

CITY OF VINELAND

RESOLUTION NO. 2017-_____

RESOLUTION AUTHORIZING THE EXECUTION OF A
GENERAL RELEASE BY AND BETWEEN SIEMENS
ENERGY INC. AND THE CITY OF VINELAND

WHEREAS, the City of Vineland (City) and Siemens Energy Inc. (Siemens) entered into a contract, contract number RES 09-623 and Change Order number 6, dated November 9, 2011 for the purchase of 2 simple cycle turbine generators located at Down 11 and Clayville; and

WHEREAS, the generator located at Down 11 experienced a failure of the turbine engine after the expiration of the warranty period, but during the term of the Long Term Service Agreement (LTSA); and

WHEREAS, an issue arose as to whether the failure was caused by a design flaw or construction failure, which led to a dispute as to whether the responsibility for the repair and related costs should be borne by Siemens or the City; and

WHEREAS, in order to assure no failure occurs with the Clayville turbine under the same conditions as Down 11, the parties have agreed to investigate and modify the Clayville turbine; and

WHEREAS, the City and Siemens intend upon amicably resolving all of the claims surrounding the failure of Down 11 and modifications of Clayville turbines and have tentatively agreed upon the performance of certain services by Siemens and payment by the City, as recommended by the Director of the Municipal Utilities, and subject to approval by the Governing Body and the Mayor.

NOW THEREFORE BE IT RESOLVED by the Council of the City of Vineland that the Mayor and Clerk are hereby authorized to execute a Settlement Agreement and General Release in the substance substantially contained in the attached Settlement Agreement and General Release, subject to modification in the form as approved by the City Solicitor.

Adopted:

President of Council

ATTEST:

City Clerk

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (the "Agreement") is made and effective this ____ day of February, 2017 by and between the City of Vineland ("Vineland") and Siemens Energy, Inc. ("Siemens") (individually referred to as a "Party" and collectively referred to as the "Parties").

RECITALS

WHEREAS, Vineland is a municipality in the state of New Jersey with an address of 640 E. Wood Street, P.O. Box 1508, Vineland, NJ 08362; and

WHEREAS, Siemens is a corporation duly organized and validly existing under the laws of the State of Delaware with its principal place of business at 4400 Alafaya Trail, Orlando, Florida 32826; and

WHEREAS, the Parties entered into a contract number RES09-623 and Change Order No. 6 dated November 9, 2011, for the purchase of a Simple Cycle Turbine Generator, ESN118 (the "Contract"); and

WHEREAS, certain disputes relating to the Contract and the Parties' performance under the Contract have arisen between the Parties; and

WHEREAS, the Parties desire to settle fully any and all disputes between them including, but not limited to, to any and all claims that arise out of Gas Turbine Generator ESN 109 and ESN118 under the Contract (collectively the "Disputes").

NOW THEREFORE, in consideration of the mutual promises contained in this Agreement, and for good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, and intending to be legally bound by this Agreement, the Parties stipulate and agree as follows:

- B. In full and complete satisfaction for the claims made by Vineland with regards to ESN118, the Parties hereby stipulate and agree that Vineland will:**
- a. Pay for the cost of shipping ESN118 to Siemens facility in Montreal for modifications 702 and 708;**
 - b. Pay for the field service costs associated with removal of the engine to install modifications 702 and 708 and pay for the field service costs associated with reinstallation of the engine upon completion of modifications 702 and 708. Vineland to cover the engine change parts consumables and engine change tooling. The field service costs will be at the time and material rates set forth in the LTSA.**
 - c. Immediately release payment of One Million Two Hundred Sixteen Thousand Two Hundred Two US Dollars and nine cents (\$1,216,202.09) towards payment for ESN118;**
 - d. Make an additional payment of One Hundred Thousand US Dollars and no cents (\$100,000) after the inspection report on ESN118 is released following the arrival of the engine in Montreal, Canada;**
 - e. Make final payment of One Hundred Thousand US Dollars and no cents (\$100,000) two months after ESN118 has been returned to service.**
- C. In full and complete satisfaction for any and all claims by Vineland with regards to ESN118, it is further stipulated and agreed to by the Parties that:**
- a. There is no extension of the general equipment warranty for ESN118 under the Contract, such warranty having expired on December 15, 2016;**
 - b. The warranty for modifications 702 and 708 on ESN118 will be as set forth in the warranty provision, Article 7, of the LTSA.**
 - c. Vineland is to be given a One Million One hundred Seventy Four Thousand Seven Hundred Thirty Eight US Dollars and no cents (\$1,174,738) credit to be applied 50% towards future services and 50% towards a price reduction on Change Order 18, Resolution Number 2016-295 amending the Contract.**
- D. In full and complete satisfaction for any and all claims by Vineland with regards to ESN118, it is further stipulated and agreed to by the Parties that with regards to performance of the modified ESN118:**
- a. After installation of the modified engine of the ESN118, a performance test will be conducted using existing in situ operations monitoring systems to confirm ESN118 is operating within guaranteed natural gas fuel performance**

for net power, net heat rate, and emissions compliance, taking into account "Plant Degradation" as defined in the Contract, Tab B Technical – section 1, page 5 (Performance Guarantee).

- b. Should the modified ESN118 not meet the Performance Guarantee in accordance with the test guidelines set forth above, Siemens will repair or replace the equipment until it adequately passes the performance test.

3. Mutual Releases

- A. With respect to the Disputes only, Vineland, for itself, its successors and assigns, officers, stockholders, directors, agents, representatives and attorneys, hereby releases, quit claims and forever discharges Siemens and its affiliates, predecessors, successors, assigns, parent corporations, officers, directors, employees, agents and attorneys and their heirs and personal representatives, from all claims, defenses, demands, damages, setoffs, recoupments, judgments, obligations, indemnities, subrogation, duties, demands, controversies and liabilities of every kind and nature, at law or in equity, under statute or at common law, liquidated or unliquidated, known or unknown, matured or unmatured, foreseeable or unforeseeable, for any reason whatsoever, and under any theory of recovery including in contract and tort (including negligence, gross negligence, willful misconduct and strict liability), which Vineland ever had, now has, or can, shall or may in the future have, directly or indirectly, against Siemens.

- B. With respect to the Disputes only, Siemens, for itself, its successors and assigns, officers, stockholders, directors, agents, representatives and attorneys, hereby releases, quit claims and forever discharges Vineland and its affiliates, predecessors, successors, assigns, parent corporations, officers, directors, employees, agents and attorneys and their heirs and personal representatives, successors and assigns from all claims, defenses, demands, damages, setoffs, recoupments, judgments, obligations, indemnities, subrogation, duties, demands, controversies and liabilities of every kind and nature, at law or in equity, under statute or at common law, liquidated or unliquidated, known or unknown, matured or unmatured, foreseeable or unforeseeable, for any reason whatsoever, and under any theory of recovery including in contract and in tort (including

negligence, gross negligence, willful misconduct and strict liability), which Siemens ever had, now has, or can, shall or may in the future have, directly or indirectly, against Vineland. Notwithstanding the above, Siemens does not waive, release, or discharge any of its rights and remedies under the Intellectual Property or Confidentiality provisions of the Contract, specifically sections 14 of the Amended and Restated Long Term Service Agreement, Reference Number 0426.

4. Settlement not Admission of Liability

This Agreement is in full accord and satisfaction of the Disputes, and is not, and shall not be construed as, an admission of liability by either Party regarding the Disputes or an acceptance of or agreement to any positions asserted by the other Party. Neither Party will be bound by any matters agreed upon or items undertaken in this Agreement in settlement of the Disputes in any other existing or future disputes between the Parties.

5. Confidentiality

The Parties and their affiliates, subsidiaries, parents, officers, employees and directors agree to keep confidential the terms of this Agreement and not to disclose the same to any other persons or entities except as may be required by law.

6. No Representations

There are no written or oral understandings, agreements, representations or warranties of any kind or nature directly or indirectly connected with this Agreement which are not expressly set forth in this Agreement.

7. Release on Advice of Counsel

Vineland and Siemens represent that before entering into this Agreement each has relied upon the legal advice and counsel of its respective attorneys, the terms of this Agreement have been completely read and explained by its respective attorneys, and those terms are fully understood and voluntarily accepted.

8. No Oral Modification

This Agreement may not be altered or amended except by subsequent agreement in writing signed by both Parties.

9. Entire Agreement

This Agreement represents the entire understanding of the Parties, and there are no prior or contemporaneous oral or written representations, agreements or understandings with respect to the subject matter of this Agreement. Should any such prior or contemporaneous representations, agreements and/or understandings exist, they are superseded by this Agreement.

10. Execution in Counterparts

This Agreement may be executed in counterparts, each of which shall be duly binding and enforceable.

11. Governing Law

This Agreement shall be interpreted and construed in accordance with the laws of the State of New Jersey in effect as of the date of this Agreement without regard to its choice of law or conflicts of laws principles.

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement and General Release to be executed by their respective duly authorized representatives.

City of Vineland

Siemens Energy, Inc.

Signature

Signature

Name

Name

Title

Title

Date of Signature

Date of Signature