

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into among the United States of America, acting through the United States Attorney's Office for the Eastern District of California (collectively the "United States") and Sierra Nevada Corporation ("SNC") (hereafter collectively referred to as the "Parties"), through their authorized representatives.

### RECITALS

A. SNC is a Nevada corporation that provides services to agencies of the United States pursuant to various defense and space contracts. SNC is headquartered in Sparks, Nevada.

B The United States contends that it has certain civil claims against SNC arising from the following conduct by SNC:

(1) Misclassification of certain direct contract costs and Manufacturing and Production Engineering ("MPE") costs as Independent Research and Development ("IR&D") costs between fiscal years ("FY") 2007 and 2011 for the IR&D projects and associated contracts/projects listed in Attachment A hereto.

(2) Charging certain IR&D costs in the wrong cost accounting period for the IR&D projects and associated contracts/projects listed in Attachment B hereto.

This conduct resulted in SNC applying overstated General & Administrative (G&A) rates to its government contracts for FY 2007 through FY 2011. The conduct described in this paragraph is referred to hereafter as the Covered Conduct.

C. This Settlement Agreement is neither an admission of liability by SNC 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. SNC shall pay to the United States the total sum of \$14,888,779, as follows:
  - a. SNC shall pay \$13,794,069 plus accrued interest at the rate of 3% per annum from November 1, 2016, and continuing until and including the day of payment (the "Settlement Amount"), by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Eastern District of California on or before the latter of ten (10) business days after the Effective Date of this Agreement or five (5) business days after receiving the above-referenced written instructions. If payment is not timely received, SNC shall also pay the interest on the Settlement Amount at a rate of 10% in addition to the 3% noted above (13%) from the date payment was due through the date payment is received;
  - b. SNC represents and warrants that it has reimbursed to the United States the remaining sum of \$1,094,710, through downward adjustments to final G&A rates for fiscal years 2007 and 2008.
2. Subject to the exceptions in Paragraph 3 (concerning excluded claims) below, and conditioned upon SNC's full payment of the Settlement Amount, the United States later releases SNC 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; 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 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;
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

4. SNC waives and shall not assert any defenses SNC 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. SNC 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 SNC 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. SNC hereby expressly waives all rights it may have by virtue of Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO  
CLAIMS WHICH THE CREDITOR DOES NOT KNOW  
OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT  
THE TIME OF EXECUTING THE RELEASE, WHICH IF  
KNOWN BY HIM OR HER MUST HAVE  
MATERIALLY AFFECTED HIS OR HER  
SETTLEMENT WITH THE DEBTOR.

SNC's releases herein shall be effective whether or not they release claims that are currently known, unknown, foreseen or unforeseen.

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

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

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. SNC warrants that it has been represented by, and has sought and obtained the advice of, independent legal counsel with regard to the nature, purpose, and effect of this Agreement. The Agreement was negotiated by the Parties and their respective counsel, each of whom had the opportunity to participate in the drafting thereof. SNC hereby declares that the terms of this Agreement have been completely read, fully

understood, and voluntarily accepted following opportunity for review by legal counsel of their choice.

11. Each of the Parties and each signatory to this Agreement warrants and represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion whatsoever, after having been apprised of all relevant information and data by its legal counsel. Each of the Parties further warrants and represents that no other Party or its representative has made any promise, representation or warranty, express or implied, except as expressly set forth in this Agreement, and that no Party has relied on any inducements, promises, or representations made by any Party to this Agreement, or its representatives, or any other person, except as expressly set forth herein.

12. 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 Eastern District of California. 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.

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

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

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