

TERRA ENGINEERING & CONSTRUCTION CORP. v. CITY OF MILWAUKEE, et al.

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is made and entered into for and in consideration of the commitments set forth herein on this ____ day of _____, 2009, by and between Terra Engineering & Construction Corp., (hereafter referred to as "Plaintiff" or "Terra"), and the City of Milwaukee (hereafter referred to as "Defendant" or "City").

WHEREAS, the City filed a complaint in Milwaukee County Circuit Court, Case Number 06-CV-001133, alleging (among other things) that Terra had breached its construction contract and warranty owed to the City in regard to the North Avenue Dam Project; and

WHEREAS, Terra answered, denying all liability, and counterclaimed against the City for failing to have paid the retained percentages ("retainage") allegedly due under the construction contract; and

WHEREAS, the City subsequently entered into a partial settlement with Terra's insurance carrier, CNA, releasing the City's claim against Terra and assigning a claim the City had filed against Camp, Dresser & McKee, Inc. to Terra and CNA; and

WHEREAS, Terra's counterclaim for retainage continued to be litigated in Milwaukee County Circuit Court Case Number 06-CV-001133, with Terra realigned as plaintiff, and the City realigned as defendant; and

WHEREAS, the Parties wish to resolve the litigation between them by entering into this full and final settlement.

NOW, THEREFORE, in consideration of their mutual promises as set forth herein with their intention to be mutually and legally bound hereby, the Parties covenant and agree as follows:

1. Approval. This Agreement is subject to approval in its entirety by the Common Council of the City of Milwaukee. It shall be deemed null and void, and have no force, effect, or admissibility in the event it is not so approved in its entirety.

2. Payment. The City of Milwaukee shall pay to Terra Engineering & Construction Corp. the total sum of Twenty Thousand and 00/100 Dollars (\$20,000.00). A check for Twenty Thousand and 00/100 Dollars (\$20,000.00) shall be made payable to said company and delivered to Terra Engineering & Construction Corp., c/o Scott Zimmerman, CEO, 2201 Vondron Road, Madison, Wisconsin 53718, within twenty (20) days of the expiration of the mayoral veto period after approval of this settlement by the Common Council of the City of Milwaukee.

3. Dismissal of the Litigation. Upon the approval of the Common Council of this settlement, and the payment of the settlement provided for above, Terra agrees to dismiss the action entitled *Terra v. City of Milwaukee*, Milwaukee County Circuit Court Case Number 06-CV-001133 (the "Litigation"), with prejudice, each party to bear its own costs and attorneys' fees.

4. Mutual Releases. In exchange for the payment and dismissals contemplated by this Agreement, Terra Engineering & Construction Corp. and the City of Milwaukee hereby mutually release each other, their past, present and future agents, insurers, representatives, shareholders, principals, attorneys, affiliates, departments, employees and their successors and heirs, executors and assigns, from any and all legal, equitable or other claims, counterclaims, demands, setoffs, defenses, contracts, warranties (express or implied), accounts, suits, debts,

agreements, actions, causes of action, sums of money, bonds, bills, specialties, covenants, promises, variances, damages, executions, judgments, findings, controversies and disputes, and any past, present or future duties, responsibilities or obligations, known or unknown, arising out of the facts, issues, or allegations made or referred to in the Litigation, as well as any state court complaint containing related facts or claims.

5. Full Release. The Parties to this Agreement understand that it represents a complete release of any and all claims, that it is intended further to be mutual, and that none of the Parties to this release may make further claims against the others concerning the claims, contracts, warranties, events, transactions or facts referred to in the Litigation.

6. Future Contracts. The Parties to this Agreement understand that it shall not act as a release of future claims which may arise out of future conduct unrelated to the claims, contracts, events, transactions or facts referred to in the Litigation.

7. Compromise. It is expressly understood and agreed between the Parties that by entering into this Agreement, the Parties do not admit to liability for any claim brought in the Litigation. Liability for any and all claims for relief is expressly denied by each of the Parties.

8. Governing Law. This Agreement shall in all respects be interpreted, enforced and governed under the laws of the State of Wisconsin.

9. Severability. Should any provision of this Agreement be declared or be determined by any court to be illegal, invalid, and/or against public policy, the validity of the remaining parts, terms or provisions shall not be affected thereby, and said illegal and invalid provision or term shall be deemed not to be part of the Agreement.

10. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all counterparts so executed shall constitute one agreement

binding on all of the Parties hereto, notwithstanding that all of the Parties may not be a signatory to the same counterpart. This Agreement may be executed by facsimile or Portable Data Format (PDF) and such signatures shall be binding and deemed original for purposes of enforcing this Agreement.

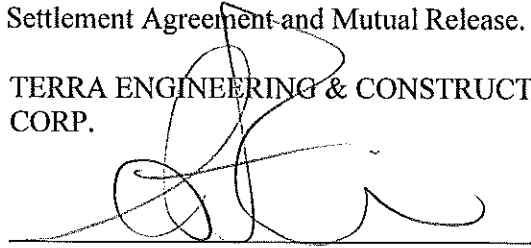
11. Integrated Agreement. This Agreement sets forth the entire Agreement between the Parties hereto, and fully supersedes any and all prior agreements or understandings between the Parties hereto pertaining to the subject matter hereof.

12. Warranty. The Parties each warrant that no other person or other legal entity has any interest in any claims, demands, causes of action, obligations, damages or liabilities covered by this Agreement, and has not sold, assigned, transferred, conveyed or otherwise disposed of any claim, demand, cause of action, obligation, damage, or liability covered by this Agreement.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Parties (through their attorneys) have executed the foregoing Settlement Agreement and Mutual Release.

Dated: 12/21/09

TERRA ENGINEERING & CONSTRUCTION
CORP.



Scott A. Zimmerman, CEO

CITY OF MILWAUKEE

Dated: _____

Grant F. Langley, City Attorney
Miriam R. Horwitz, Assistant City Attorney
Attorneys for Defendant