**CONFIDENTIAL SETTLEMENT AGREEMENT**

*[General comment: This is quite good, although the long sentences and paragraphs could be broken up for better readability.]* This General Release and Settlement Agreement (“Agreement”) is made and entered into as of April 28, 2015 (the “Effective Date”), by and between Acme Metal Company,  (collectively “Plaintiff”) and National Construction Company (“Defendant”) (Plaintiff and Defendant are referred to herein collectively as the “Party” or “Parties.”) on behalf of the Parties, their respective subsidiaries, administrators, agents, and shareholders.

**Overview**

A dispute has arisen between the Parties regarding the agreed purchase of raw materials from Plaintiff by Defendant (the “Dispute”); and,

Plaintiff has filed an action in Court in the matter of Acme Metal Company v. National Construction Company Cause No. 2014-54321, (the “Litigation”); and,

Plaintiff has complained of economic damages arising out of the Dispute, which are expressly denied by Defendant; and,

The Parties have agreed to resolve the Dispute and the Litigation; and,

**WHEREFORE**, intending to be legally bound, the Parties hereby agree as follows:

**1. Settlement Payment: *[It’s not customary to include a colon at the end of a heading]***

Defendant shall pay Plaintiff a total of $572,432.34 (the “Settlement Payment”)

*[Think about how the parties and their counsel would want the following “mechanics” to work if they didn’t trust each other]* At the time of the Parties’ signing of this Agreement, Defendant shall have sent by hand delivery a bank check the Settlement Payment to the office of Plaintiff’s attorneys, The C.D. Forrest Law Firm, within 30 calendar days of the Effective Date.

After the delivery of the Settlement Payment, Plaintiff shall execute an original and one copy of this Agreement and send to Defendant. Defendant shall execute and return a fully executed original of this Agreement to Plaintiff’s counsel. Within one court day of receiving such fully executed Agreement and payment, Plaintiff will file an Agreed Motion to Dismiss in the 133rd Harris County Civil Court.

**2. Mutual Release:**

In consideration for the Settlement Payment described in paragraph 1 above and other good and valuable consideration, receipt of which is hereby acknowledged, by signing this Agreement, Plaintiff releases, acquits, and forever discharges Defendant from any and all actions, claims, demands, damages, obligations, liabilities, controversies and executions, of any kind or nature whatsoever, whether known or unknown, whether suspected or not, which have arisen, or may have arisen, or in the future arise by reason of any matter, cause or thing whatsoever, from the first day of the world, including this day and each day after, and Plaintiff specifically waives, without limitation, any claim or right to assert any cause of action or alleged cause of action or claim or demand which has, through oversight or error, intentionally or unintentionally or through a mutual mistake, been omitted from this Release.

Defendant does hereby release, cancel, forgive and forever discharge Plaintiff and each of its holding companies, subsidiaries, affiliates, divisions, successors, heirs, and assigns in all capacities whatsoever, including without limitation as an officer, director, employee, representative, designee, agent, and shareholder thereof, from all actions, claims, demands, damages, obligations, liabilities, controversies and executions, of any kind or nature whatsoever, whether known or unknown, whether suspected or not, which have arisen, or may have arisen, or shall arise by reason of any matter, cause or thing whatsoever, from the first day of the world, including this day and each day hereafter, and Defendant does specifically waive any claim or right to assert any cause of action or alleged cause of action or claim or demand which has, through oversight or error, intentionally or unintentionally or through a mutual mistake, been omitted from this Release.

**3. Dismissal of Lawsuit:**

Each Party is to pay the costs and attorneys’ fees and other expenses it incurred in connection with this lawsuit. No Party is to pay the costs or attorneys’ fees or other expenses incurred by any other Party.

**4. No Admission of Liability:**

 Each Party agrees that nothing contained herein, and no action taken by any other Party with respect to this Agreement, is to be construed as an admission of liability by that other Party.

**5. CONFIDENTIALITY:**

*[QUESTION: Is there a better way of making this paragraph “conspicuous” than bold-faced all-caps?]* **A. THE PARTIES HEREBY AGREE THAT THIS AGREEMENT, ITS TERMS, AND ALL FACTS AND INFORMATION RELATING TO THE DISPUTE, INCLUDING BUT NOT LIMITED TO THE FACT AND AMOUNT OF SETTLEMENT THEREOF, SHALL BE KEPT IN THE STRICTEST CONFIDENCE AND SHALL NOT HEREAFTER BE DISCLOSED TO ANY PERSON, UNLESS REQUIRED BY LAW.**

**B. NOTWITHSTANDING THE FOREGOING, THE PARTIES MAY DISCLOSE INFORMATION ABOUT THIS SETTLEMENT: (A) TO THEIR ATTORNEYS, AUDITORS, OR ACCOUNTANTS IN THE CONTEXT OF THE ATTORNEY-CLIENT OR ACCOUNTANT-CLIENT RELATIONSHIP; (B) TO THEIR TAX ADVISORS OR TO GOVERNMENT TAX AUTHORITIES TO THE EXTENT NECESSARY TO ASSIST IN THE PREPARATION OR REVIEW OF INCOME TAX RETURNS; AND (C) IN RESPONSE TO ANY INQUIRY ABOUT THIS SETTLEMENT OR ITS UNDERLYING FACTS BY ANY SELF-REGULATORY, LOCAL, STATE, OR FEDERAL AUTHORITY, OR ANY OTHER GOVERNMENTAL BODY.**

**C. THE PARTIES MAY ADDITIONALLY DISCLOSE INFORMATION ABOUT THIS SETTLEMENT TO INSURERS OR PROSPECTIVE INSURERS.**

**D. UPON EITHER PARTY RECEIVING AN INQUIRY, SUBPOENA, OR COURT ORDER TO DISCLOSE INFORMATION, THAT PARTY SHALL NOTIFY THE OTHER PARTY OF THIS INQUIRY, SUBPOENA, OR COURT ORDER WITHIN 14 CALENDAR DAYS THROUGH ITS RESPECTIVE ATTORNEY OF RECORD, AND SHALL TAKE THE NECESSARY MEASURES TO PRESERVE THE CONFIDENTIALITY OF THIS AGREEMENT, AND SHALL COOPERATE FULLY IN ANY LAWFUL EFFORT TO PRESERVE THE CONFIDENTIALITY OF THIS AGREEMENT.**

**E. THE PARTIES UNDERSTAND AND ACKNOWLEDGE THAT ANY BREACH OF THIS PROVISION SHALL CONSTITUTE A BREACH OF THIS AGREEMENT.**

**7. Entire Agreement; Amendments:**

a. This Agreement constitutes the complete understanding between the Parties. No other promises, representations, or agreements shall be binding unless signed by these Parties.

b. This Agreement cannot be altered, amended, or modified in any respect, except by a writing duly executed by all Parties to the Agreement.

**8. Severability:**

 In the event that any court of enforcement authority determines that any provision of this Agreement is unenforceable, the provision at issue shall be enforced to the maximum extent permitted by law, and all other provisions shall remain in full effect.

**9. Choice of Law:**

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without reference to its provisions regarding choice of law.

**10. Costs of Enforcement:**

The Parties agree that if this Agreement is breached, the breaching Party shall save and hold harmless *[QUESTION: Why use this language – why not instead just use plain English, e.g., “reimburse”]*  each other Party *[There’s a case cited in the* Common Draft *materials that says that if the “non-breaching” party is itself technically in breach about something, then that party isn’t entitled to terminate the Agreement.]* from any and all claims, costs, and expenses including, but not limited to, reasonable attorneys’ fees incurred as a result of the breach.

**11. Execution in Counterparts:**

 This Agreement may be executed in identical counterparts. Each executed counterpart may be delivered by email or facsimile; each counterpart so transmitted is deemed an original for all purposes.

**12. Authorization to Act:**

 Each Party warrants to each other Party that the warranting Party is authorized and empowered to execute this Agreement on its own behalf and on behalf of any individual or organization on whose behalf the warranty Party has executed *[COMMENT: It’s better to be consistent with “signed” vs. “executed”]* this Agreement.

**13. Voluntary Act:**

*[COMMENT: If this is a settlement involving an individual plaintiff, it’d be good to have a separate set of these paragraphs for each party, and to use the plaintiff’s name for his or hers. EXAMPLE: “Jane Doe certifies that: (A) she has had the opportunity to read this entire Agreement; (B) she has had the opportunity to discuss and ask questions about this Agreement with her legal counsel and any other adviser she wishes, of her own choosing; (C) she agrees to each of the terms of this Agreement; and (D) she is signing this Agreement with the intent to be legally bound by it.”]*

a. The Parties acknowledge that they have read this Agreement and agree to the terms as set forth in it.

b. Further the Parties acknowledge that they have had an opportunity to consult with legal counsel and any other advisers they wish of their own choice with respect to the contents hereof and are signing this Agreement of their own free will.

**IN WITNESS WHEREOF,** and intending to be legally bound hereby, the Parties have executed the foregoing General Release and Settlement Agreement. *[COMMENT: “General Release and Settlement Agreement” isn’t the title of this Agreement – be consistent.] [COMMENT: This paragraph could be replaced by just “AGREED:” above each signature block.]*

*[WORD-PROCESSING COMMENT: It’s better to do the signature blocks as a two-column Word table instead of with tabs.]*

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