

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement 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 (“SBA”) (collectively, the “United States”); SMI Demolition, Inc. (“SMI”) and Charles Smith, Jr. (“Smith”) (SMI and Smith collectively are referred to as the “Defendants”); and Aidan Forsyth (“Forsyth” or “Relator”) (the United States, Defendants, and Forsyth collectively are referred to as the “Parties”), through their authorized representatives.

RECITALS

- A. SMI is a Massachusetts corporation with a principal place of business in Norwood, Massachusetts.
- B. Smith is a resident of Sharon, Massachusetts. Smith owns at least 20% of SMI.
- C. The SBA is an independent agency of the United States government that provides aid, counsel, and assistance to small businesses and entrepreneurs. The Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), Section 1102, vested the SBA with the responsibility of managing the Paycheck Protection Program (“PPP”), under the SBA’s 7(a) Loan Program. The PPP was intended to provide economic relief to small businesses nationwide adversely impacted by COVID-19. In March 2020, SBA announced a first round of loans under the PPP (the “PPP First Draw”).
- D. The CARES Act also authorized SBA to issue loans under the Economic Injury Disaster Loan (“EIDL”) program to businesses that were impacted by the COVID-19 pandemic.
- E. On January 8, 2021, SBA announced the PPP Second Draw. This program allowed certain eligible borrowers to apply for a second forgivable loan.

F. To apply for the PPP First Draw, the PPP Second Draw, and EIDL funding, a business or entity had to certify that it met the requirements of the respective programs, including that no “owner of the Applicant” had “pleaded guilty” to “any felony involving fraud” SBA Form 2483-SD (1/21). SBA required anyone who owned “20% or more of the equity of the Applicant” to be identified as an owner. *Id.*

G. On January 13, 2023, Forsyth filed a qui tam action in the United States District Court for the District of Massachusetts captioned *United States ex rel. Forsyth v. SMI Demolition, Inc. and Charles Smith, Jr.*, No. 23-cv-10091-NMG, pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). The United States intervened in the Civil Action on April 2, 2025.

H. SMI and Smith each admit, acknowledge, and accept responsibility for the following facts:

- a. In January 2018, Smith pled guilty to two counts of mail fraud, and in March 2018, Judge Zobel sentenced Smith to six months of home confinement. *United States v. Charles Smith*, No. 17-cr-10386-RWZ.
- b. In April 2020, Smith owned 51% of SMI. Smith and others prepared a purchase and sale agreement that purported to transfer some of his ownership shares in SMI to another person and which would have reduced his ownership share to 19%, but the parties to that agreement never consummated that agreement and the transfer did not occur.
- c. SMI submitted three applications to SBA for loans on the following dates:

Application Date	Type of Loan	Amount
April 7, 2020	PPP First Draw	\$740,212.53
May 2020	EIDL	\$150,000.00
March 25, 2021	PPP Second Draw	\$558,190.00

- d. Each of these loan applications was approved, and SMI received these funds.
- e. Smith caused SMI to submit each of these applications.
- f. Each of these applications included a false certification that no “owner of the Applicant” had “pleaded guilty” to “any felony involving fraud”
- g. SMI subsequently requested, and received, forgiveness for the full amount of the PPP First Draw and PPP Second Draw loans. In connection with the PPP First Draw loan, SBA also forgave \$6,592.52 in interest and incurred a \$16,745.69 lender fee. In connection with the PPP Second Draw loan, SBA also forgave \$8,120.51 in interest and incurred a \$22,008.60 lender fee.
- h. Both of SMI’s forgiveness applications included a false certification that the initial applications were accurate.
- i. Smith caused SMI to submit each of the forgiveness applications.

I. The United States contends that it has certain civil claims against the Defendants for engaging in the conduct described in Recital H (hereafter referred to as the “Covered Conduct.”). In particular, the United States contends that, as a result of the Covered Conduct, the Defendants caused the submissions of false claims for payment to SBA. The United States contends that the claims were false and SMI was ineligible for PPP First Draw, PPP Second Draw, and EIDL funding, because at the time of the applications Smith owned 20% or more of SMI and had pleaded guilty to a felony involving fraud.

J. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator’s reasonable expenses, attorneys’ fees and costs.

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

TERMS AND CONDITIONS

1. The Defendants collectively shall pay to the United States Two Million Eleven Thousand Nine Hundred Dollars (\$2,011,900) plus interest at a rate of 5.0% per annum from June 10, 2025 (“Settlement Amount”). Of the Settlement Amount, \$1,495,276.94 shall constitute restitution to the United States. Defendants shall pay the Settlement Amount according to the following payment schedule:

Payment date	Amount
8/29/2025	\$300,000.00
8/29/2026	\$488,993.91
8/29/2027	\$488,993.91
8/29/2028	\$488,993.91
8/29/2029	\$488,993.91

Each payment shall be made by electronic funds transfer pursuant to written instruction to be provided by the United States Attorney’s Office. The Settlement Amount may be prepaid, in whole or in part, without penalty or premium. SMI and Smith are jointly and severally liable for the Settlement amount.

2. If SMI or any of its affiliates is sold, merged, or transferred, or a significant portion of the assets of SMI or of any of its affiliates is sold, merged, or transferred into another non-affiliated entity, SMI 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. Defendants agree that all payment obligations set forth in this Settlement Agreement shall be prioritized over distributions to Smith and any other equity owners of SMI and subordinate only to currently existing debt (as of the Effective Date of this Settlement Agreement) of higher priority that Defendants disclose to the United States Attorney’s office for the District of Massachusetts by the Effective Date of this Settlement Agreement.

3. Conditioned upon the United States receiving the Settlement Amount payments, the United States agrees that it shall pay to Relator by electronic funds transfer ten (10) percent of each such payment received under the Settlement Agreement (“Relator’s Share”) as soon as feasible after receipt of the payment.

4. Defendants agree to pay Eleven Thousand Nine Hundred Ten Dollars (\$11,910) to Relator and Relator’s counsel in full satisfaction of their claims for expenses, attorney’s fees, and costs incurred in connection with the Civil Action, by electronic funds transfer. No additional attorney’s fees, expenses, or costs shall be paid or claimed by Relator or his counsel.

5. Subject to the exceptions in Paragraph 7 (concerning reserved claims) below, and subject to Paragraph 10 (concerning disclosure of assets), Paragraph 16 (concerning default), and Paragraph 17 (concerning bankruptcy) below, and upon the United States’ receipt of the Settlement Amount, the United States releases Defendants 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 or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud. Upon the United States’ receipt of the Settlement Amount, the EIDL loan issued to SMI shall be considered paid in full.

6. Subject to the exceptions in Paragraph 7 below, and subject to Paragraph 10 (concerning disclosure of assets), Paragraph 16 (concerning default), and Paragraph 17 (concerning bankruptcy) below, and upon the United States’ receipt of the Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases Defendants from any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729–3733.

7. Notwithstanding the releases given in Paragraph 5 of this Settlement Agreement, or any other term of this Settlement 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 Settlement Agreement, any administrative liability or enforcement right;
- 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 Settlement Agreement; and
- f. Any liability of individuals other than Smith.

8. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Settlement Agreement but agree and confirm that this Settlement Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relator's receipt of the Relator's Share, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Settlement Agreement and/or the Civil Action.

9. Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases Defendants, and their officers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorneys' fees and costs.

10. SMI and Smith each have provided sworn financial disclosures and supporting documents (together “Financial Disclosures”) to the United States and the United States has relied on the accuracy and completeness of those Financial Disclosures in reaching this Settlement Agreement. SMI and Smith each warrant that the Financial Disclosures are complete, accurate, and current as of the Effective Date of this Settlement Agreement. If the United States learns of asset(s) in which Defendants had an interest of any kind as of the Effective Date of this Settlement Agreement (including, but not limited to, promises by insurers or other third parties to satisfy Defendants’ obligations under this Settlement Agreement) that were not disclosed in the Financial Disclosures, or if the United States learns of any false statement or misrepresentation by Defendants’ 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 \$200,000 or more, the United States may at its option: (a) rescind this Settlement Agreement and reinstate its suit or file suit based on the Covered Conduct or (b) collect the full Settlement Amount in accordance with the Settlement Agreement plus one hundred percent (100%) of the net value of Defendants’ previously undisclosed assets. SMI and Smith each agree 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 Settlement Agreement, SMI and Smith each waive and agree 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 Defendants’ that this Settlement Agreement has been rescinded, and (b) relate to

the Covered Conduct, except to the extent these defenses were available on the Effective Date of the Settlement Agreement.

11. SMI and Smith each waive and shall not assert any defenses Defendants 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 Settlement Agreement bars a remedy sought in such criminal prosecution or administrative action.

12. SMI and Smith each fully and finally release 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 Defendants 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 or the United States' investigation or prosecution thereof.

13. SMI and Smith each agree to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395–1395lll and 1396–1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Defendants, their present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Settlement Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Settlement Agreement;

- (3) Defendants' investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Settlement Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Settlement Agreement; and
- (5) the payment Defendants' make to the United States pursuant to this Settlement Agreement and any payments that Defendants may make to Relator, including costs and attorneys' fees,

are unallowable costs for government contracting purposes (hereinafter referred to as "Unallowable Costs").

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Defendants, and Defendants shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment:
Within 90 days of the Effective Date of this Settlement Agreement, Defendants shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Defendants or any of its subsidiaries or affiliates from the United States. Defendants agree that the United States, at a minimum, shall be entitled to recoup from Defendants 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 Defendants' books and records and to disagree with any calculations submitted by Defendants or any of their subsidiaries or affiliates regarding any

Unallowable Costs included in payments previously sought by Defendants, or the effect of any such Unallowable Costs on the amount of such payments.

14. SMI and Smith each agree to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Settlement Agreement. Upon reasonable notice, Defendants 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. SMI and Smith each further agree 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.

15. This Settlement Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity.

16. The Settlement Amount represents the amount the United States is willing to accept in compromise of its civil claims arising from the Covered Conduct due solely to Defendants' financial condition as reflected in the Financial Disclosures referenced in Paragraph 10.

- a. In the event that Defendants fail to pay the Settlement Amount as provided in the payment schedule set forth in Paragraph 1 above, Defendants shall be in Default of Defendants' payment obligations ("Default"). The United States will provide a written Notice of Default, and Defendants 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 Defendants, or to such other representative as Defendants shall designate in advance in writing. If Defendants fail 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 12% per annum, compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance).

- b. In the event of a Default, SMI and Smith each agree to the United States moving to enter the Consent Judgment attached as Exhibit 1.
- c. In the event of Uncured Default, SMI and Smith each agree that the United States, at its sole discretion, may (i) retain any payments previously made, rescind this Settlement Agreement and pursue the Civil Action or bring any civil and/or administrative claim, action, or proceeding against Defendants for the claims that would otherwise be covered by the releases provided in Paragraph 5 above, with any recovery reduced by the amount of any payments previously made by Defendants to the United States under this Settlement Agreement; (ii) take any action to enforce this Settlement Agreement in a new action or by reinstating the Civil Action; (iii) offset the remaining unpaid balance from any amounts due and owing to Defendants 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 Settlement 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, SMI and Smith each agree 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 Settlement Agreement pursuant to this paragraph, SMI and Smith each waive and agree 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 Defendants within 120 days of written notification that this Settlement Agreement has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of the Agreement. SMI and Smith each agree 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.

17. In exchange for valuable consideration provided in this Settlement Agreement, Defendants and Relator acknowledge the following:

- a. SMI and Smith each have reviewed their financial situation and warrant that they are 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 Settlement Agreement, the Parties intend that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Defendants, 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 Defendants was or became indebted to on or after the date of any transfer contemplated in this Settlement Agreement, within the meaning of 11 U.S.C. § 548(a)(1).
- e. If any of Defendants' payments or obligations under this Settlement 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, Defendants 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 Defendants' debts, or to adjudicate

Defendants as bankrupt or insolvent; or seeking appointment of a receiver, trustee, custodian, or other similar official for Defendants or for all or any substantial part of Defendants' assets:

- (i) the United States may rescind the releases in this Settlement Agreement and bring any civil and/or administrative claim, action, or proceeding against Defendants for the claims that would otherwise be covered by the releases provided in Paragraph 5 above;
- (ii) the United States has an undisputed, noncontingent, and liquidated allowed claim against Defendants in the amount of \$4,485,830.81, less any payments received pursuant to Paragraph 1 of this Settlement Agreement, provided, however, that such payments are not otherwise avoided and recovered from the United States by Defendants, a receiver, trustee, custodian, or other similar official for Defendants;
- (iii) if any payments are avoided and recovered by a receiver, trustee, creditor, custodian, or similar official, the United States shall not be responsible for the return of any amounts already paid by the United States to the Relator; and
- (iv) if, notwithstanding subparagraph (iii), any amounts already paid by the United States to the Relator pursuant to Paragraph 3 are recovered from the United States in an action or proceeding filed by a receiver, trustee, creditor, custodian, or similar official in or in connection with a bankruptcy case that is filed within two years of

the Effective Date of this Settlement Agreement or of any payment made under Paragraph 1 of this Settlement Agreement, Relator shall, within thirty days of written notice from the United States to the undersigned Relator's counsel, return to the United States all amounts recovered from the United States.

- f. SMI and Smith each agree that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 17.e is not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) because it would be an exercise of the United States' police and regulatory power. Defendants 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). SMI and Smith each waive 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 Defendants that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on the Effective Date of the Settlement Agreement.

18. Upon receipt of the first payment 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 pursuant to Rule 41(a)(1).

19. Except as provided in Paragraph 4, above, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Settlement Agreement.

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

21. This Settlement Agreement is governed by the laws of the United States. The exclusive venue for any dispute relating to this Settlement Agreement is the United States District Court for the District of Massachusetts. For purposes of construing this Settlement Agreement, this Settlement Agreement shall be deemed to have been drafted by all Parties to this Settlement Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

22. This Settlement Agreement constitutes the complete agreement between the Parties. This Settlement Agreement may not be amended except by written consent of the Parties. Forbearance by the United States from pursuing any remedy or relief available to it under this Settlement Agreement shall not constitute a waiver of rights under this Settlement Agreement.

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

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

25. This Settlement Agreement is binding on Defendants' successors, transferees, heirs, and assigns.

26. This Settlement Agreement is binding on Relator's successors, transferees, heirs, and assigns.

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

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

[signature page follows]

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____
ANDREW A. CAFFREY, III
Assistant United States Attorney
District of Massachusetts

CHARLES SMITH, JR. - DEFENDANT

DATED: _____

BY: _____
CHARLES SMITH, JR.

DATED: _____

BY: _____
MICHAEL S. MARINO
Counsel for Charles Smith, Jr.

SMI DEMOLITION, INC. - DEFENDANT

DATED: _____

BY: _____
CHARLES SMITH, JR.
Principal

DATED: _____

BY: _____
MICHAEL S. MARINO
Counsel for SMI Demolition, Inc.

AIDAN FORSYTH - RELATOR

DATED: _____

BY: _____
AIDAN FORSYTH

DATED: _____

BY: _____
ERIC JASO
Counsel for Aidan Forsyth