

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT (hereafter referred to as the "Agreement") is entered into this _____ day of _____, 2014, by and between the City of San Antonio, Texas, a Texas Municipal Corporation (hereafter referred to as "City") and E-Z Bel Construction, LLC, a Texas Limited Liability Company (hereafter referred to as "Claimant") with its main offices located at 203 Recoleta, San Antonio, Texas (hereafter City and Claimant collectively referred to as "the Parties").

WHEREAS, the City entered into a contract dated September 29, 2011 (hereafter referred to as the "Contract") to perform certain construction for the Fort Sam Houston Transportation Project located along Harry Wurzbach intersections: Winans, Burr and Rittiman Road in San Antonio, Texas (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 "Fort Sam Houston Project Claims"; and

WHEREAS, bona fide disputes and controversies exist between the Parties, with respect to the Fort Sam Houston Project Claims, but the Parties wish and agree to settle the Fort Sam Houston 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. City will make a final payment, which shall be the final amount due either party under the Contract (with the exception of potential warranty and indemnity obligations as set forth in Paragraph 4 herein), to Claimant in the amount of TWO HUNDRED EIGHTY FOUR THOUSAND SEVEN HUNDRED NINE DOLLARS AND 34/100 (\$284,709.34), said amount includes payment in full for any and all costs incurred by Claimant (both delay and actual) on the Fort Sam Houston Project for barricades, asphalt (and associated escalation costs) all overhead costs and all costs incurred on the project for bonds and insurance, along with any and all other costs Claimant may have incurred on the Fort Sam Houston Project. Payment shall be made by City to Claimant as follows:

\$284,709.34 within thirty (30) calendar days of approval of this Agreement by the San Antonio, Texas City Council, following its execution by Claimant.

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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.


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

City of San Antonio, Texas

By: _____
Peter Zanoni
Assistant City Manager

Execution Date: _____

E-Z Bel Construction, LLC

By: 
Title: PRES.
203 Recoleta
San Antonio, Texas 78216

Execution Date: 03/11/2014

APPROVED AS TO FORM:

City Attorney