

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 United States Department of Transportation, Federal Highway Administration (“FHA”) (collectively the “United States”) and MV Contracting, Inc. (“MV Contracting”) (collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. MV Contracting is a New Jersey Corporation with its principal place of business located at 91 Harrow Drive, Colonia, New Jersey 07067.

B. The United States contends that it has certain civil claims against MV Contracting for violations of the False Claims Act, 31 U.S.C. §§ 3729, *et seq.* (the “False Claims Act”), and for common law remedies, arising from allegations that: (1) MV Contracting, in its capacity as a contractor for projects funded by the FHA, improperly represented itself as a Disadvantaged Business Enterprise (“DBE”), as defined by the regulations of the United States Small Business Administration (“SBA”), in order to obtain federally-funded contracts set aside for DBE companies; (2) MV Contracting obtained numerous federally-funded contracts set aside for DBE companies from October, 2016 through April, 2019, with the knowledge that it did not qualify as a DBE; (3) MV Contracting submitted improper claims for payment under the aforementioned contracts, which were ultimately paid using federal funds; and (4) MV Contracting’s conduct violated the FCA and created other common law causes of action. The allegations contained in this Paragraph are referred to below as the “Covered Conduct.”

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 agree and covenant as follows:

TERMS AND CONDITIONS

1. MV Contracting shall pay to the United States Nine Hundred Fifty Thousand dollars (\$950,000.00) (the “Settlement Amount”), of which Four Hundred Seventy-Five Thousand dollars (\$475,000.00) is restitution, by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney’s Office for the District of New Jersey, as follows:

a. MV Contracting shall pay the United States Four Hundred Seventy-Five Thousand dollars (\$475,000.00), no later than 30 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions provided by the U.S. Attorney’s Office for the District of New Jersey; and

b. MV Contracting shall pay the United States the remaining Four Hundred Seventy-Five Thousand dollars (\$475,000.00), no later than 6 months after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions provided by the U.S. Attorney’s Office for the District of New Jersey.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, and conditioned upon the United States’ receipt of the Settlement Amount, the United States releases MV Contracting, and the present and former parents, subsidiaries, affiliates, and successors of MV Contracting from any civil monetary claim the United

States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

3. Notwithstanding the release given in Paragraph 2 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, or any administrative remedy, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (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;

4. MV Contracting waives and shall not assert any defenses MV Contracting 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.

5. MV Contracting fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that MV Contracting has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

6. 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 MV Contracting, 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' audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;
- (3) MV Contracting's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment MV Contracting makes to the United States pursuant to this Agreement,

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 MV Contracting, and MV Contracting 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, MV Contracting shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by MV Contracting or any of its subsidiaries or affiliates from the United States. MV Contracting agrees that the United States, at a minimum, shall be entitled to recoup from MV Contracting 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 MV Contracting's books and records and to disagree with any calculations submitted by MV Contracting or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by MV Contracting, or the effect of any such Unallowable Costs on the amount of such payments.

7. In the event that MV Contracting fails to pay the Settlement Amount as provided in the payment schedule set forth in Paragraph 1 above, MV Contracting shall be in default of its payment obligations ("Default"). The United States will provide a written Notice of Default, and MV Contracting shall have an opportunity to cure such Default within seven (7) calendar days from the date of receipt of the Notice of Default

by making the payment due and paying any additional interest accruing under the Settlement Agreement at a rate of 12% from the date of Default up to the date of payment, compounded daily. Notice of Default will be delivered to MV Contracting, or to such other representative as MV Contracting shall designate in advance in writing. If MV Contracting fails to cure the Default within seven (7) calendar days of receiving the Notice of Default, and in the absence of an agreement with the United States to a modified payment schedule (“Uncured Default”), the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest on the remaining unpaid balance shall thereafter accrue at the rate of 12% per annum, compounded daily from the date of Default, on the remaining unpaid total (“Principal and Interest Balance”).

In the event of Uncured Default, MV Contracting agrees that the United States, at its sole discretion, may (i) retain any payments previously made, rescind this Agreement and pursue the Civil Action or bring any civil and/or administrative claim, action, or proceeding against MV Contracting for the claims that would otherwise be covered by the releases provided in Paragraph 2 above, with any recovery reduced by the amount of any payments previously made by MV Contracting to the United States under this Agreement; (ii) take any action to enforce this Agreement in a new action or by reinstating the Civil Action; (iii) offset the remaining unpaid balance from any amounts due and owing to MV Contracting and/or affiliated companies by any department, agency, or agent of the United States at the time of Default or subsequently; and/or (iv) exercise any other right granted by law, or under the terms of this Agreement, or recognizable at common law or in equity. The United States shall be entitled to any other

rights granted by law or in equity by reason of Default, including referral of this matter for private collection. In the event the United States pursues a collection action, MV Contracting agrees immediately to pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States opts to rescind this Agreement pursuant to this paragraph, MV Contracting waives and agrees not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that are (i) filed by the United States against MV Contracting within 120 days of written notification that this Agreement has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of this Agreement. MV Contracting agrees not to contest any offset, recoupment, and /or collection action undertaken by the United States pursuant to this paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the United States.

8. In exchange for valuable consideration provided in this Agreement, MV Contracting acknowledges the following:

a. MV Contracting has reviewed its financial situation and warrants that it 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 of the Settlement Amount.

b. In evaluating whether to execute this Agreement, the Parties intend that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to MV Contracting, within the meaning

of 11 U.S.C. § 547(c)(1), and the Parties conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.

c. The mutual promises, covenants, and obligations set forth herein are intended by the Parties to, and do in fact, constitute a reasonably equivalent exchange of value.

d. The Parties do not intend to hinder, delay, or defraud any entity to which MV Contracting was or became indebted to on or after the date of any transfer contemplated in this Agreement, within the meaning of 11 U.S.C. § 548(a)(1).

e. If any of MV Contracting's payments or obligations under this Agreement are avoided for any reason (including but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code) or if, before the Settlement Amount is paid in full, MV Contracting or a third party commences a case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking any order for relief of MV Contracting's debts, or to adjudicate MV Contracting as bankrupt or insolvent; or seeking appointment of a receiver, trustee, custodian, or other similar official for MV Contracting or for all or any substantial part of MV Contracting's assets:

(i) the United States may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against MV Contracting for the claims that would otherwise be covered by the releases provided in Paragraph 2 above;

(ii) the United States has an undisputed, noncontingent, and liquidated allowed claim against MV Contracting in the amount of One Million, Four Hundred

Twenty-Five dollars (\$1,425,000.00), less any payments received pursuant to Paragraph 1 of this Agreement, provided, however, that such payments are not otherwise avoided and recovered from the United States by a receiver, trustee, creditor, custodian, or similar official.

f. MV Contracting agrees that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 8(e) herein is not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) because it would be an exercise of the United States' police and regulatory power. MV Contracting shall not argue or otherwise contend that the United States' claim, action, or proceeding is subject to an automatic stay and, to the extent necessary, consents to relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1). MV Contracting waives and shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claim, action, or proceeding brought by the United States within 120 days of written notification to MV Contracting that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on the Effective Date of this Agreement.

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

10. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

11. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

12. This Agreement is governed by the laws of the United States. The exclusive 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.

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

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

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

16. This Agreement is binding on MV Contracting's successors, transferees, heirs, and assigns.

17. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

18. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

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SIGNATURE PAGE

THE UNITED STATES OF AMERICA

PHILIP R. SELLINGER
United States Attorney

By:



MARK C. ORLOWSKI
Assistant United States Attorney

DATED: 9/20/2024

MV CONTRACTING, INC.

By:



MARIA GESUMARIA
President and Chief Executive Officer
MV Contracting, Inc.

By:



MICHAEL A. SCHWARTZ, ESQ.
Troutman Pepper Hamilton Sanders, LLP
Attorney for Defendant.
MV Contracting, Inc.

By:



JULIE A. GROHOVSKY, ESQ.
Cohen Seglias Pallas Greenhall
& Furman P.C.
Attorney for Defendant.
MV Contracting, Inc.

DATED: 9/6/24