

## SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Department of Defense and Department of Labor (collectively the “United States”), the State of New Jersey, Ranco Construction, Inc. (“Ranco”), and Robert Kleinow (“Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

### RECITALS

A. Ranco is a for profit construction company incorporated, located and doing business in New Jersey, including contract work for the United States and the State of New Jersey subject to each sovereign’s prevailing wage requirements as set forth in the Davis-Bacon and Related Acts, *see* 40 U.S.C. §§ 3141, *et seq.* and N.J. Stat. Ann. § 34:11-56.25, *et seq.* respectively.

B. On October 2, 2015, Relator filed a qui tam action in the United States District Court for the District of New Jersey captioned *United States ex rel. Robert Kleinow and the State of New Jersey ex rel. Robert Kleinow and Robert Kleinow individually v. Ranco Construction*, Civ. Action No. 15-7278 (RBK), pursuant to the qui tam provisions of the Federal False Claims Act, 31 U.S.C. § 3730 *et seq.*, the New Jersey False Claims Act, N.J. Stat. Ann. § 2A:32C-1, *et seq.*, the New Jersey Prevailing Wage Act, N.J. Stat. Ann. § 34:11-56.25 *et seq.*, and the New Jersey Conscientious Employee Protection Act, N.J. Stat. Ann. § 34:19-1 *et seq.* (the “Civil Action”). Relator alleged in his complaint that Ranco systematically failed to pay employees prevailing wages for work performed on federal and state contracts as required under federal and state laws

and regulations. Relator further alleged that Ranco falsified its records including its certified payroll records to disguise its underpayment of wages. Relator also claimed that after objecting to Ranco's unlawful practices he was forced to leave Ranco's employ through a constructive discharge.

C. The United States and the State of New Jersey contend that they have certain civil claims under the Federal False Claims Act, 31 U.S.C. § 3730 *et seq.*, the Davis-Bacon and Related Acts, *see* 40 U.S.C. §§ 3141, *et seq.*, the New Jersey False Claims Act, N.J. Stat. Ann. § 2A:32C-1, *et seq.*, and the New Jersey Prevailing Wage Act, N.J. Stat. Ann. § 34:11-56.25, *et seq.*, against Ranco arising from unlawful underpayment of wages due to the four workers named on Attachment A during the period from January 1, 2008 through January 1, 2016, as a result of Ranco's knowing false certification of compliance, and failure to comply, with their respective prevailing wage laws and regulations applicable to contracts between Ranco and the Department of Defense or the State of New Jersey, or New Jersey local government entities for projects funded in part or in whole with Federal and/or State funds. That conduct is referred to below as the "Covered Conduct."

D. This Settlement Agreement is not an admission of facts or liability by Ranco as it denies any and all improper conduct. This Settlement Agreement is not a concession by the Relator, United States or the State of New Jersey that its claims are not well founded. Neither this agreement, nor its execution, nor the performance of the obligations under it, including payment, nor the fact of any settlement, is intended to be, or shall be understood, as an admission of liability, or wrongdoing, or other expression reflecting the merits of the dispute by Ranco.

E. Relator claims entitlement under 31 U.S.C. § 3730(d), N.J. Stat. Ann. § 2A:32C-7, and N.J. Stat. Ann. § 2A:32C-8 to a share of the proceeds of this Settlement Agreement and to Relator's reasonable expenses, attorneys' fees and costs.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties reach a full and final settlement pursuant to the terms and conditions below.

#### TERMS AND CONDITIONS

1. In settlement of this action including Relator's claims, the unpaid wages of the four named Ranco employees in Attachment A with respect to the Covered Conduct, and the claims of the United States and the State of New Jersey with respect to the Covered Conduct, Ranco shall pay the sum of one-million five-hundred-thousand dollars (\$1,500,000) plus accrued interest as follows:

A. Within twenty-one (21) days of the Effective Date of this Agreement, Ranco will make a payment to the United States pursuant to written instructions to be provided by the United States Attorney's Office for the District of New Jersey in the amount of Five-Hundred-Thousand Eight-Hundred and Ninety-Six Dollars (\$500,896). After any required adjustments, withholding, or deductions the Department of Labor will distribute these monies to the four Ranco employees named in Attachment A in proportion to their unpaid gross wages as depicted in Attachment A. Relator and Relator's Counsel expressly understand and agree that Ranco is not liable to the Relator or Relator's Counsel for the transmittal of said funds by the United States once those funds have been paid by Ranco to the United States.

B. Within twenty-one (21) days of the Effective Date of this Agreement, Ranco will make a payment to the State of New Jersey pursuant to written instructions to be provided by the Attorney General's Office for the State of New Jersey in the amount of Seventy-One-Thousand Six-Hundred and Eighty-Nine Dollars (\$71,689). After any required adjustments, withholding, or deductions the State will distribute these monies to the four named individuals in proportion to their unpaid gross wages as depicted in Attachment A. The State shall distribute Relator's share of wages to Relator's Counsel Richard M. Pescatore, P.C. in trust of Relator, by way of electronic funds transfer pursuant to written instructions provided by Relator's Counsel. Relator and Relator's Counsel expressly understand and agree that Ranco is not liable to the Relator or Relator's Counsel for the transmittal of said funds by the State of New Jersey once those funds have been paid by Ranco to the State of New Jersey.

C. Within twenty-one (21) days of the Effective Date of this Agreement, Ranco will make a payment to the United States pursuant to written instructions to be provided by the United States Attorney's Office for the District of New Jersey in the amount of Thirteen-Thousand Two-Hundred and Eighteen Dollars (\$13,218).

1. Within one year from the date of the first payment, Ranco will pay its second installment to the United States of Two-Hundred-Seventy-Thousand Dollars (\$270,000), plus interest at 2.375% per annum calculated from the date of the first payment,

2. Within one year from the date of the second payment, Ranco will pay its last installment to the United States of Two-Hundred-Sixteen-

Thousand Dollars (\$216,000), plus interest at 2.375% per annum calculated from the date of the second payment.

D. Within twenty-one (21) days of the Effective Date of this Agreement, Ranco will make a payment to the State of New Jersey pursuant to written instructions to be provided by the Office of the Attorney General of the State of New Jersey in the amount of Fourteen-Thousand One-Hundred and Ninety-Seven Dollars (\$14,197).

1. Within one year from the date of the first payment, Ranco will pay its second installment to the State of New Jersey of Two-Hundred-Thirty-Thousand Dollars (\$230,000), plus interest at 2.5% per annum calculated from the date of the first payment,

2. Within one year from the date of the second payment, Ranco will pay its last installment to the State of New Jersey of One-Hundred-Eighty-Four-Thousand Dollars (\$184,000), plus interest at 2.5% per annum calculated from the date of the second payment.

E. Collectively the settlement amount and interest received by the United States and the State of New Jersey, less the amount paid to the four named individuals on Attachment A, shall be referred to as the "Settlement Proceeds."

2. Conditioned upon the United States and the State of New Jersey receiving the Settlement Amount payments from Ranco, the United States and the State of New Jersey agree that they shall pay to Relator's counsel Richard M. Pescatore, P.C. in trust of Relator, pursuant to written instructions provided by Relator's Counsel by electronic funds transfer 17 percent of the Settlement Proceeds of each such payment received

under the Settlement Agreement as soon as feasible after receipt of the payment. Relator and Relator's Counsel expressly understand and agree that the United States and New Jersey are only liable to the Relator for a share of Settlement Proceeds actually received or collected by the United States and New Jersey under this Settlement Agreement.

Relator and Relator's Counsel expressly understand and agree that Ranco is not liable to the Relator or Relator's Counsel for the transmittal of said funds by the United States and the State of New Jersey once those funds have been paid by Ranco to the United States and the State of New Jersey.

3. Within twenty-one (21) days of the Effective Date of this Agreement, Ranco shall make a payment to Relator's Counsel Richard M. Pescatore, P.C. in trust of Relator, by way of electronic funds transfer pursuant to written instructions provided by Relator's Counsel in the amount of Seventy-Five-Thousand Dollars (\$75,000). This payment encompasses Relator's attorney fees and costs pursuant to the Federal and State False Claims Acts and resolution of any and all other claims Relator has against Ranco, including his claim of constructive discharge under the New Jersey Conscientious Employee Protection Act.

4. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon Ranco's full payment of the Settlement Amount and subject to Paragraph 15, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the United States and the State of New Jersey release Ranco, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns

of any of them, from any civil or administrative monetary claim they have for the Covered Conduct under the Federal False Claims Act, 31 U.S.C. § 3730 *et seq.*, the New Jersey False Claims Act, N.J. Stat. Ann. § 2A:32C-1, *et seq.*, or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraph 15 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), Relator, for himself/herself and for his/her heirs, successors, attorneys, agents, and assigns, releases, remises, and forever discharges Ranco and its current and former employees, officers, directors, shareholders, attorneys, agents, insurers, parents, subsidiaries, predecessors, successors, assigns, and affiliated and related entities from any claims, rights, demands, controversies, causes of action, suits, obligations, judgments, debts, duties, attorneys' fees, costs, and all other liabilities of any kind or nature whatsoever, whether in law, equity or otherwise, whether known or unknown, suspected or unsuspected, accrued or not accrued, and whether or not asserted, which he has ever had, now have or may have in the future against Ranco for or by reason of any cause, matter or thing whatsoever from the beginning of time to the Effective Date of this Agreement.

6. Notwithstanding the releases given in paragraphs 4 and 5 of this Agreement, or any other term of this Agreement, the following claims of the United States and the State of New Jersey are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code), or New Jersey State or municipal tax law;
- b. Any criminal liability;

- c. Except as explicitly stated in this Agreement, any administrative liability, including the suspension and debarment rights of any federal or state agency;
- d. Any liability to the United States (or its agencies) or the State of New Jersey (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals.

7. Relator represents, warrants, and agrees not to issue or participate in any critical, negative, or disparaging communication, written, verbal, or otherwise, against Ranco.

8. Ranco represents, warrants, and agrees not to issue or participate in any critical, negative, or disparaging communication, written, verbal, or otherwise, against Relator.

9. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B) and N.J. Stat. Ann. 2A:32C-6(c). Conditioned upon Relator's Counsel's receipt of the payments described in Paragraph 2, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States and the State of New Jersey, along with their its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, or under



N.J. Stat. Ann. 2A:32C-1 to -18, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

10. Conditioned upon Relator's Counsel's receipt of the payment described in Paragraphs 1 through 3, Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases Ranco, and its current and former employees, officers, directors, shareholders, attorneys, agents, insurers, parents, subsidiaries, predecessors, successors, assigns and affiliated and related entities, from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

11. Ranco waives and shall not assert any defenses Ranco may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code, or an agreement by the State of New Jersey concerning the characterization of the Settlement Amount for purposes of New Jersey's revenue codes.

12. Ranco fully and finally releases the United States and the State of New Jersey, including their agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however

denominated) that Ranco has asserted, could have asserted, or may assert in the future against the United States and/or the State of New Jersey, their agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' and/or the State of New Jersey's investigation and prosecution thereof.

13. Ranco fully and finally releases the Relator from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Ranco has asserted, could have asserted, or may assert in the future against the Relator, related to this complaint and the Relator's investigation and prosecution thereof. Ranco waives any objections it has asserted, could have asserted, or may assert as to Relator's Fees as set forth in this agreement.

14. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Ranco, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' and the State of New Jersey's audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Ranco's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement;

- (5) the payments Ranco makes to the United States and the State of New Jersey pursuant to this Agreement and any payments that Ranco may make to Relator, including costs and attorneys fees,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Ranco, and Ranco shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, Ranco shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Ranco or any of its subsidiaries or affiliates from the United States. Ranco agrees that the United States, at a minimum, shall be entitled to recoup from Ranco any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine Ranco's books and records and to disagree with any calculations submitted by Ranco or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Ranco, or the effect of any such Unallowable Costs on the amount of such payments.

15. Ranco warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the United States, the State of New Jersey and Relator of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Ranco, within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Ranco was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

16. This Agreement is intended to be for the benefit of the Parties only.

17. Upon receipt of the payment described in Paragraphs 1 and 3, above, the Relator, the United States, and the State of New Jersey shall promptly sign and file in the Civil Action a Stipulation of Dismissal of the Civil Action pursuant to Rule 41. The Parties agree that the Court shall retain jurisdiction to enforce the terms of this Settlement Agreement.

18. Except as specified in this agreement each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

19. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

20. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of New Jersey. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

21. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

22. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

23. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.


24. This Agreement is binding on Ranco's successors, transferees, heirs, and assigns.

25. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

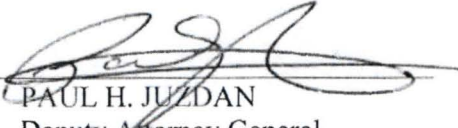
26. All parties consent to the disclosure of this Agreement, and information about this Agreement, to the public. All parties agree that the terms and conditions of this Agreement are not subject to any non-disclosure agreement.

27. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles, emails, or other reproductions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

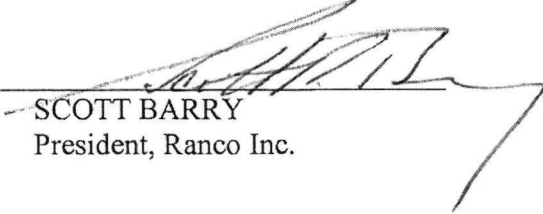
DATED: 5/1/18 BY:   
DAVID E. DAUENHEIMER  
Assistant United States Attorney  
Deputy Chief, Civil Division  
United States Attorney's Office  
District of New Jersey

THE STATE OF NEW JERSEY

DATED: 4/9/2018 BY:   
PAUL H. JUZDAN  
Deputy Attorney General  
Government and Healthcare Fraud Section  
New Jersey Division of Law  
Department of Law & Public Safety

RANCO INC. - DEFENDANT

DATED: 04-24-18 BY: \_\_\_\_\_

  
SCOTT BARRY  
President, Ranco Inc.

DATED: \_\_\_\_\_ BY: \_\_\_\_\_

LINDA DALE HOFFA  
Dilworth Paxson LLP  
Counsel for Ranco Inc.

ROBERT KLEINOW - RELATOR

DATED: \_\_\_\_\_ BY: \_\_\_\_\_

ROBERT KLEINOW  
Relator

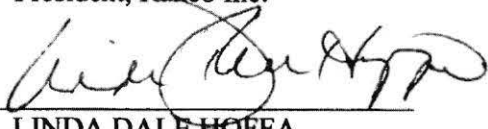
DATED: \_\_\_\_\_ BY: \_\_\_\_\_

JENNIFER M. CARLSON  
Richard M. Pescatore, P.C. Counsel for Robert Kleinow



RANCO INC. - DEFENDANT

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
SCOTT BARRY  
President, Ranco Inc.

DATED: 4/26/2018 BY:   
LINDA DALE HOFFA  
Dilworth Paxson LLP  
Counsel for Ranco Inc.

ROBERT KLEINOW - RELATOR

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
ROBERT KLEINOW  
Relator

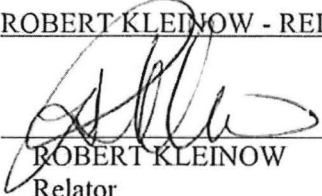
DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
JENNIFER M. CARLSON  
Richard M. Pescatore, P.C. Counsel for Robert Kleinow


RANCO INC. - DEFENDANT

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
SCOTT BARRY  
President, Ranco Inc.

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
LINDA DALE HOFFA  
Dilworth Paxson LLP  
Counsel for Ranco Inc.

ROBERT KLEINOW - RELATOR

DATED: 4-9-18 BY:   
ROBERT KLEINOW  
Relator

DATED: 4-9-18 BY:   
JENNIFER M. CARLSON  
Richard M. Pescatore, P.C. Counsel for Robert Kleinow