

ORDINANCE

2021-06-17-0465

APPROVING AN AGREEMENT BETWEEN THE CITY OF SAN ANTONIO, J3 COMPANY LLC AND DC CIVIL CONSTRUCTION LLC AND AUTHORIZING PAYMENT TO J3 COMPANY LLC IN THE AMOUNT OF \$140,000.00 FOR WORK PERFORMED RELATED TO THE PORT SAN ANTONIO PROJECT, A 2017 BOND FUNDED PROJECT, LOCATED IN COUNCIL DISTRICT 4.

* * * * *

WHEREAS, on May 6, 2017, San Antonio voters approved the City of San Antonio's 2017-2022 Bond Program, of which \$24,000,000.00 was approved for drainage improvements associated with the Port San Antonio project with funds being used toward constructing the project, construction oversight and the reimbursement of construction phase design services and utility adjustments; and

WHEREAS, in partnership with the City, the Port Authority of San Antonio agreed to manage and fund the design phase of the project, including the necessary environmental services and manage the preconstruction utility adjustments, the City agreed to contribute \$24,000,000.00 toward the construction and provide construction management services for the Port San Antonio project and fund the preconstruction utility adjustments; and

WHEREAS, the Port San Antonio project is a continuation of the City of San Antonio's commitment to providing an adequate storm water system to reduce on-going flooding risks within the City and the project expands the 36th Street Phase IIIB (Billy Mitchell to General Hudnell) drainage infrastructure built as part of the 2012 General Obligation Bond Program; and

WHEREAS, project construction began in February 2019 and is estimated to be completed by May 2022; and

WHEREAS, this agreement finalizes multiple issues related to the impact of groundwater on the project, associated project delays and the loss of production made by the prime contractor, J3 Company LLC, on behalf of their subcontractor, DC Civil Construction LLC in association with the Port San Antonio project; and

WHEREAS, this ordinance authorizes an Agreement between the City of San Antonio, J3 Company LLC and DC Civil Construction LLC and authorizes payment to J3 Company LLC in the increased amount of \$140,000.00 for the issues related to the impact of groundwater; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or his designee is hereby authorized the Agreement between the City of San Antonio, J3 Company LLC and DC Civil Construction LLC and authorizes payment to J3 Company LLC in the increased amount of \$140,000.00 for issues related to the impact of groundwater. A copy of the agreement in substantially final form is attached as **Exhibit I**.

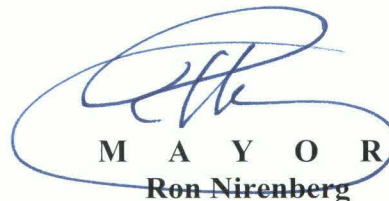
SECTION 2. Payment is authorized to be encumbered and made payable to J3 Company LLC for the Settlement and Release Agreement between the City of San Antonio, J3 Company LLC and DC Civil Construction LLC, in an amount not to exceed \$140,000.00. Payment is in support of the Port San Antonio Project, using Fund 45099000, with WBS Element 23-01633-05-02-01 with General Ledger Account 5201140. Funding is provided by GO Bonds and is budgeted in the FY2021-FY2026 CIP Budget.

Payment is limited to the amounts budgeted in the Operating and/or Capital Budget funding sources identified. All expenditures will comply with approved operating and/or capital budgets for current and future fiscal years.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Fund Numbers, Project Definitions, WBS Elements, Internal Orders, Fund Centers, Cost Centers, Functional Areas, Funds Reservation Document Numbers, and GL Accounts as necessary to carry out the purpose of this Ordinance.


SECTION 4. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

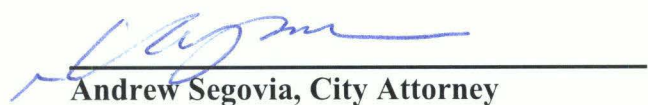
PASSED AND APPROVED this 17th day of June, 2021.


M A Y O R
Ron Nirenberg

ATTEST:

APPROVED AS TO FORM:


Tina J. Flores, City Clerk


Andrew Segovia, City Attorney



City of San Antonio

City Council

June 17, 2021

Item: 22B

File Number: 21-4356

Enactment Number:

2021-06-17-0465

Ordinance approving an Agreement between the City of San Antonio, J3 Company LLC and DC Civil Construction LLC and approving payment to J3 Company LLC in the amount of \$140,000.00 for work performed related to the Port San Antonio project, a 2017 Bond funded project.

Councilmember Ana E. Sandoval made a motion to approve. Councilmember John Courage seconded the motion. The motion passed by the following vote:

Aye: 10 Nirenberg, McKee-Rodriguez, Viagran, Rocha Garcia, Castillo,
Cabello Havrda, Sandoval, Pelaez, Courage and Perry

Abstain: 1 Bravo

DBS
06/17/2021
Item No. 22B

EXHIBIT I
Agreement Port SA

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (hereinafter the “Agreement”) is entered into between and among the **City of San Antonio** (hereinafter the “City”), a Municipal Corporation in the State of Texas, **J3 Company LLC** (hereinafter “J3”), and **DC Civil Construction LLC** (hereinafter “DC Civil”). City, J3 and DC Civil are sometimes collectively referred to herein as the “Parties”.

WHEREAS, the City and J3 entered into a construction contract for Port San Antonio Drainage Channel, Project No. 23-01633 (hereinafter the “Project”) pursuant to Ordinance No. 2019-01-17-0025 (hereinafter the “Contract”); and

WHEREAS, DC Civil, through J3, has submitted multiple claims associated with work performed by DC Civil on the Project which are attached hereto as Exhibit A (referred to hereinafter as the “Claim”); and

WHEREAS, DC Civil and City are not in privity of contract; and

WHEREAS, the City disputes the validity of the Claims and DC Civil’s right to assert a claim because the subcontract between J3 and DC Civil fails to meet the conditions precedent set out in per Article IV.2.10.b of the Contract for J3 to submit a subcontractor pass-through claim; and

WHEREAS, City further disputes that J3 is entitled to any markup, percentage, fee, cost, expense or remuneration of any kind associated with the Claim; and

WHEREAS, DC Civil, J3 and City hereto desire to resolve all claims and causes of action which exist among them of any kind whatsoever and in any way related to the Claim amicably and without litigation. This Agreement shall not constitute or be construed to be an admission on any part by any Party or as evidencing or indicating any admission of the truth or correctness of any claims asserted;

NOW THEREFORE, in consideration of the mutual promises and agreements herein contained, including the recitals set forth above, the receipt and sufficiency of which are hereby formally acknowledged, the Parties agree as follows:

1. 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 DC Civil in any way related to or arising out of the Claim or out of the Project as whole, perceived or actual, the City does hereby agree to pay DC Civil the sum of ONE HUNDRED FORTY THOUSAND AND 00/100 DOLLARS (\$140,000.00). Which payment will be made within thirty (30) days of City Council approving this Agreement. The foregoing shall in no way limit the ability of City to require DC Civil to correct latent defects or nonconformities in the work according to the Contract which are not included in the Claim, which defects or nonconformities could not have been discovered through reasonable diligence by City at the time the work was performed or at the time of Project substantial completion.
2. DC Civil, for and on behalf of itself, all related companies, partnerships or joint ventures, with respect to each of them, their predecessors and successors, shall further, and does hereby, RELEASE, ACQUIT and FOREVER DISCHARGE the City, the City's Council members, officers, directors, assigns, representatives, agents, or employees, of and from any and all claims, damages, demands, liability, lawsuits, actions or causes of action, costs, losses, expenses, compensation and/or obligations, whether known or unknown, at law or in equity, which DC Civil has or may have against the City arising from or related in any way whatsoever to the Claim or the Project as a whole that DC Civil may have incurred or accrued up to the date of this Agreement with the exception of those claims specifically listed in Exhibit B. It is the express intent of DC Civil this Agreement operate as a bar to any subsequent proceedings with respect to any claims, causes of action or lawsuits arising from or related to the Claim or the Project, perceived or actual, that DC Civil may have incurred or accrued up to the date this Agreement with the exception of those claims specifically listed

in Exhibit B. The Agreement shall not act as a bar to those claims specifically listed in Exhibit B, and nothing herein shall be deemed to have waived, settled, or compromised the claims specifically listed in Exhibit B.

3. The City, for and on behalf of itself, all related entities or parties, with respect to each of them, their predecessors and successors, shall further, and does hereby, RELEASE, ACQUIT and FOREVER DISCHARGE, DC Civil from any and all claims, damages, demands, liability, lawsuits, actions or causes of action, costs, losses, expenses, compensation and/or obligations, whether known or unknown, at law or in equity, which the City has or may have against DC Civil arising from or related in any way whatsoever to the Claim. It is the express intent of the City that this Agreement operate as a bar to any subsequent proceedings with respect to any claims, causes of action or lawsuits arising from or related to the Claim with the exception of those claims specifically listed in Exhibit B. The foregoing shall in no way limit the ability of City to require DC Civil to correct latent defects or nonconformities in the work in accordance with the Contract, which defects or nonconformities could not have been discovered through reasonable diligence by City at the time the work was performed or at the time of Project substantial completion.
4. J3, for and on behalf of itself, all related entities or parties, with respect to each of them, their predecessors and successors, shall further, and does hereby acknowledge and agree that J3 is in no way entitled to any markup, percentage, fee, cost, expense or remuneration of any kind associated with the Claim and waives any and all right J3 may have to collect any payment whatsoever from City in association with the Claim. The agreements in this paragraph only apply to the Claim as stated in Exhibit A and no other amounts.
5. It is understood and agreed by the Parties to this Agreement that it is executed for the sole purpose of compromising and settling the matters involved in and associated with the Claim and any associated payments to J3 and it is expressly understood and agreed, as a condition of the compromise, that this Agreement shall not constitute or be construed to be an admission on any part of any Party or as evidencing or indicating any admission of the truth

or correctness of the Claim asserted. This Agreement is a satisfaction and accord of disputed claims relating to and arising out of the Claim and any additional payments to J3 arising out of or related to the Claim.

6. The Parties understand and agree that any legal fees or costs expended shall be borne by the party incurring the same.
7. All Parties acknowledge the terms of this Agreement have been negotiated by the Parties hereto and that they have had the opportunity to review this settlement agreement for themselves and with their attorneys. By the execution hereof, the Parties hereto expressly warrant that they have read the Agreement, understand its terms, and are signing this Agreement of their own free will.
8. In making this Agreement, it is understood and agreed that the undersigned have relied wholly upon their own respective judgment, belief and knowledge of the nature, extent, and duration of any damages, as well as any liability question involved, the undersigned have not been influenced to any extent whatsoever in making this release by any representations or statements or any other matters made by the municipality, persons, firms, or corporations hereby released or by any person representing or acting for them, and that regardless of whether any representations have been made by any Party or any agent of any Party, the Parties hereto are entering into this Agreement based solely upon the terms contained herein. All Parties hereto expressly disclaim any and all past or oral representations made by such Parties or their agents. This Agreement reflects the entire agreement of understanding between the Parties with respect to the foregoing subject matter.
9. DC Civil represents and warrants it is the sole and lawful owner of all right, title and interest in and to every claim and other matter that DC Civil is purporting to release or settle by this Agreement and that DC Civil has not previously assigned or transferred, either by act or operation of law, to any party or entity, any claim or other matters released by this

Agreement. It is further understood and specifically agreed that in the event City is subjected to further claim, whether in law or in equity, by any person, firm, corporation or other entity, acting under any actual or purported right or subrogation, or assignment regarding the Claim, DC Civil, will indemnify, hold harmless and defend the City from any such claim or demand.

10. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, insurers, sureties, administrators, legal representatives, corporations, partnerships, entities, successors or predecessors, directors, officers, employees, servants, assigns, attorneys or any one in privity with any of them.
11. This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are to be performed in Bexar County, Texas. Any actions arising out of this Agreement shall be brought in the State District Court of Bexar County, Texas.
12. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.
13. In the event that this Agreement, or any provisions hereof, is construed or determined to be ambiguous by any court of law or arbitrator, then in that event, the Parties agree that each Party has contributed to the preparation of this Agreement and have jointly written or composed the clauses herein contained and that no Party hereto shall be given any advantage over the other Parties under the laws of construction of instruments based upon the authorship hereof.

14. Any person signing this Agreement on behalf of any type of legal entity, including, but not limited to, a corporation, partnership, limited partnership or joint venture, represents and warrants that the person signing has actual authority to sign this Settlement Agreement in order to bind the legal entity he or she represents, and further warrants that the legal entity has taken all internal actions necessary or appropriate to bind the legal entity to this Agreement.

Signatures to follow

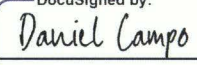
IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have caused this Settlement and Release Agreement to be executed by their duly authorized representatives as of the latter date set forth below.

CITY OF SAN ANTONIO

Roderick J. Sanchez, AICP
Assistant City Manager

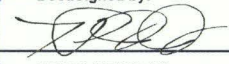
Date: _____

**DC CIVIL CONSTRUCTION
LLC**

DocuSigned by:

11EBB339529746B
Name: Daniel Campo
Title: President

Date: 5/14/2021

J3 COMPANY LLC

DocuSigned by:

D31601157ACF447
Name: Hugh Jons
Title: Vice President
Date: 5/14/2021

APPROVED AS TO FORM:

City Attorney

EXHIBIT A
CLAIM

Date	Claims	Amount
6/4/2019	PRN-44 Time Impact – Unforeseen Industrial Waste Line	\$ 70,757.64
6/5/2019	PRN-43 Time Impact – Groundwater Containment Trench Plug	\$ 41,089.72
6/5/2019	PRN-42 Time Impact – USAF Permit Delay	\$ 10,947.50
2/6/2020	PRN-48 Demobilization for DC Civil – Sewer Redesign	\$ 36,921.86
2/24/2020	PRN-49 Time Impact – Groundwater Shutdown	\$ 198,839.76
12/7/2020	RFI-170 DC Civil/J3 Loss of Production Impact	\$ 358,534.48

EXHIBIT B
CLAIM EXCEPTIONS

J3 and DC Civil Claims to be Excepted from Settlement Agreement		
Date	Location	Conflict
Jun 10, 2020 - Aug 12, 2020	Line "A" from STA 49+33 to 63+85	Concrete blocks along Line "A" on Berman From MH 13A to MH 18A
June 20, 2019	Line "A" from STA 10+00 to STA 20+20	Design Change - Sewer Rework - MH 4A to MH A0
February 23, 2021	Water Line "D"	Due to realignment of the drain channel the water line has to be extended 20 LF to the south, have to remove existing line and add 20 LF of 24-inch steel casing and relocate two valves
Aug 24/25/26/27/28, 2020	Line "B" from STA 11+82 to STA 12+24	Storm Box Repair Line "A" STA 63+38
August 4, 2020	Line "A" STA 63+38	Storm Box Bottom Demolition
Aug 25/26, 2020	Line "B" from STA 11+82 to STA 12+24	Due to rain on Aug 22nd and unforeseen utilities, removed and reinstalled to grade 42 Lf of the 21-inch Pipe
August 5, 2020	Line "A" from STA 63+21 to STA 63+49	Due to rain on Aug 4th and unforeseen utilities, removed and reinstalled to grade 24 Lf of the 21-inch Pipe