

RESOLUTION NO. 2186

A RESOLUTION OF THE COUNCIL OF THE CITY OF SALISBURY, MARYLAND APPROVING THE SETTLEMENT AGREEMENT BY AND BETWEEN THE CITY OF SALISBURY AND SIEMENS INDUSTRY, INC. AND FIDELITY & DEPOSIT COMPANY OF MARYLAND; AND AUTHORIZING THE MAYOR AND COUNCIL PRESIDENT TO SIGN THIS AGREEMENT ON BEHALF OF THE CITY OF SALISBURY.

WHEREAS, the City has pursued a lawsuit against Siemens Industry, Inc. and Fidelity & Deposit Company of Maryland, in the Circuit Court for Wicomico County relating to the performance of the sludge dryer installed in the City's Waste Water Treatment Plant; and

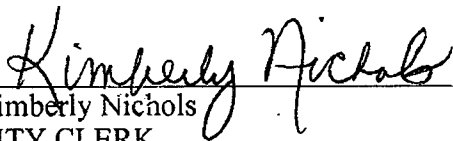
WHEREAS, the Mayor and Council have participated in extensive negotiations and mediation with Siemens Industry, Inc. and Fidelity & Deposit Company of Maryland; and

WHEREAS, the Mayor and Council have considered all of the aspects of the litigation and have concluded that the attached Settlement Agreement is in the best interest of the City;

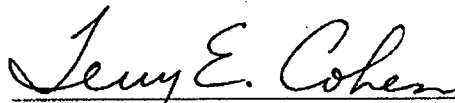
NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Salisbury, Maryland, hereby approves the terms of the Settlement Agreement attached hereto and authorizes Mayor Ireton and Council President Cohen to execute this Agreement on behalf of the City of Salisbury.

THE ABOVE RESOLUTION was introduced and duly passed at a meeting of the Council of the City of Salisbury, Maryland held on 6th day of August, 2012, and is to become effective immediately upon adoption.

ATTEST:

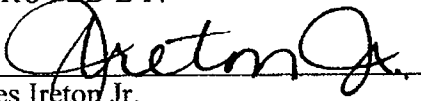


Kimberly Nichols
CITY CLERK



Terry E. Cohen
PRESIDENT, City Council

APPROVED BY:



James Ireton Jr.
MAYOR, City of Salisbury

SETTLEMENT AGREEMENT, RELEASE, AND COVENANT NOT TO SUE

This SETTLEMENT AGREEMENT, RELEASE, AND COVENANT NOT TO SUE (the "Settlement Agreement") made this 6th day of ~~August~~ 2012, by and among the City of Salisbury (hereinafter "City"), Siemens Industry, Inc. (hereinafter "Siemens"), and Fidelity & Deposit Company of Maryland (hereinafter "F&D"):

Introductory Statement

The City is a municipal corporation created and existing under the laws of the State of Maryland. On June 29, 2005, U.S. Filter Davco Products, predecessor to Siemens and now referred to as "Siemens", signed a Purchase Order Agreement with Pizzagalli Construction Company by the terms of which Siemens agreed to provide a sludge dryer (called its Dragon Dryer) to Pizzagalli for the City's wastewater treatment plant. On August 3, 2005, Siemens signed a second contract with Pizzagalli regarding installation of the Dragon Dryer. Thereafter, Siemens, as principal, and Fidelity & Deposit, as surety, executed a performance bond relating to Siemens' obligations under the Purchase Order.

The City and Siemens have disputes regarding the performance of the Dragon Dryer and the causes of any problems therewith. The City filed claims against Siemens and F&D in litigation captioned *City of Salisbury v. O'Brien & Gere Engineers, Inc., et al.*, Case No.: 22C11000313. The parties have now agreed to enter into this Settlement Agreement for the purposes of resolving all claims which were made or which could have been made by the City in the Lawsuit and to eliminate the risks and uncertainties associated with the Lawsuit, all without the admission of fault on the part of Siemens and F&D.

Now, therefore, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the sufficiency of which is acknowledged by all parties, the parties hereto agree as follows:

1. The Introductory Statement is incorporated herein by reference.
2. Within 30 days after the City signs this agreement, Siemens (or its insurers) shall deliver to the City the total sum of Five Hundred Thousand Dollars (\$500,000.00), either via check or wire transfer.
3. In consideration of the aforesaid payment, the City does hereby release and forever discharge Siemens and F&D, their successors, assigns, parents, subsidiaries, other affiliated entities, and each of their respective officers, directors, stockholders, insurers, attorneys, agents, servants and employees, from all claims, demands, proceedings, actions and causes of action, whether at law or at equity, from the beginning of the world to the date hereof, relating to F & D Bond No: PRF 8828347 and relating directly or indirectly to the Purchase Order and Installation Contract for the supply and installation of the Dragon Dryer at the City's wastewater treatment plant, including but not limited to all claims that were made or that could have been made or asserted in the Lawsuit relating in any way to the Dragon Dryer or the design, installation, or supply thereof (all collectively the "Released Claims"). The provisions of this paragraph do not apply to any claim for enforcement of or for the breach of Siemens' obligations under this Settlement Agreement.
4. Neither the Releases specified in Paragraph 3 nor any other provision of this Settlement Agreement shall inure to the benefit of any other party to the Lawsuit or any other person

or entity other than Siemens, F&D and the City and those persons or entities affiliated with Siemens, F&D and the City as set forth in Paragraph 3.

5. The City agrees to fully defend (with counsel that the City, Siemens and F & D agree upon and paid for by the City), indemnify and hold harmless Siemens and F&D and the other entities and/or persons released pursuant to Paragraph 3 from any claim asserted (previously or at any time in the future) by any other party to the Lawsuit or any other person or entity against whom the City has asserted or may assert a claim relating to the supply or installation of the Dragon Dryer, including but not limited to claims for contribution or indemnity resulting from any claim asserted by the City. The City's obligation to defend and indemnify Siemens and F & D shall not apply to any fees and costs Siemens and F & D incur prior to Siemens and F & D obtaining their dismissal from the City in this action.

6. In addition to the releases contained in paragraph 3, the Parties agree that this Settlement Agreement is enforceable as a contract, including as a covenant not to sue. The City covenants that it will not commence, prosecute, or permit to be commenced or prosecuted any action or other proceeding based on any Released Claim.

7. To the extent any claims in the Lawsuit are determined by final judgment of a court of competent jurisdiction to be subject to the Maryland Uniform Contribution Among Tortfeasors Act ("Act"), the City agrees that, to the extent that Siemens or any other person released under paragraph 3 above ("Released Party"), is determined to be a joint tortfeasor, then all damages recoverable by the City against anyone other than such Released Party(ies) as a result of the herein described matters shall be reduced under the provisions of and in accordance with the Act. The City understands and agrees that this

paragraph 7 is intended to protect Siemens (and other persons released under paragraph 3) from any liability and expense associated with any claims that the City is now pursuing, or hereafter may initiate or pursue, against any person other than Siemens arising from or in any way relating to the installation or supply of the Dragon Dryer. The Released Parties deny that they are joint tortfeasors with any other person or entity.

8. In consideration of the aforesaid release and hold harmless agreement, Siemens does hereby release and forever discharge the City, its past, present or future governmental officials, agents, servants and employees, from all claims, demands, proceedings, actions and causes of action, whether at law or at equity, from the beginning of the world to the date hereof to the extent related to or arising from the supply by Siemens or installation by Siemens of the Dragon Dryer. The provisions of this paragraph do not apply to any claim for enforcement of or for breach of the City's obligations under this Settlement Agreement. In addition, Siemens does hereby release and forever discharge O'Brien & Gere Engineers, Inc., Construction Dynamics Group, Inc., Pizzagalli Construction Company, and all other persons and entities from all claims which have accrued or which may accrue in the future for contribution or indemnity for the sums paid to the City pursuant to Paragraph 2 of this Settlement Agreement.
9. The City represents and warrants that it will dispose of the Dragon Dryer as scrap only and not as an operating machine. The City further represents and warrants that any contract or agreement with any third party to effectuate said disposal will explicitly require disposal and explicitly prohibit any operation and/or resale of the Dryer.
10. The parties hereto acknowledge that they have each had the benefit of the advice of their own counsel with regard to the sufficiency of the consideration provided by each of them

and with regard to the terms of this Settlement Agreement. Neither Siemens nor any other person or entity who is being released pursuant to Paragraphs 3 admits fault, liability or responsibility for any of the claims which were or which could have been made by the City in the Lawsuit.

11. The parties hereto acknowledge that the City may disclose the terms of this Settlement Agreement to the extent required by applicable law.
12. The City, its past, present or future governmental officials, agents, servants and employees will not issue any press release or official public announcement, other than Exhibit A, concerning the settlement between Siemens and the City without Siemens' prior review and approval (if Siemens so chooses in its sole discretion). The City, its past, present or future governmental officials, agents, servants and employees are permitted to discuss this settlement with their constituents as long as they do not make any derogatory statements (either oral or written) or otherwise disparage Siemens, its products, employees, services or work and will take all reasonable steps to prevent others from making such derogatory or disparaging statements on (or purportedly on) its behalf.
13. Upon receipt of the settlement payment set forth in this Agreement, the City hereby agrees to promptly sign a Line of Dismissal with Prejudice of its claims against Siemens and F&D and file same with the Circuit Court for Wicomico County, Maryland. Thereafter, Siemens will file a Line of Dismissal with Prejudice of its cross-claims in the matter.
14. This Settlement Agreement shall be construed and interpreted in accordance with the law of the State of Maryland. As each party has had the full opportunity to participate in the

drafting of the Settlement Agreement it shall not be construed in favor of or against either party hereto.

15. Each Party shall bear its own attorneys fees and costs of litigation.
16. Each party covenants that the representative executing the Settlement Agreement on its behalf has full legal authority to do so as required by applicable law.
17. This Agreement may be executed in one or more counterparts (including via facsimile), each of which shall be deemed an original copy of this Agreement and all of which, when taken together, shall constitute one and the same Agreement. Copies of executed counterparts transmitted by telecopy or other electronic transmission service shall be considered original executed counterparts, provided receipt of copies of such counterparts is confirmed.

The parties have executed this Agreement on August 6, 2012.

City of Salisbury

By: James Ireton, Jr.
James Ireton, Jr.

Date: Aug 6, 2012

Title: Mayor

By: Terry E. Cohen
Terry Cohen

Date: Aug. 6, 2012

Title: Council President

Siemens

By: _____

Date: _____

Title: _____

16. Each party covenants that the representative executing the Settlement Agreement on its behalf has full legal authority to do so as required by applicable law.

17. This Agreement may be executed in one or more counterparts (including via facsimile), each of which shall be deemed an original copy of this Agreement and all of which, when taken together, shall constitute one and the same Agreement. Copies of executed counterparts transmitted by telecopy or other electronic transmission service shall be considered original executed counterparts, provided receipt of copies of such counterparts is confirmed.

The parties have executed this Agreement on July ____, 2012.

City of Salisbury

By: _____ Date: _____
James Ireton, Jr.

Title: Mayor

By: _____ Date: _____
Terry Cohen

Title: Council President

Siemens

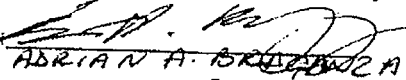
By: _____ Date: 7/9/2012
JEFF TANNENBOM
Title: SVP Finance, Municipal Account, WI

Malcolm Kinnaird
Title: SUP MUNICIPAL SECUR OPS

Fidelity & Deposit Company of Maryland

By: _____ Date: 7/3/2012
ADRIAN A. SPAGNAZZA
Title: Senior Claims Counsel

Fidelity & Deposit Company of Maryland

By:  Date: August 6, 2012.

Title: Senior Claims Counsel