SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT (hereafter referred to as the "Agreement") is entered into this _____ day of _____, 2018, by and between the City of San Antonio, Texas, a Texas Municipal Corporation (hereafter referred to as "City") and Spawglass Civil Construction, Inc., a Texas Corporation (hereafter referred to as "Claimant") with its offices located at 13800 West Road, Houston, Texas 77041 (City and Claimant collectively referred to as "the Parties").

WHEREAS, the Parties entered into a construction contract, as authorized by the San Antonio City Council pursuant to Ordinance No. 2015-12-10-1043 on December 10, 2015 (hereafter referred to as the "Contract") to perform certain construction for the Terminal Area Taxiway Improvements Package 3 at San Antonio International Airport in San Antonio, Texas, Project No. 33-00193, (hereafter referred to as the "Project"); capitalized terms not otherwise defined herein shall have the meanings set forth in the Contract; and

WHEREAS, the Parties have asserted certain claims against one another growing out of the Project, which claims collectively are referred to herein as the "Project Claims," which are shown in Exhibit 1, attached hereto; and

WHEREAS, bona fide disputes and controversies exist between the Parties, with respect to the Project Claims, but the Parties wish and agree to settle the Project Claims and any and all other matters relating to the Project;

NOW THEREFORE, in consideration of the mutual covenants, promises, representations, conditions warranties and agreements set forth herein, and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Contingent upon approval of this Agreement by the City of San Antonio, Texas City Council ("City Council"), City does hereby agree to payment of the total of ONE HUNDRED SEVENTY EIGHT THOUSAND, TWO HUNDRED SIXTY THREE AND 56/100 DOLLARS ($178,263.56), as full and final settlement of any and all claims, liabilities, damages, obligation and/or duties, known and unknown, asserted or unasserted, past present and future owed by City to Claimant in any way related to or arising out of the Project Claim or out of the Project as whole, perceived or actual, that Claimant may have incurred. The sum will be paid in full within thirty (30) calendar days of approval of this Agreement by City Council.

2. Claimant, its respective officers, directors, members, employees, agents, representatives and their respective successors, heirs and assigns, does hereby release, acquit and forever discharge City and its respective officers, directors, members, employees, agents, representatives and their respective sureties,

successors, heirs and assigns from any and all actions, suits, debts, demands, accounts, claims, reckonings, bonds, bills, liabilities, controversies, damages, judgments, and causes of action, whether known or unknown, actual or potential, whether based on law or in equity, in tort, contract, by statute or in law, which either now has or ever has had by reason of any matter, cause or thing, which in any way relate directly or indirectly to the Project. It is the express intent of the Parties that this Agreement operate as a bar to any subsequent proceedings initiated by or on behalf of Claimant with respect to any claims, causes of action, lawsuits, debts, demands, accounts, claims, reckonings, bonds, bills, liabilities, controversies, damages, and judgments, perceived or actual, that Claimant may have incurred or accrued, arising from or related to the Contract or Project.

3. City, its respective officers, directors, members, employees, agents, subcontractors, representatives and their respective successors, heirs and assigns, does hereby release, acquit and forever discharge Claimant and its respective officers, directors, members, employees, agents, representatives and their respective sureties, successors, heirs and assigns from those actions, suits, debts, demands, accounts, claims, reckonings, bonds, bills, liabilities, controversies, damages, judgments, and causes of action, whether based on law or in equity, in tort, contract, by statute or in law, with the exception of such warranty and indemnity provisions of the Contract as survive completion of the work thereunder and any implied warranties applicable by operation of law. It is the express intent of the Parties that this Agreement operate as a bar to any subsequent proceedings initiated by or on behalf of City with respect to any claims, causes of action or lawsuits, debts, demands, accounts, claims, reckonings, bonds, bills, liabilities, controversies, damages, and judgments, perceived or actual that City may have incurred or accrued arising from or related to the Contract or Project, with the exception of warranty and indemnity provisions of the Contract as survive completion of the work thereunder and any implied warranties applicable by operation of law. The Parties expressly agree that Claimant's warranty obligations, both express and implied, under the Contract shall remain in full force and effect in accordance with the terms thereof.

4. This Agreement is a negotiated Lump Sum settlement between the Parties. Any action(s) taken pursuant to the Agreement does not constitute and shall not be construed as an admission of liability on the part of either Party.

5. The Parties warrant and represent that they have read this Agreement, that they understand this Agreement and that they freely and voluntarily entered into this Agreement.

6. Claimant represents and warrants that it is the sole and lawful owner of all right, title and interest in and to every claim and other matter that Claimant is purporting to release or settle by this Agreement and that Claimant previously has not assigned or transferred, either by act or operation of law, to any party or entity, any claim or other matters release by this Agreement. It further is understand and specifically agreed, in the event that City is subject to further claims, whether in

law or in equity, by any Subcontractor, Sub-Consultant, supplier, person, firm, corporation or other entity, acting under any actual or purported right of subrogation or assignment, Claimant shall indemnify, hold harmless and defend City from any such claim or demand.

7. Each of the Parties warrants, represents, and agrees that no promise, agreement, representation or statement not explicitly and expressly contained in the Agreement has been made or relied upon in entering the Agreement. This Agreement is a complete integration and represents the entire agreement among and between the Parties relating to the subject matter hereof. This Agreement supersedes and replaces any and all previous understandings or agreements, whether oral or written.

8. Each signatory warrant and represent that: (i) it legally is competent and has the power to execute this Agreement on behalf of the party for whom it purports to execute this Agreement; and (ii) it has entered the Agreement with full and complete knowledge of its contents and the effects thereof, solely motivated by its own free will and accord.

9. The Parties warrant and represent that they will cooperate fully in executing, preparing and filing any and all documents that may be necessary or appropriate to give full force and effect to the Agreement.

10. This Agreement shall inure to the benefit of and be binding upon the respective successors, heirs and assigns of the Parties hereto.

11. This Agreement may not orally be modified, amended, waived or terminated. No modification, amendment, termination or claimed waiver of any of the Agreement's provisions shall be binding unless made in writing and signed by the Parties hereto.

12. This Agreement may be executed in counterpart by each signatory and when each party has done so, such will have the same force and legal effect as if each had signed the same document.

13. If any portion of this Agreement is held to be invalid or restricted for any reason, the remainder of this Agreement shall continue in full force and effect.

14. This Agreement is made and performable in Texas, and shall be construed in accordance with the substantive law of the State of Texas, without giving effect to Texas's conflict of law provisions, and all obligation hereunder are to be performed in San Antonio, Bexar County, Texas. Any actions arising out of this Agreement shall be brought in the State District Court of San Antonio, Bexar County, Texas.

15. If any action in law or in equity, to include any action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the substantially prevailing party shall be entitled to recover reasonable attorney's fees from the

other Party, which fees may be set by the Court in the trial of such action or may be enforced in a separate action brought for that purpose and which fees shall be in addition to any other relief which may be awarded.

16. Notwithstanding anything herein to the contrary, this agreement does not apply to claims, causes of action or any other issue not apparent as of December 20, 2017.

IN WITNESS WHEREOF, the Parties each have duly executed this Settlement Agreement on the dates represented below.

City of San Antonio, Texas

By: _____
Sheryl Sculley
City Manager

Execution Date: _____

Spawglass Civil Construction, Inc.

By: _____
Signature
Amer Al-Nahhas
Printed Name
President
Title

Execution Date: _____

APPROVED AS TO FORM:

_____
City Attorney

EXHIBIT 1
CLAIM DOCUMENTS

CITY OF SAN ANTONIO
AVIATION DEPARTMENT

December 6, 2017

Mr. Amer Al-Nahhas
President
Spawglass Civil Construction, Inc.
13800 West Road
Houston, TX 77041

Re: Terminal Area Taxiway Improvements Package 3 (CIP No. 33-00193)
Claim for Temporary Suspension of Work

Dear Mr. Al-Nahhas:

Thank for meeting on Monday, November 27, 2017 to discuss your claim related to the Temporary Suspension of Work from March 2, 2017 to April 9, 2017. As a result of our discussions, we have further considered the items in your claim and propose to offer $159,094.48 to resolve this claim. Below, find our evaluation/breakdown of items and what we feel to be fair compensation:

Materials (Project trailer)
- SpawGlass requested $8,920.47
- The City agrees to amount as requested: $8,920.47

Supervision
- SpawGlass requested $57,419.31
- Payment for Supervision is not an allowable markup for change order pricing when there is not an extension of Contract Time, as the City of San Antonio Special Conditions for Horizontal Projects, Article 7.2.5.1, *Labor*, the last sentence states the following: "No charge for Superintendence shall be made unless considered necessary and approved by Owner or a Change Order includes an extension of Contract Time."
- However, whenever the Contractor is working, the Contract Documents require supervision. Therefore, pursuant to Article 4.4.3, *Resolution of Claims and Disputes,* the Design Consultant may suggest a compromise when taking action to review claims.
- The Perimeter Road project started on March 23, 2017 and the same management personnel were overseeing this project as were assigned to Package 3 as verified by Perimeter Road progress meeting reports, sign-in sheets and the organization chart in the quality management plan.
- We propose to allow for a single supervisor (Mr. Stephen Raley) for 21 days x 8-hrs per day = $12,257.03 due to Contract requirements for full time supervision.

Downtime Labor
- SpawGlass requested $41,342.34
- The City agrees to amount as requested: $41,342.34

Equipment
- SpawGlass requested $131,322.36
- Contractor moved 19 pieces of equipment to the Perimeter Road project after 21 calendar days during the temporary suspension. This equipment remained on the Perimeter Road project. Five(5) pieces of equipment remained in the laydown area for Package 3 during the duration of the temporary suspension.
- The City agrees to pay 50% standby charges in accordance with Article 8.2.2 of the Contract for equipment NOT working on Perimeter Road project. See Table 1 attached for the list of equipment, hours assigned to each project and amounts derived. Proposed equipment standby amount is $51,479.38.

Subcontractor Down Time Labor

- SpawGlass requested $10,168.08
- Subcontractor Martinez Steel performed gate guard duties while Contractor was surveying the Perimeter Road project. Field surveying started on Monday, March 20, 2017 for the Perimeter Road, as documented in Consultant's daily construction field report. Therefore, Subcontractor labor will be considered from March 2 through March 19, 2017.
- Proposed Subcontractor down time labor is $5,304.10 based on certified payroll reports.

Batch Plant Standby Cost

- SpawGlass requested $37,041.42
- The City agrees to amount as requested: $37,041.42

Webber Escalation Costs

- SpawGlass requested $13,405.00
- Considering construction phases 1-3 were combined which reduced Contract Time by 31 days and the duration of the temporary suspension is 39 days for this claim, the City proposes to reimburse for 8 days.
- Proposed Webber escalation costs is $2,749.74 when prorating the requested amount.

Equipment Credit for Perimeter Rd

- SpawGlass offered credit of $3,840.48 for the CAT 12M blade and no other equipment credits.
- This is accounted for in equipment calculation above and attached.

Time Extension

- SpawGlass requested 39 calendar days.
- General Condition Specification, Article 13.4.2.1 allows for an equitable extension of the Contract Time, as follows: "An equitable extension of Contract Time, not to exceed the actual delay caused by the temporary suspension, as determined by Owner and Design Consultant." The project was suspended for less than 90-calendar days (not delayed), therefore no additional time shall be granted.
- Furthermore, no Contract Time was charged against the project during the suspension because Phase 4 was substantially complete and the Contract Time for Phase 5 did not start until after the temporary suspension.

The City's proposal to resolve this claim is $159,094.48. If you have any questions, please contact Mr. Dennis Fiemeyer, P.E., Capital Programs Manager, Aviation Department, at (210) 207-3401, electronic mail address: Dennis.Fiemeyer@sanantonio.gov or Ms. Dulce Bares, Contract Coordinator, Aviation Department, at (210) 207-3517, electronic mail address: Dulce.bares@sanantonio.gov

Sincerely,

Russell J. Handy
Aviation Director

Attachment: Table 1 – Design Consultant's Review of Contractor's Claim for Equipment Costs Regarding the Temporary Suspension of the Work for Phase 5, Package 3

cc: Dennis Fiemeyer, Dulce Bares, Candyce Selby, Mike Norby, Jon Graf

SpawGlass

December 15, 2017

Mr. Russell J. Handy
Aviation Director
City of San Antonio Aviation Department
9800 Airport Boulevard
San Antonio, TX 78216

Re: Terminal Area Taxiway Improvements Package 3 (CIP No. 33-00193)
Subject: Temporary Suspension of Work - Post Senior Level Negotiation Meeting Counteroffer

Dear Mr. Handy:

SpawGlass has reviewed the City's proposal dated December 6, 2017 and received on December 8, 2017 for the amount of $159,094.48. Based on our review of the City's proposal SpawGlass is offering to settle this claim for $178,263.56 per the attached summary and in accordance with the following:

- SpawGlass agrees to the City's amounts for the following items:
  - Material: $8,920.47
  - Downtime Labor: $41,342.34
  - Equipment: $51,479.38
  - Subcontractor Down Time Labor: $5,304.10
  - Batch Plant Standby Cost: $37,041.42
  - Webber Escalation Cost: $2,749.74
- The City agreed to $12,257.03 for Supervision for a single supervisor, Stephen Raley for 21 days of the between the start of the shutdown to the start of the Perimeter Road Package 1 project.
  - Due to the size and location of the Perimeter Road project, it was the intent of the Package 3 team to split cost between the two projects. The City benefited from our salary personnel cost allocation structure at bid time of the Perimeter Road project by selecting SpawGlass, thus not having to spend the $15,000 allowance for a different contractor to set up outside of the AOA.
  - During the 39 days, the Package 3 team was processing invoices, quality control, and subcontractor pay applications in addition to preparing for the Perimeter Road project by studying the project, writing subcontracts and starting the submittal process the team members' time was split between the two projects. Taking this into consideration, SpawGlass offers the following Supervision Cost Allocation structure (all calculations are based on the original rates submitted by Dan Hinson to Jon Graf):
    - Martin Johnson at 20% x 39 days = $ 4,759.40
    - Philip Betancourt at 20% x 39 days = $ 2,554.03
    - Stephen Raley at 100% x 21 days = $ 10,656.66
    - Stephen Raley at 50% x 18 days = $ 4,567.14
    - Sam Riojas at 20% x 39 days = $ 3,423.26
    - Jose Turrubiates at 10% x 39 days = $ 1,882.92
    - **Total Supervision Cost = $ 27,843.41**

We feel this counteroffer is fair and equitable to the City and SpawGlass. The City's efforts to negotiate in an open and fair way are greatly appreciated. If you need any further information or would like to discuss this counteroffer, please feel free to contact me.

We look forward to your response.
Sincerely,
SPAWGLASS CIVIL CONSTRUCTION, INC.

Amer Al-Nahhas
President

SpawGlass Civil Construction
13800 West Rd
Houston, TX 77041

SpawGlass

Claim

SG Job #	5015027		
Project:	Terminal Area Taxiway Improvements - Package 3		
Reference:	SAIA	Date:	12/15/2017
Bid Items:	N/A		

Description of Changes:
Option 3 - Project Shutdown - Rev. 6 Post Senior Level Negotiations Counte Offer

Itemization of Shutdown Costs

	Description						Total
	Extended General Conditions - Material						$ 8,920.47
	Extended General Conditions - Downtime Labor						$ 41,342.34
	Extended General Conditions - Equipment						$ 51,479.38
	Traffic Control Sub - Downtime Labor						$ 5,304.10
	Concrete Batch Plant - Standby Costs						$ 37,041.42
	Webber Escalation Cost						$ 2,749.74
	Extended General Conditions - Supervision						$ 27,843.41
	Subtotal						**$ 174,680.86**

Subtotal:						**$ 174,680.86**
Bonds				1.000%	$	1,746.81
General Liability Insurance				0.850%	$	1,484.79
Builders Risk				0.121%	$	211.36
Owners Protective Insurance				0.080%	$	139.74
Grand Total					$	178,263.56

Notes: 1 Burden is included in all labor and salary cost.

Per the request made in the Senior Level Negotiations Meeting held on 11/27/2017, these are the costs associated with shutting the project down for 39 days:
$ 178,263.56

Additional Time	0

Signed

Amer Al-Nahhas, President
SpawGlass Civil Construction, Inc.

The State of Texas
County of Harris

BEFORE ME, the undersigned authority, on this day personally appeared AMER AL-NAHHAS, who is personally known to me, and being duly sworn according to law, upon his oath deposed and said:

(1) "My name is Amer Al-Nahhas. I am over the age of 18. I have never been convicted of a crime and am fully competent to make this affidavit."

(2) "I am the President of SpawGlass Civil Construction, Inc."

(3) "I am an authorized officer of SpawGlass Civil Construction, Inc. with the authority to bind the company to an agreement."

(4) "I have personal knowledge of facts contained herein and they are all true and correct."

Signed

Amer Al-Nahhas, President
SpawGlass Civil Construction, Inc.

SUBSCRIBED AND SWORN TO BEFORE ME on this 15th day of December, 2017 to certify which witness my hand and seal of office.

Notary Public, State of Texas

ROBIN Y FALKE
Notary Public, State of Texas
Commission Expires
JUNE 7, 2018