

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice (“DOJ”) and on behalf of the Department of the Air Force; Department of the Army; Department of the Navy (“Navy”); Department of Energy (“DOE”); Department of Health and Human Services; Department of Justice; Department of Treasury; Department of Veterans Affairs (“VA”); the General Services Administration; and the Smithsonian Institution; (collectively the “United States”) and NORESKO, LLC (“NORESCO”) (hereafter the United States and NORESKO are collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. NORESKO, headquartered in Westborough, MA, is a DOE qualified energy services company. NORESKO offers a wide range of electricity solutions for buildings and data centers, including energy savings performance contracting. Energy savings performance contracting is a funding method in which an energy service company partners with its clients in long-term projects that address maintenance backlogs and facility improvements with energy efficient solutions, using the energy savings generated to pay for the larger project scope. NORESKO provides such energy savings performance contracting services to the federal government.

B. Among others, DOE and the U.S. Army Corps of Engineers administer master energy savings performance contracts (“ESPCs”) under which agencies of the United States may issue Task Orders (“TO”) to energy savings performance contractors like NORESKO to achieve energy savings goals. NORESKO has been awarded no fewer

than forty-three such TOs since December 2008. Such TOs are entered into for generally fixed prices that are negotiated. The negotiations include review of cost estimates and anticipated profit margins that the energy savings performance contractor anticipates ultimately incurring based on preliminary project development, such as non-binding indicative bids received from potential sub-contractors.

C. In June 2019, the Offices of Inspector General for the GSA, VA, and DOE, along with the Naval Criminal Investigative Service and Defense Criminal Investigative Service, began investigating allegations that NORESO improperly negotiated for inflated TO prices by adding unnecessary costs to its price proposals and failed to disclose the nature of its anticipated costs to the United States. In May 2020, DOE's Office of Inspector General issued a subpoena to NORESO in connection with this investigation. Pursuant to the subpoena, the United States sought and reviewed information from NORESO regarding bidding and negotiation practices on numerous ESPC TOs, and NORESO fully cooperated in response to those inquiries.

D. NORESO admits, acknowledges, and accepts responsibility for the following facts:

a. In February 2021, NORESO contacted DOE's Office of Inspector General and explained that it wished to voluntarily disclose a financing issue that was unrelated to the government concerns that had prompted the initial inquiry but which NORESO had identified while responding to the May 2020 subpoena. Specifically, NORESO disclosed that NORESO discovered that its internal model for estimating project costs, financing, and energy savings assumed a longer period of construction than the actual period in some contracts/task orders and defaulted to a more

expensive accounting methodology for accruing interest. As a result, NORESO inappropriately profited, or stood to profit, from the portion of TO payments grounded in the incorrectly modeled financing costs associated with ESPC projects. NORESO calculated that, uncorrected, the then projected excess financing costs to the various government agencies would be an aggregate of \$5,645,655 on the 29 TOs in Attachment A over the expected lifetime of those contracts. At the time of the disclosure, various agencies had made various payments under their respective TOs or were expected yet to make certain payments. Those payments include an aggregate actual excess cost to the government of \$1,466,180 that had been actually paid out. In consultation with DOJ and the impacted agencies, NORESO fully credited and/or refunded (or has agreed to credit and/or refund) the entire \$5,645,655, the amount that, without correction, the impacted agencies would have overpaid over the remaining life of their contracts, which includes amounts already overpaid.

b. Additionally, NORESO inflated the initial price of a TO issued by the Navy (Contract Number: N3943018F9914). Specifically, after Navy contracting personnel partially rejected NORESO's request to include certain contingency costs in the price of the TO, NORESO instructed two of its subcontractors to add a total of \$3.46 million to their indicative sub-contractor bids to address potential contingency costs and did not disclose the inclusion of those contingency costs to the Navy. Ultimately the Navy and NORESO entered into the TO without further disclosure. The Navy subsequently made two annual payments to NORESO under the TO, and those payments included an aggregate overpayment of \$372,501. NORESO fully cooperated with the government's investigation of the Navy project. In consultation with DOJ and

the Navy, in March of 2023, NORESO issued a \$3.46 million credit to the Navy in connection with the relevant energy savings project. The credit is equal to the amount that the Navy would have overpaid over the remaining life of the contract, plus the \$372,501 that the Navy already overpaid.

E. The United States contends that it has certain civil claims against NORESO arising from the conduct described in recital D, during the period from April 9, 2012, through March 29, 2023 (the “Covered Period”). That conduct during the Covered Period is referred to below as the “Covered Conduct.”

F. NORESO has been credited in this settlement under the Department of Justice’s guidelines for taking disclosure, cooperation, and remediation into account in FCA cases under Justice Manual § 4-4.112. The cooperation that NORESO provided demonstrated candor and business integrity and included: performing and disclosing the results of an internal investigation; responding to requests of the United States to search for, gather and provide information related to the investigation; disclosing relevant facts and material not known to the government but relevant to its investigation, including voluntarily disclosing an issue not known to the government; conducting a damages analysis; identifying and separating the individuals responsible for or involved in the misconduct to ensure the misconduct would not be repeated; accepting responsibility for the misconduct; and improving its compliance programs.

In consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. NORESKO shall pay to the United States \$9,585,141 (the “Settlement Amount”), of which \$9,105,655 is restitution, plus interest on the remaining unpaid amount of the Settlement Amount at a rate of 4.625 percent per annum, beginning on February 18, 2025. As set forth in recital D, NORESKO already paid, or has scheduled to pay, \$9,105,655 of the Settlement Amount via a series of refunds and credits.

NORESKO shall pay to the United States the remaining \$479,486 of the Settlement Amount, plus any interest due and owing under the terms of this Agreement, pursuant to written instructions to be provided by the United States Attorney’s Office for the District of Massachusetts no later than 17 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, plus interest due under Paragraph 1, the United States releases NORESKO, together with its current and former parent corporations, subsidiaries, divisions, and corporate successors and assigns, 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; 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, 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. NORESKO waives and shall not assert any defenses NORESKO 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. NORESKO 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 NORESKO 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 NORESKO, 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) NORESKO'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;
- (5) the payment NORESKO 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 NORESKO, and NORESKO 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, NORESKO shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by NORESKO or any of its subsidiaries or affiliates from the United States. NORESKO agrees that the United States, at a minimum, shall be entitled to recoup from NORESKO 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 NORESKO's books and records and to disagree with any calculations submitted by NORESKO or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by NORESKO, or the effect of any such Unallowable Costs on the amount of such payments.

7. NORESKO agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, NORESKO shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. NORESKO

further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

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

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

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

11. 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 Massachusetts. 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.

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

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

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

15. This Agreement is binding on NORESKO's successors, transferees, heirs, and assigns.

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

17. 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 ON FOLLOWING PAGE]

THE UNITED STATES OF AMERICA

DATED: _____

BRIAN
BY: LAMACCHIA

Brian LaMacchia
Assistant United States Attorney
District of Massachusetts

Digitally signed by BRIAN
LAMACCHIA
Date: 2025.05.09 16:46:33
-04'00'

NORESCO

DATED: 5/9/25

BY: 
Troy Walters
President & CEO
NORESCO, LLC

DATED: 5/9/25

BY: 
Ronald Tenpas
Vinson & Elkins
Counsel for NORESCO

ATTACHMENT A

Task Orders Affected by the Issue Described in Recital D.a. of the Agreement

1. Carlisle Barracks
2. NIH TO-1
3. West Point ESPC TO-2
4. VISN 2 Northport
5. Fort Lee ESPC TO-1
6. Keesler AFB ESPC TO-1
7. Ft. Leavenworth (Mod #2)
8. BOP Milan ESPC TO-1
9. GSA Chicago DER
10. VA VISN 12 Lovell Health
11. Arnold AFB ESPC TO-1
12. FDC Philadelphia TO-1
13. Smithsonian ESPC TO-2
14. DOE Argonne NL ESPC TO-1
15. JB Pearl Hickam ESPC TO-1
16. FCI Danbury/Otisville ESPC TO-1
17. US Mint Denver ESPC TO-1
18. US Mint Philadelphia ESPC1
19. VA VISN 11 ESPC TO-1
20. VA VISN 11 ESPC TO-1 Ph 2
21. VISN 15 ESPC TO-1
22. FCI Fort Dix TO-1
23. Navy Region Japan Atsugi
24. Hanscom AFB
25. VISN 15 ESPC Phase 2
26. VISN 22
27. Fort Jackson ESPC TO#1
28. VA VISN 11 ESPC TO-1 Ph 3
29. BOP Marion ESPC TO-1