SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is between the United States of America, acting through the United States Attorney’s Office for the Eastern District of Washington, and on behalf of the United States Department of Energy ("DOE") (collectively, the “United States”); and Denice Johns (the United States and Denice Johns are referred to collectively herein as the “Parties” where appropriate).

II. RECITALS

A. Denice Johns was employed as a Material Coordinator with Fluor Hanford, Inc., ("Fluor") at times including from approximately June of 2000 to June of 2008. In her capacity as a Material Coordinator Denice Johns purchased materials for Fluor’s use in connection with Contract No. DE-AC06-96RL13200 between Fluor and DOE using a government issued purchase card ("P-Card"). All purchases made by Denice Johns as a Material Coordinator for Fluor using her P-Card were ultimately paid for by the United States through a DOE funded line of credit.

B. Fast Pipe and Supply Co., Inc., ("Fast Pipe") was a vendor and subcontractor that supplied materials to various government prime contractors including Fluor. Fast Pipe was owned and operated by Shane Fast. While acting as a Material Coordinator for Fluor, Denice Johns made purchases from Fast Pipe with her P-Card.

C. The United States asserts that it has civil claims and civil causes of action against Denice Johns for damages and civil penalties, under the False Claims Act, 31 U.S.C. §§ 3729-3733, under the Anti-Kickback Act, 41 U.S.C. §§ 8701 et seq., and under the common law for the alleged conduct described as follows (the “Covered Conduct”):
1. During the month of November 2005, Denice Johns made purchases of materials from Fast Pipe totaling $2,140.17 with her P-Card. During the month of July 2007, Denice Johns made purchases of materials from Fast Pipe totaling $286.67 with her P-Card. Between October of 2005 and September of 2007, Denice Johns made purchases from Fast Pipe during 23 of 24 months for a total of $70,167.25 and a monthly average amount of $2,923.64. These purchases were ultimately paid for by the United States through a DOE funded line of credit.

2. In November of 2005 Denice Johns, as a Material Coordinator with Fluor, accepted a kickback from Shane Fast in the form of a gift card to Walmart with an approximate value of $100. In July of 2007 Denice Johns, as a Material Coordinator with Fluor, accepted a kickback from Shane Fast in the form of an airline ticket with an approximate value of $606.60. Between October of 2005 and October of 2007, Denice Johns, as a Material Coordinator with Fluor, accepted kickbacks from Shane Fast in the form of one ticket to a Seattle Mariners Major League Baseball game on three occasions with an approximate total value of $45 and one ticket to a Seattle Seahawks National Football League game with an approximate value of $40.

3. The kickbacks that Shane Fast provided to Denice Johns were for the purpose of obtaining or rewarding favorable treatment from a prime contractor employee to wit: Denice Johns’s purchases from Fast Pipe as a Material Coordinator for Fluor with her P-Card.

4. Denice Johns knowingly accepted the kickbacks from Shane Fast while making and continuing to make purchases as a Material Coordinator for Fluor from Shane Fast’s company Fast Pipe in violation of Fluor’s rules, on which she had received training, as well as in violation of the terms in Fluor’s contract with DOE and applicable federal regulations and
5. Had DOE known that Denice Johns was accepting kickbacks from Fast Pipe it would not have approved any of the amounts used to ultimately pay for her purchases from Fast Pipe through the DOE funded line of credit.

6. As a result of the conduct described in Paragraphs II.C.1 through II.C.5, in November of 2005, July of 2007, and multiple other months between October of 2005 and October of 2007, Denice Johns knowingly accepted things of value, which were provided in order to improperly induce and/or reward favorable treatment for Fast Pipe on Fluor’s DOE contract, thereby committing knowing violations of the Anti-Kickback Act, 41 U.S.C. §§ 8701 et. seq. Additionally, as a result of the conduct described in Paragraphs II.C.1 through II.C.5, in November of 2005, July of 2007, and multiple other months between October of 2005 and October of 2007, Denice Johns knowingly presented and/or caused to be submitted false and fraudulent claims for the payment of her P-Card purchases from Fast Pipe to DOE, thereby committing violations of the False Claims Act, 31 U.S.C. §§ 3729-3733.

D. Denice Johns does not admit the contentions of the United States as set forth in Paragraphs II.C above.

E. In order to avoid the delay, uncertainty, inconvenience and expense of protracted litigation of these claims, and in consideration of the mutual promises and obligations of this Agreement, the Parties reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

1. In consideration of this Agreement, Denice Johns shall consent to judgment being entered against her in the amount of $48,414.73 in the U.S. District Court for the Eastern District
of Washington ("Consent Judgment") and waive any and all defenses against such Consent Judgment other than full and strict compliance with the terms of this Agreement. The Consent Judgment shall exist until the requirements of this Agreement are satisfied.

2. In further consideration of this Agreement Denice Johns agrees to pay to the United States a total of $10,440, plus simple interest of 2% per annum on any unpaid balance, beginning on the Effective Date of this agreement, and including the day on which final payment is made (the “Settlement Amount”). Payments shall be made as follows:

   a. The first payment shall be sent to the United States Attorney’s Office, as described in Paragraph III.2.c, postmarked on or before June 15, 2012, in the amount of at least $153.56. Thereafter, payments shall be made on a monthly basis, postmarked on the 15th of each month, for the subsequent seventy-one (71) months or until the settlement amount plus accrued interest is paid in full. If any of the payment dates fall on a weekend or federal holiday, payment shall be postmarked no later than the next business day. All monthly payments described in this Paragraph shall be in the amount of at least $153.56. If Denice Johns prepays any of the monthly payments or pays an amount in excess of the minimum monthly payment amount (hereinafter “prepayment”), Denice Johns shall be liable only for the interest that accrues as of and including the date of prepayment. Therefore, Denice Johns may make prepayments to the principal amount. In the event of prepayment, Denise Johns shall indicate in writing that the prepayment is to be applied to the principal amount. If Denise Johns fails to indicate in writing that the prepayment is to be applied to the principal amount, the prepayment shall be applied to the outstanding balance as deemed appropriate by the United States.

   b. Denice Johns agrees that if Denice Johns fails to make any of the monthly
payments as described in the preceding Paragraph (III.2.a), the entire balance, including any accrued interest, will immediately become due and must be paid, in full, within thirty (30) days of the date that the missed payment was due.

c. Denice Johns shall make all payments required by this Settlement Agreement to the United States by check or money order made payable to the United States Department of Justice and mailed to the United States Attorney’s Office for the Eastern District of Washington, PO Box 1494, Spokane, WA 99210-1494.

3. Subject to Paragraph III.4 (concerning excluded claims) below, and conditioned upon Denice Johns’s full payment of the Settlement Amount and her agreement to continue to cooperate with the United States and to testify truthfully in any legal proceeding or deposition in a matter involving the United States as a party and which involves the civil or criminal liability of any entity or individual other than Denice Johns, the United States agrees to release Denice Johns, except as reserved in Paragraphs III.4 and III.10, from any civil or administrative monetary claim the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729 - 3733, the Anti-Kickback Act, 41 U.S.C. §§ 8701, et. seq, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, and all claims under common law for payment by mistake, unjust enrichment, and fraud.

4. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to Denice Johns are the following claims of the United States:

(a) Any civil, criminal, or administrative 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 described above;

(e) Any claims based upon such obligations as are 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 provided by Denice Johns;

(g) Any liability for failure to deliver goods or services due;

(h) Any liability for any personal injury or consequential damages claim; and

(i) Except as explicitly stated in this Agreement, any liability of any other individuals or entities implicated in the Covered Conduct.

5. Denice Johns waives and shall not assert any defenses she may have to any criminal prosecution or to 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 to the Constitution, or under the Excessive Fines Clause in the Eighth Amendment to 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.

6. Denice Johns finally and fully releases the United States, its agencies,
employees, servants, and agents from any claims (including attorney’s fees, costs, and expenses of every kind and however denominated) that Denice Johns has asserted, could have asserted, or may assert in the future against the United States, and its agencies, employees, servants, and agents, related to the Covered Conduct and the United States’ investigation and prosecution thereof.

7. Denice Johns agrees to the following:

a. **Unallowable Costs Defined:** that all costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Denice Johns in connection with:

   (1) the matters covered by this Agreement;

   (2) the United States’ audits and civil and criminal investigations of the matters covered by this Agreement;

   (3) Denice Johns’s investigation, defense, and corrective actions undertaken in response to the United States’ audits and civil and criminal investigations 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(s) Denice Johns 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 Denice Johns, and Denice Johns 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: Denice Johns further agrees that within 90 days of the Effective Date of this Agreement she shall identify any Unallowable Costs (as defined in this Paragraph) included in payments previously sought by Denice Johns or any entity owned or controlled by Denice Johns or any of their subsidiaries or affiliates from the United States. Denice Johns agrees that the United States, at a minimum, shall be entitled to recoup from Denice Johns any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs in any such payments. Any payments due shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Denice Johns regarding any Unallowable Costs included in payments previously sought by Denice Johns, or the effect of any such Unallowable Costs on the amount of such payments.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine Denice Johns’s books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

8. This 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. The Parties do not release any claims against any other person or entity, including, but not limited to, Fluor Hanford, Inc., or any of its respective officers, agents, or employees or former employees. Nor does this Agreement release,
in any way, Fast Pipe and Supply, Inc., or any of its respective owners, directors, officers, employees, or former employees including but not limited to Shane Fast and Skyler Hamm.

9. Denice Johns warrants that she has reviewed her financial situation and that she is currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I). Further, the Parties warrant that, in evaluating whether to execute this Agreement, they: (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Denice Johns, within the meaning of 11 U.S.C. § 547(c)(1); and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Denice Johns was or became indebted on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

10. If, within 90 days of the Effective Date of this Agreement or of any payment made under this Agreement, either Denice Johns commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking to have any order for relief of Denice Johns’s debts, or seeking to adjudicate as bankrupt or insolvent, Denice Johns agrees as follows:

   a. Denice Johns’s obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Denice Johns shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Denice Johns’s obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Denice Johns was insolvent at the time that this
Agreement was entered into, or Denice Johns became insolvent as a result of the payment made to the United States made pursuant to this Agreement; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Denice Johns.

b. If Denice Johns’s obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee’s avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Denice Johns for the claims that would otherwise be covered by the releases provided in Paragraph III.3 above. Denice Johns agrees that (i) any such claims, actions, or proceedings brought by the United States are not subject to an “automatic stay” pursuant to 11 U.S.C. § 362(a) as a result of the action, case or proceedings described in the first clause of this Paragraph, and Denice Johns shall not argue or otherwise contend that the United States’ claims, actions, or proceedings are subject to an automatic stay; (ii) Denice Johns 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 claims, actions, or proceedings that are brought by the United States within 90 calendar days of written notification to Denice Johns that the releases have been rescinded pursuant to this Paragraph, except to the extent that such defenses were available on the Effective Date of this agreement; and (iii) the United States has a valid claim against Denice Johns in the amount of at least $48,414.73 and the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.
c. Denice Johns acknowledges that her agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

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

12. Denice Johns represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

13. If Denice Johns is not represented by an attorney in this matter and/or has not consulted with an attorney prior to entering into this Agreement, Denice Johns acknowledges that she is hereby advised to seek the advice of counsel and has knowingly, voluntarily, and intelligently declined to do so.

14. This Agreement is governed by the laws of the United States. The Parties agree that exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement is in the United States District Court for the Eastern District of Washington.

15. For purposes of construction, this Agreement shall be deemed to have been drafted by all Parties this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

16. This Agreement constitutes the complete agreement between the United States and Denice Johns. This Agreement may not be amended except by written consent of the Parties.

17. The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the parties indicated below.

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

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

20. This Agreement is binding on Denice Johns’s successors, transferees, heirs, and assigns.

21. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures and scanned or other electronic signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

IN WITNESS WHEREOF, the parties hereto affix their signatures.

UNITED STATES OF AMERICA

Dated: 5/7/12 

By: 

TYLER H.L. TORNABENE
Assistant United States Attorney
Eastern District of Washington

Denice Johns

Dated: 4/11/2012 

By: 

Denice Johns