

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

For good and valuable consideration, rendered to resolve and settle finally, fully and completely all matters or disputes that now or may exist between the parties herein, relating to the Chlorine and Ammonia Matters that are the subject of those letter agreements dated March 23, 2020, May 1, 2020, June 5, 2020, August 3, 2020, November 20, 2020 and January 11, 2021, and attached hereto collective as Exhibit A and relating to fines, penalties, actual costs, special and liquidated damages and all other liability regarding achieving any Milestones and Substantial Completion and completion of Work and readiness for final payment with respect to the Project (as defined below) (collectively herein the “Claim Matters”), it is agreed as follows:

**1. Parties.** The parties to this Settlement Agreement and Mutual Release (“Agreement”) are as follows: The City of Norman, Oklahoma and the Norman Utilities Authority and their respective heirs, successors, subsidiaries, associates, affiliates and assigns (collectively, hereinafter “Norman”); Carollo Engineers, Inc., and their respective heirs, successors, subsidiaries, associates and affiliates, and assigns (hereinafter “Carollo”); and Enerfab Power & Industrial, Inc., and their respective heirs, successors, subsidiaries, associates and affiliates, and assigns (hereinafter “Enerfab”). Norman, Carollo and Enerfab are sometimes hereafter, or collectively, referred to as the “Party” or “Parties.”

**2. Release of the Claim Matters by all Parties.** In exchange for the promises contained in this Agreement and to the extent permitted by law, the Parties mutually waive, release and forever discharge, and agree that each will not in any manner institute, prosecute or pursue, any and all complaints, claims, charges, liabilities, claims for relief,

demands, suits, actions or causes of actions, whether in law or in equity, which each asserts or could assert, at common law or under any statute, rule, regulation, order or law, whether federal, state or local, or on any grounds whatsoever, against the Parties to this Agreement and/or any of their current or former, owners, officials, directors, officers, shareholders, affiliates, agents, representatives, servants, employees, attorneys, insurance carriers, subsidiaries, parents, divisions, branches, units, successors, predecessors, and assigns (collectively referred to as "Released Parties") relating in any way to the Claim Matters.

3. Other than as specifically excepted herein, the waiver, release and discharge described above is a full and final release applying to all types of losses regarding the Claim Matters, including, but not limited to, damages, costs, expenses and attorneys' fees incurred by said Parties arising out of, or in any way connected with Enerfab's claim related to the delay of turnover status of the existing chlorine gas and ammonia systems ("Released Claim") for the City of Norman, Water Treatment Plant Phase II Expansion Project ("Project"). It is the intention of the releasing Parties in executing this Agreement that the same shall be effective as a bar to each and every claim, demand, and cause of action by said Parties based upon the Claim Matters other than as specifically excepted below, and the Parties knowingly, voluntarily and expressly waive any and all rights and benefits thereto. However, nothing in this Agreement shall affect or alter in any way the warranties afforded to Norman under other Project contracts with these Parties.

This Agreement shall be given full and final effect according to each and all of its express terms and conditions, including those relating to unknown and unsuspected claims, demands, and causes of action. The Parties acknowledge and agree that the foregoing

waiver, release and discharge is an essential and material term of this Agreement and without such the settlement would not have been entered into.

Specifically excepted from the foregoing waiver, release and discharge are any and all claims for enforcement of any of the covenants or obligations created pursuant to this Agreement, which covenants shall survive the foregoing waiver, release and discharge and mutual execution this Agreement and be fully enforceable by, between, and against the Parties hereto.

**4. Outstanding Claims.** As further consideration and inducement for this Agreement, the Parties represent that the Parties have not filed or otherwise pursued any charges, complaints or claims of any nature which are in any way pending against any of the Parties, with any local, state or federal government agency or court with respect to any matter waived, released and/or discharged by this Agreement and, to the extent permitted by law, they will not do so in the future. If any government agency or court assumes jurisdiction of any charge, complaint, cause of action or claim waived, released and/or discharged by this Agreement against any of the Released Parties, on behalf of or related to any other Party, they will withdraw from and/or dismiss the matter with prejudice as to any claims they might have. The Parties agree they will not participate or cooperate in such matters except as required by law or as specified in this Agreement. However, nothing in this Agreement shall affect or alter in any way the warranties afforded to Norman under other Project contracts with these Parties.

**5. Settlement Terms.** The following are the terms of the settlement reached by Norman, Carollo and Enerfab:

A. Carollo will reimburse Enerfab \$6,017.44 for the costs incurred by Enerfab related to the Released Claim which payment will be due and payable to Enerfab within fourteen (14) calendar days from the last date on which this Agreement is executed by the Parties.

B. Norman will receive a credit against Carollo's Engineering Contract for \$3,982.56 related to the modifications of the Ozone Sample piping and sample pumps associated with the resolution final punchlist item #438, which credit will be further memorialized as a part of the final payment and closure of the Project contract between those parties.

C. In addition to the credit referenced in subpart 5(B) herein, Norman will receive a credit against the Contract Price in the amount of \$8,712.00 for the final punch list items which Enerfab will not be required to complete as provided in Exhibit B to this Agreement:

D. Norman hereby waives all of its rights to relating to fines, penalties, actual costs and special and liquidated damages and all other liability that Enerfab is currently or at any time was or may be subject to or liable for related to the Project regarding achieving Substantial Completion, any Milestones and/or completion of the Work and readiness for final payment. However, nothing in this Agreement shall affect or alter in any way the warranties afforded to Norman under other Project contracts with these Parties.

E. Norman will process a final change order reflecting the credit delineated in Section C above, including the previously agreed upon change order items provided in Exhibit C.

F. Norman will pay Enerfab the remainder of the final payment (as adjusted pursuant to the above referenced change order) to be paid following approval of final completion of the Project by the Norman City Council in accordance with the Contract Documents.

**6. No Admission of Liability.** Entering into this Agreement shall not constitute an admission of fault by any Party hereto. None of the Parties admit any liability whatsoever to any other person or party arising out of the claims heretofore or hereafter asserted.

**7. Joint Participation in Preparation of Agreement.** The Parties have had the opportunity to obtain the advice of counsel and review, comment upon, and redraft this Agreement. Accordingly, it is agreed that no rule of construction shall apply against any party or in favor of any party. This Agreement shall be construed as if the Parties jointly prepared this Agreement, and any uncertainty or ambiguity shall not be interpreted against any one party in favor of the other.

**8. Severability.** If any of the provisions of this Agreement are rendered invalid by a court or government agency of competent jurisdiction, it is agreed that this shall not in any way or manner affect the enforceability of the other provisions of this Agreement. This Agreement shall remain in full force and effect. The Parties further agree that Oklahoma law shall govern the validity and interpretation of this Agreement and that jurisdiction and/or venue of any action involving the validity, interpretation, or

enforcement of this Agreement or any of its terms, provisions, or obligations, or claiming breach thereof, shall exist exclusively in a court or government agency located within the City of Norman, Cleveland County, State of Oklahoma.

**9. Attorneys' Fees and Costs.** As further mutual consideration of the promises set forth herein, the parties agree that there is no prevailing party in this matter and that each is responsible for their own attorneys' fees and costs. However, should one Party not comply with the provisions of this Settlement Agreement, any Party, their successors or assigns, who is considered the prevailing party in an action or proceeding to enforce the provisions of this Agreement shall be entitled to attorneys' fees and costs incurred in the enforcement of this Agreement.

**10. Section Headings.** Section headings in this Agreement are included for convenience of reference only and shall not be considered a part of this Agreement for any other purpose.

**11. Entire Agreement.** This Agreement constitutes the complete understanding between the Parties and supersedes any and all prior agreements, promises, representations, or inducements, no matter its or their form, concerning its subject matter. No promises or agreements made subsequent to the execution of this Agreement by these Parties shall be binding unless reduced to writing and signed by authorized representatives of these Parties. The Parties agree that this Settlement Agreement may be executed in counterparts and that facsimile or photostatic copies of the signatures of the parties shall have the same force and effect as their original. This Settlement Agreement shall be implemented as an amendment and supplement to Contract No. K-1617-121, but shall be enforceable against all parties hereto, and with respect to other applicable Project contracts.

**12. Authority to Bind.** The Parties to this Agreement have been advised, or have had the opportunity to be advised, by their legal counsel with respect to the terms of this Agreement, and understand and acknowledge the significance and consequences of it. Each of the signers of this Agreement hereby represents and covenants that he or she is authorized to execute the Agreement on behalf of the Party for which he or she is signing.

**13. Counterparts.** This agreement may be signed in counterparts and remain legally enforceable against all parties.

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Approved by the Trustees of the **NORMAN UTILITIES AUTHORITY**

DATED: \_\_\_\_\_, 2021

By: \_\_\_\_\_  
Brea Clark, Chair

ATTEST:

\_\_\_\_\_  
Brenda Hall, Secretary

**CITY OF NORMAN, OKLAHOMA**

By: \_\_\_\_\_  
Brea Clark, Mayor

ATTEST:

\_\_\_\_\_  
Brenda Hall, City Clerk

APPROVED as to legality and form on this 22 day of January, 2021

Elizabeth Luckala  
Office of the City Attorney and General Counsel



DATED: January 21, 2021

**CAROLLO ENGINEERS, INC.**

By: Thomas O. Crowley, PE

Print name/Title: Thomas O. Crowley P.E. /Vice President

ATTESTED by OFFICER:

By: Garrett Sheehan

Print Name/Title: Garrett Sheehan P.E. /Vice President

DATED: January 21, 2021 **ENERFAB POWER & INDUSTRIAL, INC.**

By: Daniel Wayne Smith

Print name: DANIEL WAYNE SMITH

ATTESTED by OFFICER:

By: \_\_\_\_\_

Print Name/Title