

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into between the United States of America, acting through the United States Department of Justice and on behalf of the Department of Energy, National Nuclear Security Administration (NNSA) (collectively the "United States") and Sandia Corporation (SC) (hereafter the United States and SC are collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. Sandia National Laboratories (SNL) is a government-owned, contractor-operated laboratory that is part of the NNSA's nuclear weapons complex and is located in Albuquerque, New Mexico and Livermore, California.

B. In 1993, a Management and Operating (M&O) contract, DE-AC04-94AL85000, was competitively awarded to Sandia Corporation (SC), a wholly owned subsidiary of Martin Marietta Corporation. In 1995, Martin Marietta and Lockheed Corporation merged to form Lockheed Martin Corporation (LMC). SC is the current M&O Contractor at SNL.

C. The United States contends that it has certain civil claims against SC arising from its submission of claims seeking and obtaining reimbursement from NNSA, and/or use of federal appropriated funds advanced to it under the M&O Contract for expenses of employees and consultants related to lobbying and/or influencing members of Congress and other federal officials on behalf of SC and LMC designed to influence the award of a further contract extension without competition during the period from January 1, 2008 through December 31, 2011. That conduct is referred to below as the "Covered Conduct."

D. This Settlement Agreement is neither an admission of liability by SC 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. SC shall pay to the United States \$4,790,042.00 (Settlement Amount) by electronic funds transfer pursuant to written instructions to be provided by the United States Department of Justice, Civil Division no later than ten (10) days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 3 (concerning excluded claims) below, and conditioned upon SC's full payment of the Settlement Amount, the United States releases SC, together with its officers, directors, employees, shareholders, parent corporations, subsidiaries, divisions, and affiliates, and the predecessors, successors, transferees 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; the Byrd Amendment, 31 U.S.C. § 1352; 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 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 for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for failure to deliver goods or services due;
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;

4. SC waives and shall not assert any defenses SC 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. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

5. SC 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 SC 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 SC, 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) SC'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 attorney's fees);
- (4) the negotiation and performance of this Agreement;

- (5) the payment SC 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 SC, and SC 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, SC shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by SC or any of its subsidiaries or affiliates from the United States. SC agrees that the United States, at a minimum, shall be entitled to recoup from SC 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 SC's books and records and to disagree with any calculations submitted by SC or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by SC, or the effect of any such Unallowable Costs on the amount of such payments.

7. Except as otherwise provided in Paragraph 2 above, this Agreement is intended to be for the benefit of the Parties only.

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

9. 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.

10. 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 New Mexico. 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.

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

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

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

14. This Agreement is binding on SC's successors, transferees, heirs, and assigns.

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

16. 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.

Execution Version 8.20.2015

*(Signatures on following page)*

THE UNITED STATES OF AMERICA

DATED: \_\_\_\_\_


BY: \_\_\_\_\_

Don Williamson  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

SANDIA CORPORATION

DATED: 8/20/15

BY: \_\_\_\_\_

  
Mark Meagher  
Kayla Smith  
Dentons US LLP  
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