

## 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 Small Business Administration and the United States Department of Veterans Affairs (collectively the "United States") and Regiment Construction Corp. ("Regiment") and Daniel Hernandez ("Hernandez") (the United States, Regiment, and Hernandez are hereafter collectively referred to as the "Parties"), through their authorized representatives.

### RECITALS

A. Regiment is a corporation with its principal place of business located in the State of New Jersey. Regiment represented itself as a company owned and controlled by a service-disabled veteran in order to obtain government contracts from the United States. Daniel Hernandez is a principal of Regiment.

B. The United States contends that it has certain civil claims against Regiment and Hernandez arising from false claims made in conjunction with contracts awarded to Regiment by the United States. Specifically, the United States contends that Regiment and its principals, including Hernandez, improperly represented to the United States that they were eligible to bid on contracts set aside for companies owned and controlled by service-disabled veterans. During the period from the years 2008 through 2015, Regiment obtained multiple government contracts set aside for companies owned and operated by service-disabled veterans under the Small Business Association's Service-Disabled Veteran-Owned Small Business ("SDVOSB") set aside program. The United States contends that Regiment was controlled and operated by Hernandez, not the veteran to whom ownership and control was attributed in Regiment's certification to the

United States. Accordingly, the United States asserts that between the years 2008 and 2015, Regiment and Hernandez procured government contracts set aside for SDVOSBs by improperly representing that Regiment was an SDVOSB. That conduct is referred to below as the Covered Conduct.

C. This Settlement Agreement is neither to be construed as an admission of liability by Regiment or Hernandez, who dispute the merits of the allegations, nor a concession by the United States that its claims are not well founded.

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. Hernandez and/or Regiment are hereby obligated, jointly and severally, and shall pay to the United States Two Million Four Hundred Thousand dollars (\$2,400,000.00) (the "Settlement Amount"), of which \$2,400,000.00 is restitution, in four equal installments of \$600,000.00, by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the District of New Jersey. The initial payment of \$600,000.00 shall be made on or before August 1, 2019, with additional payments of \$600,000.00 due on or before August 1 of each consecutive year, with the final payment being due on or before August 1, 2022, as set forth on Exhibit A to this Agreement, which is incorporated by reference.

2. Subject to the exceptions in Paragraph 3 (concerning excluded claims) below, and conditioned upon the full payment of the Settlement Amount, and subject to Paragraph 11 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payments made under this

Agreement) the United States releases Regiment and Hernandez from any civil or administrative 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. Nothing in this Paragraph shall be construed as releasing claims against Regiment and/or Hernandez by the United States or any federal agency in connection with work performed by Regiment.

3. Notwithstanding the release given in paragraph 2 of this Agreement, or any other term of this Agreement, the following claims 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, 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 except for civil liability against Daniel Hernandez (as outlined in Paragraph 2 of this Agreement) for the covered conduct;

- 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;
- h. Any liability for failure to deliver goods or services due;
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

4. Regiment and Hernandez waive and shall not assert any defenses they 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. Regiment and Hernandez fully and finally release the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that they have 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. Nothing in this Paragraph shall be construed as releasing Regiment and/or Hernandez's claims against any federal agency in connection with work performed by Regiment.

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 Regiment, 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/or criminal investigation(s) of the matters covered by this Agreement;
- (3) Regiment and/or Hernandez's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and any civil and/or criminal 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 Regiment and/or Hernandez make 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 Regiment and Hernandez, and Regiment and Hernandez 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, Regiment shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Regiment or any of Regiment's subsidiaries or affiliates from the United States. Regiment agrees that the United States, at a minimum, shall be entitled to recoup from Regiment 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 Regiment's books and records and to disagree with any calculations submitted by Regiment or any of Regiment's subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Regiment, or the effect of any such Unallowable Costs on the amount of such payments.

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

8. Hernandez has provided sworn financial disclosure statements ("Financial Statements") to the United States, and the United States has relied on the accuracy and completeness of those Financial Statements in reaching this Agreement. Hernandez warrants that the Financial Statements previously provided to the United States were complete, accurate, and current as of the date provided. If the United States learns of asset(s) in which Hernandez had an interest at the time of the disclosure of the Financial Statements that were not disclosed in the Financial Statements, or if the United States learns of any misrepresentation by Hernandez on, or in connection with, the Financial Statements, and if such nondisclosure or misrepresentation changes the estimated net worth set forth in the Financial Statements by \$100,000.00 or more, the United States may at its option: (a) rescind this Agreement and file suit based on the Covered Conduct, or (b) let the Agreement stand and collect the full Settlement Amount plus one hundred percent (100%) of the value of the net worth of Hernandez previously undisclosed. Hernandez agrees not to contest any collection action undertaken by the United States pursuant to this provision, and will pay the United States all reasonable costs incurred in such an action, including attorney's fees and expenses.

9. In the event that the United States, pursuant to Paragraph 8 (concerning disclosure of assets), above, opts to rescind this Agreement, Hernandez agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the United States within 90 calendar days of written notification to Hernandez that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on the date of the Effective Date of this Agreement.

10. Hernandez warrants that he has reviewed his financial situation and that he currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall make best efforts to remain solvent following payments to the United States 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 Defendants, 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 Regiment or Hernandez were or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

11. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, Regiment or Hernandez commence, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any

order for relief of Regiment or Hernandez's debts, or seeking to adjudicate Regiment or Hernandez as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Regiment or Hernandez or for all or any substantial part of Regiment or Hernandez's assets, Regiment and Hernandez agree as follows:

a. Regiment and Hernandez's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Regiment and Hernandez shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Regiment or Hernandez's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Regiment or Hernandez were insolvent at the time this Agreement was entered into, or became insolvent as a result of the payments made to the United States; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Regiment and Hernandez.

b. If Regiment or Hernandez's 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, the United States, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Regiment or Hernandez for the claims that would otherwise be covered by the releases provided in Paragraphs 2 above. Regiment or Hernandez agree that, in the event that the releases are rescinded, (i) any such claims, actions, or proceedings subsequently brought by the United States are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and Regiment and Hernandez shall not argue or otherwise contend that the United States' claims, actions, or



proceedings are subject to an automatic stay; (ii) Regiment and Hernandez 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 claims, actions, or proceeding that are brought by the United States within 90 calendar days of written notification to Regiment and Hernandez 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; and (iii) the United States has a valid claim may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. Regiment and Hernandez acknowledge that their agreements in this Paragraph are provided in exchange for good and valuable consideration provided in this Agreement.

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

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

14. 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.

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

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

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

18. This Agreement is binding on Regiment and Hernandez's successors, transferees, heirs, and assigns.

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

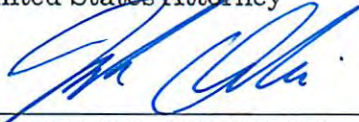
20. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date of this Agreement"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

**THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK**

SIGNATURE PAGE

For the United States of America:

CRAIG CARPENITO  
United States Attorney




---

By: MARK C. ORLOWSKI  
Assistant U.S. Attorney  
U.S. Attorney's Office  
District of New Jersey  
Civil Division  
970 Broad Street, Suite 700  
Newark, New Jersey 07102

Dated: 7/30/19

For Regiment Construction Corp.:



---

DANIEL HERNANDEZ  
Principal

Dated: 7-19-19



---

DANIEL HERNANDEZ, individually

Dated: 7-19-19

# **EXHIBIT A**

## **SCHEDULE OF PAYMENTS**

<b>08/01/2019</b>	<b>\$600,000.00</b>
<b>08/01/2020</b>	<b>\$600,000.00</b>
<b>08/01/2021</b>	<b>\$600,000.00</b>
<b>08/01/2022</b>	<b>\$600,000.00</b>