

## **SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into among the United States of America, acting through the United States Department of Justice and the United States Attorney's Office for the Eastern District of Pennsylvania on behalf of the United States Department of the Navy (collectively, the United States), and Navmar Applied Sciences Corporation (NASC) (the United States and NASC are, collectively, the Parties), through their authorized representatives.

### **RECITALS**

A. NASC is a Pennsylvania Corporation that has provided research and engineering services; Unmanned Aerial Systems (UAS) development, manufacture, training and worldwide Intelligence, Reconnaissance & Surveillance (ISR) operations; advanced acoustic research; information technology services; and combat system development, training and support to the U.S. Department of Defense (DoD), numerous federal agencies and research institutions, and academia since 1977.

B. Between 2010 and 2012, the U.S. Department of the Navy (Navy) awarded NASC a series of contracts, including Contract Nos. N68335-10-G-0026, N68335-10-C-0045, N68335-11-C-0038 and N68335-12-C-0304 (collectively the contracts). In general, the contracts concerned the provision of enhanced intelligence, surveillance, and reconnaissance systems, hardware, maintenance technical support services, and the development and rapid deployment of various advanced sensors and Unmanned Aerial Systems. These contracts were awarded in part based on technologies developed under the Small Business Administration's Small Business Innovation Research Program Phase III.

C. The Defense Contract Audit Agency (DCAA) audited NASC's incurred cost proposals for Fiscal Years 2011, 2012 and 2013.

D. The Defense Contract Management Agency (DCMA) subsequently issued a final decision with respect to claims arising out of these DCAA audits on March 26, 2019. NASC appealed the decision to the Armed Services Board of Contract Appeals (ASBCA), docketed as *NASC Applied Science Corporation*, ASBCA No. 62018. This matter is still pending before the ASBCA; however, NASC has reached an agreement in principle with DCMA that the Parties expect will be memorialized in a separate written agreement to resolve those administrative claims.

E. The United States Department of Justice also conducted an investigation related to certain aspects of the DCAA audits and resulting claims arising therefrom.

F. The United States contends that it has certain civil claims against NASC arising from:

1. NASC knowingly billed the Navy, and received payment, for certain labor and material costs on one contract, and subsequently billed the Navy, and received payment, for the same costs on another contract. This double billing occurred on:
  - a. Contracts N68335-10-G-0026-0004 (J10) and N68335-10-G-0026-0002 (J09); and
  - b. Contracts N68335-10-G-0026-0004 (J10) and N68335-11-C-0038 (J15).
2. NASC knowingly shifted material costs incurred under certain contracts to other contracts in violation of the FAR, 48 CFR 31.201-4. This cost shifting occurred:
  - a. From contract N68355-10-C-0045 (J06) to contract N68335-10-G-0026-002 (J09);
  - b. From contract N68355-10-C-0045 (J06) to contract N68335-10-G-0026-0001 (J08);
  - c. From contract N68335-10-G-0026-011 (J38) to contract N68335-12-C-0304 (J36); and

d. From contract N68355-12-C-0353 (J35) to contract N38355-11-C-0038 (J15).

The conduct described in this paragraph is referred to below as the Covered Conduct.

G. NASC denies the United States' allegations in Paragraph F.

H. This Settlement Agreement is neither an admission of liability by NASC, nor a concession by the United States that its claims are not well founded.

I. 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. NASC shall pay to the United States **Four Million, Four Hundred Thousand Dollars and Zero Cents (\$4,400,000.00)** (the Settlement Amount), of which \$2,128,145.00 constitutes restitution, plus interest at a rate of 3.51% per annum accruing monthly from September 1, 2022, by electronic funds transfer (EFT) pursuant to written instructions provided by the United States Attorney's Office for the Eastern District of Pennsylvania as follows:

A. NASC shall pay \$733,333.33 of the Settlement Amount plus accumulated interest no later than twenty (20) days after the Effective Date of this Agreement (defined below).

B. NASC shall pay a second installment of \$733,333.33 plus any accumulated interest no later than twelve (12) months after the Effective Date of this Agreement.

C. NASC shall pay a third installment of \$733,333.33 plus any accumulated interest no later than twenty-four (24) months after the Effective Date of this Agreement.

D. NASC shall pay a fourth installment of \$733,333.33 plus any accumulated interest no later than thirty-six (36) months after the Effective Date of this Agreement.

E. NASC shall pay a fifth installment of \$733,333.33 plus any accumulated interest no later than forty-eight (48) months after the Effective Date of this Agreement.

F. NASC shall pay the remainder of the Settlement Amount plus any accumulated interest no later than sixty (60) months after the Effective Date of this Agreement.

G. Collectively the Settlement Amount and interest received by the United States shall be referred to as the Settlement Payments.

H. The Settlement Amount may be prepaid, in whole or in part, without penalty or premium.

I. If more than 50% of NASC or any of its affiliates is sold, merged, or transferred, or if more than 50% of the assets of NASC or of any of its affiliates is sold, merged, or transferred to or into another non-affiliated entity, NASC shall promptly notify the United States, and all remaining payments owed pursuant to the Settlement Agreement shall be accelerated and become immediately due and payable.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below and subject to Paragraph 4 (concerning disclosure of assets), Paragraph 8 (concerning default), and Paragraph 9 (concerning bankruptcy), below, and upon the United States' complete receipt of the Settlement Amount, plus interest due under Paragraph 1, the United States releases NASC 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.

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 of the United States Code (the 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;

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. NASC has provided sworn financial disclosures and supporting documents (Financial Disclosures) to the United States and the United States has relied on the accuracy and completeness of those Financial Disclosures in reaching this Agreement. NASC warrants that the Financial Disclosures are complete, accurate, and current as of the Effective Date of this Agreement. If the United States learns of any asset(s) in which NASC had an interest of any kind as of the Effective Date of this Agreement (including, but not limited to, promises by insurers or other third parties to satisfy NASC's obligations under this Agreement) that were not disclosed in the Financial Disclosures, or if the United States learns of any false statement or misrepresentation by NASC on, or in connection with, the Financial Disclosures, and if such nondisclosure, false statement, or misrepresentation changes the estimated net worth set forth in the Financial Disclosures by \$220,000 or more, the United States may at its option: (a) rescind this Agreement and reinstate its suit or file suit based on the Covered Conduct or (b) collect the full Settlement Amount in accordance with the Agreement plus one hundred percent (100%) of the net value of NASC's previously undisclosed assets. NASC agrees not to contest any collection action undertaken by the United States pursuant to this provision, and agrees that it will immediately pay the United States the greater of (i) a ten-percent (10%) surcharge of the

amount collected in the collection action, 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, pursuant to this paragraph rescinds this Agreement, NASC waives and 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 120 calendar days of written notification to NASC that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on April 23, 2019.

5. NASC waives and shall not assert any defenses that NASC 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. NASC fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind, however denominated) that NASC 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 or the United States' investigation or prosecution thereof.

7. Unallowable Costs

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 NASC,

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. NASC's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
4. the negotiation and performance of this Agreement; and
5. the payment NASC makes to the United States pursuant to this Agreement,

are unallowable costs for government contracting purposes (Unallowable Costs).

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

8. Default

A. In the event that NASC fails to pay the Settlement Amount or any of the Settlement Payments as provided in Paragraph 1 above, NASC shall be in Default of NASC's payment obligations. The United States will provide a written Notice of Default, and NASC shall have an opportunity to cure such default within twenty-one (21) 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 counsel for NASC that signs this Agreement, or to such other representative as NASC shall designate in advance in writing. If NASC fails to cure the Default within twenty-one (21) 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).

B. In the event of Uncured Default, NASC 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 NASC 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 NASC 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 NASC 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, NASC 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, NASC 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 NASC 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, 2019. NASC 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.

9. In exchange for valuable consideration provided in this Agreement, NASC acknowledges the following:

A. NASC 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). NASC further warrants that (i) it shall remain solvent following payment to the United States of the Settlement Amount referenced in Section 1(A) above; and (ii) based upon the cash flow projections prepared by NASC and provided to the United States, and assuming no material events occur that are outside the control of NASC, it shall remain solvent over the time period contemplated by the payment schedule set forth in Section 1(B) above.

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 NASC, 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 NASC 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 NASC'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, NASC 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 NASC's debts, or to adjudicate NASC as bankrupt or insolvent; or seeking appointment of a receiver, trustee, custodian, or other similar official for NASC or for all or any substantial part of NASC'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 NASC for the claims that would otherwise be covered by the releases provided in Paragraph 2 above; and

(ii) the United States has an undisputed, noncontingent, and liquidated allowed claim against NASC in the amount of \$13,200,000.00, 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. NASC agrees that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 9(E) is not subject to an

“automatic stay” under 11 U.S.C. § 362(a) because it would be an exercise of the United States’ police and regulatory power. NASC 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). NASC 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 NASC that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on April 23, 2019.

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

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 Eastern District of Pennsylvania. 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 written consent of the Parties. Any

forbearance by the United States from pursuing any remedy or relief available to it under this Agreement shall not constitute a waiver of rights under this Agreement.

15. The undersigned counsel 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 NASC'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 (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

*[signatures follow on next pages]*

IN WITNESS WHEREOF, the United States of America and NASC Applied Sciences Corporation, intending to be legally bound, have set their hands and seals to this Settlement Agreement:

**FOR THE UNITED STATES OF AMERICA:**

**UNITED STATES DEPARTMENT OF JUSTICE  
CIVIL DIVISION**


  
\_\_\_\_\_  
K.L. GRACE MOSELEY  
Trial Attorney  
U.S. Department of Justice  
Civil Division  
Commercial Litigation Branch

Dated: September 15, 2023


**UNITED STATES ATTORNEY'S OFFICE  
EASTERN DISTRICT OF PENNSYLVANIA**

  
\_\_\_\_\_  
JACQUELINE C. ROMERO  
United States Attorney

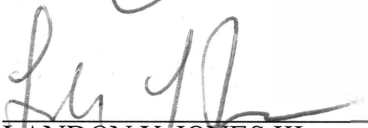
Dated: August 24, 2023

  
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GREGORY B. DAVID  
Assistant United States Attorney  
Chief, Civil Division

Dated: 9/15/23

  
\_\_\_\_\_  
CHARLENE KELLER FULLMER  
Assistant United States Attorney  
Deputy Chief, Civil Division

Dated: 8/24/23

  
\_\_\_\_\_  
LANDON Y. JONES III  
MARK J. SHERER  
Assistant United States Attorneys

Dated: 9/15/23

**FOR NAVMAR APPLIED SCIENCES CORPORATION:**

**Thomas B.  
Fenerty** Digitally signed by  
Thomas B. Fenerty  
Date: 2023.09.14  
08:29:26 -04'00'

Dated: 14 September 2023

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THOMAS B. FENERTY  
President and Chief Executive Officer

**Joseph G.  
Poluka** Digitally signed by  
Joseph G. Poluka  
Date: 2023.09.14  
13:01:44 -04'00'

Dated: September 14, 2023

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JOSEPH G. POLUKA, Esquire  
BLANK ROME LLP  
*Attorneys for NASC*