

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 National Aeronautics and Space Administration (NASA), (collectively the "United States"), Defendants Crown Roofing Services, Inc. (Crown), Ray Palmer, and R.D. Chatmon, and Relators Bobby Garrison and Rudolph Gaona (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. Crown is a roofing company that performed roofing work on buildings at NASA's Johnson Space Center (JSC) in Houston, Texas between 2005 and 2007. Ray Palmer and R.D. Chatmon were the owners and operators of Crown during that time.

B. On March 23, 2007, Garrison and Gaona filed a *qui tam* action in the United States District Court for the Southern District of Texas captioned *United States ex rel. Garrison and Gaona v. Crown Roofing Services, Inc., and USS Engineering, LLC (USSE)*, Case No. 07-1018, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Civil Action). Relators allege that Crown obtained prime contracts to perform roofing work at NASA JSC by providing kickbacks to NASA officials, Jameel Hattab and Larry Shelmire, who were responsible for recommending award of the prime contracts. According to Relators, the kickbacks consisted primarily of subcontracts that Crown awarded to USSE, a company owned and operated by Hattab. The United States intervened in the Civil Action in November 2009 and filed a Complaint on November 22, 2009. The United States filed an Amended Complaint on December 10, 2010 adding Ray Palmer, R.D. Chatmon, and Jameel Hattab as defendants.

C. The United States contends that it has certain civil claims against Crown and Palmer arising from a fraudulent scheme to obtain recommendations for the award of prime contracts for roofing work on Buildings 13, 15, 420, 422, and 9 North at NASA JSC by providing kickbacks in the form of subcontracts to NASA officials Hattab and Shelmire and USSE from July 2005 through July 2007. The United States contends that the alleged fraudulent scheme resulted in the submission of false claims for payment to NASA. The United States has also made civil claims against Crown, Palmer, and Chatmon for the alleged fraudulent transfer of \$5.2 million in bonuses from Crown to Palmer and Chatmon in around May of 2009. This conduct is referred to below as the Covered Conduct.

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

E. Relators claim entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relators' reasonable expenses, attorney 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. The Defendants, through Crown, shall pay to the United States \$3 million (Settlement Amount) as follows:

a. Defendants shall pay simple interest on the Settlement Amount at an

annual rate of 6 percent, calculated daily from October 4, 2012, forward on the unpaid Settlement Amount. Interest shall be calculated by applying the ratio of the interest rate over a period of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding;

- b. \$2.2 Million of the Settlement Amount, plus interest (First Tranche) shall be paid no later than 7 days after the Effective Date of this Agreement;¹
- c. The second \$800,000.00 of the Settlement Agreement (Second Tranche) plus accrued interest shall be paid no later than February 14, 2013;
- d. All payments shall be made by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice;
- e. There shall be no penalty for payment in whole or in part prior to the above payment dates.

2. Conditioned upon the United States receiving the payments from Defendants as outlined in Paragraph 1 above, and as soon as feasible after receipt of each payment, the United States shall pay Relators 18% of each such payment by electronic funds transfer. Relators' share of the \$3 million Settlement Amount shall not exceed \$540,000 plus 18% of interest paid by Defendants.

¹ The Effective Date of the Settlement Agreement shall be the date of the signature of the last signatory to the Agreement.

3. Subject to the exceptions in Paragraph 7 (concerning excluded claims) below, and conditioned upon Defendants' full payment of the Settlement Amount, and subject to Paragraph 13, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the United States releases Defendants 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 Anti-Kickback Act, 41 U.S.C. § 52-58; the Federal Debt Collection Procedures Act, 28 U.S.C. § 3304-3308; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; and any statutory provision creating a cause of action for civil damages or civil penalties for which the Civil Division of the Department of Justice has actual or present authority to assert and compromise pursuant to 28 C.F.R. Part 0, Subpart I, 0.45(d) or the common law theories of breach of contract, payment by mistake, disgorgement, unjust enrichment, bribery, inducement of breach of fiduciary duty, and fraud.

4. Subject to Paragraph 6 (concerning attorney fees, costs, and expenses) and the exceptions in Paragraph 7, (concerning excluded claims), and conditioned upon Defendants' full payment of the Settlement Amount, and subject to Paragraph 13, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, RELEASE Defendants from any and all civil or administrative monetary claims, damages, losses, suits judgments and expenses, including attorney's fees, or causes of action of any kind whatsoever at common law, statutory (Federal or State), contract, tort, in equity or

otherwise, which the United States has, or might have, known or unknown, now existing or that may arise hereafter, directly or indirectly, related or attributable to the above described controversies or disputes that could have been asserted in this cause which relate to those matters that are more specifically set forth in the United States' First Amended Complaint including any civil monetary claim the Relators have on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

Defendants fully and finally release the Relators, their heirs, successors, attorneys, agents and assigns from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Defendants have asserted, could have asserted, or may assert in the future against the Relators, their heirs, successors, attorneys, agents, and assigns related to the Covered Conduct and the United States' investigation and prosecution thereof.

5. It is expressly understood that Chatmon, Palmer and Crown, expressly reserve among themselves any and all claims and defenses related to contribution, indemnity, division and funding of the amounts payable pursuant to this Settlement Agreement. By signing this Settlement Agreement, Chatmon, Palmer and Crown do not waive any such claims and/or defenses among each other, including but not limited to, claims and defenses arising out of or related to the civil claims asserted in this case or the pending litigation in Louisiana captioned "Crown Roofing Services, Inc. and Ray Palmer vs. R.D. Chatmon, Katie Mae Chatmon, Royalty Roofing Consulting, LLC, and Chatmon Construction, LLC", Case No. C-63981, on the docket of 40th Judicial District Court, Parish of St. John the Baptist.

It is further expressly understood that the foregoing provision in no way affects the United States' right to receive or collect payment of the amounts due in accordance with the terms of this Settlement Agreement.

6. Defendants, through Crown, shall pay a total of \$275,000 to the Relators in two installments for attorneys fees, expenses, and costs, pursuant to 31 U.S.C. § 3730(d)(1). The first installment of \$171,000.00 shall be paid no later than 7 days after the Effective Date of this Settlement Agreement. The second installment of \$104,000.00 shall be paid no later than February 14, 2013.

7. 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 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;

8. Relators and their 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 Relators' receipt of the payments described in Paragraph 2, Relators and their 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. Defendants waive and shall not assert any defenses Defendants 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.

10. Defendants fully and finally release 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 Defendants have 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.

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 Defendants,

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' audits and civil and criminal investigations of the matters covered by this Agreement;
- (3) Defendants' 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;
- (5) the payment Defendants make to the United States pursuant to this Agreement and any payments that Defendants may make to Relators, including costs and attorney 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 Defendants, and Defendants 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, Defendants shall identify and repay by adjustment to future claims for payment or otherwise any

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

12. Though Crown Roofing Services, Inc. is no longer solvent, Palmer and Chatmon warrant that they have reviewed their financial situation and that they currently are solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the United States of the Settlement Amount. 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 Defendants, 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 Defendants were or became

indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

13. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, any of the Defendants commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of a Defendant's debts, or seeking to adjudicate a Defendant as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for any of the Defendants or for all or any substantial part of a Defendant's assets, the Defendants agree as follows:

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

b. If any of the Defendants' 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 release in this Agreement and bring any civil and/or administrative claim, action, or proceeding against the Defendants for the claims that would otherwise be

covered by the release provided in Paragraph 3. Defendants agree 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 Defendants shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) Defendants 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 proceeding that are brought by the United States within 365 calendar days of written notification to Defendants that the release has been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of this Agreement; and (iii) the United States has a valid claim against Defendants in the amount of \$5,111,462 and the United States may pursue its claims 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. Defendants acknowledge that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

14. Defendants agree that in the event of failure to pay the amounts due pursuant to the Terms and Conditions set forth in paragraph 1 of this Settlement Agreement, within 15 days the United States may file a Consent Judgment against Defendants in the amount of \$3 million plus accrued interest less the amount of payments made by Defendants under the Settlement Agreement

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

16. Upon receipt of the payments described in Paragraph 1, 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).

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 except as provided in Paragraph 6.

18. Each party and signatory to this Agreement represents that it freely and voluntarily enters into 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 Texas. 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 Defendants' successors, transferees, heirs, and assigns.

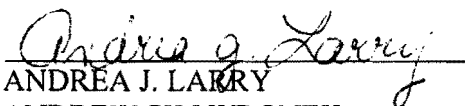
24. This Agreement is binding on Relators' successors, transferees, heirs, and assigns.

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: 12/18/12 BY:


ANDREA J. LARRY
ANDREW SKOWRONEK
Trial Attorneys
Commercial Litigation Branch
Civil Division
United States Department of Justice

CROWN ROOFING SERVICES, INC., RAY
PALMER & R.D. CHATMON - DEFENDANTS

DATED: 12/14/12 BY: [Signature]
CROWN ROOFING SERVICES, INC.

DATED: 12/14/12 BY: [Signature]
RAY PALMER

DATED: 12-12-12 BY: [Signature]
R.D. CHATMON


DATED: _____ BY: _____
HECTOR A. CANALES
C. ANDERSON PARKER
Parker & Canales
Counsel for Defendants

CROWN ROOFING SERVICES, INC., RAY
PALMER & R.D. CHATMON - DEFENDANTS

DATED: _____ BY: _____
CROWN ROOFING SERVICES, INC.

DATED: _____ BY: _____
RAY PALMER

DATED: _____ BY: _____
R.D. CHATMON

DATED: 12-15-12 BY: 
HECTOR A. CANALES
C. ANDERSON PARKER
Parker & Canales
Counsel for Defendants

**BOBBY GARRISON AND RUDOLPH
GAONA- RELATORS**

DATED: _____ BY:

BOBBY GARRISON

DATED: 12-6-2011 BY:

R. Gaona Jr.
RUDOLPH GAONA JR.

DATED: 12-6-12 BY:

H. Vincent McNight
H. VINCENT MCNIGHT
McKnight & Kennedy
Counsel for Relators

**BOBBY GARRISON AND RUDOLPH
GAONA- RELATORS**

DATED: 11/14/2012 BY:

Bobby Garrison
BOBBY GARRISON

DATED: _____ BY:

RUDOLPH GAONA JR.

DATED: 12-6-12 BY:

H. Vincent McNight
H. VINCENT MCNIGHT
McKnight & Kennedy
Counsel for Relators