedial work; and

WHEREAS, by separate contract directly with Sioux Falls, Dalsin supplied services in connection with the replacement of a membrane roof for the Sioux Falls Convention Center Project (the "Convention Center Subcontract"); and

WHEREAS, Sioux Falls has alleged the existence of certain deficiencies with respect to the installation of the roofing system on the Premier Center Project by Mortenson and Dalsin (the "Premier Center Roofing System Issues") and at the Sioux Falls Convention Center Project by Dalsin (the "Convention Center Roofing Systems Issues"); and

WHEREAS, Mortenson and Dalsin have denied responsibility or liability for the Premier Center Roofing System Issues and the Convention Center Roofing System Issues and Dalsin has provided an extended "Golden Seal Total Roofing System Warranty" issued by Carlisle for both Projects, and has asserted that payment of contract funds are due and owing for both Projects; and

WHEREAS, the Parties met in Sioux Falls, South Dakota on May 7, 2015, at a settlement conference, or participated in such conference by telephone, and entered into an agreement whereby Sioux Falls accepted the metal wall panel materials and system as provided

and installed and the Parties agreed to resolve all issues identified above pursuant to the terms of this Confidential Settlement Agreement; and

WHEREAS, certain modifications to the agreement reached on May 7 have been requested by Dalsin and agreed to among the other Parties hereto;

NOW, THEREFORE, in consideration of the mutual promises, agreements, covenants, conditions and releases contained herein, as well as for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

AGREEMENT

1. Metal Wall Panel Settlement Payments

1.1 Establishment of Escrow Fund. All settlement payments contemplated by this Settlement Agreement shall be deposited into the Denny Sanford Premier Center Escrow Fund (the "Escrow fund"), which is an IOLTA account established by Thompson Hine LLP, and for which Thompson Hine LLP shall serve as the Escrow Agent. Such payments shall be released from the Escrow Fund to the City of Sioux Falls at such time, and upon such terms, as set forth in this Settlement Agreement. The Escrow Agreement governing the collection, handling and disbursement of the Escrow Fund is attached as Exhibit A to this Settlement Agreement.

1.2 Payment by IMETCO. In consideration for the releases and covenants set forth in this Settlement Agreement, IMETCO shall, within seven (7) days of execution of this Settlement Agreement by all Parties, make payment of the sum of Forty Thousand Dollars (\$40,000) to the Escrow Fund.

1.3 Payment by Dalsin's Insurer. In consideration for the releases and covenants set forth in this Settlement Agreement, Dalsin's Insurer shall, within seven (7) days of execution of this Settlement Agreement by all Parties, make payment of the sum of One Hundred Twenty-Five Thousand Dollars (\$125,000) to the Escrow Fund.

1.4 Payment by SCD. Sioux Falls and SCD recognize that the amount of \$41,285 is currently owed by Sioux Falls to SCD for services performed pursuant to the Owner/Architect Agreement. In consideration for the releases and covenants set forth in this Settlement Agreement, SCD agrees that Sioux Falls shall be released from any obligation to pay the foregoing amount for services rendered in connection with the Owner/Architect Agreement and/or to pay any other amount for services rendered to date in connection with the Premier Center Project. In addition, SCD, on behalf of itself and its authorized representative, Koch Hazard, agrees to make payment of One Hundred Eighteen Thousand Seven Hundred Nineteen Dollars (\$118,719) to the Escrow Fund within seven (7) days of execution of this Settlement Agreement by all Parties.

1.5 Payment by Mortenson. In consideration for the releases and covenants set forth in this Settlement Agreement, Mortenson shall, within seven (7) days of execution of this Settlement Agreement by all Parties, make payment of the sum of One Hundred Sixty Thousand Dollars (\$160,000) to the Escrow Fund. Such payment shall not be made from the Construction Manager's Contingency Fund and is separate and apart from the contingency fund reduction described in Paragraph 3.1 of this Settlement Agreement.

2. Release of Funds from the Escrow Fund.

2.1 Within ten (10) business days of confirmation that all settlement payments have been deposited into the Escrow Fund (or three (3) business days if all funds are received by wire

transfer) , and conditioned upon the receipt by all parties of signed counterparts of this Settlement Agreement, Thompson Hine, as escrow agent, shall submit payment to Sioux Falls in the amount of Four Hundred Forty Three Thousand Seven Hundred Nineteen Dollars (\$443,719).

3. Reconciliation of Amounts Due and Owing for Work Performed by Dalsin

3.1 Provided that all Parties execute this Settlement Agreement on or before the close of business (5:00 PM CST) on Monday, September 14, 2015,, Sioux Falls shall issue the following payments:

3.1.1 Dalsin Closeout Payment for Premier Center Project. In full settlement and release of its payment obligations to Dalsin (and any and all payment obligations of Mortenson to Dalsin) in connection with the Premier Center Project, Sioux Falls shall pay to Mortenson, on or before the close of business on Tuesday, September 15, 2014 and Mortenson shall (within two (2) business days, and in any event, before the close of business on Friday, September 18, 2015), in turn, pay to Dalsin, the sum of Four Hundred Forty Thousand Four Hundred Forty-Five Dollars (\$440,445). Dalsin acknowledges that such amount represents full payment for the contract balance, retention and any other sums owed to it by Sioux Falls and/or Mortenson for work performed on the Premier Center Project. Dalsin further agrees to discharge the lien filed in the amount of \$452,277.24 dated December 2, 2014, and, to that end, hereby authorizes its counsel of record to execute and file a certificate of

satisfaction and any other documents as may be necessary or convenient to accomplish such purpose.

3.1.2 Dalsin Closeout Payment for Sioux Falls Convention Center Project. In full settlement and release of its payment obligations to Dalsin in connection with the Sioux Falls Convention Center Project, Sioux Falls shall, on or before the close of business on Friday, September 18, 2015, pay to Dalsin the sum of Fifty-Four Thousand Five Hundred Fifty-Five Dollars (\$54,555). Dalsin acknowledges that such amount represents full payment for the contract balance, retention and any other sums owed to it by Sioux Falls for work performed on the Sioux Falls Convention Center Project. Dalsin further agrees to discharge the lien filed in the amount of \$87,346.94 dated December 2, 2014, and, to that end, hereby authorizes its counsel of record to execute and file a certificate of satisfaction and any other documents as may be necessary or convenient to accomplish such purpose.

4. Application of Construction Manager at Risk's Contingency and Reduction of Guaranteed Maximum Price.

4.1 The Guaranteed Maximum Price ("GMP") includes a contingency referred to as the "Construction Manager's Contingency Fund." Sioux Falls and Mortenson agree that the current balance of the Construction Manager's Contingency Fund and/or other amounts included within the GMP shall be adjusted so that the GMP shall be reduced by the sum of Five Hundred Fourteen Thousand Nine Hundred Ninety-Six Dollars (\$514,996) (the "Contingency Fund Contribution").

5. Releases

5.1 In consideration of the agreements, obligations and covenants contained in this Settlement Agreement, the Parties hereby irrevocably and unconditionally release, acquit and discharge each of the other Parties, M. G. McGrath, Inc. ("McGrath"), and each of the other Parties' and McGrath's partners, architects, engineers, board members, directors, officers, officials, shareholders, employees, consultants, agents, professionals, representatives, divisions, affiliates, subsidiaries, parents, successors, predecessors, insurers, sureties, attorneys and assigns from any claims, obligations, liabilities, damages, rights, losses, expenses (including attorney's fees), costs, and/or causes of action that arise from or otherwise relate in any way to (1) the Metal Wall Panel Issues and/or the Premier Center Roofing System Issues that the Parties now have, have had or may hereafter have and (2) payment obligations for work performed to date pursuant to the Owner/Architect Agreement, the Premier Center Subcontract and/or the IMETCO Agreement. Notwithstanding the breadth of this mutual release, the Parties agree that the obligations, promises, releases or other representations contained in this Settlement Agreement shall survive the mutual release contained in this paragraph.

5.2 In consideration of the agreements, obligations and covenants contained in this Settlement Agreement, Sioux Falls and Dalsin hereby irrevocably and unconditionally release, acquit and discharge each other and each of the other's partners, architects, engineers, board members, directors, officers, officials, shareholders, employees, consultants, agents, professionals, representatives, divisions, affiliates, subsidiaries, parents, successors, predecessors, insurers, attorneys and assigns from any claims, obligations, liabilities, damages, rights, losses, expenses (including attorney's fees), costs, and/or causes of action that arise from or otherwise relate in any way to (1) the Convention Center Roofing System Issues that the

Parties now have or have had and (2) payment obligations for work performed to date on the Sioux Falls Convention Center Project. Notwithstanding the breadth of this mutual release, Sioux Falls and Dalsin agree that the obligations, promises, releases or other representations contained in this Settlement Agreement shall survive the mutual release contained in this paragraph.

5.3 Notwithstanding the releases set forth in Paragraphs 5.1 and 5.2 above, it is expressly understood and agreed that the Settlement Agreement does not release any of the Parties from any contractual guaranty, warranty (including, but not limited to, the Golden Seal Total Roofing System Warranty), or duty of indemnification, or other obligation set forth in the Agreements and Subcontract identified above, that may exist relating to any third party claims for personal injuries, property damage or wrongful death, which may have arisen or arise as a result of the work performed on the Premier Center Project or the Sioux Falls Convention Center Project, or future claims that arise out of latent or hidden defects. A latent or hidden defect is a defect that was not (prior to the date of this Settlement Agreement) apparent or readily detectable through the exercise of reasonable diligence by the party claiming the existence of the latent or hidden defect. It is further expressly understood and agreed that in the event of any third party claim for personal injury, property damages or wrongful death, the Parties do not release each other from any claims for contribution or indemnity which they may have arising against each other. The Parties represent and covenant to each other that they are not aware of any such reserved claims described in this Paragraph 4.3 as of the effective date of this Settlement Agreement.

6. Representation and Warranties

6.1 The Parties to this Settlement Agreement specifically deny any wrongdoing or liability with respect to the subject matter of this Settlement Agreement, and the Parties stipulate that the settlement provided for herein is not and shall not in any way be construed or deemed to be evidence or an admission or concession of any fault, liability, fact or any other matter whatsoever on the part of any Party to this Settlement Agreement.

6.2 The Parties to this Settlement Agreement warrant and represent that no portion of any claim, right, demand, claim for relief or cause of action against the other Party to this Settlement Agreement, and no portion of any recovery or settlement to which any of the Parties might be entitled, has been assigned or transferred to any other person or entity in any manner whatsoever, including by way of subrogation.

6.3 Each Party to this Settlement Agreement warrants and represents that this Settlement Agreement constitutes the entire agreement and understanding of the Parties hereto with respect to the subject matter hereof and supersedes any prior or contemporaneous oral or written agreements, proposed agreements, negotiations and discussions with respect to the subject matter hereof.

6.4 Each Party to this Settlement Agreement warrants and represents that no promises or inducements have been offered except as set forth in this Settlement Agreement, and that this Settlement Agreement is executed without reliance upon any statement or representation by any of the Parties to this Settlement Agreement or any of their respective representatives or attorneys concerning the nature and extent of the claims, damages or legal liability.

6.5 Each Party to this Settlement Agreement warrants and represents that the individuals executing this Settlement Agreement on their behalf fully understand this Settlement Agreement and are authorized to execute this Settlement Agreement on behalf of their respective principals.

6.6 The contribution of the Parties to the settlement of the Metal Wall Panel Issues, the Premier Center Roofing System Issues and the Convention Center Roofing System Issues totals One Million Dollars (\$1,000,000) as set forth above. Each Party to this Settlement Agreement warrants and represents that except for disclosure of the global amount of the settlement in the amount of \$1,000,000, any and all details of this settlement, and the consideration paid therefor, including individual contribution amounts, shall remain confidential and shall not be disclosed to any person. This agreement as to nondisclosure shall also apply to the attorneys for the undersigned. No disclosure of the terms and amount of settlement shall be made by said attorneys. Any violation of this agreement as to nondisclosure shall constitute a breach of this Settlement Agreement.

6.7 Each Party to this Settlement Agreement further warrants and represents that Sioux Falls will lead with any statements issued to third parties and/or Sioux Falls governing body regarding the settlement efforts; however, all other Parties shall review and approve any press releases issued by Sioux Falls prior to issuance. Each Party to this Settlement Agreement further warrants and represents that the use of disparaging comments toward one another or against the process would be futile and agree to refrain from doing so.

6.8 Each Party to this Settlement Agreement further warrants and represents that:

- (a) Each Party has carefully read and reviewed the full contents of this Settlement Agreement, and each Party is voluntarily entering into this Settlement Agreement with the advice and assistance of their respective attorneys;
- (b) Each Party has investigated the facts pertaining to this Settlement Agreement and all matters pertaining thereto, to the full extent it deems necessary for the purpose of executing this Settlement Agreement;
- (c) Each term of this Settlement Agreement is contractual and not merely a recital;
- (d) The Parties, and each of them, will execute all such additional documents as may be necessary to carry out the provisions of this Settlement Agreement.

7. ADDITIONAL TERMS

7.1 No additional work will be assigned to Mortenson by Sioux Falls under the CMAR Agreement as of June 5, 2015, and any additional work to be performed by Mortenson at the Premier Center Project shall be by separate agreement except for work assigned prior to June 5, 2015 and services related to warranties.

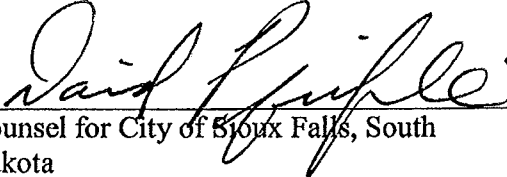
7.2 This Settlement Agreement shall be binding upon and inure to the benefit of each Party hereto and their respective representatives, successors and assigns, and any corporation, partnership, company, or other entity into which any Party hereto may merge, consolidate, or reorganize.

7.3 Each Party has cooperated and participated in, and in any construction to be made in this Settlement Agreement shall be deemed to have cooperated and participated in, the drafting and preparation of this Settlement Agreement. All introductory and recital paragraphs are incorporated into and form a part of this Settlement Agreement.

7.4 Each Party signing this Settlement Agreement acknowledges and declares that he or she is authorized to sign this Settlement Agreement in his or her stated capacity and that he or she is authorized to bind the Party which he or she represents.

7.5 For the convenience of the Parties hereto, this Settlement Agreement may be executed in Counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

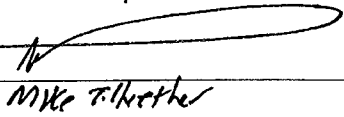
IN WITNESS WHEREOF, the Parties have voluntarily executed this Settlement Agreement and Mutual Release.

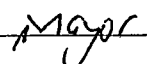

Counsel for City of Sioux Falls, South
Dakota

Counsel for M. A. Mortenson Company

Counsel for Sink Combs Dethlefs P.C.

**CITY OF SIOUX FALLS, SOUTH
DAKOTA**

By:  _____

Its:  _____

M. A. MORTENSON COMPANY

By: _____

Its: _____

SINK COMBS DETHLEFS P.C.

By: _____

Its: _____

KOCH HAZARD

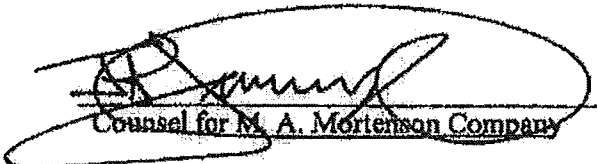
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Counsel for City of Sioux Falls, South
Dakota



Counsel for M. A. Mortenson Company

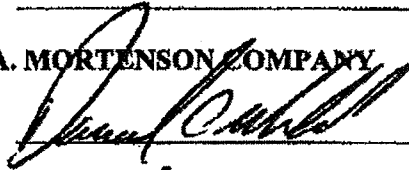
Counsel for Sink Combs Dethlefs P.C.

**CITY OF SIOUX FALLS, SOUTH
DAKOTA**

By: _____

Its: _____

M. A. MORTENSON COMPANY

By:  _____

Its: VICE PRESIDENT

SINK COMBS DETHLEFS P.C.

By: _____

Its: _____

KOCH HAZARD

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CITY OF SIOUX FALLS, SOUTH DAKOTA

Counsel for City of Sioux Falls, South Dakota

By: _____
Its: _____

M. A. MORTENSON COMPANY

Counsel for M. A. Mortenson Company

By: _____
Its: _____

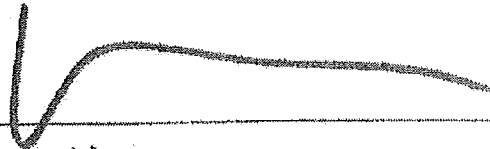
SINK COMBS DETHLEFS P.C.

Counsel for Sink Combs Dethlefs P.C.

By: *[Signature]*
Its: *Principal*

KOCH HAZARD

Counsel for Koch Hazard

By: 

Its: 

DALSIN, INC.

Counsel for Dalsin, Inc.

By: _____

Its: _____

INNOVATIVE METALS COMPANY INC.

Counsel for Innovative Metals Company
Inc.

By: _____

Its: _____

Counsel for Koch Hazard

By: _____

Its: _____

DALSIN, INC.

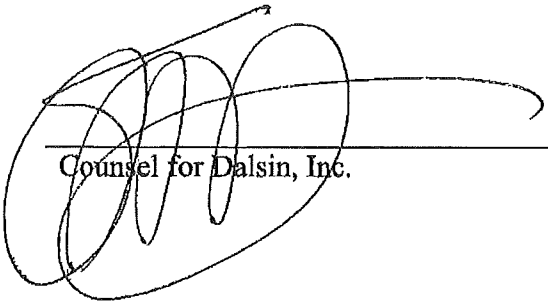
By: Mal

Its: President

INNOVATIVE METALS COMPANY INC.

By: _____

Its: _____



Counsel for Dalsin, Inc.

Counsel for Innovative Metals Company
Inc.

Counsel for Koch Hazard

By: _____

Its: _____

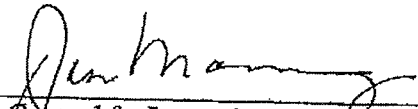
DALSIN, INC.

Counsel for Dalsin, Inc.

By: _____

Its: _____

**INNOVATIVE METALS COMPANY
INC.**



Counsel for Innovative Metals Company
Inc.

By: 

Its: PRESIDENT

EXHIBIT A

ESCROW AGREEMENT

This ESCROW AGREEMENT (this "Agreement") is made and entered into as of this 15 day of ~~June~~ ^{September}, 2015, by and among the City of Sioux Falls, South Dakota ("Sioux Falls"), and M. A. Mortenson Company, Sink Combs Dethlefs P.C., Koch Hazard Architects, Dalsin, Inc., and Innovative Metals Company Inc. (collectively referred to as the "Non-Client Parties"), and Thompson Hine LLP, an Ohio limited liability partnership ("Escrow Agent").

RECITALS

WHEREAS, the Non-Client Parties and Sioux Falls have entered into a Confidential Settlement Agreement and Release (the "Settlement Agreement") that requires the establishment of an Escrow Fund and payments into and disbursements from that Escrow Fund; and

WHEREAS, the Escrow Agent has agreed to provide the services set forth in this Agreement;

NOW, THEREFORE, in consideration of the covenants set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Non-Client Parties, Sioux Falls and Escrow Agent hereto agree as follows:

ARTICLE I

ESCROW; DISBURSEMENT OF FUNDS

1.1 **Escrow.** All payments required by the Settlement Agreement to be made into the Escrow Fund shall be paid to the Escrow Fund as follows:

- (a) Payment by wire should be made as follows:

KeyBank – IOLTA
127 Public Square
Cleveland, OH 44114-1291
ABA #041001039
Account #10001009504
For the benefit of Thompson Hine LLP
Reference – 093219.2

Swift Code : KEYBUS33

(b) Payment by check should be made as follows:

If a check must be used, it should be made payable to "Thompson Hine LLP" and should bear the reference "Trust Account for 093219.2".

1.2 **Disbursements.** Escrow Agent shall disburse the Escrow Fund to Sioux Falls as set forth in Paragraph 1.6 of the Settlement Agreement.

1.3 **Exclusive Function as Escrow Agent.** Notwithstanding that Escrow Agent is the attorney for Sioux Falls, the Escrow Agent is not acting under this Agreement as the attorney or agent of Sioux Falls. Rather, Escrow Agent is acting in an independent individual capacity. Sioux Falls expressly consents and agrees that the Escrow Agent's legal representation of Sioux Falls shall be limited to the extent that the Escrow Agent is not obligated to take any action that is inconsistent with the duties of the Escrow Agent hereunder. That means that (a) Escrow Agent will not comply with any instruction or demand that the Escrow Fund be disbursed in any manner other than strictly as provided in this Agreement and the Settlement Agreement; and (b) Escrow Agent will not handle the Escrow Fund in any manner other than strictly as provided in this Agreement and the Settlement Agreement. Sioux Falls hereby waives any conflict of interest that may exist in such situations.

1.4 **Consent of Non-Client Parties.** Non-Client Parties consent and agree, after having the opportunity to consult with legal counsel, that the Escrow Agent may continue to

represent and act as counsel to Sioux Falls notwithstanding that there may be any dispute or any litigation, including any interpleader action that may be brought with regard to the Escrow Fund. Non-Client Parties hereby waive any conflict of interest that may exist in such situations.

1.5 **Dispute as to Disposition of Escrow Fund.** If there is any dispute between Sioux Falls and Non-Client Parties as to the disposition of the Escrow Fund, the Escrow Agent shall continue to hold the Escrow Fund subject to the order of a court of competent jurisdiction as to the disposition thereof. At the option of the Escrow Agent (a) at any time after the Escrow Agent becomes aware of such dispute; or (b) at any time after 120 days from the date hereof, the Escrow Agent may deposit the Escrow Fund with the clerk of a court of competent jurisdiction and commence an action in the nature of an interpleader for a determination of the respective rights of Sioux Falls and the Non-Client Parties in the Escrow Fund. In any such interpleader action, the Escrow Agent may recover its costs and expenses, including reasonable attorneys' fees.

1.6 **Indemnification of Escrow Agent.** Escrow Agent acts hereunder as a depository for funds only, and in case of any suit or proceeding regarding this Agreement, Sioux Falls and the Non-Client Parties, jointly and severally, agree to indemnify and hold harmless Escrow Agent from all loss, costs or damages incurred by it (including, but not limited to, reasonable attorneys' fees and other reasonable professional fees and expenses) by reason of this Agreement or any action, claim or proceeding brought against the Escrow Agent arising out of or relating in any way to this Agreement or any transaction to which this Agreement relates, and to pay Escrow Agent upon demand all such costs, damages, fees and expenses so incurred.

1.7 **Reliance.** Escrow Agent may conclusively presume the genuineness of all signatures on documents and instruments that Escrow Agent receives, the genuineness of all facsimile and email correspondence that Escrow Agent receives, and the authority of any person purporting to act on behalf of a party that is not a natural person. Escrow Agent may, as to any other party hereto, conclusively rely upon written instructions given pursuant to this Agreement if and when received by Escrow Agent, in whatever form received by Escrow Agent.

1.8 **No Escrow Agent Fee.** The Escrow Agent shall not be entitled to a fee for its administration of the escrow arrangement established herein.

ARTICLE II MISCELLANEOUS

2.1 **Termination.** The Escrow Fund and Escrow Agent's obligations under this Agreement shall terminate immediately upon Escrow Agent's disbursement of the Escrow Fund.

2.2 **Entire Agreement.** This Agreement, together with the Confidential Settlement Agreement and Release, constitutes the entire agreement of the parties to this Agreement with respect to the subject matter hereof and supersedes all prior agreements and undertakings, both written and oral, with respect to the subject matter hereof.

2.3 **Notices.** All notices, requests and other communications to any party hereunder must be in writing (including facsimile or email).

2.4 **Amendments and Waivers.**

(a) **Writing Required.** Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of

an amendment, by each party or in the case of a waiver, by the party against whom the waiver is to be effective.

(b) **No Implied Waiver.** No failure or delay by any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

2.5 **Successors and Assigns.** The provisions of this Agreement are binding upon and shall inure to the benefit of the parties to this Agreement and their respective successors and permitted assigns. Notwithstanding anything to the contrary contained in this Agreement, nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties to this Agreement or their respective successors and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

2.6 **Expenses.** Each of the parties will bear their respective expenses incurred or to be incurred in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

2.7 **Titles and Headings.** Titles and headings to Sections in this Agreement are inserted for convenience of reference only, and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. No provision of this Agreement is to be interpreted in favor of, or against, any of the parties to this Agreement by reason of the extent to which any such party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft hereof or thereof.

2.8 **Governing Law.** This Agreement is to be construed in accordance with and governed by the internal substantive law of the State of Ohio regardless of the laws that might otherwise govern under principles of conflict of laws applicable thereto.

2.9 **Severability.** If any provision of this Agreement is determined by a governmental entity to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

2.10 **Counterparts; Effectiveness.** This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and to this Agreement were upon the same instrument. This Agreement shall become effective when each party to this Agreement has received counterparts hereof signed by the other parties to this Agreement.

IN WITNESS WHEREOF, the parties to this Agreement have caused this Escrow Agreement to be duly executed by their respective duly authorized representatives as of the day and year first above written.

ESCROW AGENT

Thompson Hine LLP

By: _____

Title: _____


Partner

CITY OF SIOUX FALLS, SOUTH DAKOTA

By: _____

Its: _____

Counsel for City of Sioux Falls, South Dakota

M. A. MORTENSON COMPANY

By: _____

Its: _____

Counsel for M. A. Mortenson Company

SINK COMBS DETHLEFS P.C.

By: _____

Its: _____

Counsel for Sink Combs Dethlefs P.C.

KOCH HAZARD

By: _____

Its: _____

Counsel for Koch Hazard

DALSIN, INC.

By: _____

Its: _____

Counsel for Dalsin, Inc.

IN WITNESS WHEREOF, the parties to this Agreement have caused this Escrow Agreement to be duly executed by their respective duly authorized representatives as of the day and year first above written.

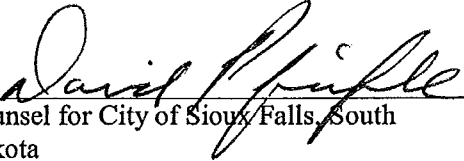
ESCROW AGENT

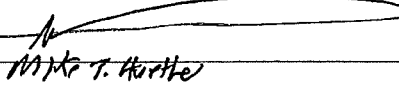
Thompson Hine LLP

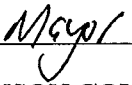
By: _____

Title: _____

**CITY OF SIOUX FALLS, SOUTH
DAKOTA**


Counsel for City of Sioux Falls, South
Dakota

By:  _____

Its:  _____

M. A. MORTENSON COMPANY

Counsel for M. A. Mortenson Company

By: _____

Its: _____

SINK COMBS DETHLEFS P.C.

Counsel for Sink Combs Dethlefs P.C.

By: _____

Its: _____

KOCH HAZARD

Counsel for Koch Hazard

By: _____

Its: _____

DALSIN, INC.

Counsel for Dalsin, Inc.

By: _____

Its: _____

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Thompson Hine LLP

By: _____

Title: _____

CITY OF SIOUX FALLS, SOUTH DAKOTA

By: _____

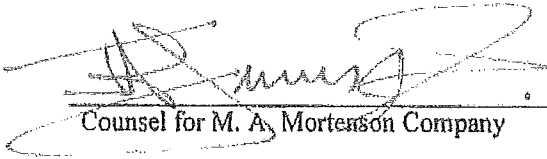
Its: _____

Counsel for City of Sioux Falls, South Dakota

M. A. MORTENSON COMPANY

By:  _____

Its: VICE PRESIDENT


Counsel for M. A. Mortenson Company

SINK COMBS DETHLEFS P.C.

By: _____

Its: _____

Counsel for Sink Combs Dethlefs P.C.

KOCH HAZARD

By: _____

Its: _____

Counsel for Koch Hazard

DALSIN, INC.

By: _____

Its: _____

Counsel for Dalsin, Inc.

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Thompson Hine LLP

By: _____

Title: _____

CITY OF SIOUX FALLS, SOUTH DAKOTA

Counsel for City of Sioux Falls, South
Dakota

By: _____

Its: _____

M. A. MORTENSON COMPANY

Counsel for M. A. Mortenson Company

By: _____

Its: _____

SINK COMBS DETHLEFS P.C.

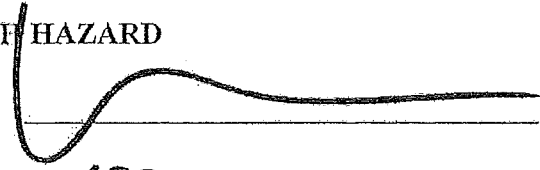
Counsel for Sink Combs Dethlefs P.C.

By:  _____

Its: *Architect of Record* _____

KOCH HAZARD

Counsel for Koch Hazard

By:  _____

Its: *CEO* _____

DALSIN, INC.

Counsel for Dalsin, Inc.

By: _____

Its: _____

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ESCROW AGENT

Thompson Hine LLP

By: _____

Title: _____

CITY OF SIOUX FALLS, SOUTH DAKOTA

Counsel for City of Sioux Falls, South
Dakota

By: _____

Its: _____

M. A. MORTENSON COMPANY

Counsel for M. A. Mortenson Company

By: _____

Its: _____

SINK COMBS DETHLEFS P.C.

Counsel for Sink Combs Dethlefs P.C.

By: _____

Its: _____

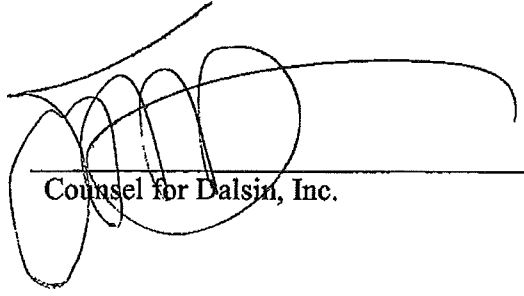
KOCH HAZARD

Counsel for Koch Hazard

By: _____

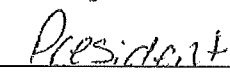
Its: _____

DALSIN, INC.



Counsel for Dalsin, Inc.

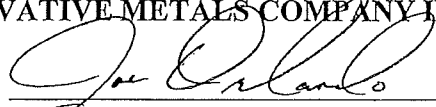
By:  _____

Its:  _____

Counsel for Innovative Metals Company
Inc.

INNOVATIVE METALS COMPANY INC.

By:



Its:



PRESIDENT