

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (hereinafter "Settlement Agreement") is effective as of this this ___ day of December, 2013, by and among The City of Lawrence, Kansas ("City") and Schmidtlein Excavating, Inc. ("Schmidtlein").

I. RECITALS

WHEREAS, on or about April 13, 2011, City entered into a construction agreement ("Contract") with Schmidtlein for the installation and construction of new sanitary sewer improvements connected to the Lawrence Airport, Project No. UT0922CS, Bid No. B1101 (the "Project").

WHEREAS, as part of its scope of work for the Project, Schmidtlein agreed to install manholes, underground piping, a designated holding tank and other related work associated with the Project in accordance with the Project Contract Documents.

WHEREAS, during the course of installation of the holding tank at the original location identified in the drawings, Schmidtlein encountered more dewatering effort than it claims to have anticipated in the preparation of its bid for the Project.

WHEREAS, on or about November 15, 2011, Schmidtlein submitted a claim to the City requesting additional compensation for additional costs it allegedly incurred in its attempt to dewater the area for the holding tank. Schmidtlein also requested additional compensation for the completion of the holding tank installation, which included, among other things, costs for the installation of a cofferdam around the holding tank. Schmidtlein's claim was amended on December 7, 2012 and revised again on April 19, 2013 in the final claim amount of \$151,682.11 plus a request for a change order in the amount \$5,217.55 for additional pvc coated electrical conduit.

WHEREAS, per the Contract, Schmidtlein agreed that its work would be substantially complete within 80 working days after a Notice to Proceed of May 4, 2011. The Contract also included a liquidated damages provision, which assessed a specified daily rate for each day the project was not complete by the date for substantial completion.

WHEREAS, The City denied Schmidtlein's claim for additional compensation and, instead, considered assessing liquidated damage for Schmidtlein's alleged late performance on the Project.

WHEREAS, in the interest of trying to settle and compromise or reduce the claims in dispute, the parties agreed to relocate the installation of the holding tank to a new location, per revised design that was prepared for the new location. The parties executed Change Order No. 1 in connection with the relocated work.

WHEREAS, during the course of installation of the holding tank at the new location, the holding tank was installed and subsequently settled so that the holding tank leaned approximately 15 inches out of plumb thus making future piping connections very difficult. The City contends that Schmidtlein should be responsible for costs associated with the repair or re-installation of the holding tank at the new location.

WHEREAS, a dispute exists among the Parties as to responsibility for Schmidtlein's claims for additional compensation on the Project and the City's assessment of liquidated damages as well the City's claim that Schmidtlein should be responsible for the costs to repair and reinstall the holding tank at the new location that is the subject o Change Order No. 1.

WHEREAS, the Parties now desire to enter into this Settlement Agreement in order to resolve and agree as to the terms of full settlement and discharge of all claims and actions against one another for damages arising out of the Project.

NOW, THEREFORE, it is hereby agreed as follows:

II. SETTLEMENT AND MUTUAL RELEASE

In consideration for the promises and covenants contained herein, the Parties agree as follows:

1. Schmidtlein agrees to:
 - a. Remove and reinstall the existing lid level, block in place and grout the remaining gap;
 - b. Install backfill around the holding tank with materials approved by the City and compact same to the extent agreed upon between the Parties.
 - c. Schmidtlein agrees to seal the lower joint between the base section and the first barrel section. If an alternative sealing procedure is to be used, Schmidtlein agrees to provide a submittal for the City's consideration and approval.
 - d. Schmidtlein agrees to complete all remaining work under the original contract as well as the work detailed in changer order no. 1.
 - e. Schmidtlein's remaining work under the Contract and Change Order No. 1 shall be finally complete on or before November 26, 2013, at which time all punch list work shall be substantially completed;
2. In consideration for Schmidtlein's covenants for settlement and settlement and release of claims, the City will accept the holding tank in its current tilted condition, providing Schmidtlein's remaining work is performed, as described above.
3. Upon final completion, the City further agrees to release Schmidtlein from any claims relating to the settlement of the holding tank and the City will assume the risk of further settlement to the tank, unless such further settlement is attributable to improperly installed and compacted backfill by Schmidtlein.
4. In addition, all warranties relating to all other work provided by Schmidtlein shall remain in effect to the extent provided by the Contract between the City and Schmidtlein and the contract documents;
5. In consideration for this settlement, the parties agree that the final amount due Schmidtlein upon final completion of its work under the Contract and Change Order No. 1 is \$211,596.98 plus retention in the amount of \$11,210.71. This will be paid at the time of final completion and upon Schmidtlein's completion of the paper work, punch lists, and providing final lien releases as waivers and other items for final payment, pursuant to the terms of the Contract and provide an executed Consent from Surety as to final payment;

6. In further consideration for the settlement and covenants between the parties, the City will release all claims for liquidated damages against Schmidlein.

7. In consideration of the promises herein, the City, and upon final approved completion of the work Schmidlein, the City shall fully, finally and forever release and discharge Schmidlein, its parent corporations, subsidiaries, affiliates, predecessors, successors and their respective directors, officers, agents, employees, insurers, stockholder representatives and attorneys, and all other persons, firms or entities involved with the Work under the Contract for the Project, from any and all known claims, demands, causes of action, lawsuits, legal proceedings, damages, costs, expenses, attorneys' fees and liabilities of any and every kind, character and description, at law or in equity, including any claims in any way arising out of, or relating in any way to the Project. Notwithstanding the foregoing, it is agreed that the City's release herein does not pertain to or bar claims for unknown or latent defects and all applicable warranties to the extent provided under the Contract between City and Schmidlein or at law, said liability for latent defects and warranties shall remain in full force and effect and which shall survive the execution of this Settlement Agreement. However, this Settlement Agreement shall not be construed to broaden, modify, lengthen or expand the warranty obligations specifically set forth in the contract between City and Schmidlein for this Project. City represents and warrants that it is not presently aware of any other claims, including any latent defects or warranty claims as of the date of this Settlement Agreement. The City's release herein is expressly conditioned upon the final completion of Work under the Contract and Change Order No. 1 and satisfactions of all requirements and conditions precedent for final payment as required under the Contract Documents and this Settlement Agreement.

8. Upon receipt of final payment and retention described above, and in consideration of the promises herein, Schmidlein, for itself and on behalf of its parent corporations, subsidiaries, affiliates, predecessors, successors, and their respective directors, officers, agents, employees, insurers and attorneys, does hereby fully, finally and forever release and discharge City, commission members, officers, directors, agents, employees, insurers, representatives and attorneys, of and from any and all known claims, demands, causes of action, lawsuits, legal proceedings, damages, costs, expenses, attorneys' fees and liabilities of any and every kind, character and description, at law or in equity, including any claims in any way arising out of, or relating to, the Contract between the City and Schmidlein or the Project. Notwithstanding the foregoing, it is agreed that Schmidlein's release does not pertain to or bar claims for unknown or latent defects and all applicable warranties to the extent claimed by City against Schmidlein and to the extent provided under the Contract. Said liability for latent defects and warranties shall remain in full force and effect and survive the execution of this Settlement Agreement.

9. The Parties agree that the above releases do not pertain to or bar third-party claims for personal injury or property damage or related claims for contribution or indemnity that might be lodged against one or more of the parties arising from the Project. The parties represent to each other that they are not aware of any such third-party claims at the time of the signing of this Settlement Agreement.

10. Reading of the Settlement Agreement. In entering into this Settlement Agreement, the Parties represent that they have relied upon the legal advice of their attorney, who is the attorney of their own choice; and that the terms of this Settlement Agreement have been completely read by them and explained by said attorney and that those terms are fully understood and voluntarily accepted.

11. The Parties acknowledge that no admission of fault has been made by City or Schmidlein. In fact, the City and Schmidlein specifically deny any allegations of fault.

12. Modifications. This Settlement Agreement may not be amended, altered, modified or otherwise changed except in writing executed by all Parties hereto and expressly stating that it is an amendment to this Settlement Agreement. The undersigned hereby acknowledge and agree that they, and each of them, will make no claim, and hereafter waive any right that they now have or they hereafter have, based upon any alleged oral alteration, oral amendment, oral modification or other changes based upon any alleged oral warranty, representation or promise except as set forth expressly in this Settlement Agreement.

13. Future Cooperation. All parties to this Settlement Agreement agree to fully cooperate, to execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Settlement Agreement which are not inconsistent with its terms.

14. Drafting of Document and Reliance. This Settlement Agreement has been negotiated by the Parties through their respective legal counsel. The Parties warrant, represent, and agree that they are not relying on the advice of the other Parties as to the legal, income tax or other consequences of any kind arising out of this Settlement Agreement. Accordingly, the Parties hereby release and hold harmless one another and any or all legal counsel or consultants for any of them from any claim, cause of action or other rights of any kind which the Party may assert because the legal, income tax or other consequences of this Settlement Agreement are other than those anticipated.

15. Binding Effect. The Parties agree and acknowledge that this Settlement Agreement shall bind the Parties and their respective heirs, administrators, executors, assigns, shareholders, officers, directors, attorneys, servants, insurers, subsidiaries, divisions, affiliates, employees, agents, representatives, insurance carriers, and predecessors and successors in interest, and related entities and shall inure to the benefit of the Parties released and their respective heirs, administrators, executors, assigns, shareholders, officers, directors, members, attorneys, servants, insurers, subsidiaries, divisions, affiliates, employees, agents, representatives, insurance carriers, and predecessors and successors in interest.

16. Reliance. The Parties acknowledge and warrant that, except as stated here, no promises or inducements have been made or offered by the Parties and that this Settlement Agreement is executed by the Parties without reliance upon any other statements or representations made by the Parties concerning the nature or merits of any claims that they might have had against each other. The Parties assume the risk that the facts or law may be otherwise than the Parties believe.

17. Authority to Execute/Counterparts. Each individual executing this Settlement Agreement on behalf of a Party represents and warrants that all actions necessary to authorize its execution on behalf of that Party have been duly performed; that such individual has authority to execute this Settlement Agreement on behalf of such Party; and that such Party shall be legally bound hereby. The Parties further agree that more than one copy of this Settlement Agreement may be signed by them and that the collective signatures of all parties shall constitute a fully executed agreement as though both parties had signed one original document.

18. Governing Law and Attorney's Fees: This Settlement Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of Kansas. In the event a

Party fails to comply with the terms of this Settlement Agreement, including, but not limited to, the payment terms and conditions set forth above, and a Party finds it necessary to enforce such terms of the Settlement Agreement, the prevailing party shall be entitled to recover against the other party or parties its costs and reasonable attorneys' fees associated with any lawsuit filed to enforce the terms and conditions of this Settlement Agreement.

19. Integration clause. The Parties represent that this is a completely integrated Agreement. The no oral agreements will be binding on the parties. For any terms to be binding on the parties it must be expressly provided in this Agreement.

THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK

BEFORE SIGNING BELOW, THE UNDERSIGNED DECLARES THAT HE OR SHE IS LEGALLY COMPETENT TO EXECUTE THIS SETTLEMENT AGREEMENT AND RELEASE, THAT HE OR SHE HAS READ AND FULLY UNDERSTANDS IT, AND THAT HE OR SHE VOLUNTARILY EXECUTES IT WITH FULL KNOWLEDGE OF ITS CONTENTS AND MEANING FOR THE PURPOSE OF OBTAINING THE ABOVE-STATED CONSIDERATION.

The City of Lawrence, Kansas

Name: _____

Title: _____

STATE OF KANSAS)
)ss.
COUNTY OF JOHNSON)

SUBSCRIBED AND SWORN to before me this ____ day of December, 2013

Notary Public

My Commission Expires:

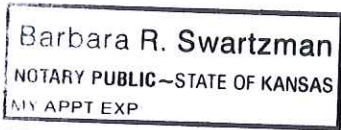
BEFORE SIGNING BELOW, THE UNDERSIGNED DECLARES THAT HE OR SHE IS LEGALLY COMPETENT TO EXECUTE THIS SETTLEMENT AGREEMENT AND RELEASE, THAT HE OR SHE HAS READ AND FULLY UNDERSTANDS IT, AND THAT HE OR SHE VOLUNTARILY EXECUTES IT WITH FULL KNOWLEDGE OF ITS CONTENTS AND MEANING FOR THE PURPOSE OF OBTAINING THE ABOVE-STATED CONSIDERATION.

Schmidtlein Excavating, Inc.

Name: David J. Schmidtlein
Title: Vice-President

STATE OF KANSAS)
)ss.
COUNTY OF SHAWNEE)

SUBSCRIBED AND SWORN to before me this 19 day of Dec, 2013



Notary Public

My Commission Expires:

6/24/15