

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 the Navy and the United States Coast Guard (collectively the "United States"), Huntington Ingalls Industries, Inc. ("HII"), and Bryon Faulkner ("Relator") (hereafter collectively referred to as the "Parties"), through their authorized representatives.

RECITALS

A. Defendant, Huntington Ingalls Industries, Inc. (HII) is a publicly traded company headquartered in Newport News, Virginia. Ingalls Shipbuilding is a Division of Huntington Ingalls Incorporated, a wholly owned subsidiary of HII.

B. In July 2013, Relator Faulkner filed a *qui tam* action in the United States District Court for the Southern District of Mississippi captioned *United States ex rel. Faulkner v. Huntington Ingalls Industries*, 1:13-cv-295 HSO RHW, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the "Civil Action").

C. The United States contends that it has certain civil claims against HII arising under certain Coast Guard and Navy shipbuilding contracts identified in Appendix A to this agreement. Specifically, the United States contends that from 2003 through 2015, in the performance of the Coast Guard and Navy Shipbuilding contracts reflected in Appendix A in Pascagoula, Mississippi, HII mischarged labor costs to other contracts for which the costs were not actually incurred and prematurely reported progress in the hulls. The conduct described in this paragraph is referred to below as the "Civil Action Covered Conduct."

D. On May 25, 2012 and March 23, 2015, pursuant to the Mandatory Disclosure provisions of the Federal Acquisition Regulation, Defendant HII submitted to the Department of Defense, Office of Inspector General, DoD Disclosure No. 2012-0671, in which it disclosed instances of mischarging from 2007 to 2012 on Navy and Coast Guard contracts for dive operations to support construction of the ship hulls identified in Appendix B to this agreement. Specifically, HII disclosed that it had billed for premium pay for supervisors who did not actually dive, and for dives that did not occur. This conduct is referred to below as the "Disclosure Covered Conduct." Together the Disclosure Covered Conduct and the Civil Action Covered Conduct shall be referred to as the "Covered Conduct."

E. The Civil Action Covered Conduct also was the subject of DoD FAR Disclosure No. 2103-0821, which HII submitted to the Department of Defense, Office of Inspector General on January 8, 2013 pursuant to the mandatory disclosure provisions of the Federal Acquisition Regulation. The U.S. Navy and the U.S. Department of Homeland Security, for the U.S. Coast Guard, withheld funds on existing HII contracts pending the investigation of the conduct disclosed by DoD Disclosure No. 2013-0821. After adjustments, the amounts currently being withheld in connections with DoD Disclosure No. 2013-0821 are \$4.7 million on U.S. Navy contracts and \$3.6 million on U.S. Coast Guard contracts. These amounts shall be referred to collectively as the "Withhold Amounts."

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

G. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of the settlement of the Civil Action Covered Conduct and to Relator's reasonable expenses, attorneys' fees and costs.

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. In compromise of the Civil Action, HII has agreed to pay the United States a total of \$8,834,323.00 (the "Civil Action Settlement Amount"). In partial satisfaction of the Civil Action Settlement Amount, the United States shall retain, and HII shall release any claim to two previous payments by HII made to the U.S. Treasury, in the amounts of \$1,235,135 (Check # 610608, dated December 9, 2014) and \$99,188 (Check #610770, dated May 1, 2015). In addition, HII shall pay to the United States \$7,500,000.00, the balance of the Civil Action Settlement Amount, by electronic funds transfer no later than 7 (seven) days after the Effective Date of this Agreement pursuant to written instructions to be provided by the United States Attorney's Office for the Southern District of Mississippi.

2. In compromise of the Disclosure Covered Conduct, HII previously reversed and credited to the United States \$400,000 of diver billings, which amount the United States shall retain and to which HII releases any claim thereto. In addition, HII shall pay to the United States an additional \$400,000 by electronic funds transfer no later than 7 (seven) days after the Effective Date of this Agreement pursuant to written instructions to be provided by the United States Attorney's Office for the Southern

District of Mississippi. The reversed diver billings and \$400,000 cash payment together are the "Disclosure Settlement Amount." Together, the Civil Action Settlement Amount and the Disclosure Settlement Amount shall be referred to as the "Settlement Amount."

3. Conditioned upon the United States receiving the Civil Action Settlement Amount from Defendant and as soon as feasible after receipt, the United States shall pay \$1,590,144 to Relator by electronic funds transfer.

4. The Parties recognize that HII is responsible for Relator's reasonable attorney's fees. HII agrees to pay Relator's counsel \$118,755.00 in fees and \$1,100.00 in expenses in satisfaction of this obligation, based on written proof of fees and expenses provided by Relator.

5. Subject to the exceptions in Paragraph 7 (concerning excluded claims) below, and conditioned upon HII's full payment of the Settlement Amount, the United States releases HII, 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.

6. Subject to the exceptions in Paragraph 7 below, and conditioned upon Defendant's full payment of the Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases HII, 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 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. Nothing about this agreement or release shall discharge or release HII or any other party from the Relator's claims, under 31 U.S.C. § 3730(h) or state law, for alleged retaliation against the Relator individually.

7. Notwithstanding the releases given in paragraph 5 and 6 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 the 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.

8. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this 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 payment described in Paragraph 3, 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 Agreement and/or the Civil Action.

9. Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases HII, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; corporate successors; officers; agents; and employees, from any liability to Relator arising from the Civil Action Covered Conduct, including but not limited to any claims under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs. Nothing about this agreement or release shall discharge or release HII or any other party from the Relator's claims, under 31 USC 3730(h) or state law, for alleged retaliation against the Relator individually.

10. HII waives and shall not assert any defenses HII 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.

11. HII 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 HII 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 Civil Action and the Covered Conduct, and the United States' investigation and prosecution thereof provided, however, that HII expressly reserves and does not release its claim to recover the Withhold Amounts from the U.S. Navy and the U.S. Department of Homeland Security on behalf of the U.S. Coast Guard.

12. HII fully and finally releases the Relator from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that HII has asserted, could have asserted, or may assert in the future against the Relator, related to the Civil Action Covered Conduct and the Relator's investigation and prosecution thereof.

13. 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 HII, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement and any related plea agreements;
- (2) the United States' audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;
- (3) HII'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 and any plea agreements;
- (5) the payment HII has made or will make to the United States pursuant to this Agreement and any payments that HII may make to Relator, including costs and attorney's fees,

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 HII, and HII 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, HII shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by HII or any of its subsidiaries or affiliates from

the United States. HII agrees that the United States, at a minimum, shall be entitled to recoup from HII 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 HII's books and records and to disagree with any calculations submitted by HII or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by HII, or the effect of any such Unallowable Costs on the amount of such payments.

14. HII agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, HII 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. HII 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.

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

16. The United States shall intervene in the Civil Action for the purpose of effecting this Settlement Agreement. Upon receipt of the payments described in Paragraphs 1 and 2, 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). Dismissal

shall be with prejudice to Relator, and with prejudice to the United States to the extent of the Covered Conduct, but otherwise without prejudice to the United States.

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

18. 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.

19. 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 Southern District of Mississippi. 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.

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

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

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

23. This Agreement is binding on HII's successors, transferees, heirs, and assigns.

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

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

26. 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: 8/9/2017 BY: Marc A. Perez
for ART J. COULTER
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

HAROLD BRITTAIN
Acting United States Attorney

By: Marc A. Perez
MARC A. PEREZ
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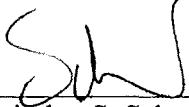
Bryon Faulkner - RELATOR

DATED: 7-12-17 BY: Bryon Faulkner
[Relator]

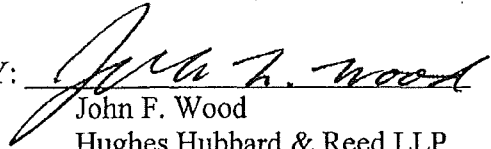
DATED: 7-12-17 BY: [Signature]
Counsel for Relator

Huntington Ingalls Industries, Inc. - DEFENDANT

DATED: 8/8/17 BY: _____


Nicholas G. Schuck
Corporate Vice President
Chief Accounting Officer and Controller

DATED: 8/9/17 BY: _____


John F. Wood
Hughes Hubbard & Reed LLP
Counsel for HII

APPENDIX A

N00024-97-C-2202
N00024-98-C-2207
N00024-98-C-2307
N00024-00-C-2217
N00024-01-C-2224
N00024-02-C-2302
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N00024-07-C-2302
N00024-11-C-2309

HSCG23-04-J-2DW206
HSCG23-05-J-2DW056
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HSCG23-11-C-2DB043

APPENDIX B

N00024-97-C-2202
N00024-98-C-2307
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