

## 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 National Nuclear Security Administration (collectively the “United States”) and MOX Services, LLC, formerly known as CB&I AREVA MOX Services, LLC (“MOX”), through their authorized representatives. MOX is hereafter referred to as “Defendant.” The United States and the Defendant are hereafter collectively referred to as “the Parties.”

### RECITALS

A. The NNSA is a semi-autonomous agency within the United States Department of Energy responsible for the management and security of the nation’s nuclear weapons, nuclear nonproliferation, and naval reactor programs. NNSA manages a program for the long-term disposition of weapons-grade plutonium by converting the materials to nuclear fuel for use in commercial reactors. As part of this program, NNSA administered the design, construction, and operation of the Mixed Oxide Fuel Fabrication Facility (the “MOX Project”) at the Savannah River Site in Aiken, South Carolina.

B. Defendant MOX is a South Carolina limited liability company with a principal place of business in Aiken, South Carolina. MOX is a private company that was established specifically to design, build, and operate the MOX Project. MOX performed this work pursuant to a cost reimbursement contract with NNSA, Contract No. DE-AC02-99CH10888 (the “Contract”). MOX submitted claims to NNSA for allowable costs and fees on the MOX Project, including costs related to subcontracts that MOX entered into with vendors like defendant Wise Services, Inc. (“Wise”).<sup>1</sup>

---

<sup>1</sup> Defendant Wise Services, Inc. is not a party to this Settlement Agreement.



C. MOX was established as a single purpose limited liability company as described in Paragraph B. The Contract was terminated in October 2018. As a result, MOX has neither engaged in contract activities nor invoiced any costs since the Contract was terminated, apart from the termination activities that were billable for the six months following termination. Activities occurring after the six-month period following termination of the Contract were not billable. Therefore, previous invoices for costs were submitted within six months of the termination date of the Contract, and MOX will not be engaging in additional contracts with the United States. The final invoice, following the November 2019 Settlement Agreement, was submitted in November 2019 and paid by NNSA in December 2019.

D. Defendant Wise is an Ohio corporation with a principal place of business in Dayton, Ohio. Wise is a small, minority-owned business contractor formed in 1993 to work on construction labor projects at a DOE facility in Ohio. Between 2008 and 2016, MOX hired Wise as a subcontractor and entered into three subcontracts for Wise to perform services at the MOX Project (the "Wise Subcontracts").

E. On February 14, 2019, the United States filed an action in the United States District Court of South Carolina captioned *United States v. CB&I MOX Services, LLC and Wise Services, Inc.*, C.A. No. 1:19-cv-00444-TLW (the "Civil Action").

F. The United States contends that it has certain civil claims against MOX and Wise, as asserted in the Civil Action, arising from the submission of false and fraudulent invoices submitted for non-existent materials under the Wise Subcontracts and arising from allegations of improper kickbacks solicited and received by MOX personnel from Wise,





during the period from January 1, 2008 through December 31, 2015 (the "Covered Conduct").

G. MOX denied the claims made in the Civil Action.

H. This Settlement Agreement is neither an admission of liability by MOX, nor a concession by the United States that the Civil Action is not well founded.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation concerning the above Covered Conduct, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

#### TERMS AND CONDITIONS

1. **MOX** shall pay to the United States **Ten Million Dollars** ("Settlement Amount"), of which \$6,400,000.00 is restitution, by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the District of South Carolina, no later than twenty-five (25) days after the Effective Date of this Agreement.

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 fully and finally releases MOX together with its corporate successors and assigns, current and former parent companies, direct and indirect subsidiaries and affiliated companies, corporate divisions, current and former corporate owners, and attorneys, in each case, from any civil or administrative monetary claim the United States has arising out of or related to the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Anti-Kickback Act, 41 U.S.C. §§ 8701-8707; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the common law theories of fraud, breach of contract,



payment by mistake, negligence, gross negligence, indemnification, misrepresentation, deceit, breach of fiduciary duty, conspiracy, and unjust enrichment, as well as aiding and abetting any of the foregoing.

3. Notwithstanding the releases 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;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services; and
- h. Any liability for failure to deliver goods or services due for any conduct other than the Covered Conduct.





4. The Parties stipulate and agree that this Agreement does not in any way derogate or alter the terms of the November 2019 Settlement Agreement between the United States and MOX, which, among other things, disposed of *CB&I AREVA MOX Services, LLC v. United States*, Fed. Cl. No. 16-950C (Consolidated) and Fed. Cir. No. 19-1905.

5. MOX waives and shall not assert any defenses that MOX 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.

6. MOX 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 MOX has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, arising out of or related to the Covered Conduct and the United States' investigation and prosecution thereof.

7. 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 MOX, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement and any related plea agreement;



- (2) the United States' audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;
- (3) MOX'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 any plea agreement];
- (5) the payment MOX 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 MOX, and MOX 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, MOX shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by MOX or any of its subsidiaries or affiliates from the United States. MOX agrees that the United States, at a minimum, shall be entitled to recoup from MOX and Wise 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 MOX's books and records and to disagree with any calculations submitted by MOX or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by MOX, or the effect of any such Unallowable Costs on the amount of such payments.

8. This Agreement is intended to be for the benefit of the Parties only, and their respective successors, transferees, heirs, and assigns.

9. Upon the United States' receipt of the payment of the Settlement Amount as described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action as to MOX pursuant to Rule 41(a)(1), FRCP.

10. Within five (5) days of the Effective Date of this Agreement, MOX agrees to dismiss with prejudice the matter captioned *MOX Services LLC v. Wise Services Inc. et al.*, 3:18-cv-03072-TLW, currently pending in the United States District Court for the District of South Carolina (Columbia Division).

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

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

13. 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 South Carolina. 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.

14. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by a written instrument duly signed by authorized representatives of both Parties.

15. The undersigned counsel or Parties, as applicable, represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

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

17. This Agreement is binding on MOX's successors, transferees, heirs, and assigns.

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

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

THE UNITED STATES OF AMERICA

DATED: 3/7/22

BY: 


DON WILLIAMSON  
RORY SKAGGS  
Trial Attorneys  
Commercial Litigation Branch



Civil Division  
U.S. Department of Justice  
and

DATED:

BY:

  
JOHANNA C. VALENZUELA  
SHERIA A. CLARKE

Assistant United States Attorney  
United States Attorney's Office  
District of South Carolina

MOX Services, LLC

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

Gilles Rousseau

DATED: 2 Mar 2022 BY: \_\_\_\_\_

Shane Willoughby

DATED: 3 March 2022 BY: \_\_\_\_\_

Lindsay A. Joyner, Esq.  
Counsel for MOX Services, LLC



Civil Division  
U.S. Department of Justice  
and

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
JOHANNA C. VALENZUELA  
SHERIA A. CLARKE  
Assistant United States Attorney  
United States Attorney's Office  
District of South Carolina

MOX Services, LLC

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
**ROUSSEAU Gilles**   
Gilles Rousseau Digitally signed by ROUSSEAU Gilles  
Date: 2022.03.02 11:28:22 -05'00'

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
Shane Willoughby

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
Lindsay A. Joyner, Esq.  
Counsel for MOX Services, LLC