



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: K-1617-121 Amd #1

File ID: K-1617-121 Amd #1

Type: Contract

Status: ATS Review

Version: 1

Reference: Item 16

In Control: City Council

Department: Legal Department

Cost:

File Created: 01/21/2021

File Name: Claim Settlement and Release Supplement to Enerfab Contract

Final Action:

Title: AMENDMENT NO. ONE TO CONTRACT K-1617-121: BY AND BETWEEN THE CITY OF NORMAN, NORMAN UTILITIES AUTHORITY, CAROLLO ENGINEERS, INC., AND ENERFAB, INC., SUCCESSOR TO FOLEY COMPANY, SETTLING A DISPUTED CLAIM AS TO THE PROJECT, AND PROVIDING FOR A MUTUAL RELEASE OF THE PARTIES FOR THE SAME.

Notes: ACTION NEEDED: Acting as the City Council and the Norman Utilities Authority, motion to approve or reject Amendment No. One to Contract K-1617-121 with Carollo Engineers, Inc., and Enerfab, Inc., successor to Foley Company settling a disputed claim as to the Water Treatment Plant Phase II Improvements Project; and, if approved, authorize the execution thereof.

ACTION TAKEN: _____

Agenda Date: 01/26/2021

Agenda Number: 16

Attachments: Carollo Recommendation Letter, Final Settlement Agreement, Exhibit A, Exhibit B, Exhibit C

Project Manager: Beth Muckala, Asst City Attorney

Entered by: beth.muckala@normanok.gov

Effective Date:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
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Text of Legislative File K-1617-121 Amd #1

Body

BACKGROUND: On May 22, 2012, the Norman Utilities Authority (NUA) approved Contract K-1112-124 with Carollo Engineers, Inc. to perform final design services for the Phase II Water Treatment Plant (WTP) Improvements. An 8-month pilot project was performed as a part of that contract to determine the final design parameters and arrangement of the treatment system.

Three process alternatives were studied and it was concluded that ozone should be used to address taste and odor concerns and pharmaceutical/algal toxin reduction while a system employing Ultraviolet Light would function as the primary disinfectant.

On January 13, 2015, Norman citizens approved a water rate increase with 67% voting in favor of the increase. The rate increase was expected to generate capital of approximately \$49 million of which \$31 million was to be used for the WTP Phase II Upgrade.

On February 2, 2015, the NUA approved Amendment No. 1 to complete the design, provide construction administration services, and provide full-time on-site construction observation services for the WTP Phase II Upgrade. The design was completed and plans and specifications were submitted to the Oklahoma Department of Environmental Quality (ODEQ) on October 4, 2016. The ODEQ approved the plans and specifications on January 18, 2017. The Phase II WTP improvements include:

- New 17 million gallons per day (MG/D) ozone system;
- Ultraviolet disinfection system;
- On-site hypochlorite solution generation system;
- Intermediate (low lift) pump station;
- Chemical feed equipment and new chemical feed building;
- New maintenance building;
- New administration building and architectural improvements to the existing filter building;
- Rehabilitation of high pressure zone pump station; and
- Associated electrical and control system improvements.

The project is primarily funded by a State Revolving Fund loan administered by ODEQ and dispersed from the Oklahoma Water Resources Board (OWRB). A loan of up to \$31 million from the OWRB was approved by the NUA on January 17, 2017 and the loan closed on January 31, 2017 at an interest rate of 2.81% for a 15-year term.

Bids for the WTP Phase II Improvements were received from three pre-qualified prime contractors on March 23, 2017. Foley Company was overall low bidder in the amount of \$33,309,665 and also low bidder for selected additive alternate combinations for an anticipated contract amount of \$29,990,165 (base bid less selected alternates). The following bid items were omitted as a cost saving measure:

Air wash system for filters - \$2,895,000
Covered parking/PAC Storage at maintenance building (future) - \$56,000
Door replacement on chemical building (future) - \$42,000
Replace filter effluent valves #1-4 (future) - \$174,000
Replace filter effluent valves #5-8 (future) - \$49,000
Chemical trench covers (future) - \$21,000
Replace backwash pump (future) -\$62,000
Operator door with window side lite (omit) -\$5,500
Brick veneer on south side of new admin building in lieu of metal panels (omit) - \$15,000

TOTAL - \$3,319,500

Foley Company began construction of the improvements on May 29, 2017 and the work was scheduled to be complete within 730 calendar days. On July 10, 2018, Change Order No. 1 was approved by the NUA increasing the contract amount by \$207,727.96 and providing a contract time extension of 87 calendar days. On June 11, 2019, Change Order No. 2 was approved by the NUA increasing the contract by \$317,569.30 and providing a contract time extension of 118 calendar days. On April 3, 2020, Change Order No. 3 was approved by the NUA General Manager increasing the contract amount by \$37,487.96 and providing a contract time extension of 4 calendar days. On May 18, 2020, Change Order No. 4 was approved by NUA General Manager increasing the contract amount by \$37,614.13 and providing a contract time extension of 35 calendar days. On July 7, 2020, Change Order No. 5 was approved by NUA General Manager increasing the contract amount by \$20,398.71. Enerfab, Inc. is the successor of Foley Company under the current contract, as the successor in a corporate merger (see attached 10/15/2018 letter and Certificate of Corporate Merger).

DISCUSSION: Final Change Order No. 6 (CO#6) is presented as a companion and related item on this agenda. The potential change order items (PCOs) associated with CO#6 total \$124,533.36 which increases the contract approximately 0.4% from \$30,610,963.06 to \$30,735,496.42.

CO#6 is presented in conjunction with this supplement to resolve the claim dispute as a means of the parties finally resolving all outstanding matters concerning the project. Approval of CO#6 is integral to the approval of this supplement and amendment, and approval of this supplement and amendment is necessary to fully effectuate the parties' agreements as to the items presented in CO#6.

The claim at issue with respect to this supplement and amendment concerns a requested change order and claim by Enerfab related to delays and associated costs related to the startup and commissioning of the new chlorine and ammonia injection systems. The City of Norman/NUA disputed responsibility for the reference costs associated with this claim, as well as the manner in which the claim was presented by the other parties. The parties worked amicably to find a resolution to this claim in a manner which avoided delay of project completion and upon terms which the parties felt were fair and equitable. Per the parties' resolution with respect to the chlorine and ammonia matters, the City of Norman will not be paying any material or labor costs associated therewith, and the Enerfab final contract price shall be adjusted to reflect additions for items which the contract engineer, Carollo, found to be necessary and equitably priced, as set forth in CO#6 (see attached Carollo Recommendation Letter). NUA/City Staff has reviewed the Carollo Letter and has found that the recommendations with respect to payments or credits for work other than the chlorine and ammonia matters are accurate reflections of Enerfab's work, and are the proper subjects of CO#6.

This Settlement Agreement and Release supplement reflects the various parties' agreements with respect to resolution of this claim, including a release of all alleged responsibility of the Norman Utilities Authority for this claim under this contract with Enerfab, Inc. Additionally, the

supplement and amendment is presented as an amendment to the original Contract K-1617-121 with respect to the parties only as to the terms set forth therein, and does not alter the ongoing contractual warranty obligations of the various parties with respect to the original contracts for the project work. Finally, pursuant to this supplement, the contract engineer, Carollo, has agreed to credit the NUA on its separate contract with the NUA, which credit will be effectuated immediately, and will again be reflected when the final payment on its contract is presented to the Norman Utilities Authority/City Council for final consideration.

RECOMMENDATION: City and NUA Staff is satisfied that the resolution presented for approval is fair, equitable and beneficial to the City with respect to a final resolution of the project work with these parties. NUA/City Staff recommends approval of Amendment No. 1 to Contract K-1617-121.