

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 Defense, Defense Logistics Agency (“DLA”) (collectively the “United States”) and Brighton Cromwell, LLC (“Brighton Cromwell”) (collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Brighton Cromwell is a limited liability company with its principal place of business located in Randolph, New Jersey. It specializes in the manufacture, distribution and/or sale of various supplies to the United States and federal government prime contractors.

B. The United States contends that it has certain civil claims against Brighton Cromwell arising from instances in which the United States contends it knowingly sold contractually non-compliant parts for use by the DLA between April 23, 2012 and December 31, 2019 (the “Relevant Time Period”). More specifically, the United States asserts that Brighton Cromwell knowingly sold to the United States during the Relevant Time Period the items listed in Appendix A hereto, and that it failed to reasonably ascertain and verify that they were manufactured by or for its suppliers in non-compliant countries under either the Buy American Act, 41 U.S.C. § 8301, et seq. (“BAA”), or the Trade Agreements Act, 19 U.S.C. § 2501, et seq. (“TAA”), in violation of the Defense Federal Acquisition Regulation Supplement (“DFARS”) 252.225-7001 or DFARS 252.225-7021, respectively, that were clauses included in either the actual solicitation or the DLA Master Solicitation version in effect at the time of solicitation,

which were then incorporated by reference into the contracts at issue. The United States contends that those actions by Brighton Cromwell violate the False Claims Act, 31 U.S.C. § 3729, et seq. In addition, the United States asserts that Brighton Cromwell sold the items listed in Appendix B hereto to the United States during the Relevant Time Period, and those items were not manufactured and/or assembled in BAA or TAA compliant countries, thus breaching its contracts with the United States and unjustly enriching the company. The conduct listed in this Paragraph is referred to below as the Covered Conduct.

C. This Settlement Agreement is neither an admission of liability or wrongdoing by Brighton Cromwell 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. Brighton Cromwell shall pay to the United States a total sum of Eight Hundred Fifty Thousand dollars (\$850,000.00) (the "Settlement Amount"), of which Seven Hundred Fifty Thousand dollars (\$750,000.00) is restitution. The Settlement amount consists of a payment of Two Hundred Thousand dollars (\$200,000.00) relating to the False Claims Act allegations related to the sale of the parts in Appendix A, and a payment of Six Hundred Fifty Thousand dollars (\$650,000.00) relating to the common law allegations of breach of contract and unjust enrichment related to the sale of the parts in Appendix B. The Settlement Amount will be paid by electronic funds transfer

pursuant to written instructions to be provided by the Office of the United States Attorney for the District of New Jersey. Brighton Cromwell shall make an initial payment of One Hundred Fifty Thousand dollars (\$150,000.00) on or before November 1, 2021, and thirty five (35) consecutive monthly payments of Twenty Thousand dollars (\$20,000.00) in accordance with the schedule set forth on Exhibit C to this Agreement, which is incorporated by reference. There shall be no penalty for, nor prohibition against, advance payment of any or all amounts due hereunder.

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 Brighton Cromwell from any civil or administrative monetary or non-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; the Contract Disputes Act, 41 U.S.C. §§ 7101-7109; 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, 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;
- 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. Brighton Cromwell waives and shall not assert any defenses Brighton Cromwell 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. Brighton Cromwell 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 Brighton Cromwell 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. Brighton Cromwell agrees to the following:

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

7. In the event that Brighton Cromwell fails to pay the Settlement Amount as provided in the payment schedule set forth in Paragraph 1 above, Brighton Cromwell shall be in Default of Brighton Cromwell's payment obligations ("Default"). The United States will provide a written Notice of Default, and Brighton Cromwell 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 under the payment schedule and paying any additional interest accruing under the Settlement Agreement up to the date of payment. Notice of Default will be delivered to Brighton Cromwell, or to such other representative as Brighton Cromwell shall designate in advance in writing. If Brighton

Cromwell 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 6% per annum, compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance).

In the event of Uncured Default, Brighton Cromwell agrees that the United States, at its sole discretion, may (i) retain any payments previously made, rescind this Agreement or bring any civil and/or administrative claim, action, or proceeding against Brighton Cromwell for the claims that would otherwise be covered by the releases provided in Paragraph 4 above, with any recovery reduced by the amount of any payments previously made by Brighton Cromwell to the United States under this Agreement; (ii) take any action to enforce this Agreement in a new action; (iii) offset the remaining unpaid balance from any amounts due and owing to Brighton Cromwell 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 prevails in a collection action, Brighton Cromwell 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, Brighton Cromwell 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 subject to any waiver of a statute of limitations and are (i) filed by the United States against Brighton Cromwell 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 April 23, 2018. Brighton Cromwell 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, Brighton Cromwell acknowledges the following:

a. Brighton Cromwell 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 Brighton Cromwell, 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 Brighton Cromwell 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 Brighton Cromwell'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) or if, before the Settlement Amount is paid in full, Brighton Cromwell 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 Brighton Cromwell's debts, or to adjudicate Brighton Cromwell as bankrupt or insolvent; or seeking appointment of a receiver, trustee, custodian, or other similar official for Brighton Cromwell or for all or any substantial part of Brighton Cromwell'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 Brighton Cromwell for the claims that would otherwise be covered by the releases provided in Paragraph 4 above; and

(ii) the United States has an undisputed, noncontingent, and liquidated allowed claim against Brighton Cromwell in the amount of Eight Hundred Fifty Thousand dollars (\$850,000.00), less any payments received pursuant to this agreement, provided, however, that such payments are not otherwise avoided and recovered from the United States by Brighton Cromwell, a receiver, trustee, custodian, or other similar official for Brighton Cromwell.

f. Brighton Cromwell 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). Brighton Cromwell 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 Brighton Cromwell that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on April 23, 2018..

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 Brighton Cromwell'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 of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

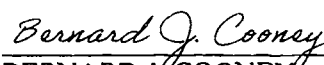
RACHAEL A. HONIG
Acting United States Attorney

By:


MARK C. ORŁOWSKI
Assistant United States Attorney

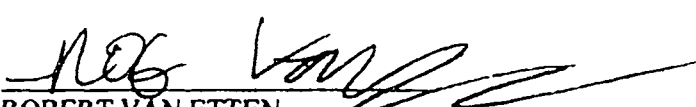
DATED: 10/18/2021

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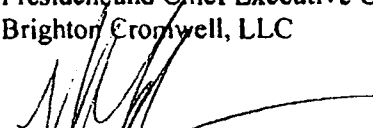

BERNARD J. COONEY
Unit Chief, Government Fraud Unit

BRIGHTON CROMWELL, LLC

By:


ROBERT VAN ETTEN
President and Chief Executive Officer
Brighton Cromwell, LLC

By:


MICHAEL J. FELDMAN, ESQ.
Olender Feldman LLP
Attorney for Defendant,
Brighton Cromwell, LLC

DATED: 10/14/2021

APPENDIX A

Item Number	NSN	Item Description
01-456-3884	5330-01-456-3884	Seal, Plain Encased
ITM002258	5330-01-360-7753	Seal, Plain Encased
00-551-0433	5330-00-551-0433	Gasket
01-431-1324	2910-01-210-1324	Filter, Fluid
01-308-0175	5330-01-308-0175	Seal, Plain Encased
01-247-2764	5330-01-247-2764	Seal, Plain Encased
01-210-5872	2910-01-210-5872	Filter, Fluid
01-237-1551	6680-01-237-1551	Meter, Flow Rate Indicating
NN00897	2530-01-565-9660	Caliper, Disc Brake
00-450-7504	2520-00-450-7504	Retainer, Bearing
01-441-7227	5998-01-441-7227	Extender Card, Electronic Test
01-568-5097	2530-01-568-5097	Cylinder Assembly, Hydraulic
01-577-4597	6150-01-577-4597	Lead, Electrical
00-740-9550	5330-00-740-9550	Seal, Plain Encased
NN01405	2530-01-567-0893	Rotor, Disc Brake
01-156-3764	5331-01-156-3764	O-Ring
01-571-7047	6150-01-571-7047	Cable and Conduit A
01-483-5079	5331-01-483-5079	O-Ring
01-571-7045	6150-01-571-7045	Cable and Conduit A
01-571-7044	6150-01-571-7044	Cable and Conduit A
01-571-7035	6150-01-571-7035	Cable and Conduit A
01-272-1147	5330-01-272-1147	Seal, Plain Encased
01-066-2793	5340-01-066-2793	Plug, Expansion
01-456-9156	5331-01-456-9156	O-Ring
01-567-0893	2530-01-567-0893	Rotor, Disc Brake

APPENDIX B

Item Number	NSN	Item Description
01-360-7753	5330-01-360-7753	Seal, Plain Encased
01-360-5252	5330-01-360-5252	Seal, Plain Encased
ITM000572	5330-01-360-7753	Seal, Plain Encased
ITM000567	5330-01-360-5252	Seal, Plain Encased

APPENDIX C

SCHEDULE OF PAYMENTS

November 1, 2021	\$150,000.00
December 1, 2021	\$20,000.00
January 1, 2022	\$20,000.00
February 1, 2022	\$20,000.00
March 1, 2022	\$20,000.00
April 1, 2022	\$20,000.00
May 1, 2022	\$20,000.00
June 1, 2022	\$20,000.00
July 1, 2022	\$20,000.00
August 1, 2022	\$20,000.00
September 1, 2022	\$20,000.00
October 1, 2022	\$20,000.00
November 1, 2022	\$20,000.00
December 1, 2022	\$20,000.00
January 1, 2023	\$20,000.00
February 1, 2023	\$20,000.00
March 1, 2023	\$20,000.00
April 1, 2023	\$20,000.00
May 1, 2023	\$20,000.00
June 1, 2023	\$20,000.00
July 1, 2023	\$20,000.00
August 1, 2023	\$20,000.00
September 1, 2023	\$20,000.00
October 1, 2023	\$20,000.00
November 1, 2023	\$20,000.00
December 1, 2023	\$20,000.00
January 1, 2024	\$20,000.00
February 1, 2024	\$20,000.00
March 1, 2024	\$20,000.00
April 1, 2024	\$20,000.00
May 1, 2024	\$20,000.00
June 1, 2024	\$20,000.00
July 1, 2024	\$20,000.00
August 1, 2024	\$20,000.00
September 1, 2024	\$20,000.00
October 1, 2024	\$20,000.00