

CITY OF VINELAND

RESOLUTION NO. 2018-310

RESOLUTION AUTHORIZING THE EXECUTION OF A SETTLEMENT AGREEMENT BY AND BETWEEN THE CITY OF VINELAND AND ALL PARTIES NAMED IN LAWSUITS FILED IN THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, CONSOLIDATED IN DOCKET NO. CUM-L-515

WHEREAS, several law suits were filed by the City of Vineland, C&H Industrial Services Inc. (C&H), Berkley Insurance Company (Berkley), Scalfo Electric, Inc. (Scalfo), Fabbri Builders, Inc. (Fabbri), Falasca Mechanical, Inc. (Falasca) ad Tri-State Construction (Tri-State) (collectively the Parties) against one and other arising out of or in connection with the construction of a 64 Megawatt Simple Cycle Power Plant for the Vineland Municipal Electric Utility commonly known as the Clayville Unit ; said law suits bearing Docket Nos. CUM-L-868-16, CUM-L-165-15, CUM-L-515-15 which have all been consolidated under Docket No. CUM-L-515-15 (collectively Complaints); and

WHEREAS, the Parties wish to settle all controversies among them including those claims asserted in the Complaints; and

WHEREAS, the City of Vineland denies each and every allegation made against it in the Complaint and fully asserts that its claims against any and all of the Parties are valid and settlement is entered to end the litigation and compromise the claims of the Parties; and

WHEREAS, the proposed settlement is for the City to pay C&H \$3,000,000.00 of the funds being held by the City in accordance with the terms of a construction agreement with C&H for the construction of the Clayville Unit and the City will retain the balance thereof in full satisfaction of the claims of the Parties and further the City will be held harmless and be indemnified for any future claims that may be asserted by other parties related to the construction of Clayville Unit as is more fully described in the Settlement Agreement attached hereto and made a part hereof.

NOW THEREFORE BE IT RESOLVED by the Council of the City of Vineland that the Mayor and Clerk are authorized to execute a Settlement Agreement in the form and substance attached hereto and made a part hereof.

Adopted:

President of Council

ATTEST:

City Clerk

SETTLEMENT AGREEMENT

The City of Vineland, the City of Vineland Municipal Electric Utility (the “Vineland Defendants”), C&H Industrial Services, Inc. (“C&H”), Berkley Insurance Company (“Berkley”), Scalfo Electric, Inc. (“Scalfo”), Fabbri Builders, Inc. (“Fabbri”), Falasca Mechanical, Inc. (“Falasca”) and Tri-State Construction (“TriState”) (collectively the “Parties”), on their own behalf and on behalf of their heirs, executors, administrators, assigns, affiliates, departments, subdivisions, Council members, administrators, officials, employees, agents, representatives, successors and insurance carriers, have reached the within agreement in final settlement of any and all claims, disputes or rights, including attorneys’ fees and costs, that were asserted or that could have been asserted by the Parties against one another arising out of, or in connection with the construction of a 64 Megawatt Simple Cycle Power Plant for the Vineland Municipal Electric Utility, located adjacent to the existing Clayville Substation, at 4087 South Lincoln Avenue, Vineland, New Jersey and known as Clayville Unit #1 (the “Project”), from the beginning of time until the date of execution of this Settlement Agreement (the “Agreement”).

This Agreement is in full settlement of any and all claims which the Parties now have or may have against one another, individually or collectively, arising out of or in connection with the Project, including, but not limited to, all claims which were or could have been asserted in the various lawsuits filed by the Parties, pending in the Superior Court of New Jersey, Law Division, bearing Docket Nos.: CUM-L-868-16, CUM-L-165-15 and CUM-L-515-15, which have been consolidated in the civil action entitled, “C&H Industrial Services, Inc. v. City of Vineland v. Berkley Insurance,” bearing Docket No.: CUM-L-515-15 (hereinafter the “Lawsuits”).

In consideration of the mutual promises contained herein it is agreed as follows:

1. The Parties agree that they, through their attorneys, will execute (at the time of executing the Agreement) for filing with the Superior Court of New Jersey, a Stipulation of Dismissal with Prejudice of the pending Lawsuits, in the form annexed hereto as Exhibit A. The Stipulation shall be held in trust by the Vineland Defendants' counsel and may be filed with the Court after the payment to C&H's counsel of the funds set forth in paragraph 2 below.

2. At the time of execution of the Agreement, C&H's attorney shall provide a completed Form W-9 of his law firm and shall satisfy all liens, if any, from the proceeds of the Settlement. C&H will also be responsible for disbursing and allocating the settlement funds set forth below to the various Parties to the Lawsuits and or any parties who have filed mechanic's liens with respect to the Project or the Lawsuits.

In full settlement of any and all claims the Parties now have or may have against one another, including those claims referred to above and including attorneys' fees and costs, within thirty (30) days after approval of this Agreement by the Vineland City Council, and receipt of the executed Agreement and the executed Stipulation of Dismissal from all parties referred to above, the Vineland Defendants, through their counsel, shall deliver to C&H's attorneys, HANKIN SANDMAN PALLADINO & WEINTROB, 30 S. New York Avenue, Atlantic City, New Jersey ("HSPW Law Firm"), a check in the sum of \$3,000,000.00, as total and final payment for all damages and claims, in all matters and as to all Parties with respect to the Project or the Lawsuits. No other payment shall be due to any of the Parties from the Vineland Defendants or among any of the other Parties, except that C&H will be responsible for disbursing and allocating the \$3,000,000.00 to the various Parties to the Lawsuits as agreed between C&H and those Parties and or any parties who have filed mechanic's liens with respect to the Project or the Lawsuits.

3. By execution of this Agreement and satisfaction of all of its conditions, the Parties agree that any liens, construction liens or municipal mechanic's liens with respect to the Project are deemed discharged. Payment of the \$3,000,000.00 shall be conditioned upon all liens filed by any entity, regardless of whether it is a party to this lawsuit, being discharged or bonded, with satisfactory documentation provided to the Vineland Defendants by C&H evidencing discharge or bonding of all outstanding liens. Furthermore, C&H and Berkley shall, collectively, defend, indemnify and hold harmless the Vineland Defendants, their heirs, executors, administrators, assigns, affiliates, departments, subdivisions, Council members, administrators, officials, employees, agents, representatives and successors against any present or future claim, lien, mechanic's lien, construction lien, or any other action for payment for goods, materials or services, or for payment of employee or union benefits or wages, whether in contract, law or equity, by any individual, entity, contractor, subcontractor or supplier, with respect to the Project or the Lawsuits regardless of whether such entity is presently a party to the Lawsuits. By this Agreement, and notwithstanding any other provision to the contrary, the City does not discharge or release Berkley from its obligations to the City under the Project performance and payment bond with regard to its duties under this provision, and Berkley shall remain fully obligated in this regard.

4. Notwithstanding the terms of this Agreement, C&H's claims against Alexson Supply, Inc. ("Alexson"), Euclid Chemical Company ("Euclid") and Craig Testing Laboratories, Inc. ("Craig") shall remain active and are not part of this Agreement. C&H shall indemnify, defend and hold harmless the Vineland Defendants, their heirs, executors, administrators, assigns, affiliates, departments, subdivisions, Council members, administrators, officials, employees, agents, representatives and successors against any present or future claim,

lien, mechanic's lien, construction lien, or action brought by any individual or entity with respect to the Project or the Lawsuits, including but not limited to any claims made by any current or future parties to the litigation amongst C&H, Alexson, Euclid and Craig Testing, or any third party to such litigation.

5. An IRS Form or Forms 1099 will be issued to the HSPW Law Firm by the Vineland Defendants with respect to the payments made. Said payments are made in total and complete settlement of the matter and all claims referred to above, including, but not limited to, attorneys' fees, expenses and costs of suit. It is expressly understood and agreed that C&H and its counsel shall assume responsibility for the appropriate tax treatment and tax reporting of the payments made to them, if any. It is further understood and agreed that in the event the Internal Revenue Service, or any other taxing entity, including, but not limited to, the State of New Jersey or any court or other tribunal of competent jurisdiction, ultimately determines that the foregoing amount constitutes income for which any taxes remain due and owing, C&H shall be responsible for the payment of such taxes, and it shall make no claim against the Vineland Defendants for payment of any such taxes, or for the payment of any applicable interest or penalties. C&H agrees to indemnify the Vineland Defendants for any taxes, penalties or interest due and owing by it with respect to the payment, specified herein. In the event it is ultimately determined that any taxes are due and owing with respect to the foregoing sum, the validity of the Settlement Agreement and General Release shall not be affected in any way.

6. C&H acknowledges that the payment referred to above in Paragraph 2 constitutes additional consideration not otherwise owed to it but for the Agreement. Further, C&H agrees that said payment is the only payment or benefit to which it is entitled under the Agreement and agrees that it will not seek anything further, whether monetary or otherwise,

from the Vineland Defendants in any proceeding. Except as expressly set forth herein, the Parties shall not be responsible for any of the other Parties' costs and/or attorneys' fees including, but not limited to, fees and costs incurred in connection with the Lawsuits.

7. In consideration for the dismissal of the Lawsuits and for the payments provided for in the Agreement, and for the mutual promises contained in the Agreement, the Parties expressly waive, release and give up any and all claims which have been asserted, or which could have been asserted, in the Lawsuits referred to above, and any and all claims and rights, without limitation, that they may have against one another from the beginning of time until the date of execution of this Agreement. The Parties specifically release all claims arising under any contract or any other agreement between the Parties, express or implied, relating to payment for sums due and owing for goods, materials or services, or for liquidated damages or delay damages relating to the Project. Notwithstanding the foregoing, the City does not release, and retains its rights with respect to any warranties, express or implied in any such agreements relating to the use or operation of the Project and its equipment.

The Release is intended by the Parties to be construed to release any and all claims and rights related to the Project arising on or before the date of the execution of the Agreement to the fullest extent permitted by law. This paragraph bars the Parties from initiating legal action only to the fullest extent permitted by law. It does not bar a party from instituting legal action for the sole purpose of enforcing the Agreement.

The Parties represent to each other that, other than the Lawsuits specifically referenced herein, there are no pending lawsuits, charges, or other claims of any nature whatsoever by or on behalf of the Parties in any state or federal court or any agency or other administrative body.

Further, the Parties agree, to the fullest extent permitted by law, not to institute any

lawsuit, charges, or other claims of any nature whatsoever against one another in any forum, or to seek discovery from one another based upon any events occurring or arising prior to the date of the execution of the Agreement, including, but not limited to, any event related to, arising out of, or in connection with any aspect of the Project, except that the Parties agree to cooperate as to discovery which may be related to C&H's litigation with Alexson, Euclid and Craig. With respect to any report or claim or participation in any investigation or proceeding from which the Parties may not lawfully be precluded, the Parties understand and agree that they hereby voluntarily waive any right to monetary damages against any other of the Parties in such action. Furthermore, nothing in this Release shall be construed to bar the Parties from reporting anything where the prohibition would be precluded by law.

8. By making this Agreement, the Parties acknowledge that none of the Parties admit that it or they have done anything wrong, and the Parties specifically state that they have not violated or abridged any federal, state, or local law or ordinance, or any contract or any right or obligation that it or they may owe or may have owed to any other Party. This Agreement shall not constitute an admission of liability or wrongdoing for any purpose. The Parties further acknowledge that the allegations contained in the Lawsuits remain disputed and denied by all Parties and that the Parties assert that they underwent a cost benefit analysis, made business decisions, and have agreed to settle these Lawsuits in order to avoid the inherent uncertainties with any legal proceeding and the additional legal fees and expenses with continuing these disputes, but that this Release represents a compromise of disputed claims, and any liability, wrongdoing, malfeasance, misfeasance or negligence on the part of any of the Parties is expressly denied.

9. The Agreement contains the sole and entire agreement between the Parties and

fully supersedes any and all prior agreements and understandings pertaining to the subject matter hereof. The Parties represent and acknowledge, in executing the Agreement, that they have not relied upon any representation or statement not set forth herein made by any other Party to the Agreement or their counsel or representatives with regard to the subject matter of the Agreement. No other promises or agreements shall be binding unless in writing and signed by the Parties hereto.

10. The Parties agree that if any provision of the Agreement is determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall not be a part of the Agreement. The legality, validity and enforceability of the remaining provisions of the Agreement shall not be affected by a determination that a provision herein is illegal, invalid or unenforceable.

11. The Parties agree that they will not disparage, defame or slander any of the other Parties.

12. New Jersey law shall govern the Agreement, and any action under, and/or touching upon or affecting, the terms of the Agreement, shall be brought in a Court of competent jurisdiction located within the State of New Jersey.

13. The Agreement may be executed and delivered in any number of counterparts, each of which, when so executed and delivered, shall constitute an original, fully enforceable counterpart for all purposes and such counterparts together shall constitute but one and the same instrument.

14. By signing this Agreement, the Parties state and represent that:

- (a) They have read it;
- (b) They understand it and know that they are giving up important rights and claims, including, but not limited to,

rights listed in paragraph 5 above, and that they are giving up any such rights or claims in exchange for the consideration set forth in the Agreement;

- (c) They agree with everything in it;
- (d) Their attorneys negotiated the Agreement with their knowledge and consent;
- (e) They have been advised to consult with their attorneys prior to executing the Agreement, and in fact have done so; and
- (f) They have signed the Agreement knowingly and voluntarily.

IN WITNESS WHEREOF, the Parties have executed and delivered the Agreement intending to be bound hereby effective as of August ____, 2018.

C&H INDUSTRIAL SERVICES, INC.

By: _____

SWORN TO AND SUBSCRIBED IN MY PRESENCE
this ____ day of ____, 2018.

Notary Public
CITY OF VINELAND

By: _____

SWORN TO AND SUBSCRIBED IN MY PRESENCE
this ____ day of ____, 2018.

Notary Public

CITY OF VINELAND MUNICIPAL ELECTRIC UTILITY

By: _____

SWORN TO AND SUBSCRIBED IN MY PRESENCE
this ____ day of ____, 2018.

Notary Public

BERKLEY INSURANCE COMPANY

By: _____

SWORN TO AND SUBSCRIBED IN MY PRESENCE
this ____ day of ____, 2018.

Notary Public

SCALFO ELECTRIC, INC.

By: _____

SWORN TO AND SUBSCRIBED IN MY PRESENCE
this ____ day of ____, 2018.

Notary Public

FABBRI BUILDERS, INC.

By: _____

SWORN TO AND SUBSCRIBED IN MY PRESENCE
this ____ day of ____, 2018.

Notary Public

FALASCA MECHANICAL, INC.

By: _____

SWORN TO AND SUBSCRIBED IN MY PRESENCE
this ____ day of ____, 2018.

Notary Public

TRI-STATE CONSTRUCTION

By: _____

SWORN TO AND SUBSCRIBED IN MY PRESENCE
this ____ day of ____, 2018.

Notary Public