

SETTLEMENT AGREEMENT

This Settlement Agreement ("Settlement Agreement") is made and entered into as of the 25th day of February, 2003, by and between the United States of America, acting through the United States Attorney's Office for the Eastern District of Pennsylvania ("United States"), and The Boeing Company ("Boeing"), a Delaware corporation (the United States and Boeing being referred to herein collectively as "the Parties").

WHEREAS, an action entitled "United States ex rel. John Doe I and John Doe II v. Boeing Company and Davidson's Fabricating, Inc.," now pending in the United States District Court for the Eastern District of Pennsylvania, Case No. 98-CV-1842 (the "Broach Action"), was filed by James Broach and Fred Noss, as Relators on behalf of the United States ("Relators");

WHEREAS, the Relators have filed under seal a Complaint in the Broach Action (the "Broach Complaint");

WHEREAS, the United States will intervene in the Broach Action for the purposes of effecting this Settlement Agreement;

WHEREAS, the Broach Complaint includes allegations of False Claims Act violations regarding certain welding activities;

WHEREAS, Boeing denies all allegations set forth in the Broach Complaint, and maintains that it did not submit false claims to the government or engage in any conduct in violation of law or of its contractual obligations as alleged in the Broach Complaint;

WHEREAS, the Parties now mutually desire to reach a resolution of the Broach Action;

WHEREAS, the Parties mutually wish to avoid the expense, delay and

inconvenience of litigation; and

WHEREAS, Boeing has expressed its willingness to enter into a voluntary contract modification with the United States Army.

NOW, THEREFORE, for and in consideration of the mutual covenants, conditions and promises contained herein, the releases contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties hereto agree as follows:

1. Contract Price Adjustment and Working-Capital Fund Payment. For purposes of settlement, concurrently with and as a condition to the execution of this Settlement Agreement, Boeing will enter into a contract modification covering the contract(s) with the United States Army set forth in Appendix A providing for an aggregate price adjustment pursuant to the contract modification to be made in the form of a check made payable to the Treasurer of the United States in the amount of \$474,163.66, and to be delivered in accordance with the contract modification within five (5) days after the later of: i) receipt by Boeing of a fully executed Settlement Agreement, or ii) the District Court's entry of an Order of Dismissal dismissing United States ex rel. John Doe I and John Doe II v. Boeing Company and Davidson Fabricating, Inc., No. 98-CV-1842, with prejudice.

Additionally, Boeing will make a payment to the Department of Justice Working Capital Fund to be made in the form of a check payable to the Department of Justice Working Capital Fund in the amount of \$18,000.00, to be delivered to the United States Attorney's Office for the Eastern District of Pennsylvania, to the attention of Assistant United States Attorney Seth Weber, within five (5) days after the later of: i) receipt by Boeing of a fully executed Settlement Agreement, or ii) the District Court's entry of an Order of Dismissal

dismissing United States ex rel. John Doe I and John Doe II v. Boeing Company and Davidson Fabricating Inc., No. 98-CV-1842, with prejudice.

2. Dismissal of Broach Action and Complaint. Concurrent with execution and delivery of this Settlement Agreement, and conditional upon Boeing concurrently executing the contract modification set out in paragraph 1 above, the Parties will execute Stipulations and Orders providing for dismissal with prejudice to the United States to the extent set forth in paragraph 3 hereof and the Relators of all claims in the Broach Action and Complaint.

3. Releases by United States. Upon execution of this Agreement, the United States, which includes but is not limited to its agencies, employees, representatives, and assigns, hereby waives, releases, and promises to refrain from instituting, maintaining, or causing to be instituted or maintained, any civil action, claim, adjustment, set-off, or administrative monetary proceeding against Boeing, its past, present or future officers, directors, employees, agents, parents, subsidiaries, affiliates, representatives, successors, or assigns, either in their corporate or personal capacities (the "Releasees"), which the United States has or may have against Releasees under the False Claims Act, 31 U.S.C. §§ 3729 et seq., the Contract Disputes Act, 41 U.S.C. §§ 601 et seq., the Civil Major Fraud Act, 18 U.S.C. § 1031(h), the Civil Anti-Kickback Act, 41 U.S.C. § 55, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 et seq., Truth in Negotiations Act, 10 U.S.C. § 2304, and under any common law or equitable theories including fraud, breach of contract, unjust enrichment or payment by mistake: (a) for conduct and claims alleged in the Broach Complaint; (b) for conduct and claims relating to welding or welder certification practices that took place at Boeing's Ridley Park, Pennsylvania facility from April 7, 1988 through

December 31, 2000; or (c) premised on welded part numbers 414S2903-4, 114S2902-5, 114S2906-128, and 114S2903-5, and the "vent manifold tube" sent to Davidson as identified in Paragraph 18 of the Relator's Disclosure Statement provided to the United States, manufactured from April 7, 1988 through December 31, 2000.

4. Exclusions. The Parties agree that the following are excluded from this Settlement Agreement, the dismissal set forth in paragraph 2 above, and the releases set forth in paragraph 3 above: (a) liability, if any, the Releasees have or may have for delivery of any deficient product or parts, or for breach of any express or implied warranty, including injury to persons and property, or any other claims the Parties may have regarding the contracts between them, excepting therefrom the claims released in paragraph 3 above; (b) any disputes or claims between the Parties arising under the Internal Revenue Code or Internal Revenue Service Regulations or under the Securities or Environmental laws; (c) any administrative matter relating to the suspension or debarment by any federal agency of the Releasees; (d) disputes and claims for the enforcement of this Settlement Agreement; and (e) liability, if any, for any mishap(s) and/or crash(es) of any aircraft or helicopters.

5. Cost Allowability. Boeing agrees that all costs, as defined by FAR § 31.205-47(a), incurred by, for, or on behalf of Boeing, its affiliates, subsidiaries, officers, directors, agents, representatives, and employees relating to (a) the litigation matters covered by this Settlement Agreement; (b) the government's investigation of the matters covered by this Settlement Agreement; (c) Boeing's investigation and defense of the matters and corrective actions; (d) the negotiation of this Settlement Agreement; (e) the amounts, fees and expenses paid pursuant to 31 U.S.C. § 3730(d) relating to the case settled herein; and (f) costs of the payments referred to in paragraph 1 above, shall be treated as unallowable for government

contract accounting purposes. These amounts shall be separately accounted for by Boeing by identification of costs incurred through (1) accounting records to the extent possible; (2) memorandum records including diaries and informal logs, where accounting records are not available; and (3) good faith itemized estimates, where no other accounting basis is reasonably available. Any such cost previously submitted or treated by Boeing as an allowable cost for government accounting purposes shall be withdrawn, and any charge or charges previously submitted that were based on such cost shall be adjusted accordingly, and any refund or credit due the United States as a result will be paid or given promptly.

6. Federal Tax Deductibility. Boeing further agrees that the costs of the payments referred to in paragraph 1 above will not be taken as a federal tax deduction by Boeing. Except for the foregoing, nothing in this Settlement Agreement is intended to characterize the federal tax deductibility of any other matter pertaining to this Settlement Agreement.

7. No Admissions. Nothing in this Settlement Agreement is intended to constitute an admission or finding of liability by Boeing, which denies any fault or liability.

8. Authority. Boeing and the United States each warrant and represent that their representatives, whose signatures appear below, have the authority to execute this Settlement Agreement and to bind Boeing and the United States to every promise or covenant contained in this Settlement Agreement.

9. Binding Upon Parties. This Settlement Agreement will be binding upon and inure to the benefit of Boeing and the United States, and their employees, officers, agents, servants, attorneys, representatives, and, in the case of Boeing, its directors and shareholders.

10. Counterparts. The Parties have executed two identical copies of this

Settlement Agreement, which may be executed in counterparts, each of which shall be deemed an original which will be fully enforceable.

11. Changes. The Parties agree that this Settlement Agreement may not be altered, amended, modified, or otherwise changed except by a writing duly executed by both Boeing and United States.

12. Construction. This Settlement Agreement shall be construed as if the Parties jointly prepared it and any uncertainty or ambiguity shall not be interpreted against any one Party.

13. Governing Law. This Settlement Agreement shall be interpreted in accordance with federal law.

IN WITNESS WHEREOF, this Settlement Agreement has been executed as of

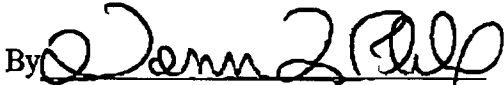
2003.

THE UNITED STATES OF AMERICA:

By 

SETH WEBER
Assistant United States Attorney
Eastern District of Pennsylvania

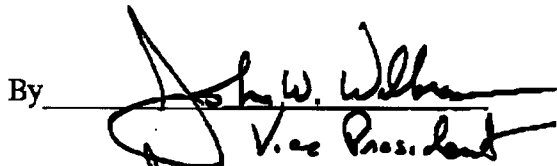
Date 2/25/03

By 

DENNIS L. PHILLIPS
Trial Attorney
U.S. Department of Justice
Attorneys for the United States of America

Date February 4, 2003

THE BOEING COMPANY:

By 
Vice President

Date January 24, 2003

APPENDIX A

CONTRACTS IMPACTED BY MODIFICATION

CONTRACT NUMBER

DELIVERY ORDER

Contract No. DAAJ 09-95-G-0012

Delivery Order No. 0048

Contract No. DAAJ 09-95-G-0012

Delivery Order No. 0113

TOTAL DEOBLIGATIONS: \$474,163.66