

**AMERICAN ARBITRATION ASSOCIATION  
CONSTRUCTION INDUSTRY ARBITRATION TRIBUNAL**

TEXAS AIM CONSTRUCTION  
COMPANY, INC.

*Claimant*

v.

SAIROOP, LLC

*Respondent.*

§  
§  
§  
§  
§  
§  
§  
§

CASE NO. 01-19-0003-1386

**FINAL AWARD**

I, the undersigned arbitrator, having been designated in accordance with the arbitration agreement entered into by the above-named parties on May 25, 2017, and the parties having been duly sworn and having duly heard the proofs and allegations of the parties, do hereby find and award as follows:

**Jurisdiction, Parties, Claims and Damages Sought**

All parties have consented to the jurisdiction of the American Arbitration Association ("AAA"). All parties have consented to the undersigned to be designated as the arbitrator in this matter.

The Claimant/Counter-Respondent is Texas Aim Construction Company, Inc. ("TACC"). The Respondent/Counter-Claimant is Sairoop, LLC ("Sairoop").

TACC has asserted claims against Sairoop for (1) breach of contract and (2) quantum meruit. TACC requests an award against Sairoop for damages of \$254,261.52 plus attorneys fees. *See TACC's Post-Hearing Brief (on its affirmative claims) at pg. 6.* Sairoop has asserted claims against TACC for (1) breach of contract and express warranty, (2) breach of implied warranties, (3) statutory fraud, (4) fraudulent inducement, (5) constructive fraud, (6) negligence and negligent misrepresentation, (7) unjust enrichment and restitution, and (8) quantum meruit. Sairoop requests an award against TACC for damages of \$2,303,305.88, plus attorneys fees and prejudgment interest.

**Background Facts**

On September 26, 2016, Interplan Architects, Inc. ("Interplan") and the owners of Sairoop, Eddy Quiroga and Sheela Kothari, entered into a contract for Interplan to develop a full set of original construction documents for the design for a convenience store and truck facility in Bay City, Texas (the "Project"). *See TACC Exhibit 2.* This design contract is signed by Marcel Meijer, who is the president of Interplan. Mr. Meijer is also the president of TACC, a general contracting construction company that ultimately was hired by Sairoop to construct the Project.

After the plans were developed by Interplan, Meijer advised Sairoop to obtain bids from other contractors for the Project. However, Sairoop only sought one bid; and that bid was from TACC, a construction company owned and run by Meijer, who was also the architect of record (under Interplan) for the Project.

On May 25, 2017, Sairoop and TACC entered into a contract entitled *AIA Document A101-2007 Standard Form of Agreement Between Owner and Contractor* that incorporated by reference the *AIA Document A201-2007 General Conditions of the Contract for Construction* (collectively, the "Contract"). Even though Meijer was the architect of record and the owner/president of TACC, the construction delivery method chosen by the parties was not design/build. Had the parties chosen a design/build delivery method, TACC would have owed certain contractual duties to Sairoop for both the design and the construction of the Project.

Instead, Sairoop agreed to the Contract presented to it by TACC. The Contract does not make TACC liable for the design work done by Interplan. With respect to Interplan's drawings, the Contract specifically provides that TACC's review of such plans are "...made in the [TACC's] capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents." See the *General Conditions of the Contract* §3.2.2 (*TACC Exhibit 6*).

The Contract required completion of the Project within "180 days (working), plus half or full days caused by rain or inclement weather, or acts of God..." from the date of commencement. See *Contract* §3.3 (*TACC Exhibit 6*). The Contract provided the date of commencement to be "May 25th, 2017 ESTIMATED." The Contract also states that "if, prior to commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows: 30 CALENDAR DAYS." See *Contract* §3.1 (*TACC Exhibit 6*). Sairoop claims that TACC achieved substantial completion five months late, on November 15, 2018. TACC claims that it could not start construction until Sairoop's financing was in place, which took several months. TACC claims that the actual construction commencement date was October 20, 2017. TACC argues that because of the delayed start date caused by Sairoop and the excused weather days, the Project was actually completed on time.

TACC also claims that the Project was delayed due to numerous scope changes requested by Sairoop. It is undisputed that the Project was originally to include a Carl's Jr. restaurant, but plans changed after Carl's Jr. decided to not go forward with the Project. After the Carl's Jr. deal fell through, Sairoop instructed TACC that it was in negotiations to put a Sonic restaurant in the space originally reserved for Carl's Jr. The specifications for a Sonic restaurant were different than the requirements for Carl's Jr. TACC performed construction work for both the Carl's Jr. space and then the Sonic space. Sairoop also instructed TACC that it wanted to add a space for a taqueria restaurant next to the Carl's Jr./Sonic space. Eventually, a deal could not be reached with either Carl's Jr. or Sonic, leaving only the taqueria space completed by TACC.

A Certificate of Substantial Completion for the Project was executed by both TACC and Sairoop on November 15, 2018. See *TACC Exhibit 18*. A month later, on December 20, 2018, TACC



presented Sairoop with a number of change orders.<sup>1</sup> See *Sairoop Exhibit 15 and TACC Exhibits 5 – 17*. These change orders included scopes of work for which the parties had established allowance amounts in the Contract. TACC's letter of December 20, 2018 to Sairoop included a breakdown of the scopes and allowance amounts totaling \$505,650, which was subtracted from the total amount of the purported change orders (\$758,846), leaving a net change order balance of \$253,196. TACC added a 4% management fee for the change orders of \$10,127. The sum of the net change order balance and the management fee equaled \$263,323.<sup>2</sup> Sairoop rejected the charges and refused to pay for them.

Within the first year after completion of the Project, Sairoop began experiencing extensive water leaks into the building. Sairoop retained construction consultants to evaluate the Project and numerous problems with the Project were identified.

Eventually, this arbitration was commenced by TACC on October 3, 2019, seeking recovery of money it claims Sairoop owed for its work on the Project. On October 21, 2019, Sairoop asserted its counterclaim against TACC in this arbitration for damages allegedly caused by TACC related to the Project. Sairoop later filed a separate lawsuit in Matagorda County, Texas state district court against Interplan and Meijer for alleged design defects with the Project. As of this time of this award, that lawsuit remaining pending.

## **Findings**

### **A. TACC's Claims Against Sairoop**

TACC asserts claims against Sairoop for breach of contract and quantum meruit. Its breach of contract claim is limited solely to the undisputed fact that Sairoop did not pay TACC \$25,000 under the Contract at the end of the Project for the installation of the sanitary sewer flow meter. TACC's quantum meruit claim is for the purported "change orders" presented to Sairoop on December 20, 2018 at the end of the Project. These two claims are addressed below.

#### **1) Breach of Contract**

Pursuant to the Contract, the contract sum to be paid by Sairoop to TACC for its work on the Project was \$4,561,360. There were no agreed-upon change orders between the parties. Accordingly, the contract sum remained unchanged. TACC submitted nine (9) pay applications to Sairoop over the course of the Project. TACC was paid \$4,536,360, which is \$25,000 less than the contract sum.

Meijer, in his capacity as the architect of record, sought the permission from Bay City, Texas to remove the sanitary sewer flow meter from the Project which would have lowered the cost to

---

<sup>1</sup> TACC claims that these change orders were presented after substantial completion at the request of Sairoop, because it did not want to present change orders to the lender. Sairoop denies this allegation and claims it was surprised to see any change orders at all, believing that the Project remained within budget.

<sup>2</sup> At the final hearing, TACC revised its damage amount to drop the 4% management fee and added addition credits to Sairoop. As such, the amount now sought by TACC against Sairoop has changed somewhat and will be addressed later in this award.



Sairoop by \$25,000. *See TACC Exhibit 22.* This request was rejected by Bay City. Eventually, in May of 2019, the city sent written notice to Sairoop that if the sanitary sewer flow meter was not installed by the end of that month the city would revoke Sairoop's temporary occupancy permit. *Id.* Sairoop thereafter instructed its lender to withhold \$25,000 from TACC's final draw so that Sairoop could have the meter installed by someone other than TACC.

TACC never installed the flow meter. Sairoop had someone else do that portion of the work. TACC argues that this amounted to a breach of the Contract by Sairoop in that it was prevented from performing this scope of work and getting paid \$25,000 for it. I find TACC's argument to be unpersuasive. I find that the work for the installation of the flow meter was essentially "de-scoped" from TACC's scope of work. In other words, TACC did not perform that portion of its work and Sairoop, rather than pay TACC for work not performed, removed that scope from TACC and had it performed by someone else. As such, TACC was neither obligated to perform that work nor was it entitled to payment for that work.

Accordingly, I find against TACC on its breach of contract claim.

## **2) Quantum Meruit**

TACC concedes in its post-hearing briefs that it is not seeking recovery of its purported "change orders" under the Contract. In fact, TACC states that it is "clear that the change orders issued to Sairoop by TACC did not comply with the terms found under Article 7 of the construction contract<sup>3</sup>...and TACC is not seeking an award for breach of contract based on the 'change orders.'" *See TACC's Reply to Sairoop's Defenses to its Affirmative Claims at pg. 1.* Rather, TACC argues that it is entitled to compensation for this extra work under the cause of action for quantum meruit.

The extra work for which TACC seeks compensation falls into the following categories: landscaping; interior and exterior signage; concrete paving; the taqueria buildout; grinder pump and force main line; electrical; plumbing; store equipment; and the Sonic buildout. Some of these categories have allowance balances that are included in Exhibit A to the Contract. TACC acknowledged, both at the time these charges were first presented to Sairoop and at the final hearing, that Sairoop is entitled to credits for the allowances in the total amount of \$505,650. *See Sairoop Exhibit 15.* TACC asserts that with additional credit given to Sairoop for a duplication in its original demand, the total amount of the extra work is \$730,751.52. *See TACC's Post-Hearing Brief at pg. 5.* Applying the allowance credits against the balance for the extra work leaving an outstanding amount of \$225,101.52.<sup>4</sup>

I find that this extra work falls outside of the original Contract. Much of this work was the

---

<sup>3</sup> Article 7 of the General Conditions to the Contract provide the requirements for the issuance of a proper change order.

<sup>4</sup> While TACC originally demanded a 4% management fee in additions to the net balance for the extra work in its December 20, 2018 letter to Sairoop, TACC has now abandoned its claim for a management fee, presumably because the right to such a fee only exists under the Contract, which TACC now concedes does not apply to its claim for extra work compensation. *See Sairoop Exhibit 15.* Accordingly, TACC now seeks only the recovery of its "pass-through" costs incurred in the performance of this work.



result of instructions from Sairoop to change the buildout from a Carl's Jr. restaurant to a Sonic restaurant and for the taqueria addition. Some of this work was the result of instructions from Sairoop to change existing scopes of work, such as changing the paving from crushed concrete to concrete. Other work was required by the city.

In all respects, the extra work was performed by TACC and accepted by Sairoop. I find that TACC is entitled to recovery against Sairoop the sum of \$225,101.52 under its claim for quantum meruit.<sup>5</sup>

## **B. Sairoop's Claims Against TACC**

Sairoop claims that the Project is riddled with construction defects caused by TACC which must be repaired. It also seeks compensation for fuel dispensers that it claims were required to be installed by TACC under the Contract but were not installed. Sairoop also claims that TACC failed to timely complete the Project such that Sairoop was delayed in opening the convenience store and truck facility and thereby lost revenue. Sairoop's claims are addressed below.

### **1) Construction Defects**

As a preliminary matter, I will address Sairoop's argument that despite the language of the Contract (an *ALA Document A101-2007 Standard Form Agreement Between Owner and Contractor*), the Project was really a design-build project. See *Sairoop's Post-Hearing Brief* at pg. 2. While this Project would have been more appropriately and accurately contracted as a design-build project with Meijer serving as architect and principal for the general contractor, the parties did not enter into such a contract.

Sairoop chose to sign the Contract presented to it. That Contract contains clear and detailed language identifying the duties of the parties. Those duties do not include a duty by TACC to provide or warranty the design documents to Sairoop. Rather, those design duties are the subject of the contract between Sairoop and Interplan and will be adjudicated by the Matagorda County state district court lawsuit against Interplan and Meijer. Sairoop's claims against TACC herein must be determined based on the Contract and relationship between Sairoop and TACC. TACC cannot be held liable for any design errors committed by Interplan or Interplan's subconsultants.

#### **a) Exterior Wainscot and Perimeter Wood Trim**

The evidence presented at the final hearing was more than sufficient to prove that the Project

---

<sup>5</sup> Sairoop claims that the Release of Lien signed by Meijer on behalf of TACC on November 26, 2018 cuts off TACC's ability to recover any amounts from Sairoop in this arbitration. I find against Sairoop on this issue. The Release of Lien, which Meijer testified was required by the lender before the final payment would be release, provides, in part: "The undersigned hereby waives and releases to the extent provided below any mechanics or materialman lien, or claim or right of such lien... which now exists or might otherwise arises because of labor, services or materials furnished or to be furnished...." See *Sairoop Exhibit 12*. I find that this document purports to release TACC's lien rights only. It does not purport to release Sairoop from any and all liability for payment related to the Project.



has substantial defects. The videos and photographs offered by Sairoop depicted significant water infiltration into the building during rainstorms which resulted in damage to the building. *See Sairoop Exhibits 72, 73, 74 and 77.* In fact, TACC admitted at the final hearing that the Project contained some construction defects. For example, when the video of water intrusion was presented, Meijer stated “I am responsible for that.” He testified that a subcontractor of TACC failed to install flashing at the exterior wainscoting and that TACC would “never use that subcontractor ever again.” I agree that the evidence presented established that TACC defectively constructed the exterior walls of the Project.

Both parties presented experts on both causation of the defects and cost to repair such defects. Not surprisingly, the experts disagreed on both the causes of the problems and the scope and cost to repair the problems. With respect to the exterior wainscoting, the wood trim around the building perimeter, and the parapet wall, I find TACC liable to Sairoop for the reasonable and necessary cost to repair these construction defects as presented by Sairoop’s experts.

#### **b) Faced Batt Insulation Replacement**

Sairoop asserts that the batt insulation installed by TACC throughout the building’s exterior walls must be removed and replaced. Interplan specified the use of “faced” batt insulation in the exterior walls of the building, which, according to Sairoop’s expert, is a Class II vapor retarder under the 2015 edition of the International Energy Conservation Code (IECC) applicable to the Project. *See Sairoop Exhibit 1 at pg 13.* In his report, Sairoop’s expert identified this as a design defect because the IECC provides that Class II vapor retarders may not be used on the interior side of frame walls within the climate zone for the Project.<sup>6</sup>

While it may be true that the insulation must be removed and replaced to comply with the IECC, I find that the evidence does not support Sairoop’s claim that this is a construction defect chargeable against TACC.

#### **c) Slope Around Building Perimeter**

Sairoop’s expert testified that the plans show that the concrete around the building perimeter to be only slightly lower than the finished floor of the building and sloped away from the building. The finished floor was designed to be at elevation 48’ and the concrete immediately adjacent to the building was designed to be 47.70’ and 47.80’. *See Sairoop Exhibit 22 at pg. 2.* A purported as-built survey showed the elevations adjacent to the building to be 47.7’, 47.9’ and 48.0’. *Id.*

While Sairoop’s expert stated in his report that a six-inch drop from the building foundation should have been designed to keep water from entering the building, at the final hearing he testified that the slight drop in elevation showed on the plans was sufficient. I am not deciding whether this is or is not a design error, however, the evidence presented does not support a finding that TACC substantially deviated from the plans. Rather, it appears from the evidence that TACC substantially followed the plans in constructing the elevations of the concrete around the building. Accordingly, I

---

<sup>6</sup> The use of “faced” batt insulation in the exterior wall assemblies can result in water vapor condensing within the insulation a climate where the Project is located.

find that Sairoop did not prove that this condition is a construction defect chargeable against TACC.

**d) Detention Pond and Use of 12" Drainage Pipe**

The experts for both parties expressed concerns regarding the design of the detention pond. TACC's expert testified that the drainage design of the detention pond must be re-designed to allow for improved flow of water from the pond at the back of the property to the right of way at the front of the property. He called for the installation of pipe to carry the water instead of the open ditch which will eliminate maintenance issues with keeping the ditch clean. He also called for a pump to be installed to carry some of the water off of the site. While Sairoop's expert testified that the design would be sufficient if installed properly by TACC, he also calls for an electric pump to be installed at the detention pond.

I find the evidence was insufficient to prove Sairoop's claim that the problems with the water management at the Project were caused by construction deficiencies of the detention pond committed by TACC.

However, evidence was presented that while the plans call for either 24" or 20" pipe to be used to connect the storm sewer system to the detention pond, 12" pipe was actually installed. *See Site Plan Drainage and Utilities C01A, TACC Exhibit 3.* This was a deviation from the plans. Even TACC's representative testified that the use of 12" pipe would be inappropriate and need to be changed.

I find that the evidence was sufficient to establish Sairoop's claim that TACC is liable for the removal of the 12" drainage pipe and installation of the pipe sizes called for in the plans.

**e) Structural Repairs (Roof Framing, Shear Walls and Anchor Bolts)**

Sairoop presented evidence of alleged structural deficiencies in the building, including inadequate roof framing, lack of shear walls (lateral wind loads), and the size/spacing of anchor bolts. While these may all be issues that require attention, there was insufficient evidence presented to establish that these were construction defects caused by TACC. Accordingly, I find that Sairoop is not entitled to an award against TACC for construction defects for these structural repairs.

**f) Roof and Porch Repairs**

Extensive evidence was provided regarding the deficiencies in the roof, including the windstorm resistance of the parapet wall, the metal coping and sealants used on the roof and the roof sloping/drainage and condensate line. The porches also lack gutters and the soffits were poorly installed.

I find that these areas are construction defects for which TACC is liable.

**2) Fuel Dispensers**

Sairoop claims that TACC was contractually required to furnish and install twelve fuel



dispensers that allowed for regular and diesel gas (known as “3+1” dispensers), on the automobile side of the convenience store. TACC installed four 3+1 dispensers and not twelve. TACC argues that it was not required by the Contract to install any 3+1 dispensers, even though four were installed.

There is a conflict in the construction documents regarding this issue in that the plans, which are part of the Contract Documents, conflict with Exhibit A to the Contract. Sheet A01 of the plans show 3+1 dispensers at six of the twelve pumps. *See TACC Exhibit 3*. However, the Retail Canopy Fuel Equipment Schedule in the plans call for twelve 3+1 dispensers. *See TACC Exhibit 3 at FP6*. Exhibit A to the Contract calls for only 3+0 dispensers at all pumps and no 3+1 dispensers.<sup>7</sup> *See TACC Exhibit 6*. The same Exhibit A to the Contract provides for the installation of a 6,000-gallon diesel tank to be installed on the automobile side of the store; which begs the question why would one install an underground diesel tank for pumps that cannot dispense diesel.<sup>8</sup>

The Contract is ambiguous. I find that under the doctrine of contra proferentem, this ambiguity must be interpreted against TACC, the drafter of the Contract. This is even more appropriate since the author of the plans is also the author of the Contract. I find in favor of Sairoop in that it is entitled to compensation for eight more 3+1 dispensers.

The truck fueling station behind the store was both contracted and designed to have Diesel Exhaust Fluid (DEF) dispensers at all pumps. However, only one DEF dispenser was installed. TACC concedes that Sairoop should be credited for the installation of three additional DEF dispensers. I agree and find in favor of Sairoop on this issue.

Finally, Sairoop presented evidence of deficiencies in the installation of the fuel pumps that required repairs which have already been made. I find that Sairoop is entitled to reimbursement of these repairs.

### **3) Delays**

Sairoop’s expert testified that completion of the Project was delayed by TACC for 248 days, resulting in substantial lost profits to Sairoop. In addition to these alleged lost profits, Sairoop also seeks damages for its increased construction loan interest and for profits it will lose when the omitted fuel dispensers are installed.

TACC contends that the commencement date of the Project was delayed for five months while Sairoop was getting its financing for the Project in place. TACC claims that when the late commencement date caused by Sairoop and excused rain/weather days are taken into account, TACC actually completed the Project eight days early.

TACC argues that Sairoop waived its right to consequential damages in the Contract and that all delay damages sought by Sairoop are consequential. Section 15.1.6 of the General Conditions of the Contract provides that the parties “waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes...damages incurred by the

---

<sup>7</sup> 3+0 fuel pump means that it dispenses three grades of gasoline but no diesel.

<sup>8</sup> The diesel tank was, in fact, installed by TACC on the automobile side of the building.



Owner for...loss of use, profit, financing....” See *TACC Exhibit 6*. I find that the delay damages sought by Sairoop fall squarely within the waiver provision of §15.1.6 of the Contract. Sairoop seeks recovery for lost profits and additional financing costs due to the delay in opening. These damages are specifically named and waived under the Contract.

Sairoop argues that TACC defrauded Sairoop and that a fraud finding would allow for the recovery of these consequential damages. However, I find that Sairoop did not meet its burden to prove that TACC committed fraud in this transaction. As such, Sairoop’s claim for delay damages fails.

For these reasons, I find that Sairoop is not entitled to damages for delays.

### **C. Sairoop’s Causes of Action**

Sairoop has asserted the following causes of action against TACC: (1) breach of contract and express warranty, (2) breach of implied warranties, (3) statutory fraud, (4) fraudulent inducement, (5) constructive fraud, (6) negligence and negligent misrepresentation, (7) unjust enrichment and restitution, and (8) quantum meruit.

For the construction deficiencies and omissions committed by TACC, I find in favor of Sairoop and against TACC for breach of contract and breach of express warranty. Section 3.1.2 of the General Conditions to the Contract provides that TACC “...shall perform the Work in accordance with the Contract Documents.” See *Sairoop Exhibit 6*. Section 3.5 of the General Conditions to the Contract includes TACC’s warranty that “...the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective.” See *Sairoop Exhibit 6*. I find that TACC did not perform all aspects of the Work in accordance with the plans and specifications and that the Work was not free from defects.

I find against Sairoop for all other causes of action it has asserted against TACC because the evidence was insufficient to establish TACC’s liability for these claims.

### **D. Attorneys Fees**

Both parties have claims for attorneys fees against the other. Sairoop claims attorneys fees totaling \$270,925.21 were incurred in the prosecution of its claims against TACC. TACC seeks the recovery of attorneys fees in the amount of \$223,900.00, which it contends were incurred in the prosecution of its claims against Sairoop.

Sairoop seeks recovery of its attorneys fees incurred in the prosecution of its claims against TACC pursuant to Texas Civil Practices & Remedies Code Chapter 38.001. TACC, on the other hand, argues that it is entitled to its attorneys fees under both Texas Civil Practices & Remedies Code Chapter 38.001 and AAA Construction Industry Arbitration Rules R-48(d)(ii), which provides that an arbitration award “may include...an award of attorneys’ fees if all parties have requested such an award....”



I find in favor of Sairoop on its claim for attorneys fees under Chapter 38.001 in the amount of \$270,925.21. However, TACC's attorneys fee claim fails under Chapter 38 because I have found against TACC on its breach of contract claim. Moreover, the version of that statute applicable to this case does not authorize recovery of attorneys' fees from a limited liability company, such as Sairoop. See *Alta Mesa Holdings, L.P. v. Ives*, 488 S.W.3d 438, 455 (Tex. App.—Houston [14th Dist.] 2016, pet. denied). Finally, while AAA R-48(d)(ii) may allow for an award to include an award of attorneys fees, it does not mandate such an award. In this case, I find against TACC on its attorneys fees claim.

## E. Damages

Damages awarded to each party herein are as follows:

- TACC shall recover against Sairoop the sum of \$225,101.25.
- Sairoop shall recover against TACC the sum of \$769,416.11. For the damages listed below, I find the expert testimony provided by Sairoop to be persuasive the repair costs to be reasonable.<sup>9</sup> This amount is comprised of the follow damages for which I find in favor of Sairoop:

○ Exterior Wainscot	\$50,567.90
○ Wood Trim, Perimeter of Building	\$19,450.00
○ Parapet Windstorm Resistance	\$32,934.00 <sup>10</sup>
○ Roof Slope/condensate line/coping/sealants	\$22,500.00 <sup>11</sup>
○ Sheet Metal Roof Repairs	\$2,790.00 <sup>12</sup>
○ Porch Repairs	\$4,300.00 <sup>13</sup>
○ Removal/Installation of Correct Drainage Pipe	\$224,456.00
○ Fuel Dispensers and DEF Dispensers	\$138,742.00 <sup>14</sup>
○ Pump Repairs	\$2,751.00
○ Attorneys Fees	\$270,925.21

I deny the requests from both parties for any and all other claims for damages not otherwise awarded above.

---

<sup>9</sup> The amounts awarded herein for costs to repair are based on Sairoop's cost of repair evidence and testimony, including the cost of repair estimate found in Sairoop Exhibit 20.

<sup>10</sup> See *Undisputed Damages* chart at pg. 24 of TACC's Post-Hearing Brief.

<sup>11</sup> See *Undisputed Damages* chart at pg. 24 of TACC's Post-Hearing Brief.

<sup>12</sup> See *Undisputed Damages* chart at pg. 24 of TACC's Post-Hearing Brief.

<sup>13</sup> See *Undisputed Damages* chart at pg. 24 of TACC's Post-Hearing Brief.

<sup>14</sup> TACC concedes that the cost for the DEF dispensers should be provided to Sairoop and agrees with Sairoop's expert's cost of \$54,800.00 to perform this work. This number is incorporated into the total line item above for *Fuel Dispensers and DEF Dispensers*. See *Undisputed Damages* chart at pg. 24 of TACC's Post-Hearing Brief.



**Award**

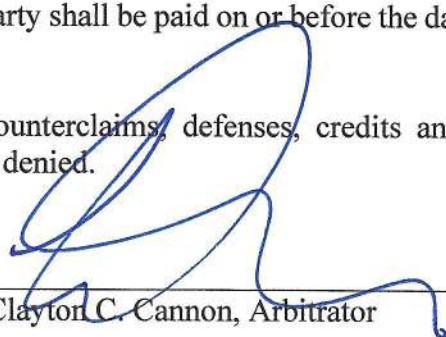
Sairoop shall recover the sum of \$544,314.86<sup>15</sup> against TACC.

The administrative fees and expenses of the American Arbitration Association totaling \$22,200.00 and the compensation and expenses of the arbitrator totaling \$30,000.00 shall be borne as incurred by the parties.

All amounts due under this Award to either party shall be paid on or before the date which is 30 days after the date of this Award.

This Award fully disposes of all claims, counterclaims, defenses, credits and offsets applicable thereto. All relief not expressly granted is denied.

DATE: 12/7/21

  
\_\_\_\_\_  
Clayton C. Cannon, Arbitrator

---

<sup>15</sup> The award of \$544,314.86 is the difference between \$769,416.11 awarded to Sairoop and \$225,101.25 awarded to TACC.