

## 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 United States Department of the Air Force (“USAF”) and the National Reconnaissance Office (“NRO”) (collectively the “United States”), United Launch Alliance, LLC and its wholly owned subsidiary United Launch Services, LLC (collectively “ULA”), and Joseph Scott (“Relator”) (hereafter collectively referred to as the “Parties”), through their authorized representatives.

### RECITALS

A. United Launch Alliance, LLC, headquartered in Centennial, Colorado, is a wholly-owned joint venture of Lockheed Martin Corporation and The Boeing Company. United Launch Alliance, LLC, through its wholly owned subsidiary, United Launch Services, LLC, provides space launch services for the U.S. government, including the USAF and the NRO.

B. On February 11, 2016, Relator filed a *qui tam* action in the United States District Court for the District of Colorado captioned *United States ex rel. Scott v. United Launch Alliance, L.L.C.*, No. 16-cv-00347-WYD-MEH (D. Colo.), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). Relator’s complaint alleges that ULA submitted false claims to the United States that inflated the labor costs for ULA’s Supplier Management and Procurement (“SM&P”) group to procure parts and materials for space launch missions. More specifically, Relator alleges that on certain launch contracts, in violation of the Truth-in-Negotiations Act and Federal Acquisition Regulation (“FAR”) requirements, ULA knowingly used a

deficient parametric labor estimation method from 2009 through 2013 for estimating SM&P labor costs (hereinafter, the “2009-2013 SM&P Parametric Model”) when more timely and accurate data and methods were available.

C. The United States contends that it has certain civil claims against ULA based on ULA’s excessive SM&P labor hour estimates in proposals and associated certifications, and recording of costs and billings for labor costs by the SM&P group for work performed on several USAF and NRO launch services and launch capability contracts that employed the 2009-2013 SM&P Parametric Model and were proposed and went on contract between November 2009 and June 2013. Those contracts are listed in Exhibit A to this Settlement Agreement and are hereafter referred to as the “Contracts.” More specifically, the United States alleges that ULA used the “2009-2013 SM&P Parametric Model” to estimate SM&P labor costs on the Contracts, while knowing that the model relied on inaccurate data to project SM&P labor costs, thereby resulting in excessive and false claims for labor under the Contracts. The conduct described in Paragraph C and the preceding Paragraph B are collectively referred to throughout this Agreement as the “Covered Conduct.”

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

E. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator’s reasonable expenses, attorney’s 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. ULA shall pay to the United States \$432,826 (Four Hundred and Thirty-Two Thousand Eight Hundred and Twenty-Six Dollars) (the “Settlement Amount”) by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice no later than fifteen (15) days after the Effective Date of this Agreement.
2. Conditioned upon the United States receiving the Settlement Amount from ULA and as soon as feasible after receipt, the United States shall pay \$82,237 to Relator by electronic funds transfer. ULA and Relator have reached a separate agreement regarding reasonable attorneys’ fees, expenses, and costs as provided for by 31 U.S.C. § 3730(d).
3. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon ULA’s full payment of the Settlement Amount, the United States releases ULA 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; the Truthful Cost or Pricing Data Statute, 41 U.S.C. §§ 3501-3509 (and the formerly-named Truth-in-Negotiations Act, 10 U.S.C. § 2306a); the Contract

Disputes Act, 41 U.S.C. §§7101-09; and the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

4. Subject to the exceptions in Paragraph 5 below, and conditioned upon ULA's full payment of the Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns ("Relator Releasers"), releases ULA together with its current and former parent corporations, direct and indirect subsidiaries, brother or sister corporations, divisions, current and former corporate owners, the corporate successors and assigns of any of them, and its directors, officers, employees and agents ("ULA Releasees") from any and all claims Relator Releasers may have against ULA Releasees including but not limited to any civil monetary claim Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

5. Notwithstanding the releases given in Paragraphs 3 and 4 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.

6. 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 2, 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.

7. Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases ULA Releasees from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

8. ULA waives and shall not assert any defenses ULA 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.

9. ULA 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 ULA 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 Civil Action, and the United States' investigation and prosecution thereof.

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

11. 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 ULA, 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) ULA'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; or
- (5) the payment ULA makes to the United States pursuant to this Agreement and any payments that ULA 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 ULA, and ULA 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, ULA shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by ULA or any of its subsidiaries or affiliates from the United States. ULA agrees that the United States, at a minimum, shall be entitled to recoup from ULA 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, the USAF and/or NRO, reserves its rights to audit, examine, or re-examine ULA's books and records and to disagree with any calculations submitted by ULA or any of its subsidiaries or affiliates

regarding any Unallowable Costs included in payments previously sought by ULA, or the effect of any such Unallowable Costs on the amount of such payments.

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

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

14. Upon receipt of the payment described in Paragraph 1, above, Relator and the United States shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Federal Rule of Civil Procedure Rule 41(a)(1). The stipulation of dismissal shall be subject to the terms and conditions of this Agreement. The dismissal shall be with prejudice to the United States as to claims for the Covered Conduct, but otherwise without prejudice to the United States; and with prejudice to Relator for all claims and allegations asserted in the Civil Action.

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



16. 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.

17. 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 Colorado. 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.

18. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties, and is complete and separate from the agreement reached between ULA and Relator resolving all other issues raised in the Civil Action.

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

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

21. This Agreement is binding on ULA's successors, transferees, heirs, and assigns.

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

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

24. This Agreement is effective on the date of signature of the last signatory to the Agreement (the “Effective Date of this Agreement”). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

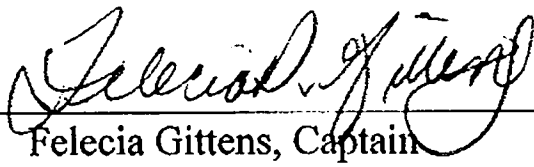
THE UNITED STATES OF AMERICA

DATED: 12-21-17 BY: Amanda Rocque

Amanda Rocque  
Assistant United States Attorney  
United States Attorney's Office  
for the District of Colorado

Department of the Air Force

DATED: 12/21/2017 BY:



Felecia Gittens, Captain  
Special Counsel  
U.S. Department of the Air Force

National Reconnaissance Office

DATED: 20 Dec 17 BY: *Donna L MacEwen*  
Donna L. MacEwen  
General Counsel  
National Reconnaissance Office

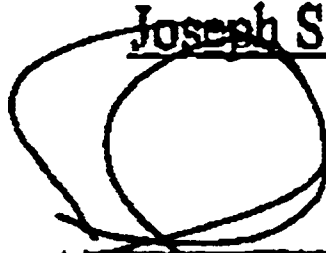
United Launch Alliance

DATED: 12/21/17 BY: James DeNapoli  
James DeNapoli  
Assistant General Counsel  
United Launch Alliance


DATED: 12/21/17 BY: Todd Steggerda  
Todd Steggerda  
Partner, McGuireWoods LLP  
  
Counsel for United Launch Alliance, LLC  
and United Launch Services, LLC

Joseph Scott - Relator

DATED: 12/21/17 BY:

  
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Joseph Scott

DATED: 12-21-17 BY:

  
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Christopher Carrington  
Richards Carrington, LLC  
Counsel for Joseph Scott

## **Exhibit A**

- F04701-98-D-0001
- F04701-98-D-0002
- FA8811-08-C-0005
- FA8816-06-C-0002
- FA8811-11-C-0002
- FA8811-13-C-0001
- FA8811-13-C-0003
- NRO000-10-C-0104