

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 Department of Veterans Affairs (collectively the “United States”) and Sterling Medical Associates, Inc. (“Sterling”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Sterling, headquartered in Ohio, provides various healthcare services, including staffing, departmental operation, and clinic operation. In March 2013, VA awarded contract VA 240C-13-D-006 to Sterling to operate its community based outpatient clinics (CBOCs) in Hibbing and Ely, Minnesota (“Hibbing/Ely CBOCs”). Sterling began performance of the contract and assumed operation of the Hibbing/Ely CBOCs on July 1, 2013.

B. The United States contends that it has certain civil claims against Sterling arising from its operation of the Hibbing/Ely CBOCs under VA Contract VA 240C-13-D-006 (“the Contract”) from July 1, 2013 through May 1, 2014. Specifically, the government contends that Sterling did not schedule all veterans for clinic appointments at the Hibbing/Ely CBOCs in accordance with VHA Directive 2010-027 (“Scheduling Directive”) and Paragraph B2.19(b) of the Contract and later modified appointment data to appear to be compliant with the Scheduling Directive. That conduct is referred to below as the Covered Conduct.

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

D. Sterling denies the United States' allegations in Paragraph B.

To avoid the delay, uncertainty, inconvenience, and expense of further investigation and potential 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. Sterling shall pay to the United States \$1,850,000.00 (Settlement Amount), of which \$886,485.00 is restitution, and interest on the Settlement Amount at a rate of 1.78% per annum from September 2, 2019, by electronic funds transfer no later than 10 business days after the Effective Date of this Agreement, pursuant to written instructions to be provided by the United States Attorney's Office for the District of Minnesota.

2. Subject to the exceptions in Paragraph 3 (concerning excluded claims) below, and conditioned upon Sterling's full payment of the Settlement Amount, the United States releases Sterling together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns of any of them 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 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;
- 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; and
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

4. Sterling waives and shall not assert any defenses it 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. Sterling 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 and however denominated) that Sterling 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 Sterling, 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 investigation(s) of the matters covered by this Agreement;
- (3) Sterling's 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 Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment Sterling 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 Sterling, and Sterling 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, Sterling shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Sterling or any of its subsidiaries or affiliates from the United States. Sterling agrees that the United States, at a minimum, shall be entitled to recoup from Sterling 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 Sterling's books and records and to disagree with any calculations submitted by Sterling or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Sterling, or the effect of any such Unallowable Costs on the amount of such payments.

7. Sterling agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Sterling 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. Sterling 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 not already produced to the United States 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 in to this Agreement without any degree of duress or compulsion.

11. 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 Minnesota. 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 Sterling'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.

THE UNITED STATES OF AMERICA

DATED:

3/11/20

BY:

(b) (6), (b) (7)(C)

CHRISTOPHER G. WILSON
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED:

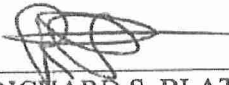
March 11, 2020

BY:

(b) (6), (b) (7)(C)

ERIN M. SECORD
Assistant United States Attorney
United States Attorney's Office
for the District of Minnesota

STERLING - DEFENDANT

DATED: 3/9/20 BY: 
RICHARD S. BLATT
CEO, Sterling

DATED: 3/11/20 BY: Barbara A. Duncombe
BARBARA A. DUNCOMBE
Counsel for Sterling