



RESOLUTION NO. 20131022-03

APPROVAL OF SETTLEMENT AGREEMENT AND AUTHORIZING EXECUTIVE DIRECTOR TO EXECUTE THE SAME

WHEREAS, TexAmericas Center is a political subdivision of the State of Texas with the powers and authorities specified in Chapter 3503 of the Special District Local Laws Code of the State of Texas; and

WHEREAS, TexAmericas Center engaged MTG Engineers & Surveyors to provide professional services relating to the design and construction of the project known as the Elliott Lake Sewer Improvements upon the Red River Army Depot and the TexAmericas Center East Campus; and

WHEREAS, TexAmericas Center entered into a contract with Sherrill Construction Co., LLC as the Contractor to construct the Elliott Lake Sewer Improvements; and

WHEREAS, a dispute arose between the parties regarding the design and construction of a lift station as a part of the Elliott Lake Sewer Improvements project; and

WHEREAS, MTG Engineers & Surveyors and TexAmericas Center have reached a settlement of the dispute regarding the alleged design defect, subject to approval of the Settlement Agreement by the Board of Directors of TexAmericas Center;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of TexAmericas Center that TexAmericas Center enter into a Settlement Agreement in the form attached hereto to accept the redesign and reconstruction of the project and to release all claims held by TexAmericas Center against MTG Engineers & Surveyors in return for the payment as stated in the Settlement Agreement and release of any and all claims by MTG Engineers & Surveyors against TexAmericas Center relating to the Elliott Lake Sewer Improvement Project.

BE IT FURTHER RESOLVED, that William V. Cork, Executive Director of TexAmericas Center shall be and he is hereby authorized to execute the Settlement Agreement, a copy of which is attached to this Resolution, to conclude the settlement of the disputed matter.

PASSED and APPROVED this 22nd day of October, 2013.



Denis Washington, Chairman of the Board

ATTEST:



Mike Carter, Secretary Treasurer



SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter referred to as the "AGREEMENT") is entered into on this 9th day of Dec. 2013, by and between TexAmericas Center ("OWNER") and MTG Engineers & Surveyors ("DESIGN PROFESSIONAL"). OWNER and DESIGN PROFESSIONAL are individually referred to herein as a "PARTY" and collectively referred to herein as the "PARTIES."

WHEREAS, DESIGN PROFESSIONAL entered into a contract with OWNER to provide professional services relating to the design and construction of the project known as the Elliott Lake Sewer Improvements on Red River Army Depot & TexAmericas Center East Campus and located at New Boston, Texas (the "PROJECT");

WHEREAS, a dispute arose between the PARTIES relating to damages claimed by OWNER allegedly flowing from the design and construction of a lift station at the PROJECT (hereinafter referred to as the "ISSUE"); and

WHEREAS, the PARTIES wish to enter into this AGREEMENT to settle and compromise the dispute between them.

NOW, THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the PARTIES agree as follow:

1. Payment by DESIGN PROFESSIONAL. In consideration for the mutual promises and covenants herein, DESIGN PROFESSIONAL and its insurer have paid contractor the sum of **\$45,498.26**, and OWNER acknowledges the adequacy and sufficiency of that amount.

2. Release by OWNER. OWNER, in consideration of the mutual promises, payments and covenants herein, does hereby release, acquit, and discharge DESIGN PROFESSIONAL and its past and present agents, servants, employees, officers, directors, consultants, subcontractors, suppliers, attorneys, insurers, parent companies, subsidiaries, successors and assigns, of and from any and all claims, damages, injuries, expenses, liabilities, and causes of action, in law or in equity, of any nature whatsoever, known or unknown, developed or undeveloped, in any way pertaining to or arising out of the ISSUE.

3. Release by DESIGN PROFESSIONAL. DESIGN PROFESSIONAL, in consideration of the mutual promises and covenants herein, does hereby release, acquit, and discharge OWNER, and its respective past and present agents, servants, employees, officers, directors, consultants, subcontractors, suppliers, attorneys, insurers, parent companies, subsidiaries, successors and assigns, of and from any and all claims, damages, injuries, expenses, liabilities, and causes of action, in law or in equity, of any nature whatsoever, known or unknown, developed or undeveloped, in any way pertaining to or arising out of the ISSUE.

4. **Binding Effect.** This AGREEMENT is binding upon the PARTIES named above, and their heirs, administrators, personal representatives, successors and assigns.

5. **Modification and Waiver.** No modification or waiver of any provision in this AGREEMENT, nor consent to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by the PARTY to be charged therewith and then such modification, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

6. **Construction.** This AGREEMENT has been arrived at after thorough bargaining and negotiations, with attorneys advising each PARTY. The language of this AGREEMENT is a product of the mutual effort of the PARTIES. This AGREEMENT shall be construed fairly as to all PARTIES; and shall not be construed for or against any PARTY on the basis or to the extent to which that PARTY participated in the drafting of the AGREEMENT.

7. **Compromise of Disputed Claims.** The PARTIES acknowledge that this is a compromise of a disputed claim. This AGREEMENT shall not be construed as an admission, as all PARTIES hereto deny any and all liability to each other and deny the nature and extent of any damage claimed by the other. In addition, the PARTIES acknowledge that the payments described in paragraph 1 above should not be construed so as to create or imply any direct contractual or third-party beneficiary relationship between those contractors/ vendors and OWNER.

8. **Authority/Competency to Act.** The PARTIES hereto warrant and represent that they are the sole owners of all claims referenced herein, and that they have the full authority and competency to execute this document in the capacity in which they have signed. The PARTIES, and each of them, mutually acknowledge and warrant that they have not sold, assigned, transferred, conveyed or otherwise disposed of any claim, right, demand, interest, action or cause of action, against any other PARTY.

9. **Entire Agreement.** The PARTIES state that this AGREEMENT contains the entire agreement between the PARTIES, and there are no other oral, written, express or implied promises, agreements, representations or inducements not specified in this AGREEMENT.


10. **Severability.** In the event that any one or more of the provisions or parts of a provision contained in the AGREEMENT shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or part of a provision of this AGREEMENT, but this AGREEMENT shall be reformed and construed in any such jurisdiction as if such invalid or illegal or unenforceable provision or part of a provision had never been contained herein, and such provision or part shall be reformed so it would be valid, legal and enforceable to the maximum extent permitted in such jurisdiction.

11. **Captions or Headings.** The captions or headings in this AGREEMENT are for convenience only and shall not affect the interpretation of this AGREEMENT.


12. **Governing Law.** This AGREEMENT shall be interpreted in accordance with the laws of the State of Texas.

IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT on the day and year written below.

TexAmericas Center- Owner

By: 
Name: WILLIAM V. COOK
Title: EXEC DIR./CEO

MTG Engineers & Surveyors -DESIGN
PROFESSIONAL

By: 
Name: Robert H. Murrday
Title: President/CEO