

CITY OF VINELAND

RESOLUTION NO. 2018-351

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-515-15.

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”), have reached the within Settlement Agreement (hereafter, “Agreement”) respecting claims by the Vineland Defendants against C&H and Berkley and claims by Scalfo, Fabbri, Falasca and Tri-State against the Vineland Defendants, C&H and Berkley 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”) and a payment-performance bond provided by Berkley, as surety, to the City of Vineland, as obligee, on behalf of C&H, as principal (hereafter, the “Berkley Bond”) relating to the Project.

The Parties are now engaged in the pending litigation 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 Company,” bearing Docket No.: CUM-L-515-15 (collectively, the “Lawsuits”).

In consideration of the mutual promises contained herein and intending to be legally bound hereby, 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, with the express exception of the “Alexson

Lawsuit” (as defined below) in the form annexed hereto as **Exhibit A**. The Stipulation shall be held in trust by the Vineland Defendants’ counsel and shall be promptly filed with the Court after complete execution of this Agreement and payment of the settlement proceeds in the manner set forth in paragraph 3 below.

2. C&H’s claims against Alexson Supply, Inc. (“Alexson”), Euclid Chemical Company (“Euclid”) and Craig Testing Laboratories, Inc. (“Craig”) in the matters of C&H Industrial Services, Inc. v. Alexson Supply, Inc., et al., Docket No. CUM-L-165-15, and in C&H Industrial Services, Inc. v. City of Vineland, Alexson Supply, Inc., Euclid Chemical Company, and Craig Testing Laboratories, Inc., Docket No. CUM-L-515-15 (the “Alexson Lawsuits”), shall remain active and are not part of this Agreement or the attached Stipulation, and nothing in this Agreement shall be construed as or constitute any waiver, relinquishment or release of any claims C&H has, had or might have against Alexson, Euclid or Craig.

3. At the time of execution of the Agreement, C&H, Scalfo, Fabbri, Falasca and Tri-State shall each provide a completed IRS Form W-9 to the City.

4. Within fourteen (14) days after approval of this Agreement by the Vineland City Counsel, and receipt of the fully executed Agreement, fully executed Stipulation of Dismissal, and IRS Form W-9 from all parties referred to above (except that Berkley shall not provide a Form W-9), 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, made payable either directly to C&H or to HSPW’s trust account, or to both jointly. Payment by the Vineland Defendants of this sum shall serve 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. C&H, Scalfo, Fabbri, Falasca and Tri-State each shall be responsible for satisfying any Project liens arising from their respective subcontractors and suppliers, out of, and as a condition of receiving the settlement proceeds.

5. 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 the Lawsuits, including any downstream liens or claims for payment for supplies, goods, services or employee benefits, being discharged or bonded, with satisfactory documentation provided to the Vineland Defendants by C&H, Scalfo, Falasca, Fabbri and Tri-State evidencing discharge or bonding of all outstanding liens arising from their respective subcontractors and suppliers. C&H, Scalfo, Falasca, Fabbri and Tri-State represent and warrant to the Vineland Defendants that all such liens and claims have been fully discharged as a material condition of, and inducement to the Vineland Defendants' disbursement of the settlement proceeds. Furthermore, each of C&H, Scalfo, Falasca, Fabbri and Tri-State shall 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, each being responsible only for such claims arising from their respective subcontractors and suppliers, whether such claims are made 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.

6. C&H shall additionally 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 Alexson Lawsuit amongst C&H, Alexson, Euclid and Craig Testing, or any third party to such litigation.

7. An IRS Form or Forms 1099 will be issued to each of the recipients of the settlement proceeds by the Vineland Defendants with respect to each payment 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 the recipients and their 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, such recipients 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. The recipients agree 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 shall not be affected in any way.

8. C&H, Scalfo, Falasca, Fabbri and Tri-State acknowledge that the payment referred to above in Paragraph 4 constitutes additional consideration not otherwise owed to them but for the Agreement. Further, the recipients agree that said payment is the only payment or benefit to which they are entitled under the Agreement and agree that they will not seek anything further, whether monetary or otherwise, from the Vineland Defendants in any proceeding.

9. The Parties agree and stipulate that as of execution of this Agreement, the Berkley Bond is terminated for all purposes relating to the Project and no longer of any force and effect.

10. Releases.

(a) Vineland Defendants' Release.

In consideration for the dismissal of the Lawsuits as expressly stated herein and for the payments provided for in the Agreement, and for the mutual promises contained herein, the Vineland Defendants, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, for itself and the entirety of its organizational structure, including, but not limited to, all of its former, present, and future departments, divisions, councils and offices, of every type, nature, and description, and all subdivisions thereto, and all of its and their respective present, former, and future officers, directors, partners, board members, members, shareholders, employees, sureties, insurers, agents, successors, affiliates, consultants, representatives, attorneys, and all other persons and entities acting on behalf of the Vineland Defendants (hereafter, "Vineland Releasers"), hereby release and discharge C&H, Berkley, Scalfo, Falasca, Fabbri and Tri-State and all of their respective former, present, and future officers, directors, partners, board members, members, shareholders, employees, sureties, insurers, agents, successors, parents, affiliates, subsidiaries, divisions, consultants, representatives, attorneys, and all other persons and entities acting on behalf of C&H, Berkley, Scalfo, Falasca, Fabbri and Tri-State, both jointly and severally, of and from any

and all settlements, compromises, demands, claims, actions, lawsuits, counts, causes of action, demands for damages, liquidated damages, losses, costs, expenses, compensation, consequential damages, loss of profits, interest, penalties, fines, liability, attorneys' fees and expenses, punitive damages, extra-contractual damages, tort damages, including, but not limited to, claims for defective work, warranty, delays, impacts or third-party claims of any kind, remedies, statutory claims, statutory causes of action, administrative claims, and administrative causes of action, whether legal, equitable, or otherwise, of every nature and description, and whether arising at law or in equity, under the common law, state law, U.S. law, or any other law, statute, rule, charter, code, regulation, administrative procedure, or otherwise, arising out of or related to any work, equipment, software and/or facet of the Project, the Lawsuits or the Berkley Bonds, that had accrued from the beginning of time up until the date of execution of this Agreement or which were asserted, or could have been asserted in the Lawsuits, except that only as to C&H, Scalfo, Fabbri, Falasca and Tri-State any claims related to latent defects not discoverable on a reasonable inspection are excluded from this release. Notwithstanding the foregoing and only except as to C&H and its subcontractors, including, but not limited to, Scalfo, Fabbri, Falasca and Tri-State, the City does not release, and retains its rights with respect to any manufacturer warranties, express or implied in any such agreements relating to the use or operation of the Project and its equipment, or with respect to any of the retained indemnity obligations under this Agreement.

(b) C&H's Release.

In consideration for the dismissal of the Lawsuits as expressly stated herein and for the payments provided for in the Agreement, and for the mutual promises contained herein, C&H, for

good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, for itself and the entirety of its organizational structure, including, but not limited to, all of its former, present, and future departments, divisions, officers, directors, partners, board members, members, shareholders, employees, sureties, insurers, agents, successors, affiliates, consultants, representatives, attorneys, and all other persons and entities acting on behalf of C&H, hereby releases and discharges the Vineland Defendants and all of their respective former, present, and future officers, directors, partners, board members, council members, members, shareholders, employees, sureties, insurers, agents, successors, parents, affiliates, subsidiaries, divisions, consultants, representatives, attorneys, and all other persons and entities acting on behalf of the Vineland Defendants, both jointly and severally (hereafter, the “Vineland Defendants Releasees”), of and from any and all settlements, compromises, demands, claims, actions, lawsuits, counts, causes of action, demands for damages, liquidated damages, losses, costs, expenses, compensation, consequential damages, loss of profits, interest, penalties, fines, liability, attorneys’ fees and expenses, punitive damages, extra-contractual damages, tort damages, including, but not limited to, claims for defective work, warranty, delays, impacts or third-party claims of any kind, remedies, statutory claims, statutory causes of action, administrative claims, and administrative causes of action, whether legal, equitable, or otherwise, of every nature and description, whether known or unknown, patent or latent, suspected or unsuspected, foreseen or unforeseen, real or imagined, actual or potential, and whether arising at law or in equity, under the common law, state law, U.S. law, or any other law, statute, rule, charter, code, regulation, administrative procedure, or otherwise, arising out of or related to any work, equipment, software and/or facet of the Project, the Lawsuits or the Berkley Bonds. Notwithstanding the foregoing and only except as to the Vineland Defendants and C&H’s

subcontractors on the Project, including, but not limited to, Scalfo, Fabbri, Falasca and Tri-State, C&H does not release, and retains its rights with respect to any claims relating to or arising out of any warranties, express or implied, in any agreements relating to the use or operation of the Project and its equipment.

(c) Scalfo's, Fabbri's, Tri-State's and Falasca's Releases.

In consideration for the dismissal of the Lawsuits as expressly stated herein and for the payments provided for in the Agreement, and for the mutual promises contained herein, Scalfo, Fabbri, Tri-State and Falasca, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, for themselves and the entirety of their organizational structure, including, but not limited to, all of their former, present, and future departments, divisions, officers, directors, partners, board members, members, shareholders, employees, sureties, insurers, agents, successors, affiliates, consultants, representatives, attorneys, and all other persons and entities acting on their behalf, hereby release and discharge the Vineland Defendants, C&H and Berkley, and all of their respective former, present, and future officers, directors, partners, board members, council members, members, shareholders, employees, sureties, insurers, agents, successors, parents, affiliates, subsidiaries, divisions, consultants, representatives, attorneys, and all other persons and entities acting on behalf of the Vineland Defendants, C&H, or Berkley, both jointly and severally (hereafter, the "Subcontractor Releasees"), of and from any and all settlements, compromises, demands, claims, actions, lawsuits, counts, causes of action, demands for damages, liquidated damages, losses, costs, expenses, compensation, consequential damages, loss of profits, interest, penalties, fines, liability, attorneys' fees and expenses, punitive damages, extra-contractual damages, tort damages, including, but not limited to, claims for defective work, warranty, delays, impacts or third-party claims of any kind, remedies, statutory claims, statutory causes of action,

administrative claims, and administrative causes of action, whether legal, equitable, or otherwise, of every nature and description, whether known or unknown, patent or latent, suspected or unsuspected, foreseen or unforeseen, real or imagined, actual or potential, and whether arising at law or in equity, under the common law, state law, U.S. law, or any other law, statute, rule, charter, code, regulation, administrative procedure, or otherwise, arising out of or related to any work, equipment, software and/or facet of the Project, the Lawsuits or the Berkley Bonds. Notwithstanding the foregoing and only except as to the Vineland Defendants and C&H, Scalfo, Fabbri, Falasca and Tri-State do not release, and retain their rights with respect to any claims relating to or arising out of any warranties, express or implied, in any agreements relating to the use or operation of the Project and its equipment.

(d) The Releases herein are intended by the Parties to be construed as broadly as possible to the fullest extent permitted by law.

(e) Furthermore, nothing in the Releases shall be construed to bar the Parties from reporting anything where the prohibition would be precluded by law.

11. The Parties represent to each other that, other than the Lawsuits and the Alexson Lawsuit specifically referenced herein, they know of 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.

12. Further, except as to claims related to latent defects not discoverable on a reasonable inspection and claims relating to express or implied warranties as referenced in Paragraph 10(a) above, the Vineland Defendants, C&H, Scalfo, Fabbri, Falasca, and Tri-State 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 claims accruing prior to the date of 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 they all agree to cooperate as to discovery which may be related to the Alexson Lawsuit.

13. C&H and others entered into and executed a certain General Agreement of Indemnity, dated on or about dated January 8, 2014, with and in favor of Berkley. Notwithstanding Berkley's agreement to be bound to the terms of this Agreement only as stated herein, nothing herein shall constitute or be construed to constitute Berkley's agreement to waive any of its rights, defenses, or remedies under its General Agreement of Indemnity and/or corresponding documents and/or under applicable law, equity or statute. Furthermore, nothing herein shall be construed to release, alter, limit, waive, impair or extinguish rights granted or accruing in favor of Berkley under the General Agreement of Indemnity and/or corresponding documents and/or accompanying documents executed by or on behalf of C&H and/or any affiliates, officers, agents or representatives, or as otherwise stated herein.

14. 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 the Lawsuits to avoid the inherent uncertainties with any

legal proceeding and the additional legal fees and expenses with continuing these disputes, but that this Agreement represents a compromise of certain disputed claims, and any liability, wrongdoing, malfeasance, misfeasance or negligence on the part of any of the Parties is expressly denied.

15. The Agreement contains the sole and entire agreement between the Parties and fully supersedes any and all prior agreements and understandings pertaining only to the express settlement contemplated hereby. 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.

16. 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.

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

18. 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.

19. 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.

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

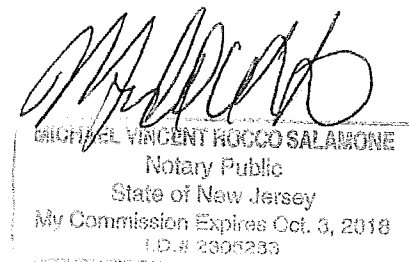
- (a) They have read it;
- (b) They understand it and know that they are giving up important rights and claims, including, but not limited to, rights listed in paragraph 5 above, and that they are giving up any such rights or claims in exchange for the consideration set forth in the Agreement;
- (c) Their attorneys negotiated the Agreement with their knowledge and consent;
- (d) They have been advised to consult with their attorneys prior to executing the Agreement, and in fact have done so; and
- (e) They have signed the Agreement knowingly and voluntarily.

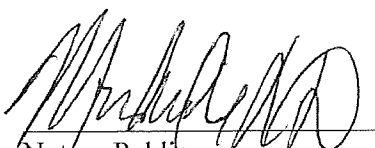
IN WITNESS WHEREOF, the Parties have executed and delivered the Agreement intending to be bound hereby effective as of August 24th, 2018.

C&H INDUSTRIAL SERVICES, INC.

By: 

SWORN TO AND SUBSCRIBED IN MY PRESENCE
this 24 day of August, 2018.




Notary Public

MICHAEL VINCENT ROCCO SALAMONE
Notary Public
State of New Jersey
My Commission Expires Oct. 3, 2018
I.D.# 2305283

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.

BERKLEY INSURANCE COMPANY

By: Ellen Carallan

SWORN TO AND SUBSCRIBED IN MY PRESENCE
this 23rd day of Aug, 2018.

Erica Charters
Notary Public

ERICA CHARTERS
NOTARY PUBLIC OF NEW JERSEY
ID # 2447788
My Commission Expires 7/9/2019

SCALFO ELECTRIC, INC.

By: [Signature]

SWORN TO AND SUBSCRIBED IN MY PRESENCE
this 27th day of Aug., 2018.

Sandra J. Carty
Notary Public

SANDRA J. CARTY
Notary Public, State of New Jersey
My Commission Expires
September 01, 2021

FABBRI BUILDERS, INC.

By: [Signature]

SWORN TO AND SUBSCRIBED IN MY PRESENCE
this 27th day of Aug., 2018.

Sandra J. Carty
Notary Public

SANDRA J. CARTY
Notary Public, State of New Jersey
My Commission Expires
September 01, 2021

FALASCA MECHANICAL, INC.

By: 

SWORN TO AND SUBSCRIBED IN MY PRESENCE
this 27th day of August, 2018.


Notary Public RICHARD A. PETTIT, JR.
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires February 7, 2021
I.D. 2404167

TRI-STATE CONSTRUCTION

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: 

Gino Ciancaglini

SWORN TO AND SUBSCRIBED IN MY PRESENCE
this 22 day of August, 2018.



Notary Public
Alan R. Angelo, Attorney at Law
State of N.J.